

Calendar No. 454

104TH CONGRESS
2D SESSION

H. R. 3286

[Report No. 104-279]
[Report No. 104-288]

AN ACT

To help families defray adoption costs, and to
promote the adoption of minority children.

JUNE 24, 1996

Reported with an amendment

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104TH CONGRESS
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IN THE SENATE OF THE UNITED STATES

MAY 13, 1996

Received; read twice and referred to the Committee on Finance

MAY 23, 1996

Ordered, if and when reported by the Committee on Finance the bill then be referred to the Committee on Indian Affairs for the purpose of considering title 3, for a period of 10 days of session, to report or be discharged

JUNE 13, 1996

Reported by Mr. ROTH, with amendments; referred to the Committee on Indian Affairs pursuant to the order of May 23, 1996

[Omit the part struck through and insert the part printed in italic]

JUNE 24, 1996

Reported by Mr. McCAIN, with an amendment

[Omit the part enclosed in boldface brackets]

AN ACT

To help families defray adoption costs, and to promote the adoption of minority children.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Adoption Promotion
3 and Stability Act of 1996”.

4 SEC. 2. TABLE OF CONTENTS.

5 The table of contents of this Act is as follows:

See. 1. Short title.

See. 2. Table of contents.

TITLE I—CREDIT FOR ADOPTION EXPENSES

Sec. 101. Credit for adoption expenses.

TITLE II—INTERETHNIC ADOPTION

Sec. 201. Removal of barriers to interethnic adoption.

**TITLE III—CHILD CUSTODY PROCEEDINGS AFFECTED BY THE
INDIAN CHILD WELFARE ACT OF 1978**

Sec. 301. Inapplicability of the Indian Child Welfare Act of 1978 to child custody proceedings involving a child whose parents do not maintain affiliation with their Indian tribe.

Sec. 302. Membership and child custody proceedings.

Sec. 303. Effective date.

TITLE IV—REVENUE OFFSETS

Sec. 400. Amendment of 1986 Code.

**Subtitle A—Exclusion for Energy Conservation Subsidies Limited to Subsidies
With Respect to Dwelling Units**

Sec. 401. Exclusion for energy conservation subsidies limited to subsidies with respect to dwelling units.

Subtitle B—Foreign Trust Tax Compliance

Sec. 411. Improved information reporting on foreign trusts.

Sec. 412. Comparable penalties for failure to file return relating to transfers to foreign entities.

Sec. 413. Modifications of rules relating to foreign trusts having one or more United States beneficiaries.

Sec. 414. Foreign persons not to be treated as owners under grantor trust rules.

Sec. 415. Information reporting regarding foreign gifts.

Sec. 416. Modification of rules relating to foreign trusts which are not grantor trusts.

Sec. 417. Residence of trusts, etc.

Sec. 401. *Repeal of bad debt reserve method for thrift savings associations.*

Sec. 402. *Depreciation under income forecast method.*

1 **TITLE I—CREDIT FOR ADOPTION**
2 **EXPENSES**

3 **SEC. 101. CREDIT FOR ADOPTION EXPENSES.**

4 (a) IN GENERAL.—Subpart A of part IV of sub-
5 chapter A of chapter 1 of the Internal Revenue Code of
6 1986 (relating to nonrefundable personal credits) is
7 amended by inserting after section 22 the following new
8 section:

9 **“SEC. 23. ADOPTION EXPENSES.**

10 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
11 dividual, there shall be allowed as a credit against the tax
12 imposed by this chapter for the taxable year the amount
13 of the qualified adoption expenses paid or incurred by the
14 taxpayer during such taxable year.

15 “(b) LIMITATIONS.—

16 “(1) DOLLAR LIMITATION.—The aggregate
17 amount of qualified adoption expenses which may be
18 taken into account under subsection (a) for all tax-
19 able years with respect to the adoption of a child by
20 the taxpayer shall not exceed \$5,000.

21 “(2) INCOME LIMITATION.—The amount allow-
22 able as a credit under subsection (a) for any taxable
23 year shall be reduced (but not below zero) by an
24 amount which bears the same ratio to the amount

1 so allowable (determined without regard to this
2 paragraph but with regard to paragraph (1)) as—

3 “(A) the amount (if any) by which the tax-
4 payer’s adjusted gross income (determined
5 without regard to sections 911, 931, and 933)
6 exceeds \$75,000, bears to

7 “(B) \$40,000.

8 “(3) DENIAL OF DOUBLE BENEFIT.—

9 “(A) IN GENERAL.—No credit shall be al-
10 lowed under subsection (a) for any expense for
11 which a deduction or credit is allowable under
12 any other provision of this chapter.

13 “(B) GRANTS.—No credit shall be allowed
14 under subsection (a) for any expense to the ex-
15 tent that funds for such expense are received
16 under any Federal, State, or local program.
17 The preceding sentence shall not apply to ex-
18 penses for the adoption of a child with special
19 needs.

20 “(C) REIMBURSEMENT.—No credit shall
21 be allowed under subsection (a) for any expense
22 to the extent that such expense is reimbursed
23 and the reimbursement is excluded from gross
24 income under section 137.

1 “(c) CARRYFORWARDS OF UNUSED CREDIT.—If the
2 credit allowable under subsection (a) for any taxable year
3 exceeds the limitation imposed by section 26(a) for such
4 taxable year reduced by the sum of the credits allowable
5 under this subpart (other than this section), such excess
6 shall be carried to the succeeding taxable year and added
7 to the credit allowable under subsection (a) for such tax-
8 able year. No credit may be carried forward under this
9 subsection to any taxable year following the fifth taxable
10 year after the taxable year in which the credit arose. For
11 purposes of the preceding sentence, credits shall be treated
12 as used on a first-in first-out basis.

13 “(d) DEFINITIONS.—For purposes of this section—
14 “(1) QUALIFIED ADOPTION EXPENSES.—The
15 term ‘qualified adoption expenses’ means reasonable
16 and necessary adoption fees, court costs, attorney
17 fees, and other expenses—

18 “(A) which are directly related to, and the
19 principal purpose of which is for, the legal
20 adoption of an eligible child by the taxpayer,
21 and

22 “(B) which are not incurred in violation of
23 State or Federal law or in carrying out any sur-
24rogate parenting arrangement.

1 “(2) EXPENSES FOR ADOPTION OF SPOUSE'S
2 CHILD NOT ELIGIBLE.—The term 'qualified adoption
3 expenses' shall not include any expenses in connec-
4 tion with the adoption by an individual of a child
5 who is the child of such individual's spouse.

6 “(3) ELIGIBLE CHILD.—The term 'eligible
7 child' means any individual—

8 “(A) who has not attained age 18 as of the
9 time of the adoption, or

10 “(B) who is physically or mentally inapa-
11 ble of caring for himself.

12 “(4) CHILD WITH SPECIAL NEEDS.—The term
13 'child with special needs' means any child if—

14 “(A) a State has determined that the child
15 cannot or should not be returned to the home
16 of his parents, and

17 “(B) such State has determined that there
18 exists with respect to the child a specific factor
19 or condition (such as his ethnic background,
20 age, or membership in a minority or sibling
21 group, or the presence of factors such as medi-
22 cal conditions or physical, mental, or emotional
23 handicaps) because of which it is reasonable to
24 conclude that such child cannot be placed with

1 adoptive parents without providing adoption as-
2 sistance.

3 “(e) SPECIAL RULES FOR FOREIGN ADOPTIONS.—In
4 the case of a foreign adoption—

5 “(1) subsection (a) shall not apply to any quali-
6 fied adoption expense with respect to such adoption
7 unless such adoption becomes final, and

8 “(2) any such expense which is paid or incurred
9 before the taxable year in which such adoption be-
10 comes final shall be taken into account under this
11 section as if such expense were paid or incurred dur-
12 ing such year.

13 “(f) MARRIED COUPLES MUST FILE JOINT RE-
14 TURNS.—Rules similar to the rules of paragraphs (2), (3),
15 and (4) of section 21(e) shall apply for purposes of this
16 section.

17 “(g) BASIS ADJUSTMENTS.—For purposes of this
18 subtitle, if a credit is allowed under this section for any
19 expenditure with respect to any property, the increase in
20 the basis of such property which would (but for this sub-
21 section) result from such expenditure shall be reduced by
22 the amount of the credit so allowed.

23 “(h) REGULATIONS.—The Secretary shall prescribe
24 such regulations as may be appropriate to carry out this
25 section and section 137, including regulations which treat

1 unmarried individuals who pay or incur qualified adoption
2 expenses with respect to the same child as 1 taxpayer for
3 purposes of applying the dollar limitation in subsection
4 (b)(1) of this section and in section 137(b)(1).”.

5 **(b) EXCLUSION OF AMOUNTS RECEIVED UNDER EM-**
6 **PLOYER'S ADOPTION ASSISTANCE PROGRAMS.**—Part III
7 of subchapter B of chapter 1 of such Code (relating to
8 items specifically excluded from gross income) is amended
9 by redesignating section 137 as section 138 and by insert-
10 ing after section 136 the following new section:

11 **“SEC. 137. ADOPTION ASSISTANCE PROGRAMS.**

12 “(a) IN GENERAL.—Gross income of an employee
13 does not include amounts paid or expenses incurred by the
14 employer for qualified adoption expenses in connection
15 with the adoption of a child by an employee if such
16 amounts are furnished pursuant to an adoption assistance
17 program.

18 **“(b) LIMITATIONS.**

19 “(1) DOLLAR LIMITATION.—The aggregate
20 amount excludable from gross income under sub-
21 section (a) for all taxable years with respect to the
22 adoption of a child by the taxpayer shall not exceed
23 \$5,000.

24 “(2) INCOME LIMITATION.—The amount ex-
25 cludable from gross income under subsection (a) for

1 any taxable year shall be reduced (but not below
2 zero) by an amount which bears the same ratio to
3 the amount so excludable (determined without re-
4 gard to this paragraph but with regard to paragraph
5 (1)) as—

6 “(A) the amount (if any) by which the tax-
7 payer’s adjusted gross income exceeds \$75,000,
8 bears to

9 “(B) \$40,000.

10 “(3) DETERMINATION OF ADJUSTED GROSS IN-
11 COME.—For purposes of paragraph (2), adjusted
12 gross income shall be determined—

13 “(A) without regard to this section and
14 sections 911, 931, and 933, and

15 “(B) after the application of sections 86,
16 135, 219, and 469.

17 “(e) ADOPTION ASSISTANCE PROGRAM.—For pur-
18 poses of this section, an adoption assistance program is
19 a plan of an employer—

20 “(1) under which the employer provides employ-
21 ees with adoption assistance, and

22 “(2) which meets requirements similar to the
23 requirements of paragraphs (2), (3), and (5) of sec-
24 tion 127(b).

1 An adoption reimbursement program operated under sec-
2 tion 1052 of title 10, United States Code (relating to
3 armed forces) or section 514 of title 14, United States
4 Code (relating to members of the Coast Guard) shall be
5 treated as an adoption assistance program for purposes
6 of this section.

7 “(d) **QUALIFIED ADOPTION EXPENSES.**—For pur-
8 poses of this section, the term ‘qualified adoption ex-
9 penses’ has the meaning given such term by section 23(d).

10 “(e) **CERTAIN RULES TO APPLY.**—Rules similar to
11 the rules of subsections (e) and (g) of section 23 shall
12 apply for purposes of this section.”.

