

people of Iraq to know that in a democracy, everything is not perfect, that mistakes are made. But in a democracy, as well, those mistakes will be investigated and people will be brought to justice. We're an open society. We're a society that is willing to investigate, fully investigate in this case, what took place in that prison. That stands in stark contrast to life under Saddam Hussein. His trained torturers were never brought to justice under his regime. There were no investigations about mistreatment of people. There will be investigations. People will be brought to justice.""; and

Whereas the pursuit of truth and justice are core principles of the United States, and if the Government of the United States conducts a full investigation of the alleged abuses and holds accountable the individuals who are responsible for such abuses, the people of Iraq and of the Middle East will witness how a democracy upholds the rule of law and protects the rights of individuals by administering justice in a swift, transparent, and fair manner: Now, therefore, be it

*Resolved*, That the Senate—

(1) commends all Americans serving nobly abroad who are advancing the ideals of freedom and democracy, and working, through the individual and collective actions of such individuals, to improve the lives of all the people of Iraq;

(2) condemns in the strongest possible terms the despicable acts at Abu Ghraib prison and joins with the President in expressing apology for the humiliation suffered by the prisoners in Iraq and their families;

(3) urges the Government of the United States to take appropriate measures to ensure that such acts do not occur in the future;

(4) believes that it is in the interests of the United States and of the people of the United States that the appropriate committees of the Senate, exercising the oversight responsibilities of such committees, and the President, through the appropriate departments or agencies of the executive branch, conduct a full investigation of the abuses alleged to have occurred at Abu Ghraib; and

(5) urges that all individuals responsible for such despicable acts be held accountable.

**SENATE CONCURRENT RESOLUTION 105—DESIGNATING THE SECOND WEEK OF MARCH 2005 AS "EXTENSION LIVING WELL WEEK"**

Mr. GRASSLEY submitted the following concurrent resolution; which was referred to the Committee on the Judiciary:

S. CON. RES. 105

Whereas the health and well-being of the family is crucial to the functioning of the Nation and to providing adults and youth with the necessary skills and knowledge to help them achieve the best quality of life possible;

Whereas psychologically, socially, and emotionally strong families provide strength for future generations;

Whereas Extension is a nationwide educational network through the land-grant universities, funded cooperatively through the Department of Agriculture, State governments, and local county, city, and parish governments;

Whereas Extension provides non-biased, research-based information through informal education to help adults, youth, families, farms, businesses, and communities;

Whereas Extension education programs are developed at the grassroots level to meet local needs, and are available in nearly every

county and parish in the United States and its territories, from the biggest to the smallest;

Whereas information offered by Extension is provided by scientists and researchers at land-grant universities, and is made practical and relevant by Extension educators working at the local level;

Whereas Extension Family and Consumer Sciences educators are advocates for education for families so that the families might gain skills for a full and productive life; and

Whereas the designation of the second week of March 2005 as "Extension Living Well Week" is a fitting tribute to the National Extension Association for Family and Consumer Sciences professionals who provide education that is critical to the quality of life of adults, youth, individuals, and families, including food preparation, food safety, nutrition, financial management, healthy lifestyles, home and work environment and safety, relationship and parenting skills, and much more: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That Congress—

(1) designates the second week of March 2005 as "Extension Living Well Week";

(2) encourages the people of the United States to take advantage of the educational opportunities that Extension Family and Consumer Sciences educators provide, education that can help them in raising kids, eating right, spending smart, and living well; and

(3) requests that the President issue a proclamation calling on the people of the United States to conduct appropriate ceremonies, activities, and programs to demonstrate support for Extension Family and Consumer Sciences educators as they teach adults and youth and promote optimum health and wellness of families in the United States through the "Living Well" campaign.

**AMENDMENTS SUBMITTED AND PROPOSED**

SA 3121. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table.

SA 3122. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3123. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3124. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3125. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3126. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3127. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3128. Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3129. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3130. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3131. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3132. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3133. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3134. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3135. Mr. COLEMAN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3136. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3137. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3138. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3139. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3140. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 3141. Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

**TEXT OF AMENDMENTS**

**SA 3121.** Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 441, strike line 1 through page 446, line 4, and insert the following:

**SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.**

(a) READY RESERVE-NATIONAL GUARD CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following:

**"SEC. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.**

"(a) GENERAL RULE.—For purposes of section 38, the Ready Reserve-National Guard

employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of an employer is an amount equal to 50 percent of the lesser of—

“(1) the actual compensation amount with respect to such employee for such taxable year, or

“(2) \$30,000.

“(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term ‘actual compensation amount’ means the amount of compensation paid or incurred by an employer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

“(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) QUALIFIED ACTIVE DUTY.—The term ‘qualified active duty’ means—

“(A) active duty, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

“(B) hospitalization incident to such duty.

“(2) COMPENSATION.—The term ‘compensation’ means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer’s gross income under section 162(a)(1).

“(3) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term ‘Ready Reserve-National Guard employee’ means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

“(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

“(e) PORTION OF CREDIT REFUNDABLE.—

“(1) IN GENERAL.—In the case of an employer of a qualified first responder, the aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

“(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 38(c), or

“(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 38(c) for any taxable year were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

“(2) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘employer payroll taxes’ means the taxes imposed by—

“(i) section 3111(b), and

“(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the rate under section 3111(b)).

“(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

“(3) QUALIFIED FIRST RESPONDER.—For purposes of this subsection, the term ‘qualified first responder’ means any person who is—

“(A) employed as a law enforcement official, a firefighter, or a paramedic, and

“(B) a Ready Reserve-National Guard employee.”

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking “plus” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “, plus”, and by adding at the end the following:

“(17) the Ready Reserve-National Guard employee credit determined under section 45H(a).”

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) (relating to rule for employment credits) is amended by inserting “45H(a),” after “45A(a).”

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45G the following:

“Sec. 45H. Ready Reserve-National Guard employee credit.”

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) APPLICATION OF ANNUAL EXCLUSION LIMIT UNDER SECTION 911 TO HOUSING COSTS.—

(1) IN GENERAL.—Section 911(c) (relating to housing cost amount) is amended by adding at the end the following new paragraph:

“(4) LIMIT ON EXCLUSION FOR EMPLOYER PROVIDED HOUSING COSTS.—The housing cost amount for any individual for any taxable year attributable to employer provided amounts shall not exceed the excess (if any) of—

“(A) the product of—

“(i) the exclusion amount determined under subsection (b)(2)(D) for the taxable year, and

“(ii) a fraction equal to the number of days of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1) divided by the number of days in the taxable year, over

“(B) the foreign earned income of the individual excluded under subsection (a)(1) for the taxable year.”

(2) CONFORMING AMENDMENT.—Section 911(c)(1) is amended by striking “The” and inserting “Except as provided in paragraph (4), the”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2004.

**SA 3122.** Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 441, strike line 1 through page 446, line 4, and insert the following:

**SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.**

(a) READY RESERVE-NATIONAL GUARD CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following:

**“SEC. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.**

“(a) GENERAL RULE.—For purposes of section 38, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of an employer is an amount equal to 50 percent of the actual compensation amount with respect to such employee for such taxable year.

“(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term ‘actual compensation amount’ means the amount of compensation paid or incurred by an employer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

“(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) QUALIFIED ACTIVE DUTY.—The term ‘qualified active duty’ means—

“(A) active duty, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

“(B) hospitalization incident to such duty.

“(2) COMPENSATION.—The term ‘compensation’ means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer’s gross income under section 162(a)(1).

“(3) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term ‘Ready Reserve-National Guard employee’ means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

“(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

“(e) PORTION OF CREDIT REFUNDABLE.—

“(1) IN GENERAL.—In the case of an employer of a qualified first responder, the aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

“(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 38(c), or

“(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 38(c) for any taxable year were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

“(2) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘employer payroll taxes’ means the taxes imposed by—

“(i) section 3111(b), and

“(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the rate under section 3111(b)).

“(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

“(3) QUALIFIED FIRST RESPONDER.—For purposes of this subsection, the term ‘qualified first responder’ means any person who is—

“(A) employed as a law enforcement official, a firefighter, or a paramedic, and

“(B) a Ready Reserve-National Guard employee.”

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking “plus” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “, plus”, and by adding at the end the following:

“(17) the Ready Reserve-National Guard employee credit determined under section 45H(a).”

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) (relating to rule for employment credits) is amended by inserting “45H(a),” after “45A(a).”

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45G the following:

“Sec. 45H. Ready Reserve-National Guard employee credit.”

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) APPLICATION OF ANNUAL EXCLUSION LIMIT UNDER SECTION 911 TO HOUSING COSTS.—

(1) IN GENERAL.—Section 911(c) (relating to housing cost amount) is amended by adding at the end the following new paragraph:

“(4) LIMIT ON EXCLUSION FOR EMPLOYER PROVIDED HOUSING COSTS.—The housing cost amount for any individual for any taxable year attributable to employer provided amounts shall not exceed the excess (if any) of—

“(A) the product of—

“(i) the exclusion amount determined under subsection (b)(2)(D) for the taxable year, and

“(ii) a fraction equal to the number of days of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1) divided by the number of days in the taxable year, over

“(B) the foreign earned income of the individual excluded under subsection (a)(1) for the taxable year.”

(2) CONFORMING AMENDMENT.—Section 911(c)(1) is amended by striking “The” and inserting “Except as provided in paragraph (4), the”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2004.

**SA 3123.** Ms. LANDRIEU submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to com-

ply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 441, strike line 1 through page 446, line 4, and insert the following:

**SEC. 632. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.**

(a) READY RESERVE-NATIONAL GUARD CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following:

**“SEC. 45H. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.**

“(a) GENERAL RULE.—For purposes of section 38, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of an employer is an amount equal to 50 percent of the lesser of—

“(1) the actual compensation amount with respect to such employee for such taxable year, or

“(2) \$30,000.

“(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term ‘actual compensation amount’ means the amount of compensation paid or incurred by an employer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

“(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) QUALIFIED ACTIVE DUTY.—The term ‘qualified active duty’ means—

“(A) active duty, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

“(B) hospitalization incident to such duty.

“(2) COMPENSATION.—The term ‘compensation’ means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer’s gross income under section 162(a)(1).

“(3) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term ‘Ready Reserve-National Guard employee’ means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

“(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

“(e) PORTION OF CREDIT REFUNDABLE.—

“(1) IN GENERAL.—In the case of an employer of a qualified first responder, the aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

“(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 38(c), or

“(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 38(c) for any taxable year were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

“(2) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘employer payroll taxes’ means the taxes imposed by—

“(i) section 3111(b), and

“(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the rate under section 3111(b)).

“(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

“(3) QUALIFIED FIRST RESPONDER.—For purposes of this subsection, the term ‘qualified first responder’ means any person who is—

“(A) employed as a law enforcement official, a firefighter, or a paramedic, and

“(B) a Ready Reserve-National Guard employee.”

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking “plus” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “, plus”, and by adding at the end the following:

“(17) the Ready Reserve-National Guard employee credit determined under section 45H(a).”

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) (relating to rule for employment credits) is amended by inserting “45H(a),” after “45A(a).”

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45G the following:

“Sec. 45H. Ready Reserve-National Guard employee credit.”

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.—

(1) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding after section 30C the following new section:

**“SEC. 30D. READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.**

“(a) ALLOWANCE OF CREDIT.—

“(1) IN GENERAL.—In the case of an eligible taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the sum of the employment credits for each qualified replacement employee under this section.

“(2) EMPLOYMENT CREDIT.—The employment credit with respect to a qualified replacement employee of the taxpayer for any taxable year is equal to 50 percent of the lesser of—

“(A) the individual’s qualified compensation attributable to service rendered as a qualified replacement employee, or

“(B) \$12,000.

“(b) QUALIFIED COMPENSATION.—The term ‘qualified compensation’ means—

“(1) compensation which is normally contingent on the qualified replacement employee’s presence for work and which is deductible from the taxpayer’s gross income under section 162(a)(1),

“(2) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

“(3) group health plan costs (if any) with respect to the qualified replacement employee.

“(c) QUALIFIED REPLACEMENT EMPLOYEE.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified replacement employee’ means an individual who is hired to replace a Ready Reserve-National Guard employee or a Ready Reserve-National Guard self-employed taxpayer, but only with respect to the period during which such Ready Reserve-National Guard employee or Ready Reserve-National Guard self-employed taxpayer participates in qualified active duty, including time spent in travel status.

“(2) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term ‘Ready Reserve-National Guard employee’ has the meaning given such term by section 45H(d)(3).

“(3) READY RESERVE-NATIONAL GUARD SELF-EMPLOYED TAXPAYER.—The term ‘Ready Reserve-National Guard self-employed taxpayer’ means a taxpayer who—

“(A) has net earnings from self-employment (as defined in section 1402(a)) for the taxable year, and

“(B) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in section 10142 and 10101 of title 10, United States Code.

“(d) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under sections 51(a) and 1396(a) with respect to any employee shall be reduced by the credit allowed by this section with respect to such employee.

“(e) LIMITATIONS.—

“(1) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

“(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

“(B) the tentative minimum tax for the taxable year.

“(2) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) to a taxpayer for—

“(A) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

“(B) the 2 succeeding taxable years.

“(f) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) ELIGIBLE TAXPAYER.—The term ‘eligible taxpayer’ means a small business employer or a Ready Reserve-National Guard self-employed taxpayer.

“(2) SMALL BUSINESS EMPLOYER.—

“(A) IN GENERAL.—The term ‘small business employer’ means, with respect to any taxable year, any employer who employed an

average of 50 or fewer employees on business days during such taxable year.

“(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

“(3) QUALIFIED ACTIVE DUTY.—The term ‘qualified active duty’ has the meaning given such term by section 45H(d)(1).

“(4) SPECIAL RULES FOR CERTAIN MANUFACTURERS.—

“(A) IN GENERAL.—In the case of any qualified manufacturer—

“(i) subsection (a)(2)(B) shall be applied by substituting ‘\$20,000’ for ‘\$12,000’, and

“(ii) paragraph (2)(A) of this subsection shall be applied by substituting ‘100’ for ‘50’.

“(B) QUALIFIED MANUFACTURER.—For purposes of this paragraph, the term ‘qualified manufacturer’ means any person if—

“(i) the primary business of such person is classified in sector 31, 32, or 33 of the North American Industrial Classification System, and

“(ii) all of such person’s facilities which are used for production in such business are located in the United States.

“(5) CARRYBACK AND CARRYFORWARD ALLOWED.—

“(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e)(1) for such taxable year (in this paragraph referred to as the ‘unused credit year’), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year.

“(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

“(6) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.”

(2) NO DEDUCTION FOR COMPENSATION TAKEN INTO ACCOUNT FOR CREDIT.—Section 280C(a) (relating to rule for employment credits), as amended by this Act, is amended—

(A) by inserting “or compensation” after “salaries”, and

(B) by inserting “30D,” before “45A(a).”

(3) CONFORMING AMENDMENT.—Section 55(c)(2), as amended by this Act, is amended by inserting “30D(e)(1),” after “30C(e).”

(4) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 30C the following new item:

“Sec. 30D. Credit for replacement of activated military reservists.”