13 (e) **CONFORMING AMENDMENTS.**—

14 (1) Sections 86(b)(2)(A) and 135(e)(4)(A) of
15 such Code are each amended by inserting “137,” be-
16 fore “911”.

17 (2) Clause (i) of section 219(g)(3)(A) of such
18 Code is amended by inserting “, 137,” before “and
19 911”.

20 (3) Clause (ii) of section 469(i)(3)(E) of such
21 Code is amended to read as follows:

22 “(ii) the amounts excludable from
23 gross income under sections 135 and
24 137.”.

6 “(26) to the extent provided in sections 23(g)
7 and 137(e).”

“See. 23. Adoption expenses.”.

12 (6) The table of sections for part III of sub-
13 chapter B of chapter 4 of such Code is amended by
14 striking the item relating to section 137 and insert-
15 ing the following:

“See. 137. Adoption assistance programs.

“See. 138. Cross reference to other Acts.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 1996.

19 ***TITLE I—CREDIT FOR ADOPTION
20 EXPENSES***

21 SEC. 101. CREDIT FOR ADOPTION EXPENSES.

22 (a) *IN GENERAL.*—Subpart A of part IV of subchapter
23 A of chapter 1 of the Internal Revenue Code of 1986 (relat-

1 *ing to nonrefundable personal credits) is amended by insert-*
2 *ing after section 22 the following new section:*

3 **“SEC. 23. ADOPTION EXPENSES.**

4 “(a) *ALLOWANCE OF CREDIT.—In the case of an indi-*
5 *vidual, there shall be allowed as a credit against the tax*
6 *imposed by this chapter for the taxable year the amount*
7 *of the qualified adoption expenses paid or incurred by the*
8 *taxpayer during such taxable year.*

9 “(b) *LIMITATIONS.—*

10 “(1) *DOLLAR LIMITATION.—The aggregate*
11 *amount of qualified adoption expenses which may be*
12 *taken into account under subsection (a) for all taxable*
13 *years with respect to the adoption of a child by the*
14 *taxpayer shall not exceed \$5,000 (\$6,000, in the case*
15 *of a child with special needs).*

16 “(2) *INCOME LIMITATION.—*

17 “(A) *IN GENERAL.—The amount allowable*
18 *as a credit under subsection (a) for any taxable*
19 *year shall be reduced (but not below zero) by an*
20 *amount which bears the same ratio to the*
21 *amount so allowable (determined without regard*
22 *to this paragraph but with regard to paragraph*
23 *(1)) as—*

1 “(i) the amount (if any) by which the
2 taxpayer’s adjusted gross income exceeds
3 \$75,000, bears to

4 “(ii) \$40,000.

5 “(B) DETERMINATION OF ADJUSTED GROSS
6 INCOME.—For purposes of subparagraph (A), ad-
7 justed gross income shall be determined—

8 “(i) without regard to sections 911,
9 931, and 933, and

10 “(ii) after the application of sections
11 86, 135, 137, 219, and 469.

12 “(3) DENIAL OF DOUBLE BENEFIT.—

13 “(A) IN GENERAL.—No credit shall be al-
14 lowed under subsection (a) for any expense for
15 which a deduction or credit is allowed under any
16 other provision of this chapter.

17 “(B) GRANTS.—No credit shall be allowed
18 under subsection (a) for any expense to the ex-
19 tent that funds for such expense are received
20 under any Federal, State, or local program.

21 “(c) CARRYFORWARDS OF UNUSED CREDIT.—If the
22 credit allowable under subsection (a) for any taxable year
23 exceeds the limitation imposed by section 26(a) for such tax-
24 able year reduced by the sum of the credits allowable under
25 this subpart (other than this section), such excess shall be

1 carried to the succeeding taxable year and added to the
2 credit allowable under subsection (a) for such taxable year.
3 No credit may be carried forward under this subsection to
4 any taxable year following the fifth taxable year after the
5 taxable year in which the credit arose. For purposes of the
6 preceding sentence, credits shall be treated as used on a
7 first-in first-out basis.

8 “(d) *DEFINITIONS*.—For purposes of this section—

9 “(1) *QUALIFIED ADOPTION EXPENSES*.—The
10 term ‘qualified adoption expenses’ means reasonable
11 and necessary adoption fees, court costs, attorney fees,
12 and other expenses—

13 “(A) which are directly related to, and the
14 principal purpose of which is for, the legal adop-
15 tion of an eligible child by the taxpayer,

16 “(B) which are not incurred in violation of
17 State or Federal law or in carrying out any sur-
18 rogate parenting arrangement,

19 “(C) which are not expenses in connection
20 with the adoption by an individual of a child
21 who is the child of such individual’s spouse, and

22 “(D) which are not reimbursed under an
23 employer program or otherwise.

24 “(2) *ELIGIBLE CHILD*.—The term ‘eligible child’
25 means any individual—

1 “(A) *who*—

2 “(i) *has not attained age 18, or*
3 “(ii) *is physically or mentally incap-*

4 *able of caring for himself, and*

5 “(B) *in the case of qualified adoption ex-*
6 *penses paid or incurred after December 31, 2000,*
7 *who is a child with special needs.*

8 “(4) **CHILD WITH SPECIAL NEEDS.**—*The term*
9 *‘child with special needs’ means any child if—*

10 “(A) *a State has determined that the child*
11 *cannot or should not be returned to the home of*
12 *his parents, and*

13 “(B) *such State has determined that there*
14 *exists with respect to the child a specific factor*
15 *or condition (such as his ethnic background, age,*
16 *or membership in a minority or sibling group,*
17 *or the presence of factors such as medical condi-*
18 *tions or physical, mental, or emotional handi-*
19 *caps) because of which it is reasonable to con-*
20 *clude that such child cannot be placed with*
21 *adoptive parents without providing adoption as-*
22 *sistance.*

23 “(e) **SPECIAL RULES FOR FOREIGN ADOPTIONS.**—*In*
24 *the case of an adoption of a child who is not a citizen or*

1 resident of the United States (as defined in section
2 217(h)(3))—

3 “(1) subsection (a) shall not apply to any quali-
4 fied adoption expense with respect to such adoption
5 unless such adoption becomes final, and

6 “(2) any such expense which is paid or incurred
7 before the taxable year in which such adoption be-
8 comes final shall be taken into account under this sec-
9 tion as if such expense were paid or incurred during
10 such year.

11 “(f) MARRIED COUPLES MUST FILE JOINT RE-
12 TURNS.—Rules similar to the rules of paragraphs (2), (3),
13 and (4) of section 21(e) shall apply for purposes of this sec-
14 tion.

15 “(g) BASIS ADJUSTMENTS.—For purposes of this sub-
16 title, if a credit is allowed under this section for any ex-
17 penditure with respect to any property, the increase in the
18 basis of such property which would (but for this subsection)
19 result from such expenditure shall be reduced by the amount
20 of the credit so allowed.

21 “(h) REGULATIONS.—The Secretary shall prescribe
22 such regulations as may be appropriate to carry out this
23 section and section 137, including regulations which treat
24 unmarried individuals who pay or incur qualified adoption
25 expenses with respect to the same child as 1 taxpayer for

1 purposes of applying the dollar limitation in subsection
2 (b)(1) of this section and in section 137(b)(1).”

3 (b) EXCLUSION OF AMOUNTS RECEIVED UNDER EM-
4 PLOYER’S ADOPTION ASSISTANCE PROGRAMS.—Part III of
5 subchapter B of chapter 1 of such Code (relating to items
6 specifically excluded from gross income) is amended by re-
7 designating section 137 as section 138 and by inserting
8 after section 136 the following new section:

9 **“SEC. 137. ADOPTION ASSISTANCE PROGRAMS.**

10 “(a) IN GENERAL.—Gross income of an employee does
11 not include amounts paid or expenses incurred by the em-
12 ployer for qualified adoption expenses in connection with
13 the adoption of a child by an employee if such amounts
14 are furnished pursuant to an adoption assistance program.

15 “(b) LIMITATIONS.—

16 “(1) DOLLAR LIMITATION.—The aggregate
17 amount excludable from gross income under sub-
18 section (a) for all taxable years with respect to the
19 adoption of a child by the taxpayer shall not exceed
20 \$5,000 (\$6,000, in the case of a child with special
21 needs).

22 “(2) INCOME LIMITATION.—The amount exclud-
23 able from gross income under subsection (a) for any
24 taxable year shall be reduced (but not below zero) by
25 an amount which bears the same ratio to the amount

1 so excludable (determined without regard to this
2 paragraph but with regard to paragraph (1)) as—

3 “(A) the amount (if any) by which the tax-
4 payer’s adjusted gross income exceeds \$75,000,
5 bears to

6 “(B) \$40,000.

7 “(3) DETERMINATION OF ADJUSTED GROSS IN-
8 COME.—For purposes of paragraph (2), adjusted gross
9 income shall be determined—

10 “(A) without regard to this section and sec-
11 tions 911, 931, and 933, and

12 “(B) after the application of sections 86,
13 135, 219, and 469.

14 “(c) ADOPTION ASSISTANCE PROGRAM.—For purposes
15 of this section, an adoption assistance program is a sepa-
16 rate written plan of an employer for the exclusive benefit
17 of such employer’s employees—

18 “(1) under which the employer provides such em-
19 ployees with adoption assistance, and

20 “(2) which meets requirements similar to the re-
21 quirements of paragraphs (2), (3), (5), and (6) of sec-
22 tion 127(b).

23 An adoption reimbursement program operated under sec-
24 tion 1052 of title 10, United States Code (relating to armed
25 forces) or section 514 of title 14, United States Code (relat-

1 *ing to members of the Coast Guard) shall be treated as an*
2 *adoption assistance program for purposes of this section.*

3 “(d) *QUALIFIED ADOPTION EXPENSES.*—*For purposes*
4 *of this section, the term ‘qualified adoption expenses’ has*
5 *the meaning given such term by section 23(d).*

6 “(e) *CERTAIN RULES TO APPLY.*—*Rules similar to the*
7 *rules of subsections (e), (f), and (g) of section 23 shall apply*
8 *for purposes of this section.*

9 “(f) *TERMINATION.*—*This section shall not apply to*
10 *amounts paid or expenses incurred after December 31,*
11 *2000.”*

12 (c) *CONFORMING AMENDMENTS.*—

13 (1) *Subparagraph (C) of section 25(e)(1) of such*
14 *Code is amended by inserting “and section 23” after*
15 *“this section”.*

16 (2) *Sections 86(b)(2)(A) and 135(c)(4)(A) of*
17 *such Code are each amended by inserting “137,” be-*
18 *fore “911”.*

19 (3) *Clause (i) of section 219(g)(3)(A) of such*
20 *Code is amended by inserting “, 137,” before “and*
21 *911”.*

22 (4) *Clause (ii) of section 469(i)(3)(E) of such*
23 *Code is amended to read as follows:*

24 “(ii) *the amounts excludable from gross*
25 *income under sections 135 and 137.”.*

6 “(26) to the extent provided in sections 23(g)
7 and 137(e).”

“Sec. 23. Adoption expenses.”

“Sec. 137. Adoption assistance programs.

“Sec. 138. *Cross reference to other Acts.*”

16 (d) *STUDY AND REPORT.*—The Secretary of the Treas-
17 ury shall study the effect on adoptions of the tax credit and
18 gross income exclusion established by the amendments made
19 by this section and shall submit a report regarding the
20 study to the Committee on Finance of the Senate and the
21 Committee on Ways and Means of the House of Representa-
22 tives not later than January 1, 2000.