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(c) APPLICATION OF ANNUAL EXCLUSION LIMIT UNDER SECTION 911 TO HOUSING COSTS.—

(1) IN GENERAL.—Section 911(c) (relating to housing cost amount) is amended by adding at the end the following new paragraph:

“(4) LIMIT ON EXCLUSION FOR EMPLOYER PROVIDED HOUSING COSTS.—The housing cost amount for any individual for any taxable year attributable to employer provided amounts shall not exceed the excess (if any) of—

“(A) the product of—

“(i) the exclusion amount determined under subsection (b)(2)(D) for the taxable year, and

“(ii) a fraction equal to the number of days of the taxable year within the applicable period described in subparagraph (A) or (B) of

subsection (d)(1) divided by the number of days in the taxable year, over

“(B) the foreign earned income of the individual excluded under subsection (a)(1) for the taxable year.”

(2) CONFORMING AMENDMENT.—Section 911(c)(1) is amended by striking “The” and inserting “Except as provided in paragraph (4), the”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2003.

**SA 3124.** Ms. LANDRIEU submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 441, strike line 10 through page 442, line 13, and insert the following:

“(a) GENERAL RULE.—For purposes of section 38, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of an employer is an amount equal to 50 percent of the lesser of—

“(1) the actual compensation amount with respect to such employee for such taxable year, or

“(2) \$30,000.

“(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term ‘actual compensation amount’ means the amount of compensation paid or incurred by an employer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

“(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

**SA 3125.** Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 557, between lines 9 and 10, insert the following:

**SEC. . . MODIFICATION OF EXEMPTION FROM SELF-EMPLOYMENT TAX FOR CERTAIN TERMINATION PAYMENTS RECEIVED BY FORMER INSURANCE SALESMEN.**

(a) INTERNAL REVENUE CODE.—Paragraph (4) of section 1402(k) of the Internal Revenue Code of 1986 (relating to codification of treatment of certain termination payments received by former insurance salesmen) is amended—

(1) by striking “during the last year of such agreement” in subparagraph (A), and

(2) by striking “length of service or” in subparagraph (B).

(b) SOCIAL SECURITY ACT.—Paragraph (4) of section 211(j) of the Social Security Act is amended—

(1) by striking “during the last year of such agreement” in subparagraph (A), and  
 (2) by striking “length of service or” in subparagraph (B).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments after the date of the enactment of this Act.

**SA 3126.** Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Jumpstart Our Business Strength (JOBS) Act”.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

**TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME**

Sec. 101. Repeal of exclusion for extraterritorial income.

**TITLE II—REDUCTION OF TOP CORPORATE TAX RATE**

Sec. 201. Reduction in corporate income tax rate.

**TITLE III—ALTERNATIVE MINIMUM TAX RELIEF**

Sec. 301. Reduction in corporate AMT rate.  
 Sec. 302. Increase in exemption from AMT for small corporations.  
 Sec. 303. Foreign tax credit under alternative minimum tax.

**TITLE IV—ADDITIONAL PROVISIONS**

**Subtitle A—Provisions Designed To Curtail Tax Shelters**

Sec. 401. Clarification of economic substance doctrine.  
 Sec. 402. Penalty for failing to disclose reportable transaction.  
 Sec. 403. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.  
 Sec. 404. Penalty for understatements attributable to transactions lacking economic substance, etc.  
 Sec. 405. Modifications of substantial understatement penalty for non-reportable transactions.  
 Sec. 406. Tax shelter exception to confidentiality privileges relating to taxpayer communications.  
 Sec. 407. Disclosure of reportable transactions.  
 Sec. 408. Modifications to penalty for failure to register tax shelters.  
 Sec. 409. Modification of penalty for failure to maintain lists of investors.

Sec. 410. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.

Sec. 411. Understatement of taxpayer's liability by income tax return preparer.

Sec. 412. Penalty on failure to report interests in foreign financial accounts.

Sec. 413. Frivolous tax submissions.

Sec. 414. Regulation of individuals practicing before the Department of Treasury.

Sec. 415. Penalty on promoters of tax shelters.

Sec. 416. Statute of limitations for taxable years for which required listed transactions not reported.

Sec. 417. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.

Sec. 418. Authorization of appropriations for tax law enforcement.

**Subtitle B—Other Corporate Governance Provisions**

Sec. 421. Affirmation of consolidated return regulation authority.

Sec. 422. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.

**Subtitle C—Enron-Related Tax Shelter Provisions**

Sec. 431. Limitation on transfer or importation of built-in losses.

Sec. 432. No reduction of basis under section 734 in stock held by partnership in corporate partner.

Sec. 433. Repeal of special rules for FASITs.

Sec. 434. Expanded disallowance of deduction for interest on convertible debt.

Sec. 435. Expanded authority to disallow tax benefits under section 269.

Sec. 436. Modification of interaction between subpart F and passive foreign investment company rules.

**Subtitle D—Provisions to Discourage Expatriation**

Sec. 441. Tax treatment of inverted corporate entities.

Sec. 442. Imposition of mark-to-market tax on individuals who expatriate.

Sec. 443. Excise tax on stock compensation of insiders in inverted corporations.

Sec. 444. Reinsurance of United States risks in foreign jurisdictions.

Sec. 445. Reporting of taxable mergers and acquisitions.

**Subtitle E—International Tax**

Sec. 451. Clarification of banking business for purposes of determining investment of earnings in United States property.

Sec. 452. Prohibition on nonrecognition of gain through complete liquidation of holding company.

Sec. 453. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.

Sec. 454. Effectively connected income to include certain foreign source income.

Sec. 455. Recapture of overall foreign losses on sale of controlled foreign corporation.

Sec. 456. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.

**Subtitle F—Other Revenue Provisions**

**PART I—FINANCIAL INSTRUMENTS**

Sec. 461. Treatment of stripped interests in bond and preferred stock funds, etc.

Sec. 462. Application of earnings stripping rules to partnerships and S corporations.

Sec. 463. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.

Sec. 464. Modification of straddle rules.

Sec. 465. Denial of installment sale treatment for all readily tradeable debt.

**PART II—CORPORATIONS AND PARTNERSHIPS**

Sec. 466. Modification of treatment of transfers to creditors in divisive reorganizations.

Sec. 467. Clarification of definition of non-qualified preferred stock.

Sec. 468. Modification of definition of controlled group of corporations.

Sec. 469. Mandatory basis adjustments in connection with partnership distributions and transfers of partnership interests.

**PART III—DEPRECIATION AND AMORTIZATION**

Sec. 471. Extension of amortization of intangibles to sports franchises.

Sec. 472. Class lives for utility grading costs.

Sec. 473. Expansion of limitation on depreciation of certain passenger automobiles.

Sec. 474. Consistent amortization of periods for intangibles.

Sec. 475. Reform of tax treatment of leasing operations.

Sec. 476. Limitation on deductions allocable to property used by governments or other tax-exempt entities.

**PART IV—ADMINISTRATIVE PROVISIONS**

Sec. 481. Clarification of rules for payment of estimated tax for certain deemed asset sales.

Sec. 482. Extension of IRS user fees.

Sec. 483. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangement.

Sec. 484. Partial payment of tax liability in installment agreements.

Sec. 485. Extension of customs user fees.

Sec. 486. Deposits made to suspend running of interest on potential underpayments.

Sec. 487. Qualified tax collection contracts.

**PART V—MISCELLANEOUS PROVISIONS**

Sec. 491. Addition of vaccines against hepatitis A to list of taxable vaccines.

Sec. 492. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.

Sec. 493. Clarification of exemption from tax for small property and casualty insurance companies.

Sec. 494. Definition of insurance company for section 831.

Sec. 495. Limitations on deduction for charitable contributions of patents and similar property.

Sec. 496. Increase in age of minor children whose unearned income is taxed as if parent's income.

**TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME**

**SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.**

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

(B) The table of subparts for such part III is amended by striking the item relating to subpart E.

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(3) The second sentence of section 56(g)(4)(B)(i) is amended by striking “114 or”.

(4) Section 275(a) is amended—

(A) by inserting “or” at the end of paragraph (4)(A), by striking “or” at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(5) Paragraph (3) of section 864(e) is amended—

(A) by striking:

“(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

“(A) IN GENERAL.—For purposes of”; and inserting:

“(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of”, and

(B) by striking subparagraph (B).

(6) Section 903 is amended by striking “114, 164(a),” and inserting “164(a)”.

(7) Section 999(c)(1) is amended by striking “941(a)(5).”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

(2) BINDING CONTRACTS.—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(A) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act), and

(B) which is in effect on September 17, 2003, and at all times thereafter.

(d) REVOCATION OF SECTION 943(e) ELECTIONS.—

(1) IN GENERAL.—In the case of a corporation that elected to be treated as a domestic corporation under section 943(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act)—

(A) the corporation may, during the 1-year period beginning on the date of the enactment of this Act, revoke such election, effective as of such date of enactment, and

(B) if the corporation does revoke such election—

(i) such corporation shall be treated as a domestic corporation transferring (as of such date of enactment) all of its property to a foreign corporation in connection with an exchange described in section 354 of such Code, and

(ii) no gain or loss shall be recognized on such transfer.

(2) EXCEPTION.—Subparagraph (B)(ii) of paragraph (1) shall not apply to gain on any asset held by the revoking corporation if—

(A) the basis of such asset is determined in whole or in part by reference to the basis of such asset in the hands of the person from whom the revoking corporation acquired such asset,

(B) the asset was acquired by transfer (not as a result of the election under section 943(e) of such Code) occurring on or after the 1st day on which its election under section 943(e) of such Code was effective, and

(C) a principal purpose of the acquisition was the reduction or avoidance of tax (other than a reduction in tax under section 114 of

such Code, as in effect on the day before the date of the enactment of this Act).

(e) GENERAL TRANSITION.—

(1) IN GENERAL.—In the case of a taxable year ending after the date of the enactment of this Act and beginning before January 1, 2007, for purposes of chapter 1 of such Code, a current FSC/ETI beneficiary shall be allowed a deduction equal to the transition amount determined under this subsection with respect to such beneficiary for such year.

(2) CURRENT FSC/ETI BENEFICIARY.—The term “current FSC/ETI beneficiary” means any corporation which entered into one or more transactions during its taxable year beginning in calendar year 2002 with respect to which FSC/ETI benefits were allowable.

(3) TRANSITION AMOUNT.—For purposes of this subsection—

(A) IN GENERAL.—The transition amount applicable to any current FSC/ETI beneficiary for any taxable year is the phaseout percentage of the base period amount.

(B) PHASEOUT PERCENTAGE.—

(i) IN GENERAL.—In the case of a taxpayer using the calendar year as its taxable year, the phaseout percentage shall be determined under the following table:

| Years:     | The phaseout percentage is: |
|------------|-----------------------------|
| 2005 ..... | 80                          |
| 2006 ..... | 60.                         |

(ii) SPECIAL RULE FOR 2004.—The phaseout percentage for 2004 shall be the amount that bears the same ratio to 80 percent as the number of days after the date of the enactment of this Act bears to 366.

(iii) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxpayer not using the calendar year as its taxable year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the taxpayer’s taxable year. The weighted average shall be determined on the basis of the respective portions of the taxable year in each calendar year.

(C) SHORT TAXABLE YEAR.—The Secretary shall prescribe guidance for the computation of the transition amount in the case of a short taxable year.

(4) BASE PERIOD AMOUNT.—For purposes of this subsection, the base period amount is the average FSC/ETI benefit for the taxpayer’s taxable years beginning in calendar years 2000, 2001, and 2002.

(5) FSC/ETI BENEFIT.—For purposes of this subsection, the term “FSC/ETI benefit” means—

(A) amounts excludable from gross income under section 114 of such Code, and

(B) the exempt foreign trade income of related foreign sales corporations from property acquired from the taxpayer (determined without regard to section 923(a)(5) of such Code (relating to special rule for military property), as in effect on the day before the date of the enactment of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000).

In determining the FSC/ETI benefit there shall be excluded any amount attributable to a transaction with respect to which the taxpayer is the lessor unless the leased property was manufactured or produced in whole or in significant part by the taxpayer.

(6) SPECIAL RULE FOR AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—Determinations under this subsection with respect to an organization described in section 943(g)(1) of such Code, as in effect on the day before the date of the enactment of this Act, shall be made at the cooperative level and the purposes of this subsection shall be carried out

in a manner similar to section 199(h)(2) of such Code, as added by this Act. Such determinations shall be in accordance with such requirements and procedures as the Secretary may prescribe.

(7) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 41(f) of such Code shall apply for purposes of this subsection.

(8) COORDINATION WITH BINDING CONTRACT RULE.—The deduction determined under paragraph (1) for any taxable year shall be reduced by the phaseout percentage of any FSC/ETI benefit realized for the taxable year by reason of subsection (c)(2) or section 5(c)(1)(B) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, except that for purposes of this paragraph the phaseout percentage for 2004 shall be treated as being equal to 100 percent.

(9) SPECIAL RULE FOR TAXABLE YEAR WHICH INCLUDES DATE OF ENACTMENT.—In the case of a taxable year which includes the date of the enactment of this Act, the deduction allowed under this subsection to any current FSC/ETI beneficiary shall in no event exceed—

(A) 100 percent of such beneficiary’s base period amount for calendar year 2004, reduced by

(B) the FSC/ETI benefit of such beneficiary with respect to transactions occurring during the portion of the taxable year ending on the date of the enactment of this Act.

**TITLE II—REDUCTION OF TOP CORPORATE TAX RATE**

**SEC. 201. REDUCTION IN CORPORATE INCOME TAX RATE.**

(a) IN GENERAL.—Subsection (b) of section 11 (relating to tax imposed on corporations) is amended by redesignating paragraph (2) as paragraph (6) and by striking paragraph (1) and inserting the following new paragraphs:

“(1) FOR TAXABLE YEARS BEGINNING AFTER 2009.—In the case of taxable years beginning after 2009, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

| “If taxable income is:                    | The tax is:                                     |
|---|---|
| Not over \$50,000 .....                   | 15% of taxable income.                          |
| Over \$50,000 but not over \$75,000 ..... | \$7,500, plus 25% of the excess over \$50,000.  |
| Over \$75,000 .....                       | \$13,750, plus 33% of the excess over \$75,000. |

“(2) FOR TAXABLE YEARS BEGINNING IN 2006, 2007, 2008, OR 2009.—In the case of taxable years beginning in 2006, 2007, 2008, or 2009, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

| “If taxable income is:                    | The tax is:                                       |
|---|---|
| Not over \$50,000 .....                   | 15% of taxable income.                            |
| Over \$50,000 but not over \$75,000 ..... | \$7,500, plus 25% of the excess over \$50,000.    |
| Over \$75,000 .....                       | \$13,750, plus 33.5% of the excess over \$75,000. |

“(3) FOR TAXABLE YEARS BEGINNING IN 2005.—In the case of taxable years beginning in 2005, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

| “If taxable income is:                    | The tax is:                                     |
|---|---|
| Not over \$50,000 .....                   | 15% of taxable income.                          |
| Over \$50,000 but not over \$75,000 ..... | \$7,500, plus 25% of the excess over \$50,000.  |
| Over \$75,000 .....                       | \$13,750, plus 34% of the excess over \$75,000. |

“(4) FOR TAXABLE YEARS BEGINNING IN 2004.—In the case of taxable years beginning in 2004, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

| “If taxable income is:                        | The tax is:  |
|---|--|
| Not over \$50,000 .....                       | 15% of taxable income.                                   |
| Over \$50,000 but not over \$75,000 .....     | \$7,500, plus 25% of the excess over \$50,000.           |
| Over \$75,000 but not over \$10,000,000 ..... | \$13,750, plus 34% of the excess over \$75,000.          |
| Over \$10,000,000 .....                       | \$3,388,250, plus 34.5% of the excess over \$10,000,000. |

“(5) PHASEOUT OF LOWER RATES FOR CERTAIN TAXPAYERS.—

“(A) GENERAL RULE.—In the case of a corporation which has taxable income in excess of \$100,000 for any taxable year, the amount of tax determined under paragraph (1), (2), (3) or (4) for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) \$11,000 (\$11,750 in the case of taxable years beginning before 2006 and \$11,375 in the case of taxable years beginning after 2005 and before 2010).

“(B) HIGHER INCOME CORPORATIONS.—In the case of a corporation which has taxable income in excess of \$15,000,000 for taxable years beginning in 2004, the amount of the tax determined under the foregoing provisions of this subsection shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) \$50,000.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 904(b)(3)(D)(ii) is amended to read as follows:

“(i) in the case of a corporation, section 1201(a) applies to such taxable year.”.

(2) Section 1201(a) is amended by striking “the last 2 sentences of section 11(b)(1)” and inserting “section 11(b)(5)”.

(3) Section 1561(a) is amended—

(A) by striking “the last 2 sentences of section 11(b)(1)” and inserting “section 11(b)(5)”, and

(B) by striking “such last 2 sentences” and inserting “section 11(b)(5)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

**TITLE III—ALTERNATIVE MINIMUM TAX RELIEF**

**SEC. 301. REDUCTION IN CORPORATE AMT RATE.**

(a) IN GENERAL.—Section 55(b)(1)(B)(i) (relating to amount of tentative tax for corporations) is amended by striking “20 percent” and inserting “19 percent (19.5 percent for taxable years beginning in 2004 or 2005)”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

**SEC. 302. INCREASE IN EXEMPTION FROM AMT FOR SMALL CORPORATIONS.**

(a) IN GENERAL.—Paragraph (1) of section 55(e) (relating to exemption for small corporations) is amended—

(1) by striking “\$7,500,000” in the heading and the text of subparagraph (A) and inserting “\$15,000,000”,

(2) by striking subparagraph (B), and

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

**SEC. 303. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.**

(a) IN GENERAL.—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking “and if section 59(a)(2) did not apply”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

**TITLE IV—ADDITIONAL PROVISIONS**

**Subtitle A—Provisions Designed To Curtail Tax Shelters**

**SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction has economic substance only if—

“(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer’s economic position, and

“(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

“(i) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

“(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

“(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

“(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

“(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party’s economic income or gain, or

“(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

“(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) TAX-INDIFFERENT PARTY.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle

A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person’s liability under subtitle A.

“(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

“(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

“(I) depreciation,

“(II) any tax credit, or

“(III) any other deduction as provided in guidance by the Secretary, and

“(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

**SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.**

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

**“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.**

“(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be \$50,000.

“(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be \$100,000.

“(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

“(A) IN GENERAL.—In the case of a failure under subsection (a) by—

“(i) a large entity, or

“(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

“(B) LARGE ENTITY.—For purposes of subparagraph (A), the term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of \$10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term ‘high net

worth individual' means, with respect to a reportable transaction, a natural person whose net worth exceeds \$2,000,000 immediately before the transaction.

“(c) DEFINITIONS.—For purposes of this section—

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

“(d) AUTHORITY TO RESCIND PENALTY.—

“(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

“(A) the violation is with respect to a reportable transaction other than a listed transaction,

“(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

“(C) it is shown that the violation is due to an unintentional mistake of fact;

“(D) imposing the penalty would be against equity and good conscience, and

“(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

“(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

“(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

“(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

“(A) the facts and circumstances of the transaction,

“(B) the reasons for the rescission, and

“(C) the amount of the penalty rescinded.

“(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

“(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

“(B) a description of each penalty rescinded under this subsection and the reasons therefor.

“(e) PENALTY REPORTED TO SEC.—In the case of a person—

“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

“(2) which—

“(A) is required to pay a penalty under this section with respect to a listed transaction,

“(B) is required to pay a penalty under section 6662A with respect to any reportable

transaction at a rate prescribed under section 6662A(c), or

“(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

“(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.”.

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

“Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

**SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.**

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

**“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.**

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

“(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘reportable transaction understatement’ means the sum of—

“(A) the product of—

“(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

“(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

“(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

“(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

“(A) any listed transaction, and

“(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

“(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

“(1) IN GENERAL.—Subsection (a) shall be applied by substituting ‘30 percent’ for ‘20

percent’ with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

“(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

“(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel's delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

“(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(e) SPECIAL RULES.—

“(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

“(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

“(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

“(2) COORDINATION WITH OTHER PENALTIES.—

“(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

“(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

“(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

“(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term ‘noneconomic substance transaction understatement’ has the meaning given such term by section 6662B(c).

“(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).”.**

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

“The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.”.

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

“(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

“(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

“(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

“(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

“(B) there is or was substantial authority for such treatment, and

“(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

“(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

“(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

“(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

“(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

“(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

“(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

“(I) the tax advisor is described in clause (ii), or

“(II) the opinion is described in clause (iii).

“(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

“(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

“(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

“(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

“(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

“(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts, or

“(IV) fails to meet any other requirement as the Secretary may prescribe.”.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting “FOR UNDERPAYMENTS” after “EXCEPTION”.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking “(as defined in section 6662(d)(2)(C)(iii))” in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

“(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

“(ii) any investment plan or arrangement, or

“(iii) any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking “this part” and inserting “section 6662 or 6663”.

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(6)(A) The heading for section 6662 is amended to read as follows:

“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.”.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatement with respect to reportable transactions.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

“(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

“(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section

6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

“(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) CROSS REFERENCES.—

“(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

“(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).”.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NON-REPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

“(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

“(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, \$10,000), or

“(ii) \$10,000,000.”.

(b) REDUCTION OF PENALTY FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

“(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or”.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a

list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.**

(a) **IN GENERAL.**—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

“(b) **SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.**—The privilege under subsection (a) shall not apply to any written communication which is—

“(1) between a federally authorized tax practitioner and—

“(A) any person,

“(B) any director, officer, employee, agent, or representative of the person, or

“(C) any other person holding a capital or profits interest in the person, and

“(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

**SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

(a) **IN GENERAL.**—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

**“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

“(a) **IN GENERAL.**—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

“(1) information identifying and describing the transaction,

“(2) information describing any potential tax benefits expected to result from the transaction, and

“(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

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

“(1) **MATERIAL ADVISOR.**—

“(A) **IN GENERAL.**—The term ‘material advisor’ means any person—

“(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

“(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

“(B) **THRESHOLD AMOUNT.**—For purposes of subparagraph (A), the threshold amount is—

“(i) \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

“(ii) \$250,000 in any other case.

“(2) **REPORTABLE TRANSACTION.**—The term ‘reportable transaction’ has the meaning given to such term by section 6707A(c).

“(c) **REGULATIONS.**—The Secretary may prescribe regulations which provide—

“(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

“(2) exemptions from the requirements of this section, and

“(3) such rules as may be necessary or appropriate to carry out the purposes of this section.”

(b) **CONFORMING AMENDMENTS.**—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

**“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.**

“(a) **IN GENERAL.**—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

“(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

“(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.”

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting “written” before “request” in paragraph (1)(A), and

(ii) by striking “shall prescribe” in paragraph (2) and inserting “may prescribe”.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.”

(3)(A) The heading for section 6708 is amended to read as follows:

**“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.”**

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

**“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”**

(c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.**—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

“For purposes of this section, the identity of any person on such list shall not be privileged.”

(d) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) **NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.**—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

**SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.**

(a) **IN GENERAL.**—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

**“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.**

“(a) **IN GENERAL.**—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

“(1) fails to file such return on or before the date prescribed therefor, or

“(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

“(b) **AMOUNT OF PENALTY.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be \$50,000.

“(2) **LISTED TRANSACTIONS.**—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

“(A) \$200,000, or

“(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting “75 percent” for “50 percent” in the case of an intentional failure or act described in subsection (a).

“(c) **CERTAIN RULES TO APPLY.**—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

“(d) **REPORTABLE AND LISTED TRANSACTIONS.**—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).”

(b) **CLERICAL AMENDMENT.**—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking “tax shelters” and inserting “reportable transactions”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

**SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.**

(a) **IN GENERAL.**—Subsection (a) of section 6708 is amended to read as follows:

“(a) **IMPOSITION OF PENALTY.**—

“(1) **IN GENERAL.**—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary’s request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

“(2) **REASONABLE CAUSE EXCEPTION.**—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

**SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.**

(a) **IN GENERAL.**—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

“(a) **AUTHORITY TO SEEK INJUNCTION.**—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at

the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

“(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

“(1) that the person has engaged in any specified conduct, and

“(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

“(c) SPECIFIED CONDUCT.—For purposes of this section, the term ‘specified conduct’ means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.”

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

**“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.”**

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

**SEC. 411. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.**

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking “realistic possibility of being sustained on its merits” in paragraph (1) and inserting “reasonable belief that the tax treatment in such position was more likely than not the proper treatment”;

(2) by striking “or was frivolous” in paragraph (3) and inserting “or there was no reasonable basis for the tax treatment of such position”, and

(3) by striking “UNREALISTIC” in the heading and inserting “IMPROPER”.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking “\$250” in subsection (a) and inserting “\$1,000”, and

(2) by striking “\$1,000” in subsection (b) and inserting “\$5,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

**SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.**

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

“(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

“(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

“(B) AMOUNT OF PENALTY.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$5,000.

“(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

“(I) such violation was due to reasonable cause, and

“(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

“(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

“(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

“(I) \$25,000, or

“(II) the amount (not exceeding \$100,000) determined under subparagraph (D), and

“(ii) subparagraph (B)(i) shall not apply.

“(D) AMOUNT.—The amount determined under this subparagraph is—

“(i) in the case of a violation involving a transaction, the amount of the transaction, or

“(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

**SEC. 413. FRIVOLOUS TAX SUBMISSIONS.**

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

**“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

“(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

“(2) the conduct referred to in paragraph (1)—

“(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(B) reflects a desire to delay or impede the administration of Federal tax laws.

“(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

“(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

“(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

“(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

“(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(ii) reflects a desire to delay or impede the administration of Federal tax laws.

“(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

“(i) a request for a hearing under—

“(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(II) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) an application under—

“(I) section 6159 (relating to agreements for payment of tax liability in installments),

“(II) section 7122 (relating to compromises), or

“(III) section 7811 (relating to taxpayer assistance orders).

“(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

“(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

“(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

“(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking “(A)” and inserting “(A)(i)”;

(B) by striking “(B)” and inserting “(ii)”;

(C) by striking the period at the end of the first sentence and inserting “; or”; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

“(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).”

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

(2) in subsection (c), by striking “and (e)” and inserting “(e), and (g)”.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter

68 is amended by striking the item relating to section 6702 and inserting the following new item:

“Sec. 6702. Frivolous tax submissions.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

**SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.**

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting “, or censure,” after “Department”, and

(B) by adding at the end the following new flush sentence:

“The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

“(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”.

**SEC. 415. PENALTY ON PROMOTERS OF TAX SHELTERS.**

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

**SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.**

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

“(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

“(A) the date on which the Secretary is furnished the information so required; or

“(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

**SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.**

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

“(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

“(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

**SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.**

There is authorized to be appropriated \$300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

**Subtitle B—Other Corporate Governance Provisions**

**SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.**

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: “In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.”.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502-20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

**SEC. 422. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.**

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking “Any person who—” and inserting “(a) IN GENERAL.—Any person who—”, and

(2) by adding at the end the following new subsection:

“(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any under-

payment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable.”.

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking “\$100,000” and inserting “\$250,000”,

(B) by striking “\$500,000” and inserting “\$1,000,000”, and

(C) by striking “5 years” and inserting “10 years”.

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking “misdemeanor” and inserting “felony”, and

(ii) by striking “1 year” and inserting “10 years”, and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking “\$100,000” and inserting “\$250,000”,

(B) by striking “\$500,000” and inserting “\$1,000,000”, and

(C) by striking “3 years” and inserting “5 years”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

**Subtitle C—Enron-Related Tax Shelter Provisions**

**SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.**

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

“(e) LIMITATIONS ON BUILT-IN LOSSES.—

“(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

“(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

“(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

“(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

“(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

“(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

“(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

“(A) IN GENERAL.—If—

“(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

“(ii) the transferee’s aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee’s aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

“(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

“(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor’s basis in the stock received for such property shall not exceed its fair market value immediately after the transfer.”

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

“(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

“(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

“(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee’s aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after February 13, 2003.

**SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.**

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

“(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted bases of partnership property under section 734(b)—

“(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

“(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be

allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

**SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.**

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking “REMIC, or FASIT” and inserting “or REMIC”.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking “a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies,” and inserting “or a REMIC to which part IV of subchapter M applies.”

(3) Paragraph (1) of section 582(c) is amended by striking “, and any regular interest in a FASIT.”

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: “An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.”

(B) The last sentence of section 860G(a)(3) is amended by inserting “, and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property” before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding “and” at the end of subparagraph (B), by striking “, and” at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: “For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.”

(8)(A) Section 860G(a)(3)(A) is amended by striking “or” at the end of clause (i), by inserting “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

“(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

“(II) occurs after the startup day, and

“(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.”

(B) Section 860G(a)(7)(B) is amended to read as follows:

“(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term ‘quali-

fied reserve fund’ means any reasonably required reserve to—

“(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

“(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3)(A).”

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking “REMIC, or FASIT” and inserting “or REMIC”.

(10) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking “and any regular interest in a FASIT;”, and

(B) by striking “or FASIT” each place it appears.

(11) Subparagraph (A) of section 7701(i)(2) is amended by striking “or a FASIT”.

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

**SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.**

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by inserting “or equity held by the issuer (or any related party) in any other person” after “or a related party”.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

“(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.”

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

“(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term ‘disqualified debt instrument’ does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term ‘dealer in securities’ has the meaning given such term by section 475.”

(c) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(l) is amended—

(1) by striking “or a related party” in the material preceding subparagraph (A) and inserting “or any other person”, and

(2) by striking “or interest” each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

**SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.**

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

“(a) IN GENERAL.—If—

“(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

“(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

“(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

**SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.**

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

“Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

**Subtitle D—Provisions to Discourage Expatriation**

**SEC. 441. TAX TREATMENT OF INVERTED CORPORATE ENTITIES.**

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

**“SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES.**

“(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

“(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

“(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

“(A) the entity completes after March 20, 2002, the direct or indirect acquisition of sub-

stantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

“(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

“(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

“(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

“(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation’s stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

“(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

“(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

“(A) subsection (a)(2)(A) were applied by substituting ‘after December 31, 1996, and on or before March 20, 2002’ for ‘after March 20, 2002’ and subsection (a)(2)(B) were applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’, or

“(B) subsection (a)(2)(B) were applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’,

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

“(2) ACQUIRED ENTITY.—For purposes of this section—

“(A) IN GENERAL.—The term ‘acquired entity’ means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

“(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

“(3) APPLICABLE PERIOD.—For purposes of this section—

“(A) IN GENERAL.—The term ‘applicable period’ means the period—

“(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

“(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

“(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be

the 10-year period beginning on January 1, 2003.