1 (e) *EFFECTIVE DATE.*—The amendments made by this
2 section shall apply to taxable years beginning after Decem-
3 ber 31, 1996.

4 **TITLE II—INTERETHNIC**
5 **ADOPTION**

6 **SEC. 201. REMOVAL OF BARRIERS TO INTERETHNIC ADOP-**
7 **TION.**

8 (a) *STATE PLAN REQUIREMENTS.*—Section 471(a)
9 of the Social Security Act (42 U.S.C. 671(a)) is amend-
10 ed—

11 (1) by striking “and” at the end of paragraph
12 (16);

13 (2) by striking the period at the end of para-
14 graph (17) and inserting “; and”; and

15 (3) by adding at the end the following:

16 “(18) not later than January 1, 1997, provides
17 that neither the State nor any other entity in the
18 State that receives funds from the Federal Govern-
19 ment and is involved in adoption or foster care
20 placements may—

21 “(A) deny to any person the opportunity to
22 become an adoptive or a foster parent, on the
23 basis of the race, color, or national origin of the
24 person, or of the child, involved; or

1 “(B) delay or deny the placement of a
2 child for adoption or into foster care, on the
3 basis of the race, color, or national origin of the
4 adoptive or foster parent, or the child, in-
5 volved.”

6 (b) ENFORCEMENT.—Section 474 of such Act (42
7 U.S.C. 674) is amended by adding at the end the follow-
8 ing:

9 “(d)(1) If a State’s program operated under this part
10 is found, as a result of a review conducted under section
11 471(a)(18) during a quarter
12 with respect to any person, then, notwithstanding sub-
13 section (a) of this section and any regulations promulgated
14 under section 471(b)(3), the Secretary shall reduce the
15 amount otherwise payable to the State under this part,
16 for the quarter and for each subsequent quarter before
17 the 1st quarter for which the State program is found, as
18 a result of such a review, not to have violated section
19 471(a)(18) with respect to any person, by—

20 “(A) 2 percent of such otherwise payable
21 amount, in the case of the 1st such finding with re-
22 spect to the State;

23 “(B) 5 percent of such otherwise payable
24 amount, in the case of the 2nd such finding with re-
25 spect to the State; or

1 “(C) 10 percent of such otherwise payable
2 amount, in the case of the 3rd or subsequent such
3 finding with respect to the State.

4 “(2) Any other entity which is in a State that receives
5 funds under this part and which violates section
6 471(a)(18) during a quarter with respect to any person
7 shall remit to the Secretary all funds that were paid by
8 the State to the entity during the quarter from such funds.

9 “(3)(A) Any individual who is aggrieved by a viola-
10 tion of section 471(a)(18) by a State or other entity may
11 bring an action seeking relief from the State or other en-
12 tity in any United States district court.

13 “(B) An action under this paragraph may not be
14 brought more than 2 years after the date the alleged viola-
15 tion occurred.

16 “(4) This subsection shall not be construed to affect
17 the application of the Indian Child Welfare Act of 1978.”.

18 (e) CIVIL RIGHTS.—

19 (1) PROHIBITED CONDUCT.—A person or gov-
20 ernment that is involved in adoption or foster care
21 placements may not—

22 (A) deny to any individual the opportunity
23 to become an adoptive or a foster parent, on the
24 basis of the race, color, or national origin of the
25 individual, or of the child, involved; or

(d) CONFORMING REPEAL.—Section 553 of the Howard Metzenbaum Multiethnic Placement Act of 1994 (42 U.S.C. 5115a) is repealed.

15 ***TITLE II—INTERETHNIC***
16 ***ADOPTION***

17 SEC. 201. REMOVAL OF BARRIERS TO INTERETHNIC ADOP- 18 TION

19 (a) *STATE PLAN REQUIREMENTS.*—Section 471(a) of
20 the Social Security Act (42 U.S.C. 671(a)) is amended—
21 (1) by striking “and” at the end of paragraph
22 (16);

25 (3) by adding at the end the following:

1 “(18) not later than January 1, 1997, provides
2 that neither the State nor any other entity in the
3 State that receives funds from the Federal Govern-
4 ment and is involved in adoption or foster care place-
5 ments may—

6 “(A) deny to any person the opportunity to
7 become an adoptive or a foster parent, on the
8 basis of the race, color, or national origin of the
9 person, or of the child, involved; or

10 “(B) delay or deny the placement of a child
11 for adoption or into foster care, on the basis of
12 the race, color, or national origin of the adoptive
13 or foster parent, or the child, involved.”.

14 (b) *ENFORCEMENT*.—Section 474 of such Act (42
15 U.S.C. 674) is amended by adding at the end the following:

16 “(d) *PENALTIES FOR VIOLATIONS OF INTERETHNIC
17 ADOPTION REQUIREMENTS*.—

18 “(1) *STATE VIOLATIONS*.—If, during a fiscal
19 year, a State’s program operated under this part is
20 found, as a result of a completed review under section
21 1123A, including the completion of any administra-
22 tive appeal or judicial review conducted under sub-
23 section (c) of such section, to have violated section
24 471(a)(18) during a quarter of such fiscal year with
25 respect to a person, then, notwithstanding subsection

1 (a) of this section and any regulations promulgated
2 under section 1123A(b)(3), the Secretary shall reduce
3 the amount otherwise payable to the State under this
4 part, for that fiscal year quarter and for any subse-
5 quent quarter of such fiscal year, until the State pro-
6 gram is found, as a result of a subsequent review
7 under section 1123A, not to have violated section
8 471(a)(18) with respect to such person, or no penalty
9 remains to be carried forward under paragraph
10 (2)(B).

11 “(2) AMOUNT OF REDUCTION.—

12 “(A) IN GENERAL.—For purposes of para-
13 graph (1), the amount otherwise payable to a
14 State under this part shall be reduced as follows:

15 “(i) 2 percent of such otherwise pay-
16 able amount, in the case of the 1st such
17 finding for the fiscal year with respect to
18 the State.

19 “(ii) 5 percent of such otherwise pay-
20 able amount, in the case of the 2nd such
21 finding for the fiscal year with respect to
22 the State.

23 “(iii) 10 percent of such otherwise pay-
24 able amount, in the case of the 3rd or subse-

1 *quent such finding for the fiscal year with*
2 *respect to the State.*

3 “*(B) LIMITATION ON AMOUNT OF PEN-*
4 *ALTY.*—

5 “*(i) IN GENERAL.*—*In imposing the*
6 *penalties described in this subsection, the*
7 *Secretary shall not reduce any quarterly*
8 *payment to a State by more than 25 per-*
9 *cent.*

10 “*(ii) CARRYFORWARD OF UNRE-*
11 *COVERED PENALTIES.*—*To the extent that*
12 *clause (i) prevents the Secretary from recov-*
13 *ering during a fiscal year the full amount*
14 *of all penalties imposed on a State under*
15 *this subsection for such fiscal year, the Sec-*
16 *retary shall apply any remaining amount*
17 *of such penalties to the amount payable to*
18 *the State under this part for the imme-*
19 *diately succeeding fiscal year quarter.*

20 “*(3) PRIVATE VIOLATIONS.*—*Any other entity*
21 *which is in a State that receives funds under this*
22 *part and which violates section 471(a)(18) during a*
23 *fiscal year quarter with respect to any person shall*
24 *remit to the Secretary all funds that were paid by the*

1 *State to the entity during such quarter from such*
2 *funds.*

3 “(4) *PRIVATE CAUSE OF ACTION.*—

4 “(A) *IN GENERAL.*—Any individual who is
5 *aggrieved by a violation of section 471(a)(18) by*
6 *a State or other entity may bring an action seek-*
7 *ing relief from the State or other entity in any*
8 *United States district court.*

9 “(B) *STATUTE OF LIMITATIONS.*—An action
10 *under this paragraph may not be brought more*
11 *than 2 years after the date the alleged violation*
12 *occurred.*

13 “(5) *RULE OF CONSTRUCTION.*—This subsection
14 *shall not be construed to affect the application of the*
15 *Indian Child Welfare Act of 1978.”.*

16 (c) *CIVIL RIGHTS.*—

17 (1) *PROHIBITED CONDUCT.*—A person or govern-
18 *ment that is involved in adoption or foster care place-*
19 *ments may not—*

20 (A) *deny to any individual the opportunity*
21 *to become an adoptive or a foster parent, on the*
22 *basis of the race, color, or national origin of the*
23 *individual, or of the child, involved; or*

24 (B) *delay or deny the placement of a child*
25 *for adoption or into foster care, on the basis of*

1 *the race, color, or national origin of the adoptive*
2 *or foster parent, or the child, involved.*

3 *(2) ENFORCEMENT.—Noncompliance with para-*
4 *graph (1) is deemed a violation of title VI of the Civil*
5 *Rights Act of 1964.*

6 *(3) NO EFFECT ON THE INDIAN CHILD WELFARE*
7 *ACT OF 1978.—This subsection shall not be construed*
8 *to affect the application of the Indian Child Welfare*
9 *Act of 1978.*

10 *(d) CONFORMING AMENDMENTS.—*

11 *(1) REPEAL.—Section 553 of the Howard M.*
12 *Metzenbaum Multiethnic Placement Act of 1994 (42*
13 *U.S.C. 5115a) is repealed.*

14 *(2) REDESIGNATION OF SECTION 1123.—The So-*
15 *cial Security Act is amended by redesignating section*
16 *1123, the second place it appears (42 U.S.C. 1320a–*
17 *1a), as section 1123A.*

1 **[TITLE III—CHILD CUSTODY**
2 **PROCEEDINGS AFFECTED BY**
3 **THE INDIAN CHILD WELFARE**
4 **ACT OF 1978**

5 **[SEC. 301. INAPPLICABILITY OF THE INDIAN CHILD WEL-**
6 **FARE ACT OF 1978 TO CHILD CUSTODY PRO-**
7 **CEEDINGS INVOLVING A CHILD WHOSE PAR-**
8 **ENTS DO NOT MAINTAIN AFFILIATION WITH**
9 **THEIR INDIAN TRIBE.**

10 **[Title I of the Indian Child Welfare Act of 1978 (25**
11 **U.S.C. 1911 et seq.) is amended by adding at the end**
12 **the following:**

13 **[“SEC. 114. (a) This title does not apply to any child**
14 **custody proceeding involving a child who does not reside**
15 **or is not domiciled within a reservation unless—**

16 **[“(1) at least one of the child’s biological par-**
17 **ents is of Indian descent; and**

18 **[“(2) at least one of the child’s biological par-**
19 **ents maintains significant social, cultural, or politi-**
20 **cal affiliation with the Indian tribe of which either**
21 **parent is a member.**

22 **[“(b) The factual determination as to whether a bio-**
23 **logical parent maintains significant social, cultural, or po-**
24 **litical affiliation with the Indian tribe of which either par-**

1 ent is a member shall be based on such affiliation as of
2 the time of the child custody proceeding.

3 [(“(c) The determination that this title does not apply
4 pursuant to subsection (a) is final, and, thereafter, this
5 title shall not be the basis for determining jurisdiction over
6 any child custody proceeding involving the child.”].

7 **[SEC. 302. MEMBERSHIP AND CHILD CUSTODY PROCEED-
8 INGS.]**

9 [(Title I of the Indian Child Welfare Act of 1978 (25
10 U.S.C. 1911 et seq.), as amended by section 301 of this
11 title, is further amended by adding at the end the follow-
12 ing):

13 [(“SEC. 115. (a) A person who attains the age of 18
14 years before becoming a member of an Indian tribe may
15 become a member of an Indian tribe only upon the per-
16 son’s written consent.