“(c) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

“(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

“(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

“(A) the amount of the inversion gain for the taxable year, and

“(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

“(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

“(A) the limitations of this subsection shall apply to the partner rather than the partnership level,

“(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

“(i) the partner’s distributive share of inversion gain of the partnership for such taxable year, plus

“(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

“(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

“(4) INVERSION GAIN.—For purposes of this section, the term ‘inversion gain’ means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

“(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

“(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

“(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

“(6) STATUTE OF LIMITATIONS.—

“(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law

which would otherwise prevent such assessment.

“(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term ‘pre-inversion year’ means any taxable year if—

“(i) any portion of the applicable period is included in such taxable year, and

“(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

“(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (b) APPLIES.—

“(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—

“(A) section 6662(a) shall be applied with respect to such underpayment by substituting ‘30 percent’ for ‘20 percent’, and

“(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

“(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

“(A) without regard to paragraph (2)(A)(ii) thereof, and

“(B) by substituting ‘25 percent’ for ‘50 percent’ each place it appears in paragraph (2)(B) thereof.

“(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

“(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

“(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

“(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

“(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

“(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

“(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

“(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

“(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

“(ii) to treat stock as not stock.

“(2) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by

substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(3) FOREIGN INCORPORATED ENTITY.—The term ‘foreign incorporated entity’ means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

“(4) FOREIGN RELATED PERSON.—The term ‘foreign related person’ means, with respect to any acquired entity, a foreign person which—

“(A) bears a relationship to such entity described in section 267(b) or 707(b), or

“(B) is under the same common control (within the meaning of section 482) as such entity.

“(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

“(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

“(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

“(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

“(ii) after such transaction, such acquired entity—

“(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

“(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

“(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

“(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

“(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.”

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary’s authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT IN-

VESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

#### SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

#### “SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.

“(a) GENERAL RULES.—For purposes of this subtitle—

“(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

“(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

“(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

“(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

“(3) EXCLUSION FOR CERTAIN GAIN.—

“(A) IN GENERAL.—The amount which, but for this paragraph, would be includable in the gross income of any individual by reason of this section shall be reduced (but not below zero) by \$600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includable in gross income.

“(B) COST-OF-LIVING ADJUSTMENT.—

“(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2004, the \$600,000 amount under subparagraph (A) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘calendar year 2003’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of \$1,000, such amount shall be rounded to the next lower multiple of \$1,000.

“(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

“(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

“(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

“(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

“(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

“(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

“(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

“(iii) complies with such other requirements as the Secretary may prescribe.

“(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

“(b) ELECTION TO DEFER TAX.—

“(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

“(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

“(4) SECURITY.—

“(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

“(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

“(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

“(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

“(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

“(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

“(7) INTEREST.—For purposes of section 6601—

“(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

“(B) section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(c) COVERED EXPATRIATE.—For purposes of this section—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘covered expatriate’ means an expatriate.

“(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

“(A) the individual—

“(i) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

“(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

“(B)(i) the individual’s relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

“(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

“(1) EXEMPT PROPERTY.—This section shall not apply to the following:

“(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

“(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

“(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

“(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

“(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

“(ii) an amount equal to the present value of the expatriate’s nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

“(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan’s behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) APPLICABLE PLANS.—This paragraph shall apply to—

“(i) any qualified retirement plan (as defined in section 4974(c)),

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

“(e) DEFINITIONS.—For purposes of this section—

“(1) EXPATRIATE.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes citizenship, and

“(B) any long-term resident of the United States who—

“(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

“(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

“(A) the date the individual renounces such individual’s United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen’s certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES’ INTERESTS IN TRUST.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

“(A) the individual shall not be treated as having sold such interest,

“(B) such interest shall be treated as a separate share in the trust, and

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

“(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual’s share in the trust.

“(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

“(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

“(i) paragraph (1) and subsection (a) shall not apply, and

“(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

“(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

“(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

“(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases under subparagraph (C)(ii) after the 30th day preceding the distribution.

“(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

“(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

“(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

“(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary's interest in a trust is the amount of gain which would be allocable to such beneficiary's vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

“(E) TAX DEDUCTED AND WITHHELD.—

“(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

“(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

“(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

“(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

“(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii),

there is hereby imposed a tax equal to the lesser of—

“(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

“(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

“(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

“(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

“(ii) VESTED INTEREST.—The term ‘vested interest’ means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

“(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

“(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

“(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

“(3) DETERMINATION OF BENEFICIARIES' INTEREST IN TRUST.—

“(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary's interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

“(B) OTHER DETERMINATIONS.—For purposes of this section—

“(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

“(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

“(I) the methodology used to determine that taxpayer's trust interest under this section, and

“(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary's trust interest under this section.

“(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

“(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

“(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

“(h) IMPOSITION OF TENTATIVE TAX.—

“(1) IN GENERAL.—If an individual is required to include any amount in gross in-

come under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

“(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

“(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

“(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

“(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

“(1) IMPOSITION OF LIEN.—

“(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

“(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate's income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

“(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

“(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

“(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

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

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

“(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

“(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

“(A) the gift, bequest, devise, or inheritance is—

“(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(ii) included in the gross estate of the covered expatriate for purposes of chapter 11

and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

“(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.”.

(C) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

“(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

“(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual’s citizenship is treated as relinquished under section 877A(e)(3).

“(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became a citizen of the United States and a citizen of another country.”.

(D) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

“(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).”.

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(1) (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

“(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General’s delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).”.

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961), is amended by striking “or (17)” after “any other person described in subsection (1)(16)” each place it appears and inserting “or (18)”.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking “or (18)” after “any other person described in subsection (1)(16)” each place it appears and inserting “(18), or (19)”.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961).

(c) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

“(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after January 1, 2004.”.

(2) Section 2107 is amended by adding at the end the following new subsection:

“(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.”.

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

“(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.”.

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting “or 877A” after “section 877”.

(B) The second sentence of section 6039G(e) is amended by inserting “or who relinquishes United States citizenship (within the meaning of section 877A(e)(3))” after “877(a)”.

(C) Section 6039G(f) is amended by inserting “or 877A(e)(2)(B)” after “877(e)(1)”.

(F) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

“Sec. 877A. Tax responsibilities of expatriation.”.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after January 1, 2004.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after January 1, 2004, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

**SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.**

(a) IN GENERAL.—Subtitle D is amended by adding at the end the following new chapter:

**“CHAPTER 48—STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

**“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.**

“(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any inverted corporation, there is hereby imposed on such person a tax equal to 20 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual’s family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the inversion date.

“(b) VALUE.—For purposes of subsection (a)—

“(1) IN GENERAL.—The value of specified stock compensation shall be—

“(A) in the case of a stock option (or other similar right) or any stock appreciation right, the fair value of such option or right, and

“(B) in any other case, the fair market value of such compensation.

“(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

“(A) in the case of specified stock compensation held on the inversion date, on such date,

“(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation, and

“(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

“(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an inverted corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(A) (determined by substituting ‘July 10, 2002’ for ‘March 20, 2002’) with respect to such corporation.

“(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

“(1) any stock option which is exercised on the inversion date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the inversion date with respect to the stock acquired pursuant to such exercise, and

“(2) any specified stock compensation which is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which gain or loss is recognized in full.

“(e) DEFINITIONS.—For purposes of this section—

“(1) DISQUALIFIED INDIVIDUAL.—The term ‘disqualified individual’ means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

“(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

“(B) would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

“(2) INVERTED CORPORATION; INVERSION DATE.—

“(A) INVERTED CORPORATION.—The term ‘inverted corporation’ means any corporation to which subsection (a) or (b) of section 7874 applies determined—

“(i) by substituting ‘July 10, 2002’ for ‘March 20, 2002’ in section 7874(a)(2)(A), and

“(ii) without regard to subsection (b)(1)(A).

Such term includes any predecessor or successor of such a corporation.

“(B) INVERSION DATE.—The term ‘inversion date’ means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

“(3) SPECIFIED STOCK COMPENSATION.—

“(A) IN GENERAL.—The term ‘specified stock compensation’ means payment (or right to payment) granted by the inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

“(B) EXCEPTIONS.—Such term shall not include—

“(i) any option to which part II of subchapter D of chapter 1 applies, or

“(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

“(4) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except

that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

“(f) SPECIAL RULES.—For purposes of this section—

“(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

“(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the inverted corporation or by any member of the expanded affiliated group which includes such corporation—

“(A) shall be treated as specified stock compensation, and

“(B) shall not be allowed as a deduction under any provision of chapter 1.

“(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

“(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

“(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

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

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting “48,” after “46.”

(2) \$1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

“(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 5000A directly or indirectly by the inverted corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.”

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period “or to any specified stock compensation (as defined in section 5000A) on which tax is imposed by section 5000A”.

(2) The table of chapters for subtitle D is amended by adding at the end the following new item:

“Chapter 48. Stock compensation of insiders in inverted corporations.”

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 11, 2002; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

#### SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking “source and character” and inserting “amount, source, or character”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

#### SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

##### “SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.

“(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

“(1) a description of the acquisition,

“(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

“(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

“(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

“(b) NOMINEE REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

“(c) TAXABLE ACQUISITION.—For purposes of this section, the term ‘taxable acquisition’ means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

“(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

“(1) the name, address, and phone number of the information contact of the person required to make such return,

“(2) the information required to be shown on such return with respect to such shareholder, and

“(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.”

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xvii) as clauses (iii) through (xviii), respectively, and by inserting after clause (i) the following new clause:

“(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions).”

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (AA) as subparagraphs (G) through (BB), respectively, and by inserting after subparagraph (E) the following new subparagraph:

“(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).”

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

#### Subtitle E—International Tax

#### SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

“(A) obligations of the United States, money, or deposits with—

“(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

“(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation.”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

#### SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

“(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

“(1) IN GENERAL.—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

“(A) subsection (a) and section 331 shall not apply to such distribution, and

“(B) such distribution shall be treated as a distribution to which section 301 applies.

“(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘applicable holding company’ means any domestic corporation—

“(i) which is a common parent of an affiliated group,

“(ii) stock of which is directly owned by the distributee foreign corporation,

“(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

“(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

“(B) AFFILIATED GROUP.—For purposes of this subsection, the term ‘affiliated group’ has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

“(3) COORDINATION WITH SUBPART F.—If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

“(4) REGULATIONS.—The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act.

**SEC. 453. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.**

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

“(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is included during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

“(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.”

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking “The Secretary” and inserting:

“(A) IN GENERAL.—The Secretary”, and  
(2) by adding at the end the following new subparagraph:

“(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any amount payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent such amount is included during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

“(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

**SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.**

(a) IN GENERAL.—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

“Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.**

(a) IN GENERAL.—Section 904(f)(3) (relating to dispositions) is amended by adding at the end the following new subparagraph:

“(D) APPLICATION TO DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATIONS.—In the case of any disposition by a taxpayer of any share of stock in a controlled foreign corporation (as defined in section 957), this paragraph shall apply to such disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

**SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.**

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

“(1) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

“(1) IN GENERAL.—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

“(A) such property is held by the recipient of the item for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

“(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

“(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

“(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term ‘qualified tax’ means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

“(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

“(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

“(C) DEALER.—For purposes of subparagraph (A), the term ‘dealer’ means—

“(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

“(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

“(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

“(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall

not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

“(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

“(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.”

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting “ON DIVIDENDS” after “TAXES”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

**Subtitle F—Other Revenue Provisions**

**PART I—FINANCIAL INSTRUMENTS**

**SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.**

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.”

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

“(7) CROSS REFERENCE.—

“For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

**SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERSHIPS AND S CORPORATIONS.**

(a) IN GENERAL.—Section 168(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

“(A) IN GENERAL.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

“(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

“(i) the corporation’s allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

“(ii) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation’s allocable share of such interest expense.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.**

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

“(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

“(A) a debtor corporation transfers stock, or

“(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

**SEC. 464. MODIFICATION OF STRADDLE RULES.**

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

“(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

“(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

“(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

“(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.”

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

“(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and”

(B) by adding at the end the following new flush sentence:

“The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.”

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.”

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

“(A) terminated the position for its fair market value immediately before the settlement, and

“(B) sold the property so delivered by the taxpayer at its fair market value.”

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

“(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The term ‘personal property’ includes—

“(i) any stock which is a part of a straddle at least 1 of the offsetting positions of which is a position with respect to such stock or substantially similar or related property, or

“(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

“(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.”

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking “; except that the term ‘personal property’ shall include stock”.

(d) REPEAL OF QUALIFIED COVERED CALL EXCEPTION.—Section 1092(c)(4) is amended by adding at the end the following new subparagraph:

“(I) TERMINATION.—This paragraph shall not apply to any position established on or after the date of the enactment of this subparagraph.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

**SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.**

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking “is issued by a corporation or a government or political subdivision thereof and”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

**PART II—CORPORATIONS AND PARTNERSHIPS**

**SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.**

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is

amended by adding at the end the following new sentence: “In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.”

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting “with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355” after “section 368(a)(1)(D)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

**SEC. 467. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.**

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: “Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

**SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.**

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking “possessing—” and all that follows through “(B)” and inserting “possessing”.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

“(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

“(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

“(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing—

“(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

“(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.”

“(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.**

(a) IN GENERAL.—Section 754 is repealed.  
(b) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking “, with respect to which the election provided in section 754 is in effect,” in the matter preceding paragraph (1) of subsection (b),

(2) by striking “(as adjusted by section 732(d))” both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking “OPTIONAL” in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

(1) by striking “with respect to which the election provided in section 754 is in effect” in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

(3) by adding at the end the following new subsection:

“(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.”, and

(4) by striking “OPTIONAL” in the heading.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking “section 734(b) (relating to the optional adjustment)” and inserting “section 734(a) (relating to the adjustment)”, and

(B) by striking “section 743(b) (relating to the optional adjustment)” and inserting “section 743(a) (relating to the adjustment)”.

(3) Section 755(c), as added by this Act, is amended by striking “section 734(b)” and inserting “section 734(a)”.

(4) Section 761(e)(2) is amended by striking “optional”.

(5) Section 774(a) is amended by striking “743(b)” both places it appears and inserting “743(a)”.

(6) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking “Optional”.

(7) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking “Optional”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers and distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

**PART III—DEPRECIATION AND AMORTIZATION**

**SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.**

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

**SEC. 472. CLASS LIVES FOR UTILITY GRADING COSTS.**

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii) and inserting “, and”, and by adding at the end the following new clause: “(iv) initial clearing and grading land improvements with respect to gas utility property.”

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

“(F) 20-YEAR PROPERTY.—The term ‘20-year property’ means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.”

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting “or (E)(iv)” after “(E)(iii)”, and

(2) by adding at the end the following new item:

“(F) ..... 25”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

**SEC. 473. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.**

(a) IN GENERAL.—Section 179(b) (relating to limitations) is amended by adding at the end the following new paragraph:

“(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

“(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed \$25,000.

“(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—The term ‘sport utility vehicle’ means any 4-wheeled vehicle which—

“(I) is manufactured primarily for use on public streets, roads, and highways,

“(II) is not subject to section 280F, and  
“(III) is rated at not more than 14,000 pounds gross vehicle weight.

“(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

“(I) does not have the primary load carrying device or container attached,

“(II) has a seating capacity of more than 12 individuals,

“(III) is designed for more than 9 individuals in seating rearward of the driver’s seat,

“(IV) is equipped with an open cargo area, or a covered box not readily accessible from the passenger compartment, of at least 72.0 inches in interior length, or

“(V) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver’s seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

**SEC. 474. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.**

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

“(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

“(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

“(i) the amount of start-up expenditures with respect to the active trade or business, or

“(ii) \$5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed \$50,000, and

“(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.”.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking “AMORTIZE” and inserting “DEDUCT” in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

“(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

“(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

“(A) the amount of organizational expenditures with respect to the taxpayer, or

“(B) \$5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed \$50,000, and

“(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.”.