17 [(“(b) For the purposes of any child custody proceed-
18 ing involving an Indian child, membership in an Indian
19 tribe shall be effective from the actual date of admission
20 to membership in the Indian tribe and shall not be given
21 retroactive effect.”].

22 **[SEC. 303. EFFECTIVE DATE.]**

23 [(The amendments made by this title shall take effect
24 on the date of the enactment of this Act and shall apply

1 with respect to any child custody proceeding in which a
2 final decree has not been entered as of such date.]

3 **TITLE IV—REVENUE OFFSETS**

4 **SEC. 400. AMENDMENT OF 1986 CODE.**

5 Except as otherwise expressly provided, whenever in
6 this title an amendment or repeal is expressed in terms
7 of an amendment to, or repeal of, a section or other provi-
8 sion, the reference shall be considered to be made to a
9 section or other provision of the Internal Revenue Code
10 of 1986.

11 **Subtitle A—Exclusion for Energy 12 Conservation Subsidies Limited 13 to Subsidies With Respect to 14 Dwelling Units**

15 **SEC. 401. EXCLUSION FOR ENERGY CONSERVATION SUB- 16 SIDIES LIMITED TO SUBSIDIES WITH RE- 17 SPECT TO DWELLING UNITS.**

18 (a) IN GENERAL.—Paragraph (1) of section 136(e)
19 (defining energy conservation measure) is amended by
20 striking “energy demand—” and all that follows and in-
21 serting “energy demand with respect to a dwelling unit.”

22 (b) CONFORMING AMENDMENTS.—

23 (1) Subsection (a) of section 136 is amended to
24 read as follows:

1 “(a) EXCLUSION.—Gross income shall not include
 2 the value of any subsidy provided (directly or indirectly)
 3 by a public utility to a customer for the purchase or instal-
 4 lation of any energy conservation measure.”

5 (2) Paragraph (2) of section 136(e) is amend-
 6 ed—

7 (A) by striking subparagraph (A) and by
 8 redesignating subparagraphs (B) and (C) as
 9 subparagraphs (A) and (B), respectively, and

10 (B) by striking “AND SPECIAL RULES” in
 11 the paragraph heading.

12 (e) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to amounts received after Decem-
 14 ber 31, 1996, unless received pursuant to a written bind-
 15 ing contract in effect on September 13, 1995, and at all
 16 times thereafter.

17 **Subtitle B—Foreign Trust Tax
 18 Compliance**

19 **SEC. 411. IMPROVED INFORMATION REPORTING ON FOR-
 20 EIGN TRUSTS.**

21 (a) IN GENERAL.—Section 6048 (relating to returns
 22 as to certain foreign trusts) is amended to read as follows:

23 **SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN
 24 FOREIGN TRUSTS.**

25 “(a) NOTICE OF CERTAIN EVENTS.—

1 “(1) GENERAL RULE.—On or before the 90th
2 day (or such later day as the Secretary may pre-
3 scribe) after any reportable event, the responsible
4 party shall provide written notice of such event to
5 the Secretary in accordance with paragraph (2).

6 “(2) CONTENTS OF NOTICE.—The notice re-
7 quired by paragraph (1) shall contain such informa-
8 tion as the Secretary may prescribe, including—

9 “(A) the amount of money or other prop-
10 erty (if any) transferred to the trust in connec-
11 tion with the reportable event, and

12 “(B) the identity of the trust and of each
13 trustee and beneficiary (or class of bene-
14 ficiaries) of the trust.

15 “(3) REPORTABLE EVENT.—For purposes of
16 this subsection—

17 “(A) IN GENERAL.—The term ‘reportable
18 event’ means—

19 “(i) the creation of any foreign trust
20 by a United States person;

21 “(ii) the transfer of any money or
22 property (directly or indirectly) to a for-
23 eign trust by a United States person, in-
24 cluding a transfer by reason of death, and

1 “(iii) the death of a citizen or resident
2 of the United States if—

3 “(I) the decedent was treated as
4 the owner of any portion of a foreign
5 trust under the rules of subpart E of
6 part I of subchapter J of chapter 1,
7 or

8 “(II) any portion of a foreign
9 trust was included in the gross estate
10 of the decedent.

11 “(B) EXCEPTIONS.—

12 “(i) FAIR MARKET VALUE SALES.—
13 Subparagraph (A)(ii) shall not apply to
14 any transfer of property to a trust in ex-
15 change for consideration of at least the fair
16 market value of the transferred property.
17 For purposes of the preceding sentence,
18 consideration other than cash shall be
19 taken into account at its fair market value
20 and the rules of section 679(a)(3) shall
21 apply.

22 “(ii) DEFERRED COMPENSATION AND
23 CHARITABLE TRUSTS.—Subparagraph (A)
24 shall not apply with respect to a trust
25 which is—

6 “(4) RESPONSIBLE PARTY.—For purposes of
7 this subsection, the term ‘responsible party’
8 means—

9 “(A) the grantor in the case of the ere-
10 ation of an inter vivos trust;

11 “(B) the transferor in the case of a report-
12 able event described in paragraph (3)(A)(ii)
13 other than a transfer by reason of death, and

14 “(C) the executor of the decedent’s estate
15 in any other case.

16 "(b) UNITED STATES GRANTOR OF FOREIGN
17 TRUST.—

18 “(1) IN GENERAL.—If, at any time during any
19 taxable year of a United States person, such person
20 is treated as the owner of any portion of a foreign
21 trust under the rules of subpart E of part I of sub-
22 chapter J of chapter 1, such person shall be respon-
23 sible to ensure that—

24 “(A) such trust makes a return for such
25 year which sets forth a full and complete ac-

1 counting of all trust activities and operations
2 for the year, the name of the United States
3 agent for such trust, and such other informa-
4 tion as the Secretary may prescribe, and

5 “(B) such trust furnishes such information
6 as the Secretary may prescribe to each United
7 States person (i) who is treated as the owner of
8 any portion of such trust or (ii) who receives
9 (directly or indirectly) any distribution from the
10 trust.

11 “(2) TRUSTS NOT HAVING UNITED STATES
12 AGENT.—

13 “(A) IN GENERAL.—If the rules of this
14 paragraph apply to any foreign trust, the deter-
15 mination of amounts required to be taken into
16 account with respect to such trust by a United
17 States person under the rules of subpart E of
18 part I of subchapter J of chapter 1 shall be de-
19 termined by the Secretary.

20 “(B) UNITED STATES AGENT REQUIRED.—
21 The rules of this paragraph shall apply to any
22 foreign trust to which paragraph (1) applies un-
23 less such trust agrees (in such manner, subject
24 to such conditions, and at such time as the Sec-
25 retary shall prescribe) to authorize a United

1 States person to act as such trust's limited
2 agent solely for purposes of applying sections
3 7602, 7603, and 7604 with respect to—

4 “(i) any request by the Secretary to
5 examine records or produce testimony re-
6 lated to the proper treatment of amounts
7 required to be taken into account under
8 the rules referred to in subparagraph (A),
9 or

10 “(ii) any summons by the Secretary
11 for such records or testimony.

12 The appearance of persons or production of
13 records by reason of a United States person
14 being such an agent shall not subject such per-
15 sons or records to legal process for any purpose
16 other than determining the correct treatment
17 under this title of the amounts required to be
18 taken into account under the rules referred to
19 in subparagraph (A). A foreign trust which ap-
20 points an described in this subparagraph shall
21 not be considered to have an office or a perma-
22 nent establishment in the United States, or to
23 be engaged in a trade or business in the United
24 States, solely because of the activities of such
25 agent pursuant to this subsection.

1 “(C) OTHER RULES TO APPLY.—Rules
2 similar to the rules of paragraphs (2) and (4)
3 of section 6038A(e) shall apply for purposes of
4 this paragraph.

5 “(e) REPORTING BY UNITED STATES BENEFICIARIES
6 OF FOREIGN TRUSTS.—

7 “(1) IN GENERAL.—If any United States per-
8 son receives (directly or indirectly) during any tax-
9 able year of such person any distribution from a for-
10 eign trust, such person shall make a return with re-
11 spect to such trust for such year which includes—

12 “(A) the name of such trust,

13 “(B) the aggregate amount of the distribu-
14 tions so received from such trust during such
15 taxable year, and

16 “(C) such other information as the Sec-
17 retary may prescribe.

18 “(2) INCLUSION IN INCOME IF RECORDS NOT
19 PROVIDED.—

20 “(A) IN GENERAL.—If adequate records
21 are not provided to the Secretary to determine
22 the proper treatment of any distribution from a
23 foreign trust, such distribution shall be treated
24 as an accumulation distribution includible in
25 the gross income of the distributee under chap-

1 ter 1. To the extent provided in regulations, the
2 preceding sentence shall not apply if the foreign
3 trust elects to be subject to rules similar to the
4 rules of subsection (b)(2)(B).

5 **“(B) APPLICATION OF ACCUMULATION**
6 **DISTRIBUTION RULES.**—For purposes of apply-
7 ing section 668 in a case to which subpara-
8 graph (A) applies, the applicable number of
9 years for purposes of section 668(a) shall be $\frac{1}{2}$
10 of the number of years the trust has been in ex-
11 istence.

12 **“(d) SPECIAL RULES.**—

13 **“(1) DETERMINATION OF WHETHER UNITED**
14 **STATES PERSON MAKES TRANSFER OR RECEIVES**
15 **DISTRIBUTION.**—For purposes of this section, in de-
16 termining whether a United States person makes a
17 transfer to, or receives a distribution from, a foreign
18 trust, the fact that a portion of such trust is treated
19 as owned by another person under the rules of sub-
20 part E of part I of subchapter J of chapter 1 shall
21 be disregarded.

22 **“(2) DOMESTIC TRUSTS WITH FOREIGN ACTIVI-
23 TIES.**—To the extent provided in regulations, a trust
24 which is a United States person shall be treated as
25 a foreign trust for purposes of this section and sec-

1 tion 6677 if such trust has substantial activities, or
2 holds substantial property, outside the United
3 States.

4 **“(3) TIME AND MANNER OF FILING INFORMATION.”**—Any notice or return required under this section shall be made at such time and in such manner as the Secretary shall prescribe.

5 **“(4) MODIFICATION OF RETURN REQUIREMENTS.”**—The Secretary is authorized to suspend or
6 modify any requirement of this section if the Secretary determines that the United States has no significant tax interest in obtaining the required information.”.

7 **(b) INCREASED PENALTIES.**—Section 6677 (relating
8 to failure to file information returns with respect to certain foreign trusts) is amended to read as follows:

9 **“SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT
10 TO CERTAIN FOREIGN TRUSTS.**

11 **“(a) CIVIL PENALTY.**—In addition to any criminal
12 penalty provided by law, if any notice or return required
13 to be filed by section 6048—

14 “(1) is not filed on or before the time provided
15 in such section, or

1 “(2) does not include all the information re-
2 quired pursuant to such section or includes incorrect
3 information;

4 the person required to file such notice or return shall pay
5 a penalty equal to 35 percent of the gross reportable
6 amount. If any failure described in the preceding sentence
7 continues for more than 90 days after the day on which
8 the Secretary mails notice of such failure to the person
9 required to pay such penalty, such person shall pay a pen-
10 alty (in addition to the amount determined under the pre-
11 ceding sentence) of \$10,000 for each 30-day period (or
12 fraction thereof) during which such failure continues after
13 the expiration of such 90-day period. In no event shall the
14 penalty under this subsection with respect to any failure
15 exceed the gross reportable amount.