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

“(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

“(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

“(i) the amount of organizational expenses with respect to the partnership, or

“(ii) \$5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed \$50,000, and

“(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

“(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.”

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking “AMORTIZATION” and inserting “DEDUCTION” in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

#### SEC. 475. REFORM OF TAX TREATMENT OF LEASING OPERATIONS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting “(notwithstanding any other subparagraph of this paragraph)” after “shall”.

(b) LIMITATION ON DEPRECIATION PERIOD FOR SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

“(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).”

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking “and” at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

“(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

“(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

“(II) which is with respect to the property subject to the lease or substantially similar property, and”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after December 31, 2003.

#### SEC. 476. LIMITATION ON DEDUCTIONS ALLOWABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new section:

#### “SEC. 470. LIMITATIONS ON LOSSES FROM TAX-EXEMPT USE PROPERTY.

“(a) LIMITATION ON LOSSES.—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

“(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

“(c) DEFINITIONS.—For purposes of this section—

“(1) TAX-EXEMPT USE LOSS.—The term ‘tax-exempt use loss’ means, with respect to any taxable year, the amount (if any) by which—

“(A) the sum of—

“(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

“(ii) the aggregate deductions for interest properly allocable to such property, exceed

“(B) the aggregate income from such property.

“(2) TAX-EXEMPT USE PROPERTY.—The term ‘tax-exempt use property’ has the meaning given to such term by section 168(h) (without regard to paragraph (1)(C) or (3)(C) thereof and determined as if property described in section 167(f)(1)(B) were tangible property).

“(d) EXCEPTION FOR CERTAIN LEASES.—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

“(1) PROPERTY NOT FINANCED WITH TAX-EXEMPT BONDS.—A lease of property meets the requirements of this paragraph if no part of the property was financed (directly or indirectly) from the proceeds of an obligation the interest on which is exempt from tax under section 103(a) and which (or any refunding bond of which) is outstanding when the lease is entered into. The Secretary may by regulations provide for a de minimis exception from this paragraph.

“(2) AVAILABILITY OF FUNDS.—

“(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if (at any time during the lease term) not more than an allowable amount of funds are—

“(i) subject to any arrangement referred to in subparagraph (B), or

“(ii) otherwise reasonably expected to remain available,

to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee’s obligations or options under the lease.

“(B) ARRANGEMENTS.—The arrangements referred to in this subparagraph are—

“(i) a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, a lease prepayment, a sinking fund arrangement, or any similar arrangement (whether or not such arrangement provides credit support), and

“(ii) any other arrangement identified by the Secretary in regulations.

“(C) ALLOWABLE AMOUNT.—

“(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term ‘allowable amount’ means an amount equal to 20 percent of the lessor’s adjusted basis in the property at the time the lease is entered into.

“(ii) HIGHER AMOUNT PERMITTED IN CERTAIN CASES.—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

“(iii) OPTION TO PURCHASE.—If under the lease the lessee has the option to purchase the property for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

“(3) LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.—A lease of property meets the requirements of this paragraph if—

“(A) the lessor—

“(i) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor’s adjusted basis in the property as of that time, and

“(ii) maintains such investment throughout the term of the lease, and

“(B) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

“(4) LESSEE MAY NOT BEAR MORE THAN MINIMAL RISK OF LOSS.—

“(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if there is no arrangement under which more than a minimal risk of loss (as determined under regulations) in the value of the property is borne by the lessee.

“(B) CERTAIN ARRANGEMENTS FAIL REQUIREMENT.—In no event will the requirements of this paragraph be met if there is any arrangement under which the lessee bears—

“(i) any portion of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were 25 percent less than its projected fair market value at the end of the lease term, or

“(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

“(5) REGULATORY REQUIREMENTS.—A lease of property meets the requirements of this paragraph if such lease of property meets such requirements as the Secretary may prescribe by regulations.

“(e) SPECIAL RULES.—

“(1) TREATMENT OF FORMER TAX-EXEMPT USE PROPERTY.—

“(A) IN GENERAL.—In the case of any former tax-exempt use property—

“(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

“(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as allowable under subsection (b) with respect to such property in the next taxable year.

“(B) FORMER TAX-EXEMPT USE PROPERTY.—For purposes of this subsection, the term ‘former tax-exempt use property’ means any property which—

“(i) is not tax-exempt use property for the taxable year, but

“(ii) was tax-exempt use property for any prior taxable year.

“(2) DISPOSITION OF ENTIRE INTEREST IN PROPERTY.—If during the taxable year a taxpayer disposes of the taxpayer’s entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

“(3) COORDINATION WITH SECTION 469.—This section shall be applied before the application of section 469.

“(f) OTHER DEFINITIONS.—For purposes of this section—

“(1) RELATED PARTIES.—The terms ‘lessor’, ‘lessee’, and ‘lender’ include any related

party (within the meaning of section 197(f)(9)(C)(i)).

“(2) LEASE TERM.—The term ‘lease term’ has the meaning given to such term by section 168(i)(3).

“(3) LENDER.—The term ‘lender’ means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

“(4) LOAN.—The term ‘loan’ includes any similar arrangement.

“(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section, including regulation which—

“(1) allow in appropriate cases the aggregation of property subject to the same lease, and

“(2) provide for the determination of the allocation of interest expense for purposes of this section.”

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

“Sec. 470. Limitations on losses from tax-exempt use property.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to leases entered into after December 31, 2003.

#### PART IV—ADMINISTRATIVE PROVISIONS

##### SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: “The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

##### SEC. 482. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking “December 31, 2004” and inserting “September 30, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

##### SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENT.

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—  
(A) the Department of the Treasury’s Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury’s voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer’s underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1), then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term “applicable penalty” means any penalty, addition

to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term “Voluntary Offshore Compliance Initiative” means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

##### SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking “satisfy liability for payment of” and inserting “make payment on”, and

(B) by inserting “full or partial” after “facilitate”.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting “full” before “payment”.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

“(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

##### SEC. 485. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking “March 31, 2004” and inserting “September 30, 2013”.

##### SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

##### “SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

“(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

“(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to

pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

“(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

“(d) PAYMENT OF INTEREST.—

(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

(2) DISPUTABLE TAX.—

(A) IN GENERAL.—For purposes of this section, the term ‘disputable tax’ means the amount of tax specified at the time of the deposit as the taxpayer’s reasonable estimate of the maximum amount of any tax attributable to disputable items.

(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

(A) DISPUTABLE ITEM.—The term ‘disputable item’ means any item of income, gain, loss, deduction, or credit if the taxpayer—

(i) has a reasonable basis for its treatment of such item, and

(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer’s treatment of such item.

(B) 30-DAY LETTER.—The term ‘30-day letter’ means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

(e) USE OF DEPOSITS.—

(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.”

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

“Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84-58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

##### SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

**“SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.**

“(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

“(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term ‘qualified tax collection contract’ means any contract which—

“(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

“(A) to locate and contact any taxpayer specified by the Secretary,

“(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 3 years, and

“(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

“(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

“(3) prohibits subcontractors from—

“(A) having contacts with taxpayers,

“(B) providing quality assurance services,

and

“(C) composing debt collection notices, and

“(4) permits subcontractors to perform other services only with the approval of the Secretary.

“(c) FEES.—The Secretary may retain and use an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

“(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

“(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

“(f) CROSS REFERENCES.—

“(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

“(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).”

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting “6306,” before “7651”.

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

**“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.**

“(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

“(b) MODIFICATIONS.—For purposes of subsection (a)—

“(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

“(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

“(3) Such civil action shall not be an exclusive remedy with respect to such person.

“(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.”

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

“Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.”

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

“(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.”

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

“(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.”

(e) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

**PART V—MISCELLANEOUS PROVISIONS**

**SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.**

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

“(I) Any vaccine against hepatitis A.”

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking “October 18, 2000” and inserting “May 8, 2003”.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

**SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.**

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

“(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

**SEC. 493. CLARIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.**

(a) IN GENERAL.—Section 501(c)(15)(A) is amended to read as follows:

“(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

“(i) the gross receipts for the taxable year do not exceed \$600,000, and

“(ii) more than 50 percent of such gross receipts consist of premiums.”

(b) CONTROLLED GROUP RULE.—Section 501(c)(15)(C) is amended by inserting “, except that in applying section 1563 for purposes of section 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded” before the period at the end.

(c) CONFORMING AMENDMENT.—Clause (i) of section 831(b)(2)(A) is amended by striking “exceed \$350,000 but”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

**SEC. 494. DEFINITION OF INSURANCE COMPANY FOR SECTION 831.**

(a) IN GENERAL.—Section 831 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) INSURANCE COMPANY DEFINED.—For purposes of this section, the term ‘insurance company’ has the meaning given to such term by section 816(a).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

**SEC. 495. LIMITATIONS ON DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.**

(a) DEDUCTION ALLOWED ONLY TO THE EXTENT OF BASIS.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking “or” at the end of clause (i), by adding “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) of any patent, copyright, trademark, trade name, trade secret, know-how, software, or similar property, or applications or registrations of such property.”

(b) TREATMENT OF CONTRIBUTIONS WHERE DONOR RECEIVES INTEREST.—Section 170(e) is amended by adding at the end the following new paragraph:

“(7) SPECIAL RULES FOR CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY WHERE DONOR RECEIVES INTEREST.—

“(A) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed under this section with respect to a contribution of property described in paragraph (1)(B)(iii) if the taxpayer after the contribution has any interest in the property other than a qualified interest.

“(B) CONTRIBUTIONS WITH QUALIFIED INTEREST.—If a taxpayer after a contribution of property described in paragraph (1)(B)(iii) has a qualified interest in the property—

“(i) any payment pursuant to the qualified interest shall be treated as ordinary income and shall be includible in gross income of the taxpayer for the taxable year in which the payment is received by the taxpayer, and

“(ii) subsection (f)(3) and section 1011(b) shall not apply to the transfer of the property from the taxpayer to the donee.

“(C) QUALIFIED INTEREST.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘qualified interest’ means, with respect to any taxpayer, a right to receive from the donee a percentage (not greater than 50 percent) of any royalty payment received by the donee with respect to property described in paragraph (1)(B)(iii) (other than copyrights which are described in section 1221(a)(3) or 1231(b)(1)(C)) contributed by the taxpayer to the donee.

“(ii) SECRETARIAL AUTHORITY.—

“(I) IN GENERAL.—Except as provided in subclause (II), the Secretary may by regulation or other administrative guidance treat as a qualified interest the right to receive other payments from the donee, but only if the donee does not possess a right to receive any payment (whether royalties or otherwise) from a third party with respect to the contributed property.

“(II) EXCEPTIONS.—The Secretary may not treat as a qualified interest the right to receive any payment which provides a benefit to the donor which is greater than the benefit retained by the donee or the right to receive any portion of the proceeds from the sale of the property contributed.

“(iii) LIMITATION.—An interest shall be treated as a qualified interest under this subparagraph only if the taxpayer has no right to receive any payment described in clause (i) or (ii)(I) after the earlier of the date on which the legal life of the contributed property expires or the date which is 20 years after the date of the contribution.”.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6050L(a) (relating to returns regarding certain dispositions of donated property) is amended—

(A) by striking “If” and inserting:

“(1) DISPOSITIONS OF DONATED PROPERTY.—If”.

(B) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and

(C) by adding at the end the following new paragraph:

“(2) PAYMENTS OF QUALIFIED INTERESTS.—Each donee of property described in section 170(e)(1)(B)(iii) which makes a payment to a donor pursuant to a qualified interest (as defined in section 170(e)(7)) during any calendar year shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

“(A) the name, address, and TIN of the payor and the payee with respect to such a payment,

“(B) a description, and date of contribution, of the property to which the qualified interest relates,

“(C) the dates and amounts of any royalty payments received by the donee with respect to such property,

“(D) the date and the amount of the payment pursuant to the qualified interest, and

“(E) a description of the terms of the qualified interest.”.

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 6050L is amended by striking “CERTAIN DISPOSITIONS OF”.

(B) The item relating to section 6050L in the table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking “certain dispositions of”.

(d) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other administrative guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after October 1, 2003.

**SEC. 496. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.**

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking “age 14” and inserting “age 18”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

**SA 3127.** Mr. KYL submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 558, line 1, strike all through page 559, line 5.

**SA 3128.** Mr. BUNNING submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of part V of title IV, insert:

**SEC. \_\_\_\_ CLARIFICATION OF STATUS OF CERTAIN ORGANIZATIONS AND RETIREMENT PLANS.**

(a) IN GENERAL.—For purposes of any provision of law—

(1) the organization described in subsection (c)(5) maintaining the retirement

plan of the eligible organization shall be treated as an organization described in section 414(e)(3)(A) of the Internal Revenue Code of 1986 with respect to its maintenance of benefit plans of the eligible organization, and

(2) subject to the provisions of subsection (b), any retirement plan which, as of January 1, 2003, was maintained by the organization described in paragraph (1) shall be treated as a church plan (within the meaning of section 414(e) of such Code) which is maintained by an organization described in section 414(e)(3)(A) of such Code.

(b) SPECIAL RULES RELATING TO RETIREMENT PLANS.—

(1) TAX-DEFERRED RETIREMENT PLAN.—In the case of a retirement plan which allows contributions to be made under a salary reduction agreement and which is treated as a church plan under subsection (a)—

(A) such treatment shall not apply for purposes of section 415(c)(7) of the Internal Revenue Code of 1986, and

(B) any account maintained for a participant or beneficiary of such plan shall be treated as a retirement income account described in section 403(b)(9) of such Code, except that such account shall not, for purposes of section 403(b)(12) of such Code, be treated as a contract purchased by a church for purposes of section 403(b)(1)(D) of such Code.

(2) MONEY PURCHASE PENSION PLAN.—In the case of a retirement plan subject to the requirements of section 401(a) of such Code and treated as a church plan under subsection (a)—

(A) such plan (but not any reserves held by the organization described in subsection (c)(5) maintaining the retirement plan of the eligible organization)—

(i) shall be treated as a defined contribution plan which is a money purchase pension plan, and

(ii) shall be treated as having made an election under section 410(d) of such Code for plan years beginning after December 31, 2005, except that notwithstanding the election—

(I) nothing in the Employee Retirement Income Security Act of 1974 shall prohibit the plan from commingling for investment purposes its assets with any other assets of the organization described in subsection (c)(5) maintaining the retirement plan of the eligible organization (or of plans maintained by it), and

(II) nothing in this section shall be construed as subjecting such other assets to any provision of such Act,

(B) notwithstanding section 401(a)(11) or 417 of such Code or section 205 of such Act, such plan may offer a lump-sum distribution option to participants who have not attained age 55 without offering such participants an annuity option, and

(C) any account maintained for a participant or beneficiary of such plan shall, for purposes of section 401(a)(9) of such Code, be treated as a retirement income account described in section 403(b)(9) of such Code.