16 “(b) SPECIAL RULES FOR RETURNS UNDER SEC-
17 TION 6048(b).—In the case of a return required under
18 section 6048(b)—

19 “(1) the United States person referred to in
20 such section shall be liable for the penalty imposed
21 by subsection (a), and

22 “(2) subsection (a) shall be applied by sub-
23 stituting ‘5 percent’ for ‘35 percent’.

1 “(e) GROSS REPORTABLE AMOUNT.—For purposes
2 of subsection (a), the term ‘gross reportable amount’
3 means—

4 “(1) the gross value of the property involved in
5 the event (determined as of the date of the event)
6 in the case of a failure relating to section 6048(a),

7 “(2) the gross value of the portion of the trust’s
8 assets at the close of the year treated as owned by
9 the United States person in the case of a failure re-
10 lating to section 6048(b)(1), and

11 “(3) the gross amount of the distributions in
12 the case of a failure relating to section 6048(e).

13 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
14 shall be imposed by this section on any failure which is
15 shown to be due to reasonable cause and not due to willful
16 neglect. The fact that a foreign jurisdiction would impose
17 a civil or criminal penalty on the taxpayer (or any other
18 person) for disclosing the required information is not rea-
19 sonable cause.

20 “(e) DEFICIENCY PROCEDURES NOT TO APPLY.—
21 Subchapter B of chapter 63 (relating to deficiency proce-
22 dures for income, estate, gift, and certain excise taxes)
23 shall not apply in respect of the assessment or collection
24 of any penalty imposed by subsection (a).”.

25 (e) CONFORMING AMENDMENTS.—

1 (1) Paragraph (2) of section 6724(d) is amend-
2 ed by striking “or” at the end of subparagraph (S),
3 by striking the period at the end of subparagraph
4 (T) and inserting “; or”, and by inserting after sub-
5 paragraph (T) the following new subparagraph:

“Sec. 6048. Information with respect to certain foreign trusts.”.

12 (3) The table of sections for part I of sub-
13 chapter B of chapter 68 is amended by striking the
14 item relating to section 6677 and inserting the fol-
15 lowing new item:

“See. 6677. Failure to file information with respect to certain foreign trusts.”

16 (d) EFFECTIVE DATES.

11 SEC. 412. COMPARABLE PENALTIES FOR FAILURE TO FILE
12 RETURN RELATING TO TRANSFERS TO FOR-
13 EIGN ENTITIES.

14 (a) IN GENERAL.—Section 1494 is amended by add-
15 ing at the end the following new subsection:

16 “(e) **PENALTY.**—In the case of any failure to file a
17 return required by the Secretary with respect to any trans-
18 fer described in section 1491, the person required to file
19 such return shall be liable for the penalties provided in
20 section 6677 in the same manner as if such failure were
21 a failure to file a notice under section 6048(a).”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply to transfers after the date of
24 the enactment of this Act.

1 **SEC. 413. MODIFICATIONS OF RULES RELATING TO FOR-**
2 **EIGN TRUSTS HAVING ONE OR MORE UNITED**
3 **STATES BENEFICIARIES.**

4 **(a) TREATMENT OF TRUST OBLIGATIONS, ETC.—**

5 **(1) Paragraph (2) of section 679(a) is amended**
6 **by striking subparagraph (B) and inserting the fol-**
7 **lowing:**

8 **“(B) TRANSFERS AT FAIR MARKET**
9 **VALUE.—To any transfer of property to a trust**
10 **in exchange for consideration of at least the fair**
11 **market value of the transferred property. For**
12 **purposes of the preceding sentence, consider-**
13 **ation other than cash shall be taken into ac-**
14 **count at its fair market value.”.**

15 **(2) Subsection (a) of section 679 (relating to**
16 **foreign trusts having one or more United States**
17 **beneficiaries) is amended by adding at the end the**
18 **following new paragraph:**

19 **“(3) CERTAIN OBLIGATIONS NOT TAKEN INTO**
20 **ACCOUNT UNDER FAIR MARKET VALUE EXcep-**
21 **TION.—**

22 **“(A) IN GENERAL.—In determining whether**
23 **paragraph (2)(B) applies to any transfer by**
24 **a person described in clause (ii) or (iii) of sub-**
25 **paragraph (C), there shall not be taken into ac-**
26 **count—**

1 “(i) except as provided in regulations,
2 any obligation of a person described in
3 subparagraph (C), and

4 “(ii) to the extent provided in regula-
5 tions, any obligation which is guaranteed
6 by a person described in subparagraph (C).

7 “(B) TREATMENT OF PRINCIPAL PAY-
8 MENTS ON OBLIGATION.—Principal payments
9 by the trust on any obligation referred to in
10 subparagraph (A) shall be taken into account
11 on and after the date of the payment in deter-
12 mining the portion of the trust attributable to
13 the property transferred.

14 “(C) PERSONS DESCRIBED.—The persons
15 described in this subparagraph are—

16 “(i) the trust,

17 “(ii) any grantor or beneficiary of the
18 trust, and

19 “(iii) any person who is related (with-
20 in the meaning of section 643(i)(2)(B)) to
21 any grantor or beneficiary of the trust.”.

22 (b) EXEMPTION OF TRANSFERS TO CHARITABLE
23 TRUSTS.—Subsection (a) of section 679 is amended by
24 striking “section 404(a)(4) or 404A” and inserting “see-
25 tion 6048(a)(3)(B)(ii)”.

1 (e) OTHER MODIFICATIONS.—Subsection (a) of sec-
2 tion 679 is amended by adding at the end the following
3 new paragraphs:

4 “(4) SPECIAL RULES APPLICABLE TO FOREIGN
5 GRANTOR WHO LATER BECOMES A UNITED STATES
6 PERSON.—

7 “(A) IN GENERAL.—If a nonresident alien
8 individual has a residency starting date within
9 5 years after directly or indirectly transferring
10 property to a foreign trust, this section and sec-
11 tion 6048 shall be applied as if such individual
12 transferred to such trust on the residency start-
13 ing date an amount equal to the portion of such
14 trust attributable to the property transferred by
15 such individual to such trust in such transfer.

16 “(B) TREATMENT OF UNDISTRIBUTED IN-
17 COME.—For purposes of this section, undistrib-
18 uted net income for periods before such individ-
19 ual's residency starting date shall be taken into
20 account in determining the portion of the trust
21 which is attributable to property transferred by
22 such individual to such trust but shall not oth-
23 erwise be taken into account.

24 “(C) RESIDENCY STARTING DATE.—For
25 purposes of this paragraph, an individual's resi-

1 dency starting date is the residency starting
2 date determined under section 7701(b)(2)(A).

3 “(5) OUTBOUND TRUST MIGRATIONS.—If—

4 “(A) an individual who is a citizen or resi-
5 dent of the United States transferred property
6 to a trust which was not a foreign trust, and

7 “(B) such trust becomes a foreign trust
8 while such individual is alive,

9 then this section and section 6048 shall be applied
10 as if such individual transferred to such trust on the
11 date such trust becomes a foreign trust an amount
12 equal to the portion of such trust attributable to the
13 property previously transferred by such individual to
14 such trust. A rule similar to the rule of paragraph
15 (4)(B) shall apply for purposes of this paragraph.”.

16 (d) MODIFICATIONS RELATING TO WHETHER TRUST
17 HAS UNITED STATES BENEFICIARIES.—Subsection (e) of
18 section 679 is amended by adding at the end the following
19 new paragraph:

20 “(3) CERTAIN UNITED STATES BENEFICIARIES
21 DISREGARDED.—A beneficiary shall not be treated
22 as a United States person in applying this section
23 with respect to any transfer of property to foreign
24 trust if such beneficiary first became a United

1 States person more than 5 years after the date of
 2 such transfer.”.

3 (e) TECHNICAL AMENDMENT.—Subparagraph (A) of
 4 section 679(e)(2) is amended to read as follows:

5 “(A) in the case of a foreign corporation,
 6 such corporation is a controlled foreign corpora-
 7 tion (as defined in section 957(a)),”.

8 (f) REGULATIONS.—Section 679 is amended by add-
 9 ing at the end the following new subsection:

10 “(d) REGULATIONS.—The Secretary shall prescribe
 11 such regulations as may be necessary or appropriate to
 12 carry out the purposes of this section.”.

13 (g) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to transfers of property after Feb-
 15 ruary 6, 1995.

16 **SEC. 414. FOREIGN PERSONS NOT TO BE TREATED AS OWN-
 17 ERS UNDER GRANTOR TRUST RULES.**

18 (a) GENERAL RULE.—

19 (1) Subsection (f) of section 672 (relating to
 20 special rule where grantor is foreign person) is
 21 amended to read as follows:

22 “(f) SUBPART NOT TO RESULT IN FOREIGN OWNER-
 23 SHIP.—

24 (1) IN GENERAL.—Notwithstanding any other
 25 provision of this subpart, this subpart shall apply

1 only to the extent such application results in an
2 amount (if any) being currently taken into account
3 (directly or through 1 or more entities) under this
4 chapter in computing the income of a citizen or resi-
5 dent of the United States or a domestic corporation.

6 **“(2) EXCEPTIONS.—**

7 **“(A) CERTAIN REVOCABLE AND IRREV-**
8 **OCABLE TRUSTS.—** Paragraph (1) shall not
9 apply to any portion of a trust if—

10 “(i) the power to revest absolutely in
11 the grantor title to the trust property to
12 which such portion is attributable is exer-
13 cisable solely by the grantor without the
14 approval or consent of any other person or
15 with the consent of a related or subordi-
16 nate party who is subservient to the grant-
17 or, or

18 “(ii) the only amounts distributable
19 from such portion (whether income or cor-
20 pus) during the lifetime of the grantor are
21 amounts distributable to the grantor or the
22 spouse of the grantor.

23 **“(B) COMPENSATORY TRUSTS.—** Except as
24 provided in regulations, paragraph (1) shall not
25 apply to any portion of a trust distributions

1 from which are taxable as compensation for
2 services rendered.

3 “(3) SPECIAL RULES.—Except as otherwise
4 provided in regulations prescribed by the Sec-
5 retary—

6 “(A) a controlled foreign corporation (as
7 defined in section 957) shall be treated as a do-
8 mestic corporation for purposes of paragraph
9 (1), and

10 “(B) paragraph (1) shall not apply for
11 purposes of applying section 1296.

12 “(4) RECHARACTERIZATION OF PURPORTED
13 GIFTS.—In the case of any transfer directly or indi-
14 rectly from a partnership or foreign corporation
15 which the transferee treats as a gift or bequest, the
16 Secretary may recharacterize such transfer in such
17 circumstances as the Secretary determines to be ap-
18 propriate to prevent the avoidance of the purposes of
19 this subsection.

20 “(5) SPECIAL RULE WHERE GRANTOR IS FOR-
21 EIGN PERSON.—If—

22 “(A) but for this subsection, a foreign per-
23 son would be treated as the owner of any por-
24 tion of a trust, and

1 “(B) such trust has a beneficiary who is a
2 United States person;

3 such beneficiary shall be treated as the grantor of
4 such portion to the extent such beneficiary or any
5 member of such beneficiary's family (within the
6 meaning of section 267(e)(4)) has made (directly or
7 indirectly) transfers of property (other than in a sale
8 for full and adequate consideration) to such foreign
9 person. For purposes of the preceding sentence, any
10 gift shall not be taken into account to the extent
11 such gift would be excluded from taxable gifts under
12 section 2503(b).

13 “(6) REGULATIONS.—The Secretary shall pre-
14 scribe such regulations as may be necessary or ap-
15 propriate to carry out the purposes of this sub-
16 section, including regulations providing that para-
17 graph (1) shall not apply in appropriate cases.”.

18 (2) The last sentence of subsection (e) of sec-
19 tion 672 of such Code is amended by inserting “sub-
20 section (f) and” before “sections 674”.

21 (b) CREDIT FOR CERTAIN TAXES.—

22 (1) Paragraph (2) of section 665(d) is amended
23 by adding at the end the following new sentence:
24 “Under rules or regulations prescribed by the Sec-
25 retary, in the case of any foreign trust of which the

1 settlor or another person would be treated as owner
2 of any portion of the trust under subpart E but for
3 section 672(f), the term ‘taxes imposed on the trust’
4 includes the allocable amount of any income, war
5 profits, and excess profits taxes imposed by any for-
6 eign country or possession of the United States on
7 the settlor or such other person in respect of trust
8 income.”.

9 (2) Paragraph (5) of section 901(b) is amended
10 by adding at the end the following new sentence:
11 “Under rules or regulations prescribed by the Sec-
12 retary, in the case of any foreign trust of which the
13 settlor or another person would be treated as owner
14 of any portion of the trust under subpart E but for
15 section 672(f), the allocable amount of any income,
16 war profits, and excess profits taxes imposed by any
17 foreign country or possession of the United States
18 on the settlor or such other person in respect of
19 trust income.”.

20 (e) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
21 THROUGH NOMINEES.—

22 (1) Section 643 is amended by adding at the
23 end the following new subsection:

24 “(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
25 THROUGH NOMINEES.—For purposes of this part, any

1 amount paid to a United States person which is derived
2 directly or indirectly from a foreign trust of which the
3 payor is not the grantor shall be deemed in the year of
4 payment to have been directly paid by the foreign trust
5 to such United States person.”.

6 (2) Section 665 is amended by striking sub-
7 section (e).

8 (d) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided by para-
10 graph (2), the amendments made by this section
11 shall take effect on the date of the enactment of this
12 Act.

13 (2) EXCEPTION FOR CERTAIN TRUSTS.—The
14 amendments made by this section shall not apply to
15 any trust—

16 (A) which is treated as owned by the
17 grantor under section 676 or 677 (other than
18 subsektion (a)(3) thereof) of the Internal Reve-
19 nue Code of 1986; and

20 (B) which is in existence on September 19,
21 1995.

22 The preceding sentence shall not apply to the por-
23 tion of any such trust attributable to any transfer to
24 such trust after September 19, 1995.

25 (e) TRANSITIONAL RULE.—If—

1 (1) by reason of the amendments made by this
2 section, any person other than a United States per-
3 son ceases to be treated as the owner of a portion
4 of a domestic trust, and

8 no tax shall be imposed by section 1491 of the Internal
9 Revenue Code of 1986 by reason of such trust becoming
10 a foreign trust or the assets of such trust being trans-
11 ferred to a foreign trust.

12 **SEC. 415. INFORMATION REPORTING REGARDING FOREIGN**
13 **GIFTS.**

14 (a) IN GENERAL.—Subpart A of part III of sub-
15 chapter A of chapter 61 is amended by inserting after sec-
16 tion 6039E the following new section:

17 "SEC. 6039F. NOTICE OF LARGE GIFTS RECEIVED FROM
18 FOREIGN PERSONS.

19 “(a) IN GENERAL.—If the value of the aggregate for
20 eign gifts received by a United States person (other than
21 an organization described in section 501(c) and exempt
22 from tax under section 501(a)) during any taxable year
23 exceeds \$10,000, such United States person shall furnish
24 (at such time and in such manner as the Secretary shall
25 prescribe) such information as the Secretary may pre-

1 scribe regarding each foreign gift received during such
2 year.

3 **“(b) FOREIGN GIFT.**—For purposes of this section,
4 the term ‘foreign gift’ means any amount received from
5 a person other than a United States person which the re-
6 cipient treats as a gift or bequest. Such term shall not
7 include any qualified transfer (within the meaning of sec-
8 tion 2503(e)(2)) or any distribution properly disclosed in
9 a return under section 6048(e).

10 **“(c) PENALTY FOR FAILURE TO FILE INFORMA-**
11 **TION.**—

12 **“(1) IN GENERAL.**—If a United States person
13 fails to furnish the information required by sub-
14 section (a) with respect to any foreign gift within
15 the time prescribed therefor (including extensions)—

16 **“(A)** the tax consequences of the receipt of
17 such gift shall be determined by the Secretary,
18 and

19 **“(B)** such United States person shall pay
20 (upon notice and demand by the Secretary and
21 in the same manner as tax) an amount equal to
22 5 percent of the amount of such foreign gift for
23 each month for which the failure continues (not
24 to exceed 25 percent of such amount in the ag-
25 gregate).

1 “(2) REASONABLE CAUSE EXCEPTION.—Para-
 2 graph (1) shall not apply to any failure to report a
 3 foreign gift if the United States person shows that
 4 the failure is due to reasonable cause and not due
 5 to willful neglect.

6 “(d) COST-OF-LIVING ADJUSTMENT.—In the case of
 7 any taxable year beginning after December 31, 1996, the
 8 \$10,000 amount under subsection (a) shall be increased
 9 by an amount equal to the product of such amount and
 10 the cost-of-living adjustment for such taxable year under
 11 section 1(f)(3), except that subparagraph (B) thereof shall
 12 be applied by substituting ‘1995’ for ‘1992’.

13 “(e) REGULATIONS.—The Secretary shall prescribe
 14 such regulations as may be necessary or appropriate to
 15 carry out the purposes of this section.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
 17 for such subpart is amended by inserting after the item
 18 relating to section 6039E the following new item:

“Sec. 6039F. Notice of large gifts received from foreign persons.”.

19 (e) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to amounts received after the date
 21 of the enactment of this Act in taxable years ending after
 22 such date.

1 **SEC. 416. MODIFICATION OF RULES RELATING TO FOREIGN**
2 **TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

3 (a) **MODIFICATION OF INTEREST CHARGE ON ACCU-**
4 **MULATION DISTRIBUTIONS.**—Subsection (a) of section
5 668 (relating to interest charge on accumulation distribu-
6 tions from foreign trusts) is amended to read as follows:

7 “(a) **GENERAL RULE.**—For purposes of the tax de-
8 termined under section 667(a)—

9 “(1) **INTEREST DETERMINED USING UNDER-**
10 **PAYMENT RATES.**—The interest charge determined
11 under this section with respect to any distribution is
12 the amount of interest which would be determined
13 on the partial tax computed under section 667(b) for
14 the period described in paragraph (2) using the
15 rates and the method under section 6621 applicable
16 to underpayments of tax.

17 “(2) **PERIOD.**—For purposes of paragraph (1),
18 the period described in this paragraph is the period
19 which begins on the date which is the applicable
20 number of years before the date of the distribution
21 and which ends on the date of the distribution.

22 “(3) **APPLICABLE NUMBER OF YEARS.**—For
23 purposes of paragraph (2)—

24 “(A) **IN GENERAL.**—The applicable num-
25 ber of years with respect to a distribution is the
26 number determined by dividing—

1 “(i) the sum of the products described
2 in subparagraph (B) with respect to each
3 undistributed income year, by

4 “(ii) the aggregate undistributed net
5 income.

6 The quotient determined under the preceding
7 sentence shall be rounded under procedures
8 prescribed by the Secretary.

9 “(B) PRODUCT DESCRIBED.—For pur-
10 poses of subparagraph (A), the product de-
11 scribed in this subparagraph with respect to
12 any undistributed income year is the product
13 of—

14 “(i) the undistributed net income for
15 such year, and

16 “(ii) the sum of the number of taxable
17 years between such year and the taxable
18 year of the distribution (counting in each
19 case the undistributed income year but not
20 counting the taxable year of the distribu-
21 tion).

22 “(4) UNDISTRIBUTED INCOME YEAR.—For pur-
23 poses of this subsection, the term ‘undistributed in-
24 come year’ means any prior taxable year of the trust
25 for which there is undistributed net income, other

1 than a taxable year during all of which the bene-
2 ficiary receiving the distribution was not a citizen or
3 resident of the United States.

4 **“(5) DETERMINATION OF UNDISTRIBUTED NET**
5 **INCOME.**—Notwithstanding section 666, for pur-
6 poses of this subsection, an accumulation distribu-
7 tion from the trust shall be treated as reducing pro-
8 portionately the undistributed net income for undis-
9 tributed income years.

10 **“(6) PERIODS BEFORE 1996.**—Interest for the
11 portion of the period described in paragraph (2)
12 which occurs before January 1, 1996, shall be deter-
13 mined—

14 “(A) by using an interest rate of 6 percent,
15 and

16 “(B) without compounding until January
17 1, 1996.”.

18 **(b) ABUSIVE TRANSACTIONS.**—Section 643(a) is
19 amended by inserting after paragraph (6) the following
20 new paragraph:

21 **“(7) ABUSIVE TRANSACTIONS.**—The Secretary
22 shall prescribe such regulations as may be necessary
23 or appropriate to carry out the purposes of this part,
24 including regulations to prevent avoidance of such
25 purposes.”.

1 (e) TREATMENT OF LOANS FROM TRUSTS.—

2 (1) IN GENERAL.—Section 643 (relating to
 3 definitions applicable to subparts A, B, C, and D)
 4 is amended by adding at the end the following new
 5 subsection:

6 “(i) LOANS FROM FOREIGN TRUSTS.—For purposes
 7 of subparts B, C, and D—

8 “(1) GENERAL RULE.—Except as provided in
 9 regulations, if a foreign trust makes a loan of cash
 10 or marketable securities directly or indirectly to—

11 “(A) any grantor or beneficiary of such
 12 trust who is a United States person, or

13 “(B) any United States person not de-
 14 scribed in subparagraph (A) who is related to
 15 such grantor or beneficiary,

16 the amount of such loan shall be treated as a dis-
 17 tribution by such trust to such grantor or bene-
 18 iciary (as the case may be).

19 “(2) DEFINITIONS AND SPECIAL RULES.—For
 20 purposes of this subsection—

21 “(A) CASH.—The term ‘cash’ includes for-
 22 eign currencies and cash equivalents.

23 “(B) RELATED PERSON.—

24 “(i) IN GENERAL.—A person is relat-
 25 ed to another person if the relationship be-

1 tween such persons would result in a dis-
2 allowance of losses under section 267 or
3 707(b). In applying section 267 for pur-
4 poses of the preceding sentence, section
5 267(e)(4) shall be applied as if the family
6 of an individual includes the spouses of the
7 members of the family.

8 “(ii) ALLOCATION.—If any person de-
9 scribed in paragraph (1)(B) is related to
10 more than one person, the grantor or bene-
11 ficiary to whom the treatment under this
12 subsection applies shall be determined
13 under regulations prescribed by the Sec-
14 retary.

15 “(C) EXCLUSION OF TAX EXEMPTS.—The
16 term ‘United States person’ does not include
17 any entity exempt from tax under this chapter.

18 “(D) TRUST NOT TREATED AS SIMPLE
19 TRUST.—Any trust which is treated under this
20 subsection as making a distribution shall be
21 treated as not described in section 651.