(c) ELIGIBLE ORGANIZATION.—For purposes of this section, the term “eligible organization” means any organization if, as of January 1, 2003—

(1) more than 1 church recognizes employment at the organization by a duly ordained, commissioned, or licensed minister as service in the exercise of the minister's ministry,

(2) at least 1 nationally or internationally recognized church association includes the organization (or its national or international representative body) in its directory of participating or founding organizations,

(3) such organization or national representative body thereof is part of an ecumenical movement (founded in the nineteenth century) to promote worldwide fellowship united by common loyalty to certain religious values,

(4) such organization's national representative body has chartered at least 1 organization that provides educational, recreational, social and religious support to the armed forces of the United States, and

(5) the organization has a retirement plan which is administered by an organization—

(A) which was established by State law by a special act of the legislature and subject to certain provisions of the State's insurance law,

(B) the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for employees of the eligible organization,

(C) is treated as an entity exempt from tax under section 501(m) of the Internal Revenue Code of 1986 without regard to the application of subsection (a), and

(D) whose organizing documents are amended no later than January 1, 2006, to require that, for plan years beginning on or after such date, the greater of 2 trustees or 10 percent of the membership of its board of trustees be associated with a church.

For purposes of paragraph (5)(D), association with a church may include past or present service as an officer or board member of a church (within the meaning of section 3121(w)(3)(A) of such Code) or a church-controlled organization (within the meaning of section 3121(w)(3)(B) of such Code).

(d) EFFECTIVE DATE.—The provisions of this section shall apply to plan years beginning after December 31, 2003.

**SA 3129.** Mr. McCAIN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike title VIII.

**SA 3130.** Mr. McCAIN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 797, line 17, strike all through page 810, line 9.

**SA 3131.** Mr. McCAIN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States,

and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 773, line 4, strike all through page 827, line 14.

**SA 3132.** Mr. McCAIN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “Jumpstart Our Business Strength (JOBS) Act”.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

**TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME**

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Deduction relating to income attributable to United States production activities.

**TITLE II—INTERNATIONAL TAX PROVISIONS**

**Subtitle A—International Tax Reform**

Sec. 201. 20-year foreign tax credit carryover; 1-year foreign tax credit carryback.

Sec. 202. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.

Sec. 203. Foreign tax credit under alternative minimum tax.

Sec. 204. Recharacterization of overall domestic loss.

Sec. 205. Interest expense allocation rules.

Sec. 206. Determination of foreign personal holding company income with respect to transactions in commodities.

**Subtitle B—International Tax Simplification**

Sec. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

Sec. 212. Expansion of de minimis rule under subpart F.

Sec. 213. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.

Sec. 214. Application of uniform capitalization rules to foreign persons.

Sec. 215. Repeal of withholding tax on dividends from certain foreign corporations.

Sec. 216. Repeal of special capital gains tax on aliens present in the United States for 183 days or more.

**Subtitle C—Additional International Tax Provisions**

Sec. 221. Active leasing income from aircraft and vessels.

Sec. 222. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.

Sec. 223. Look-thru treatment for sales of partnership interests.

Sec. 224. Election not to use average exchange rate for foreign tax paid other than in functional currency.

Sec. 225. Treatment of income tax base differences.

Sec. 226. Modification of exceptions under subpart F for active financing.

Sec. 227. United States property not to include certain assets of controlled foreign corporation.

Sec. 228. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.

Sec. 229. Clarification of treatment of certain transfers of intangible property.

Sec. 230. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.

Sec. 231. Toll tax on excess qualified foreign distribution amount.

Sec. 232. Exclusion of income derived from certain wagers on horse races and dog races from gross income of nonresident alien individuals.

Sec. 233. Limitation of withholding tax for Puerto Rico corporations.

Sec. 234. Report on WTO dispute settlement panels and the appellate body.

Sec. 235. Study of impact of international tax laws on taxpayers other than large corporations.

Sec. 236. Consultative role for Senate Committee on Finance in connection with the review of proposed tax treaties.

**TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS**

**Subtitle A—General Provisions**

Sec. 301. Expansion of qualified small-issue bond program.

Sec. 302. Expensing of broadband Internet access expenditures.

Sec. 303. Exemption of natural aging process in determination of production period for distilled spirits under section 263A.

Sec. 304. Modification of active business definition under section 355.

Sec. 305. Exclusion of certain indebtedness of small business investment companies from acquisition indebtedness.

Sec. 306. Modified taxation of imported archery products.

Sec. 307. Modification to cooperative marketing rules to include value added processing involving animals.

Sec. 308. Extension of declaratory judgment procedures to farmers' cooperative organizations.

Sec. 309. Temporary suspension of personal holding company tax.

Sec. 310. Increase in section 179 expensing.

Sec. 311. Three-year carryback of net operating losses.

**Subtitle B—Manufacturing Relating to Films**

Sec. 321. Special rules for certain film and television productions.

Sec. 322. Modification of application of income forecast method of depreciation.

- Subtitle C—Manufacturing Relating to Timber
- Sec. 331. Expensing of certain reforestation expenditures.
- Sec. 332. Election to treat cutting of timber as a sale or exchange.
- Sec. 333. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
- Sec. 334. Modification of safe harbor rules for timber REITs.

## TITLE IV—ADDITIONAL PROVISIONS

## Subtitle A—Provisions Designed To Curtail Tax Shelters

- Sec. 401. Clarification of economic substance doctrine.
- Sec. 402. Penalty for failing to disclose reportable transaction.
- Sec. 403. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
- Sec. 404. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 405. Modifications of substantial understatement penalty for non-reportable transactions.
- Sec. 406. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 407. Disclosure of reportable transactions.
- Sec. 408. Modifications to penalty for failure to register tax shelters.
- Sec. 409. Modification of penalty for failure to maintain lists of investors.
- Sec. 410. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 411. Understatement of taxpayer's liability by income tax return preparer.
- Sec. 412. Penalty on failure to report interests in foreign financial accounts.
- Sec. 413. Frivolous tax submissions.
- Sec. 414. Regulation of individuals practicing before the Department of Treasury.
- Sec. 415. Penalty on promoters of tax shelters.
- Sec. 416. Statute of limitations for taxable years for which required listed transactions not reported.
- Sec. 417. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.
- Sec. 418. Authorization of appropriations for tax law enforcement.

## Subtitle B—Other Corporate Governance Provisions

- Sec. 421. Affirmation of consolidated return regulation authority.
- Sec. 422. Signing of corporate tax returns by chief executive officer.
- Sec. 423. Denial of deduction for certain fines, penalties, and other amounts.
- Sec. 424. Disallowance of deduction for punitive damages.
- Sec. 425. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud.

## Subtitle C—Enron-Related Tax Shelter Provisions

- Sec. 431. Limitation on transfer or importation of built-in losses.
- Sec. 432. No reduction of basis under section 734 in stock held by partnership in corporate partner.
- Sec. 433. Repeal of special rules for FASITs.

- Sec. 434. Expanded disallowance of deduction for interest on convertible debt.
- Sec. 435. Expanded authority to disallow tax benefits under section 269.
- Sec. 436. Modification of interaction between subpart F and passive foreign investment company rules.

## Subtitle D—Provisions To Discourage Expatriation

- Sec. 441. Tax treatment of inverted corporate entities.
- Sec. 442. Imposition of mark-to-market tax on individuals who expatriate.
- Sec. 443. Excise tax on stock compensation of insiders of inverted corporations.
- Sec. 444. Reinsurance of United States risks in foreign jurisdictions.
- Sec. 445. Reporting of taxable mergers and acquisitions.

## Subtitle E—International Tax

- Sec. 451. Clarification of banking business for purposes of determining investment of earnings in United States property.
- Sec. 452. Prohibition on nonrecognition of gain through complete liquidation of holding company.
- Sec. 453. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
- Sec. 454. Effectively connected income to include certain foreign source income.
- Sec. 455. Recapture of overall foreign losses on sale of controlled foreign corporation.
- Sec. 456. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.

## Subtitle F—Other Revenue Provisions

## PART I—FINANCIAL INSTRUMENTS

- Sec. 461. Treatment of stripped interests in bond and preferred stock funds, etc.
- Sec. 462. Application of earnings stripping rules to partnerships and S corporations.
- Sec. 463. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest.
- Sec. 464. Modification of straddle rules.
- Sec. 465. Denial of installment sale treatment for all readily tradeable debt.

## PART II—CORPORATIONS AND PARTNERSHIPS

- Sec. 466. Modification of treatment of transfers to creditors in divisive reorganizations.
- Sec. 467. Clarification of definition of non-qualified preferred stock.
- Sec. 468. Modification of definition of controlled group of corporations.
- Sec. 469. Mandatory basis adjustments in connection with partnership distributions and transfers of partnership interests.

## PART III—DEPRECIATION AND AMORTIZATION

- Sec. 471. Extension of amortization of intangibles to sports franchises.
- Sec. 472. Services contracts treated in the same manner as leases for rules relating to tax-exempt use of property.
- Sec. 473. Class lives for utility grading costs.
- Sec. 474. Expansion of limitation on depreciation of certain passenger automobiles.
- Sec. 475. Consistent amortization of periods for intangibles.

- Sec. 476. Limitation on deductions allocable to property used by governments or other tax-exempt entities.

## PART IV—ADMINISTRATIVE PROVISIONS

- Sec. 481. Clarification of rules for payment of estimated tax for certain deemed asset sales.
- Sec. 482. Extension of IRS user fees.
- Sec. 483. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangement.
- Sec. 484. Partial payment of tax liability in installment agreements.
- Sec. 485. Extension of customs user fees.
- Sec. 486. Deposits made to suspend running of interest on potential underpayments.
- Sec. 487. Qualified tax collection contracts.

## PART V—MISCELLANEOUS PROVISIONS

- Sec. 491. Addition of vaccines against hepatitis A to list of taxable vaccines.
- Sec. 492. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
- Sec. 493. Clarification of exemption from tax for small property and casualty insurance companies.
- Sec. 494. Definition of insurance company for section 831.
- Sec. 495. Limitations on deduction for charitable contributions of patents and similar property.
- Sec. 496. Repeal of 10-percent rehabilitation tax credit.
- Sec. 497. Increase in age of minor children whose unearned income is taxed as if parent's income.

## TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME

## SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

(B) The table of subparts for such part III is amended by striking the item relating to subpart E.

(2) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(3) The second sentence of section 56(g)(4)(B)(i) is amended by striking “or under section 114”.

(4) Section 275(a) is amended—

(A) by inserting “or” at the end of paragraph (4)(A), by striking “or” at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(5) Paragraph (3) of section 864(e) is amended—

(A) by striking:

“(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

“(A) IN GENERAL.—For purposes of”; and inserting:

“(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of”, and

(B) by striking subparagraph (B).

(6) Section 903 is amended by striking “114, 164(a),” and inserting “164(a)”.

(7) Section 999(c)(1) is amended by striking “941(a)(5),”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act.

(2) **BINDING CONTRACTS.**—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(A) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of such Code, as in effect on the day before the date of the enactment of this Act), and

(B) which is in effect on September 17, 2003, and at all times thereafter.

(d) **REVOCATION OF SECTION 943(e) ELECTIONS.**—

(1) **IN GENERAL.**—In the case of a corporation that elected to be treated as a domestic corporation under section 943(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act)—

(A) the corporation may, during the 1-year period beginning on the date of the enactment of this Act, revoke such election, effective as of such date of enactment, and

(B) if the corporation does revoke such election—

(i) such corporation shall be treated as a domestic corporation transferring (as of such date of enactment) all of its property to a foreign corporation in connection with an exchange described in section 354 of such Code, and

(ii) no gain or loss shall be recognized on such transfer.

(2) **EXCEPTION.**—Subparagraph (B)(ii) of paragraph (1) shall not apply to gain on any asset held by the revoking corporation if—

(A) the basis of such asset is determined in whole or in part by reference to the basis of such asset in the hands of the person from whom the revoking corporation acquired such asset,

(B) the asset was acquired by transfer (not as a result of the election under section 943(e) of such Code) occurring on or after the 1st day on which its election under section 943(e) of such Code was effective, and

(C) a principal purpose of the acquisition was the reduction or avoidance of tax (other than a reduction in tax under section 114 of such Code, as in effect on the day before the date of the enactment of this Act).

(e) **GENERAL TRANSITION.**—

(1) **IN GENERAL.**—In the case of a taxable year ending after the date of the enactment of this Act and beginning before January 1, 2007, for purposes of chapter 1 of such Code, a current FSC/ETI beneficiary shall be allowed a deduction equal to the transition amount determined under this subsection with respect to such beneficiary for such year.

(2) **CURRENT FSC/ETI BENEFICIARY.**—The term “current FSC/ETI beneficiary” means any corporation which entered into one or more transactions during its taxable year beginning in calendar year 2002 with respect to which FSC/ETI benefits were allowable.

(3) **TRANSITION AMOUNT.**—For purposes of this subsection—

(A) **IN GENERAL.**—The transition amount applicable to any current FSC/ETI beneficiary for any taxable year is the phaseout percentage of the base period amount.

(B) **PHASEOUT PERCENTAGE.**—

(i) **IN GENERAL.**—In the case of a taxpayer using the calendar year as its taxable year, the phaseout percentage shall be determined under the following table:

| Years:    | The phaseout percentage is: |
|-----------|-----------------------------|
| 2004..... | 80                          |
| 2005..... | 80                          |
| 2006..... | 60.                         |

(ii) **SPECIAL RULE FOR 2003.**—The phaseout percentage for 2003 shall be the amount that bears the same ratio to 100 percent as the

number of days after the date of the enactment of this Act bears to 365.

(iii) **SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.**—In the case of a taxpayer not using the calendar year as its taxable year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the taxpayer’s taxable year. The weighted average shall be determined on the basis of the respective portions of the taxable year in each calendar year.

(C) **SHORT TAXABLE YEAR.**—The Secretary shall prescribe guidance for the computation of the transition amount in the case of a short taxable year.

(4) **BASE PERIOD AMOUNT.**—For purposes of this subsection, the base period amount is the FSC/ETI benefit for the taxpayer’s taxable year beginning in calendar year 2002.

(5) **FSC/ETI BENEFIT.**—For purposes of this subsection, the term “FSC/ETI benefit” means—

(A) amounts excludable from gross income under section 114 of such Code, and

(B) the exempt foreign trade income of related foreign sales corporations from property acquired from the taxpayer (determined without regard to section 923(a)(5) of such Code (relating to special rule for military property), as in effect on the day before the date of the enactment of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000).

In determining the FSC/ETI benefit there shall be excluded any amount attributable to a transaction with respect to which the taxpayer is the lessor unless the leased property was manufactured or produced in whole or in significant part by the taxpayer.

(6) **SPECIAL RULE FOR AGRICULTURAL AND HORTICULTURAL COOPERATIVES.**—Determinations under this subsection with respect to an organization described in section 943(g)(1) of such Code, as in effect on the day before the date of the enactment of this Act, shall be made at the cooperative level and the purposes of this subsection shall be carried out in a manner similar to section 199(h)(2) of such Code, as added by this Act. Such determinations shall be in accordance with such requirements and procedures as the Secretary may prescribe.

(7) **CERTAIN RULES TO APPLY.**—Rules similar to the rules of section 41(f) of such Code shall apply for purposes of this subsection.

(8) **COORDINATION WITH BINDING CONTRACT RULE.**—The deduction determined under paragraph (1) for any taxable year shall be reduced by the phaseout percentage of any FSC/ETI benefit realized for the taxable year by reason of subsection (c)(2) or section 5(c)(1)(B) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, except that for purposes of this paragraph the phaseout percentage for 2003 shall be treated as being equal to 100 percent.