22 “(3) SUBSEQUENT TRANSACTIONS REGARDING
23 LOAN PRINCIPAL.—If any loan is taken into account
24 under paragraph (1), any subsequent transaction be-
25 tween the trust and the original borrower regarding

1 the principal of the loan (by way of complete or par-
2 tial repayment, satisfaction, cancellation, discharge,
3 or otherwise) shall be disregarded for purposes of
4 this title.”.

5 (2) TECHNICAL AMENDMENT.—Paragraph (8)
6 of section 7872(f) is amended by inserting “;
7 643(i),” before “or 1274” each place it appears.

8 (d) EFFECTIVE DATES.—

9 (1) INTEREST CHARGE.—The amendment made
10 by subsection (a) shall apply to distributions after
11 the date of the enactment of this Act.

12 (2) ABUSIVE TRANSACTIONS.—The amendment
13 made by subsection (b) shall take effect on the date
14 of the enactment of this Act.

15 (3) LOANS FROM TRUSTS.—The amendment
16 made by subsection (c) shall apply to loans of cash
17 or marketable securities made after September 19,
18 1995.

19 **SEC. 417. RESIDENCE OF TRUSTS, ETC.**

20 (a) TREATMENT AS UNITED STATES PERSON.—

21 (1) IN GENERAL.—Paragraph (30) of section
22 7701(a) is amended by striking “and” at the end of
23 subparagraph (C) and by striking subparagraph (D)
24 and by inserting the following new subparagraphs:

1 “(D) any estate (other than a foreign es-
2 tate, within the meaning of paragraph (31)),
3 and

4 “(E) any trust if—

5 “(i) a court within the United States
6 is able to exercise primary supervision over
7 the administration of the trust, and

8 “(ii) one or more United States fidu-
9 ciaries have the authority to control all
10 substantial decisions of the trust.”.

11 (2) CONFORMING AMENDMENT.—Paragraph
12 (31) of section 7701(a) is amended to read as fol-
13 lows:

14 “(31) FOREIGN ESTATE OR TRUST.—

15 “(A) FOREIGN ESTATE.—The term ‘for-
16 eign estate’ means an estate the income of
17 which, from sources without the United States
18 which is not effectively connected with the con-
19 duct of a trade or business within the United
20 States, is not includible in gross income under
21 subtitle A.

22 “(B) FOREIGN TRUST.—The term ‘foreign
23 trust’ means any trust other than a trust de-
24 scribed in subparagraph (E) of paragraph
25 (30).”.

(B) at the election of the trustee of a trust, to taxable years ending after the date of the enactment of this Act.

8 Such an election, once made, shall be irrevocable.

9 (b) DOMESTIC TRUSTS WHICH BECOME FOREIGN
10 TRUSTS.—

(1) In GENERAL.—Section 1491 (relating to imposition of tax on transfers to avoid income tax) is amended by adding at the end the following new flush sentence:

15 "If a trust which is not a foreign trust becomes a foreign
16 trust, such trust shall be treated for purposes of this sec-
17 tion as having transferred, immediately before becoming
18 a foreign trust, all of its assets to a foreign trust.".

1 **SEC. 401. REPEAL OF BAD DEBT RESERVE METHOD FOR**
2 **THRIFT SAVINGS ASSOCIATIONS.**

3 (a) *IN GENERAL.*—Section 593 (relating to reserves for
4 losses on loans) is amended by adding at the end the follow-
5 ing new subsections:

6 “(f) *TERMINATION OF RESERVE METHOD.*—Sub-
7 sections (a), (b), (c), and (d) shall not apply to any taxable
8 year beginning after December 31, 1995.

9 “(g) *6-YEAR SPREAD OF ADJUSTMENTS.*—

10 “(1) *IN GENERAL.*—In the case of any taxpayer
11 who is required by reason of subsection (f) to change
12 its method of computing reserves for bad debts—

13 “(A) such change shall be treated as a
14 change in a method of accounting,

15 “(B) such change shall be treated as initi-
16 ated by the taxpayer and as having been made
17 with the consent of the Secretary, and

18 “(C) the net amount of the adjustments re-
19 quired to be taken into account by the taxpayer
20 under section 481(a)—

21 “(i) shall be determined by taking into
22 account only applicable excess reserves, and

23 “(ii) as so determined, shall be taken
24 into account ratably over the 6-taxable year
25 period beginning with the first taxable year
26 beginning after December 31, 1995.

1 “(2) *APPLICABLE EXCESS RESERVES.*—

2 “(A) *IN GENERAL.*—For purposes of para-
3 graph (1), the term ‘applicable excess reserves’
4 means the excess (if any) of—

5 “(i) the balance of the reserves de-
6 scribed in subsection (c)(1) (other than the
7 supplemental reserve) as of the close of the
8 taxpayer’s last taxable year beginning be-
9 fore January 1, 1996, over

10 “(ii) the lesser of—

11 “(I) the balance of such reserves
12 as of the close of the taxpayer’s last
13 taxable year beginning before January
14 1, 1988, or

15 “(II) the balance of the reserves
16 described in subclause (I), reduced in
17 the same manner as under section
18 585(b)(2)(B)(ii) on the basis of the tax-
19 able years described in clause (i) and
20 this clause.

21 “(B) *SPECIAL RULE FOR THRIFTS WHICH*
22 *BECOME SMALL BANKS.*—In the case of a bank
23 (as defined in section 581) which was not a large
24 bank (as defined in section 585(c)(2)) for its first

1 taxable year beginning after December 31,
2 1995—

3 “(i) the balance taken into account
4 under subparagraph (A)(ii) shall not be less
5 than the amount which would be the bal-
6 ance of such reserves as of the close of its
7 last taxable year beginning before such date
8 if the additions to such reserves for all tax-
9 able years had been determined under sec-
10 tion 585(b)(2)(A), and

11 “(ii) the opening balance of the reserve
12 for bad debts as of the beginning of such
13 first taxable year shall be the balance taken
14 into account under subparagraph (A)(ii)
15 (determined after the application of clause
16 (i) of this subparagraph).

17 The preceding sentence shall not apply for pur-
18 poses of paragraphs (5) and (6) or subsection
19 (e)(1).

20 “(3) RECAPTURE OF PRE-1988 RESERVES WHERE
21 TAXPAYER CEASES TO BE BANK.—If, during any tax-
22 able year beginning after December 31, 1995, a tax-
23 payer to which paragraph (1) applied is not a bank
24 (as defined in section 581), paragraph (1) shall apply
25 to the reserves described in paragraph (2)(A)(ii) and

1 *the supplemental reserve; except that such reserves*
2 *shall be taken into account ratably over the 6-taxable*
3 *year period beginning with such taxable year.*

4 ***“(4) SUSPENSION OF RECAPTURE IF RESIDEN-***
5 ***TIAL LOAN REQUIREMENT MET.—***

6 ***“(A) IN GENERAL.—In the case of a bank***
7 *which meets the residential loan requirement of*
8 *subparagraph (B) for the first taxable year be-*
9 *ginning after December 31, 1995, or for the fol-*
10 *lowing taxable year—*

11 ***“(i) no adjustment shall be taken into***
12 *account under paragraph (1) for such tax-*
13 *able year, and*

14 ***“(ii) such taxable year shall be dis-***
15 *regarded in determining—*

16 ***“(I) whether any other taxable***
17 *year is a taxable year for which an ad-*
18 *justment is required to be taken into*
19 *account under paragraph (1), and*

20 ***“(II) the amount of such adjust-***
21 *ment.*

22 ***“(B) RESIDENTIAL LOAN REQUIREMENT.—***
23 *A taxpayer meets the residential loan require-*
24 *ment of this subparagraph for any taxable year*
25 *if the principal amount of the residential loans*

1 *made by the taxpayer during such year is not*
2 *less than the base amount for such year.*

3 “*(C) RESIDENTIAL LOAN.*—*For purposes of*
4 *this paragraph, the term ‘residential loan’ means*
5 *any loan described in clause (v) of section*
6 *7701(a)(19)(C) but only if such loan is incurred*
7 *in acquiring, constructing, or improving the*
8 *property described in such clause.*

9 “*(D) BASE AMOUNT.*—*For purposes of sub-*
10 *paragraph (B), the base amount is the average*
11 *of the principal amounts of the residential loans*
12 *made by the taxpayer during the 6 most recent*
13 *taxable years beginning on or before December*
14 *31, 1995. At the election of the taxpayer who*
15 *made such loans during each of such 6 taxable*
16 *years, the preceding sentence shall be applied*
17 *without regard to the taxable year in which such*
18 *principal amount was the highest and the tax-*
19 *able year in such principal amount was the low-*
20 *est. Such an election may be made only for the*
21 *first taxable year beginning after such date, and,*
22 *if made for such taxable year, shall apply to the*
23 *succeeding taxable year unless revoked with the*
24 *consent of the Secretary.*

1 “(E) CONTROLLED GROUPS.—*In the case of*
2 *a taxpayer which is a member of any controlled*
3 *group of corporations described in section*
4 *1563(a)(1), subparagraph (B) shall be applied*
5 *with respect to such group.*

6 “(5) CONTINUED APPLICATION OF FRESH START
7 UNDER SECTION 585 TRANSITIONAL RULES.—*In the*
8 *case of a taxpayer to which paragraph (1) applied*
9 *and which was not a large bank (as defined in section*
10 *585(c)(2)) for its first taxable year beginning after*
11 *December 31, 1995:*

12 “(A) IN GENERAL.—*For purposes of deter-*
13 *mining the net amount of adjustments referred to*
14 *in section 585(c)(3)(A)(iii), there shall be taken*
15 *into account only the excess (if any) of the re-*
16 *serve for bad debts as of the close of the last tax-*
17 *able year before the disqualification year over the*
18 *balance taken into account by such taxpayer*
19 *under paragraph (2)(A)(ii) of this subsection.*

20 “(B) TREATMENT UNDER ELECTIVE CUT-
21 OFF METHOD.—*For purposes of applying section*
22 *585(c)(4)—*

23 “(i) *the balance of the reserve taken*
24 *into account under subparagraph (B) there-*
25 *of shall be reduced by the balance taken into*

1 *account by such taxpayer under paragraph*
2 *(2)(A)(ii) of this subsection, and*

3 *“(ii) no amount shall be includible in*
4 *gross income by reason of such reduction.*

5 *“(6) SUSPENDED RESERVE INCLUDED AS SEC-*
6 *TION 381(c) ITEMS.—The balance taken into account*
7 *by a taxpayer under paragraph (2)(A)(ii) of this sub-*
8 *section and the supplemental reserve shall be treated*
9 *as items described in section 381(c).*

10 *“(7) CONVERSIONS TO CREDIT UNIONS.—In the*
11 *case of a taxpayer to which paragraph (1) applied*
12 *which becomes a credit union described in section*
13 *501(c) and exempt from taxation under section*
14 *501(a)—*

15 *“(A) any amount required to be included in*
16 *the gross income of the credit union by reason of*
17 *this subsection shall be treated as derived from*
18 *an unrelated trade or business (as defined in sec-*
19 *tion 513), and*

20 *“(B) for purposes of paragraph (3), the*
21 *credit union shall not be treated as if it were a*
22 *bank.*

23 *“(8) REGULATIONS.—The Secretary shall pre-*
24 *scribe such regulations as may be necessary to carry*
25 *out this subsection and subsection (e), including regu-*

1 *lations providing for the application of such sub-*
2 *sections in the case of acquisitions, mergers, spin-offs,*
3 *and other reorganizations.”*

4 *(b) CONFORMING AMENDMENTS.—*

5 *(1) Subsection (d) of section 50 is amended by*
6 *adding at the end the following new sentence:*

7 *“Paragraphs (1)(A), (2)(A), and (4) of the section 46(e) re-*
8 *ferred to in paragraph (1) of this subsection shall not apply*
9 *to any taxable year beginning after December 31, 1995.”*

10 *(2) Subsection (e) of section 52 is amended by*
11 *striking paragraph (1) and by redesignating para-*
12 *graphs (2) and (3) as paragraphs (1) and (2), respec-*
13 *tively.*

14 *(3) Subsection (a) of section 57 is amended by*
15 *striking paragraph (4).*

16 *(4) Section 246 is amended by striking sub-*
17 *section (f).*

18 *(5) Clause (i) of section 291(e)(1)(B) is amended*
19 *by striking “or to which section 593 applies”.*

20 *(6) Subparagraph (A) of section 585(a)(2) is*
21 *amended by striking “other than an organization to*
22 *which section 593 applies”.*

23 *(7)(A) The material preceding subparagraph (A)*
24 *of section 593(e)(1) is amended by striking “by a do-*
25 *mestic building and loan association or an institu-*

1 *tion that is treated as a mutual savings bank under*
2 *section 591(b)" and inserting "by a taxpayer having*
3 *a balance described in subsection (g)(2)(A)(ii)".*

4 (B) *Subparagraph (B) of section 593(e)(1) is*
5 *amended to read as follows:*

6 “(B) *then out of the balance taken into ac-*
7 *count under subsection (g)(2)(A)(ii) (properly*
8 *adjusted for amounts charged against such re-*
9 *serves for taxable years beginning after December*
10 *31, 1987),”.*

11 (C) *The second sentence of section 593(e)(1) is*
12 *amended by striking "the association or an institu-*
13 *tion that is treated as a mutual savings bank under*
14 *section 591(b)" and inserting "a taxpayer having a*
15 *balance described in subsection (g)(2)(A)(ii)".*

16 (D) *The third sentence of section 593(e)(1) is*
17 *amended by striking "an association" and inserting*
18 *"a taxpayer having a balance described in subsection*
19 *(g)(2)(A)(ii)".*

20 (E) *Paragraph (1) of section 593(e) is amended*
21 *by adding at the end the following new sentence:*
22 *"This paragraph shall not apply to any distribution*
23 *of all of the stock of a bank (as defined in section 581)*
24 *to another corporation if, immediately after the dis-*
25 *tribution, such bank and such other corporation are*

1 members of the same affiliated group (as defined in
2 section 1504) and the provisions of section 5(e) of the
3 Federal Deposit Insurance Act (as in effect on Decem-
4 ber 31, 1995) or similar provisions are in effect.”

5 (8) Section 595 is hereby repealed.

6 (9) Section 596 is hereby repealed.

7 (10) Subsection (a) of section 860E is amend-
8 ed—

9 (A) by striking “Except as provided in
10 paragraph (2), the” in paragraph (1) and in-
11 serting “The”,

12 (B) by striking paragraphs (2) and (4) and
13 redesignating paragraphs (3) and (5) as para-
14 graphs (2) and (3), respectively, and

15 (C) by striking in paragraph (2) (as so re-
16 designed) all that follows “subsection” and in-
17 serting a period.

18 (11) Paragraph (3) of section 992(d) is amended
19 by striking “or 593”.

20 (12) Section 1038 is amended by striking sub-
21 section (f).

22 (13) Clause (ii) of section 1042(c)(4)(B) is
23 amended by striking “or 593”.

24 (14) Subsection (c) of section 1277 is amended
25 by striking “or to which section 593 applies”.

(16) The table of sections for part II of sub-chapter H of chapter 1 is amended by striking the items relating to sections 595 and 596.

7 (c) *EFFECTIVE DATES.*—

15 (A) such stock is outstanding at all times
16 after October 31, 1995, and before the distribu-
17 tion, and

9 SEC. 402. DEPRECIATION UNDER INCOME FORECAST

10 *METHOD.*

11 (a) *GENERAL RULE.*—Section 167 (relating to depre-
12 ciation) is amended by redesignating subsection (g) as sub-
13 section (h) and by inserting after subsection (f) the follow-
14 ing new subsection:

15 "(g) DEPRECIATION UNDER INCOME FORECAST

16 *METHOD.*—

17 “(1) *IN GENERAL.*—If the depreciation deduction
18 allowable under this section to any taxpayer with re-
19 spect to any property is determined under the income
20 forecast method or any similar method—

21 “(A) the income from the property to be
22 taken into account in determining the deprecia-
23 tion deduction under such method shall be equal
24 to the amount of income earned in connection
25 with the property before the close of the 10th tax-

1 able year following the taxable year in which the
2 property was placed in service,

3 “(B) the adjusted basis of the property shall
4 only include amounts with respect to which the
5 requirements of section 461(h) are satisfied,

6 “(C) the depreciation deduction under such
7 method for the 10th taxable year beginning after
8 the taxable year in which the property was
9 placed in service shall be equal to the adjusted
10 basis of such property as of the beginning of such
11 10th taxable year, and

12 “(D) such taxpayer shall pay (or be entitled
13 to receive) interest computed under the look-back
14 method of paragraph (2) for any recomputation
15 year.

16 “(2) LOOK-BACK METHOD.—The interest com-
17 puted under the look-back method of this paragraph
18 for any recomputation year shall be determined by—

19 “(A) first determining the depreciation de-
20 ductions under this section with respect to such
21 property which would have been allowable for
22 prior taxable years if the determination of the
23 amounts so allowable had been made on the basis
24 of the sum of the following (instead of the esti-
25 mated income from such property)—

1 “(i) the actual income earned in con-
2 nection with such property for periods be-
3 fore the close of the recomputation year, and

4 “(ii) an estimate of the future income
5 to be earned in connection with such prop-
6 erty for periods after the recomputation
7 year and before the close of the 10th taxable
8 year following the taxable year in which the
9 property was placed in service,

10 “(B) second, determining (solely for pur-
11 poses of computing such interest) the overpay-
12 ment or underpayment of tax for each such prior
13 taxable year which would result solely from the
14 application of subparagraph (A), and

15 “(C) then using the adjusted overpayment
16 rate (as defined in section 460(b)(7)),
17 compounded daily, on the overpayment or under-
18 payment determined under subparagraph (B).

19 For purposes of the preceding sentence, any cost in-
20 curred after the property is placed in service (which
21 is not treated as a separate property under para-
22 graph (5)) shall be taken into account by discounting
23 (using the Federal mid-term rate determined under
24 section 1274(d) as of the time such cost is incurred)
25 such cost to its value as of the date the property is

1 *placed in service. The taxpayer may elect with respect*
2 *to any property to have the preceding sentence not*
3 *apply to such property.*

4 “(3) *EXCEPTION FROM LOOK-BACK METHOD.*—

5 *Paragraph (1)(D) shall not apply with respect to any*
6 *property which had a cost basis of \$100,000 or less.*

7 “(4) *RECOMPUTATION YEAR.*—For purposes of

8 *this subsection, except as provided in regulations, the*
9 *term ‘recomputation year’ means, with respect to any*
10 *property, the 3d and the 10th taxable years beginning*
11 *after the taxable year in which the property was*
12 *placed in service, unless the actual income earned in*
13 *connection with the property for the period before the*
14 *close of such 3d or 10th taxable year is within 10 per-*
15 *cent of the income earned in connection with the*
16 *property for such period which was taken into ac-*
17 *count under paragraph (1)(A).*

18 “(5) *SPECIAL RULES.*—

19 “(A) *CERTAIN COSTS TREATED AS SEPA-*
20 *RATE PROPERTY.*—For purposes of this sub-
21 *section, the following costs shall be treated as*
22 *separate properties:*

23 “(i) *Any costs incurred with respect to*
24 *any property after the 10th taxable year be-*

1 *ginning after the taxable year in which the*
2 *property was placed in service.*

3 “*(ii) Any costs incurred after the prop-*
4 *erty is placed in service and before the close*
5 *of such 10th taxable year if such costs are*
6 *significant and give rise to a significant in-*
7 *crease in the income from the property*
8 *which was not included in the estimated in-*
9 *come from the property.*

10 “(B) *SYNDICATION INCOME FROM TELE-*
11 *VISION SERIES.*—*In the case of property which is*
12 *1 or more episodes in a television series, income*
13 *from syndicating such series shall not be re-*
14 *quired to be taken into account under this sub-*
15 *section before the earlier of—*

16 “(i) *the 4th taxable year beginning*
17 *after the date the first episode in such series*
18 *is placed in service, or*

19 “(ii) *the earliest taxable year in which*
20 *the taxpayer has an arrangement relating*
21 *to the future syndication of such series.*

22 “(C) *SPECIAL RULES FOR FINANCIAL EX-*
23 *PLOITATION OF CHARACTERS, ETC.*—*For pur-*
24 *poses of this subsection, in the case of television*
25 *and motion picture films, the income from the*

1 *property shall include income from the exploi-*
2 *tation of characters, designs, scripts, scores, and*
3 *other incidental income associated with such*
4 *films, but only to the extent that such income*
5 *is earned in connection with the ultimate use of*
6 *such items by, or the ultimate sale of merchan-*
7 *dise to, persons who are not related persons*
8 *(within the meaning of section 267(b)) to the*
9 *taxpayer.*

10 “(D) *COLLECTION OF INTEREST.*—For pur-
11 *poses of subtitle F (other than sections 6654 and*
12 *6655), any interest required to be paid by the*
13 *taxpayer under paragraph (1) for any recom-*
14 *putation year shall be treated as an increase in*
15 *the tax imposed by this chapter for such year.*

16 “(E) *DETERMINATIONS.*—For purposes of
17 *paragraph (2), determinations of the amount of*
18 *income earned in connection with any property*
19 *shall be made in the same manner as for pur-*
20 *poses of applying the income forecast method; ex-*
21 *cept that any income from the disposition of*
22 *such property shall be taken into account.*

23 “(F) *TREATMENT OF PASS-THRU ENTI-*
24 *TIES.*—Rules similar to the rules of section

1 460(b)(4) shall apply for purposes of this sub-
2 section.”

3 (b) *EFFECTIVE DATE.*—

4 (1) *IN GENERAL.*—The amendment made by sub-
5 section (a) shall apply to property placed in service
6 after September 13, 1995.

7 (2) *BINDING CONTRACTS.*—The amendment
8 made by subsection (a) shall not apply to any prop-
9 erty produced or acquired by the taxpayer pursuant
10 to a written contract which was binding on Septem-
11 ber 13, 1995, and at all times thereafter before such
12 production or acquisition.

13 (3) *UNDERPAYMENTS OF INCOME TAX.*—No addi-
14 tion to tax shall be made under—

15 (A) section 6654 or 6655 of the Internal
16 Revenue Code of 1986 (relating to failure to pay
17 estimated tax) with respect to any underpay-
18 ment of an installment required to be paid before
19 the date of the enactment of this Act, or

20 (B) section 6662 of such Code as a result of
21 the application of subsection (d) of that section
22 (relating to substantial understatements of in-
23 come tax) with respect to any underpayment of
24 income tax for any taxable year ending before
25 such date of enactment,

1 *to the extent such underpayment was created or in-*
2 *creased by the amendments made by subsection (a).*