(9) **SPECIAL RULE FOR TAXABLE YEAR WHICH INCLUDES DATE OF ENACTMENT.**—In the case of a taxable year which includes the date of the enactment of this Act, the deduction allowed under this subsection to any current FSC/ETI beneficiary shall in no event exceed—

(A) 100 percent of such beneficiary’s base period amount for calendar year 2003, reduced by

(B) the FSC/ETI benefit of such beneficiary with respect to transactions occurring during the portion of the taxable year ending on the date of the enactment of this Act.

**SEC. 102. DEDUCTION RELATING TO INCOME ATTRIBUTABLE TO UNITED STATES PRODUCTION ACTIVITIES.**

(a) **IN GENERAL.**—Part VI of subchapter B of chapter 1 (relating to itemized deductions

for individuals and corporations) is amended by adding at the end the following new section:

**“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.**

“(a) **ALLOWANCE OF DEDUCTION.**—

“(1) **IN GENERAL.**—There shall be allowed as a deduction an amount equal to 9 percent of the qualified production activities income of the taxpayer for the taxable year.

“(2) **PHASEIN.**—In the case of taxable years beginning in 2003, 2004, 2005, 2006, 2007, or 2008, paragraph (1) shall be applied by substituting for the percentage contained therein the transition percentage determined under the following table:

| “Taxable years beginning in: | The transition percentage is: |
|------------------------------|-------------------------------|
| 2003 or 2004.....            | .1                            |
| 2005.....                    | .2                            |
| 2006.....                    | .3                            |
| 2007 or 2008.....            | .6.                           |

“(b) **DEDUCTION LIMITED TO WAGES PAID.**—

“(1) **IN GENERAL.**—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W-2 wages of the employer for the taxable year.

“(2) **W-2 WAGES.**—For purposes of paragraph (1), the term ‘W-2 wages’ means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the taxpayer’s taxable year.

“(3) **SPECIAL RULES.**—

“(A) **PASS-THRU ENTITIES.**—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity, the limitation under this subsection shall apply at the entity level.

“(B) **ACQUISITIONS AND DISPOSITIONS.**—The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

“(c) **QUALIFIED PRODUCTION ACTIVITIES INCOME.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘qualified production activities income’ means an amount equal to the portion of the modified taxable income of the taxpayer which is attributable to domestic production activities.

“(2) **REDUCTION FOR TAXABLE YEARS BEGINNING BEFORE 2013.**—The amount otherwise determined under paragraph (1) (the ‘unreduced amount’) shall not exceed—

“(A) in the case of taxable years beginning before 2010, the product of the unreduced amount and the domestic/worldwide fraction, and

“(B) in the case of taxable years beginning in 2010, 2011, or 2012, an amount equal to the sum of—

“(i) the product of the unreduced amount and the domestic/worldwide fraction, plus

“(ii) the applicable percentage of an amount equal to the unreduced amount minus the amount determined under clause (i).

For purposes of subparagraph (B)(ii), the applicable percentage is 25 percent for 2010, 50 percent for 2011, and 75 percent for 2012.

“(d) **DETERMINATION OF INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.**—For purposes of this section—

“(1) **IN GENERAL.**—The portion of the modified taxable income which is attributable to domestic production activities is so much of the modified taxable income for the taxable year as does not exceed—

“(A) the taxpayer’s domestic production gross receipts for such taxable year, reduced by

“(B) the sum of—

“(i) the costs of goods sold that are allocable to such receipts,

“(ii) other deductions, expenses, or losses directly allocable to such receipts, and

“(iii) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

“(2) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

“(3) SPECIAL RULES FOR DETERMINING COSTS.—

“(A) IN GENERAL.—For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its fair market value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

“(B) EXPORTS FOR FURTHER MANUFACTURE.—In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

“(4) MODIFIED TAXABLE INCOME.—The term ‘modified taxable income’ means taxable income computed without regard to the deduction allowable under this section.

“(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this section—

“(1) IN GENERAL.—The term ‘domestic production gross receipts’ means the gross receipts of the taxpayer which are derived from—

“(A) any sale, exchange, or other disposition of, or

“(B) any lease, rental, or license of,

qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

“(2) SPECIAL RULES FOR CERTAIN PROPERTY.—In the case of any qualifying production property described in subsection (f)(1)(C)—

“(A) such property shall be treated for purposes of paragraph (1) as produced in significant part by the taxpayer within the United States if more than 50 percent of the aggregate development and production costs are incurred by the taxpayer within the United States, and

“(B) if a taxpayer acquires such property before such property begins to generate substantial gross receipts, any development or production costs incurred before the acquisition shall be treated as incurred by the taxpayer for purposes of subparagraph (A) and paragraph (1).

“(f) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

“(1) IN GENERAL.—Except as otherwise provided in this paragraph, the term ‘qualifying production property’ means—

“(A) any tangible personal property,

“(B) any computer software, and

“(C) any property described in section 168(f) (3) or (4), including any underlying copyright or trademark.

“(2) EXCLUSIONS FROM QUALIFYING PRODUCTION PROPERTY.—The term ‘qualifying production property’ shall not include—

“(A) consumable property that is sold, leased, or licensed by the taxpayer as an integral part of the provision of services,

“(B) oil or gas,

“(C) electricity,

“(D) water supplied by pipeline to the consumer,

“(E) utility services, or

“(F) any film, tape, recording, book, magazine, newspaper, or similar property the market for which is primarily topical or otherwise essentially transitory in nature.

“(g) DOMESTIC/WORLDWIDE FRACTION.—For purposes of this section—

“(1) IN GENERAL.—The term ‘domestic/worldwide fraction’ means a fraction (not greater than 1)—

“(A) the numerator of which is the value of the domestic production of the taxpayer, and

“(B) the denominator of which is the value of the worldwide production of the taxpayer.

“(2) VALUE OF DOMESTIC PRODUCTION.—The value of domestic production is the excess (if any) of—

“(A) the domestic production gross receipts, over

“(B) the cost of purchased inputs allocable to such receipts that are deductible under this chapter for the taxable year.

“(3) PURCHASED INPUTS.—

“(A) IN GENERAL.—Purchased inputs are any of the following items acquired by purchase:

“(i) Services (other than services of employees) used in manufacture, production, growth, or extraction activities.

“(ii) Items consumed in connection with such activities.

“(iii) Items incorporated as part of the property being manufactured, produced, grown, or extracted.

“(B) SPECIAL RULE.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of this subsection.

“(4) VALUE OF WORLDWIDE PRODUCTION.—

“(A) IN GENERAL.—The value of worldwide production shall be determined under the principles of paragraph (2), except that—

“(i) worldwide production gross receipts shall be taken into account, and

“(ii) paragraph (3)(B) shall not apply.

“(B) WORLDWIDE PRODUCTION GROSS RECEIPTS.—The worldwide production gross receipts is the amount that would be determined under subsection (e) if such subsection were applied without any reference to the United States.

“(h) DEFINITIONS AND SPECIAL RULES.—

“(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity—

“(A) subject to the provisions of paragraph (2) and subsection (b)(3)(A), this section shall be applied at the shareholder, partner, or similar level, and

“(B) the Secretary shall prescribe rules for the application of this section, including rules relating to—

“(i) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

“(ii) additional reporting requirements.

“(2) EXCLUSION FOR PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—

“(A) IN GENERAL.—If any amount described in paragraph (1) or (3) of section 1385 (a)—

“(i) is received by a person from an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products, and

“(ii) is allocable to the portion of the qualified production activities income of the organization which is deductible under subsection (a) and designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

then such person shall be allowed an exclusion from gross income with respect to such

amount. The taxable income of the organization shall not be reduced under section 1382 by the portion of any such amount with respect to which an exclusion is allowable to a person by reason of this paragraph.

“(B) SPECIAL RULES.—For purposes of applying subparagraph (A), in determining the qualified production activities income of the organization under this section—

“(i) there shall not be taken into account in computing the organization’s modified taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

“(ii) the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

“(3) SPECIAL RULE FOR AFFILIATED GROUPS.—

“(A) IN GENERAL.—All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

“(B) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined—

“(i) by substituting ‘50 percent’ for ‘80 percent’ each place it appears, and

“(ii) without regard to paragraphs (2) and (4) of section 1504(b).

For purposes of determining the domestic/worldwide fraction under subsection (g), clause (ii) shall be applied by also disregarding paragraphs (3) and (8) of section 1504(b).

“(4) COORDINATION WITH MINIMUM TAX.—The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, alternative minimum taxable income shall be taken into account in determining the deduction under this section.

“(5) ORDERING RULE.—The amount of any other deduction allowable under this chapter shall be determined as if this section had not been enacted.

“(6) TRADE OR BUSINESS REQUIREMENT.—This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

“(7) POSSESSIONS, ETC.—

“(A) IN GENERAL.—For purposes of subsections (d) and (e), the term ‘United States’ includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

“(B) SPECIAL RULES FOR APPLYING WAGE LIMITATION.—For purposes of applying the limitation under subsection (b) for any taxable year—

“(i) the determination of W-2 wages of a taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in a jurisdiction described in subparagraph (A), and

“(ii) in determining the amount of any credit allowable under section 30A or 936 for the taxable year, there shall not be taken into account any wages which are taken into account in applying such limitation.

“(8) COORDINATION WITH TRANSITION RULES.—For purposes of this section—

“(A) domestic production gross receipts shall not include gross receipts from any transaction if the binding contract transition relief of section 101(c)(2) of the Jumpstart Our Business Strength (JOBS) Act applies to such transaction, and

“(B) any deduction allowed under section 101(e) of such Act shall be disregarded in determining the portion of the taxable income which is attributable to domestic production gross receipts.”.

(b) **MINIMUM TAX.**—Section 56(g)(4)(C) (relating to disallowance of items not deductible in computing earnings and profits) is amended by adding at the end the following new clause:

“(v) **DEDUCTION FOR DOMESTIC PRODUCTION.**—Clause (i) shall not apply to any amount allowable as a deduction under section 199.”.

(c) **CLERICAL AMENDMENT.**—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

“Sec. 199. Income attributable to domestic production activities.”.

(d) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) **APPLICATION OF SECTION 15.**—Section 15 of the Internal Revenue Code of 1986 shall apply to the amendments made by this section as if they were changes in a rate of tax.

## TITLE II—INTERNATIONAL TAX PROVISIONS

### Subtitle A—International Tax Reform

#### SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRY-OVER; 1-YEAR FOREIGN TAX CREDIT CARRYBACK.

(a) **GENERAL RULE.**—Section 904(c) (relating to carryback and carryover of excess tax paid) is amended—

(1) by striking “in the second preceding taxable year.”, and

(2) by striking “, and in the first, second, third, fourth, or fifth” and inserting “and in any of the first 20”.

(b) **EXCESS EXTRACTION TAXES.**—Paragraph (1) of section 907(f) is amended—

(1) by striking “in the second preceding taxable year.”,

(2) by striking “, and in the first, second, third, fourth, or fifth” and inserting “and in any of the first 20”, and

(3) by striking the last sentence.

(c) **EFFECTIVE DATE.**—

(1) **CARRYBACK.**—The amendments made by subsections (a)(1) and (b)(1) shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act.

(2) **CARRYOVER.**—The amendments made by subsections (a)(2) and (b)(2) shall apply to excess foreign taxes which (without regard to the amendments made by this section) may be carried to any taxable year ending after the date of the enactment of this Act.

#### SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) **IN GENERAL.**—Section 904(d)(4) (relating to look-thru rules apply to dividends from noncontrolled section 902 corporations) is amended to read as follows:

“(4) **LOOK-THRU APPLIES TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.**—

“(A) **IN GENERAL.**—For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

“(i) the portion of earnings and profits attributable to income described in such subparagraph, to

“(ii) the total amount of earnings and profits.

“(B) **EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.**—In the case of any distribution from a controlled foreign cor-

poration to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

“(C) **SPECIAL RULES.**—For purposes of this paragraph—

“(i) **EARNINGS AND PROFITS.**—

“(I) **IN GENERAL.**—The rules of section 316 shall apply.

“(II) **REGULATIONS.**—The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer’s acquisition of the stock to which the distributions relate.

“(ii) **INADEQUATE SUBSTANTIATION.**—If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

“(iii) **COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.**—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

“(iv) **LOOK-THRU WITH RESPECT TO CARRY-OVER OF CREDIT.**—Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation to such a taxable year for purposes of allocating such dividend among the separate categories in effect for such taxable year.”.

(b) **CONFORMING AMENDMENTS.**—

(1) Subparagraph (E) of section 904(d)(1) is hereby repealed.

(2) Section 904(d)(2)(C)(iii) is amended by adding “and” at the end of subclause (I), by striking subclause (II), and by redesignating subclause (III) as subclause (II).

(3) The last sentence of section 904(d)(2)(D) is amended to read as follows: “Such term does not include any financial services income.”.

(4) Section 904(d)(2)(E) is amended—

(A) by inserting “or (4)” after “paragraph (3)” in clause (i), and

(B) by striking clauses (ii) and (iv) and by redesignating clause (iii) as clause (ii).

(5) Section 904(d)(3)(F) is amended by striking “(D), or (E)” and inserting “or (D)”.

(6) Section 864(d)(5)(A)(i) is amended by striking “(C)(iii)(III)” and inserting “(C)(iii)(II)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

#### SEC. 203. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.

(a) **IN GENERAL.**—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking “and if section 59(a)(2) did not apply”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

#### SEC. 204. RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.

(a) **GENERAL RULE.**—Section 904 is amended by redesignating subsections (g), (h), (i), (j), and (k) as subsections (h), (i), (j), (k), and (l) respectively, and by inserting after subsection (f) the following new subsection:

“(g) **RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.**—

“(1) **GENERAL RULE.**—For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer’s taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

“(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

“(B) 50 percent of the taxpayer’s taxable income from sources within the United States for such succeeding taxable year, shall be treated as income from sources without the United States (and not as income from sources within the United States).

“(2) **OVERALL DOMESTIC LOSS DEFINED.**—For purposes of this subsection—

“(A) **IN GENERAL.**—The term ‘overall domestic loss’ means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term ‘domestic loss’ means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

“(B) **TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.**—The term ‘overall domestic loss’ shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.

“(3) **CHARACTERIZATION OF SUBSEQUENT INCOME.**—

“(A) **IN GENERAL.**—Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

“(B) **INCOME CATEGORY.**—For purposes of this paragraph, the term ‘income category’ has the meaning given such term by subsection (f)(5)(E)(i).

“(4) **COORDINATION WITH SUBSECTION (f).**—The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 535(d)(2) is amended by striking “section 904(g)(6)” and inserting “section 904(h)(6)”.

(2) Subparagraph (A) of section 936(a)(2) is amended by striking “section 904(f)” and inserting “subsections (f) and (g) of section 904”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to losses for taxable years beginning after December 31, 2006.

#### SEC. 205. INTEREST EXPENSE ALLOCATION RULES.

(a) **ELECTION TO ALLOCATE ON WORLDWIDE BASIS.**—Section 864 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.**—For purposes of this subchapter, at the election of the worldwide affiliated group—

“(1) **ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE.**—

“(A) IN GENERAL.—The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

“(B) TREATMENT OF WORLDWIDE AFFILIATED GROUP.—The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

“(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

“(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

“(C) WORLDWIDE AFFILIATED GROUP.—For purposes of this paragraph, the term ‘worldwide affiliated group’ means a group consisting of—

“(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

“(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

“(2) ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.—Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term ‘affiliated group’ has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

“(3) TREATMENT OF TAX-EXEMPT ASSETS; BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS.—The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

“(4) TREATMENT OF CERTAIN FINANCIAL INSTITUTIONS.—

“(A) IN GENERAL.—For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

“(B) DESCRIPTION.—A corporation is described in this subparagraph if—

“(i) such corporation is a financial institution described in section 581 or 591,

“(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

“(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

“(C) TREATMENT OF BANK AND FINANCIAL HOLDING COMPANIES.—To the extent provided in regulations—

“(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

“(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

“(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business, shall be treated as a corporation described in subparagraph (B).

“(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

“(A) IN GENERAL.—If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

“(i) are members of such worldwide affiliated group, but

“(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

“(B) FINANCIAL CORPORATION.—For purposes of this paragraph, the term ‘financial corporation’ means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(C)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

“(C) ANTIABUSE RULES.—In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

“(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

“(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

“(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

“(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

“(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after De-

ember 31, 2008, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

“(E) DEFINITIONS RELATING TO GROUPS.—For purposes of this paragraph—

“(i) PRE-ELECTION WORLDWIDE AFFILIATED GROUP.—The term ‘pre-election worldwide affiliated group’ means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

“(ii) ELECTING FINANCIAL INSTITUTION GROUP.—The term ‘electing financial institution group’ means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

“(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

“(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

“(ii) preventing assets or interest expense from being taken into account more than once, and

“(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

“(6) ELECTION.—An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.”

(b) EXPANSION OF REGULATORY AUTHORITY.—Paragraph (7) of section 864(e) is amended—

(1) by inserting before the comma at the end of subparagraph (B) “and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection”, and

(2) by striking “and” at the end of subparagraph (E), by redesignating subparagraph (F) as subparagraph (G), and by inserting after subparagraph (E) the following new subparagraph:

“(F) preventing assets or interest expense from being taken into account more than once, and”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

**SEC. 206. DETERMINATION OF FOREIGN PERSONAL HOLDING COMPANY INCOME WITH RESPECT TO TRANSACTIONS IN COMMODITIES.**

(a) IN GENERAL.—Clauses (i) and (ii) of section 954(c)(1)(C) (relating to commodity transactions) are amended to read as follows:

“(i) arise out of commodity hedging transactions (as defined in paragraph (4)(A)),

“(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign

corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or".

(b) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 954 is amended by adding after paragraph (3) the following new paragraph:

"(4) DEFINITION AND SPECIAL RULES RELATING TO COMMODITY TRANSACTIONS.—

"(A) COMMODITY HEDGING TRANSACTIONS.—For purposes of paragraph (1)(C)(i), the term 'commodity hedging transaction' means any transaction with respect to a commodity if such transaction—

"(i) is a hedging transaction as defined in section 1221(b)(2), determined—

"(I) without regard to subparagraph (A)(ii) thereof,

"(II) by applying subparagraph (A)(i) thereof by substituting 'ordinary property or property described in section 1231(b)' for 'ordinary property', and

"(III) by substituting 'controlled foreign corporation' for 'taxpayer' each place it appears, and

"(ii) is clearly identified as such in accordance with section 1221(a)(7).

"(B) TREATMENT OF DEALER ACTIVITIES UNDER PARAGRAPH (1)(C).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

"(C) REGULATIONS.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties."

(c) MODIFICATION OF EXCEPTION FOR DEALERS.—Clause (i) of section 954(c)(2)(C) is amended by inserting "and transactions involving physical settlement" after "(including hedging transactions)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after December 31, 2004.

**Subtitle B—International Tax Simplification**  
**SEC. 211. REPEAL OF FOREIGN PERSONAL HOLDING COMPANY RULES AND FOREIGN INVESTMENT COMPANY RULES.**

(a) GENERAL RULE.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM PERSONAL HOLDING COMPANY RULES.—

(1) IN GENERAL.—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

"(5) a foreign corporation,"

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting "and" at the end of paragraph (7) (as so redesignated), and

(D) by striking "and" at the end of paragraph (8) (as so redesignated) and inserting a period.

(2) TREATMENT OF INCOME FROM PERSONAL SERVICE CONTRACTS.—Paragraph (1) of section 954(c) is amended by adding at the end the following new subparagraph:

"(I) PERSONAL SERVICE CONTRACTS.—

"(i) Amounts received under a contract under which the corporation is to furnish personal services if—

"(I) some person other than the corporation has the right to designate (by name or

by description) the individual who is to perform the services, or

"(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

"(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services."

(c) CONFORMING AMENDMENTS.—

(1) Section 1(h) is amended—

(A) in paragraph (10), by inserting "and" at the end of subparagraph (F), by striking subparagraph (G), and by redesignating subparagraph (H) as subparagraph (G), and

(B) by striking "a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or" in paragraph (11)(C)(iii).

(2) Section 163(e)(3)(B), as amended by this Act, is amended by striking "which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or" and inserting "which is a controlled foreign corporation (as defined in section 957) or".

(3) Paragraph (2) of section 171(c) is amended—

(A) by striking "or by a foreign personal holding company, as defined in section 552", and

(B) by striking "or foreign personal holding company".

(4) Paragraph (2) of section 245(a) is amended by striking "foreign personal holding company or".

(5) Section 267(a)(3)(B), as amended by this Act, is amended by striking "to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or" and inserting "to a controlled foreign corporation (as defined in section 957) or".

(6) Section 312 is amended by striking subsection (j).

(7) Subsection (m) of section 312 is amended by striking "a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)".

(8) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(9) Subparagraph (B) of section 465(c)(7) is amended by adding "or" at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(10) Paragraph (1) of section 543(b) is amended by inserting "and" at the end of subparagraph (A), by striking "and" at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(11) Paragraph (1) of section 562(b) is amended by striking "or a foreign personal holding company described in section 552".

(12) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesignating subsection (d) as subsection (c), and

(C) by striking "subsection (a), (b), or (c)" in subsection (c) (as so redesignated) and inserting "subsection (a) or (b)".

(13) Subsection (d) of section 751 is amended by adding "and" at the end of paragraph (2), by striking paragraph (3), by redesignating paragraph (4) as paragraph (3), and by striking "paragraph (1), (2), or (3)" in paragraph (3) (as so redesignated) and inserting "paragraph (1) or (2)".

(14) Paragraph (2) of section 864(d) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(15)(A) Subparagraph (A) of section 898(b)(1) is amended to read as follows:

"(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and".

(B) Subparagraph (B) of section 898(b)(2) is amended by striking "and sections 551(f) and 554, whichever are applicable,".

(C) Paragraph (3) of section 898(b) is amended to read as follows:

"(3) UNITED STATES SHAREHOLDER.—The term 'United States shareholder' has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1)."

(D) Subsection (c) of section 898 is amended to read as follows:

"(c) DETERMINATION OF REQUIRED YEAR.—

"(1) IN GENERAL.—The required year is—

"(A) the majority U.S. shareholder year, or

"(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

"(2) 1-MONTH DEFERRAL ALLOWED.—A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

"(3) MAJORITY U.S. SHAREHOLDER YEAR.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'majority U.S. shareholder year' means the taxable year (if any) which, on each testing day, constituted the taxable year of—

"(i) each United States shareholder described in subsection (b)(2)(A), and

"(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

"(B) TESTING DAY.—The testing days shall be—

"(i) the first day of the corporation's taxable year (determined without regard to this section), or

"(ii) the days during such representative period as the Secretary may prescribe."

(16) Clause (ii) of section 904(d)(2)(A) is amended to read as follows:

"(ii) CERTAIN AMOUNTS INCLUDED.—Except as provided in clause (iii), the term 'passive income' includes, except as provided in subparagraph (E)(iii) or paragraph (3)(I), any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies)."

(17)(A) Subparagraph (A) of section 904(g)(1), as redesignated by section 204, is amended by adding "or" at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(B) The paragraph heading of paragraph (2) of section 904(g), as so redesignated, is amended by striking "FOREIGN PERSONAL HOLDING OR".

(18) Section 951 is amended by striking subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(19) Paragraph (3) of section 989(b) is amended by striking "551(a)".

(20) Paragraph (5) of section 1014(b) is amended by inserting "and before January 1, 2005," after "August 26, 1937."

(21) Subsection (a) of section 1016 is amended by striking paragraph (13).

(22)(A) Paragraph (3) of section 1212(a) is amended to read as follows:

“(3) SPECIAL RULES ON CARRYBACKS.—A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

“(A) for which it is a regulated investment company (as defined in section 851), or

“(B) for which it is a real estate investment trust (as defined in section 856).”.

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 2004.

(23) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(24) Subsection (d) of section 1248 is amended by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(25) Paragraph (2) of section 1260(c) is amended by striking subparagraphs (H) and (I) and by redesignating subparagraph (J) as subparagraph (H).

(26)(A) Subparagraph (F) of section 1291(b)(3) is amended by striking “551(d), 959(a),” and inserting “959(a)”.

(B) Subsection (e) of section 1291 is amended by inserting “(as in effect on the day before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act)” after “section 1246”.

(27) Paragraph (2) of section 1294(a) is amended to read as follows:

“(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION 951.—The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.”.

(28) Section 6035 is hereby repealed.

(29) Subparagraph (D) of section 6103(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(30) Subparagraph (B) of section 6501(e)(1) is amended to read as follows:

“(B) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.”.

(31) Subsection (a) of section 6679 is amended—

(A) by striking “6035, 6046, and 6046A” in paragraph (1) and inserting “6046 and 6046A”, and

(B) by striking paragraph (3).

(32) Sections 170(f)(10)(A), 508(d), 4947, and 4948(c)(4) are each amended by striking “556(b)(2),” each place it appears.

(33) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part III.

(34) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the items relating to sections 1246 and 1247.

(35) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6035.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

#### SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUBPART F.

(a) IN GENERAL.—Clause (ii) of section 954(b)(3)(A) (relating to de minimis, etc.,

rules) is amended by striking “\$1,000,000” and inserting “\$5,000,000”.

(b) TECHNICAL AMENDMENTS.—

(1) Clause (ii) of section 864(d)(5)(A) is amended by striking “\$1,000,000” and inserting “\$5,000,000”.

(2) Clause (i) of section 881(c)(5)(A) is amended by striking “\$1,000,000” and inserting “\$5,000,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

#### SEC. 213. ATTRIBUTION OF STOCK OWNERSHIP THROUGH PARTNERSHIPS TO APPLY IN DETERMINING SECTION 902 AND 960 CREDITS.

(a) IN GENERAL.—Subsection (c) of section 902 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(7) CONSTRUCTIVE OWNERSHIP THROUGH PARTNERSHIPS.—Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.”.

(b) CLARIFICATION OF COMPARABLE ATTRIBUTION UNDER SECTION 901(b)(5).—Paragraph (5) of section 901(b) is amended by striking “any individual” and inserting “any person”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act.

#### SEC. 214. APPLICATION OF UNIFORM CAPITALIZATION RULES TO FOREIGN PERSONS.

(a) IN GENERAL.—Section 263A(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

“(7) FOREIGN PERSONS.—Except for purposes of applying sections 871(b)(1) and 882(a)(1), this section shall not apply to any taxpayer who is not a United States person if such taxpayer capitalizes costs of produced property or property acquired for resale by applying the method used to ascertain the income, profit, or loss for purposes of reports or statements to shareholders, partners, other proprietors, or beneficiaries, or for credit purposes.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by this section to change its method of accounting for its first taxable year beginning after December 31, 2004—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary of the Treasury, and

(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account in such first year.

#### SEC. 215. REPEAL OF WITHHOLDING TAX ON DIVIDENDS FROM CERTAIN FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (2) of section 871(i) (relating to tax not to apply to certain

interest and dividends) is amended by adding at the end the following new subparagraph:

“(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2004.

#### SEC. 216. REPEAL OF SPECIAL CAPITAL GAINS TAX ON ALIENS PRESENT IN THE UNITED STATES FOR 183 DAYS OR MORE.

(a) IN GENERAL.—Subsection (a) of section 871 is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(b) CONFORMING AMENDMENT.—Section 1441(g) is amended by striking “section 871(a)(3)” and inserting “section 871(a)(2)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

#### Subtitle C—Additional International Tax Provisions

#### SEC. 221. ACTIVE LEASING INCOME FROM AIRCRAFT AND VESSELS.

(a) IN GENERAL.—Section 954(c)(2) is amended by adding at the end the following new subparagraph:

“(D) CERTAIN RENTS, ETC.—

“(i) IN GENERAL.—Foreign personal holding company income shall not include qualified leasing income derived from or in connection with the leasing or rental of any aircraft or vessel.

“(ii) QUALIFIED LEASING INCOME.—For purposes of this subparagraph, the term ‘qualified leasing income’ means rents and gains derived in the active conduct of a trade or business of leasing with respect to which the controlled foreign corporation conducts substantial activity, but only if—

“(I) the leased property is used by the lessee or other end-user in foreign commerce and predominantly outside the United States, and

“(II) the lessee or other end-user is not a related person (as defined in subsection (d)(3)).

Any amount not treated as foreign personal holding income under this subparagraph shall not be treated as foreign base company shipping income.”.

(b) CONFORMING AMENDMENT.—Section 954(c)(1)(B) is amended by inserting “or (2)(D)” after “paragraph (2)(A)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2006, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

#### SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY INCOME RULES.

(a) IN GENERAL.—Subsection (c) of section 954, as amended by this Act, is amended by adding after paragraph (4) the following new paragraph:

“(5) LOOK-THRU IN THE CASE OF RELATED CONTROLLED FOREIGN CORPORATIONS.—For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person (as defined in subsection (b)(9)) shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is not subpart F income (as defined in section 952).

The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

**SEC. 223. LOOK-THRU TREATMENT FOR SALES OF PARTNERSHIP INTERESTS.**

(a) **IN GENERAL.**—Section 954(c) (defining foreign personal holding company income), as amended by this Act, is amended by adding after paragraph (5) the following new paragraph:

“(6) **LOOK-THRU RULE FOR CERTAIN PARTNERSHIP SALES.**—

“(A) **IN GENERAL.**—In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

“(B) **25-PERCENT OWNER.**—For purposes of this paragraph, the term ‘25-percent owner’ means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

**SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE RATE FOR FOREIGN TAX PAID OTHER THAN IN FUNCTIONAL CURRENCY.**

(a) **IN GENERAL.**—Paragraph (1) of section 986(a) (relating to determination of foreign taxes and foreign corporation’s earnings and profits) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

“(D) **ELECTIVE EXCEPTION FOR TAXES PAID OTHER THAN IN FUNCTIONAL CURRENCY.**—

“(i) **IN GENERAL.**—At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer’s functional currency.

“(ii) **APPLICATION TO QUALIFIED BUSINESS UNITS.**—An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

“(iii) **ELECTION.**—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

**SEC. 225. TREATMENT OF INCOME TAX BASE DIFFERENCES.**

(a) **IN GENERAL.**—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and

(J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

“(H) **TREATMENT OF INCOME TAX BASE DIFFERENCES.**—

“(i) **IN GENERAL.**—A taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

“(ii) **ELECTION IRREVOCABLE.**—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

**SEC. 226. MODIFICATION OF EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING.**

(a) **IN GENERAL.**—Section 954(h)(3) is amended by adding at the end the following:

“(E) **DIRECT CONDUCT OF ACTIVITIES.**—For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

“(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

“(ii) the activity is performed in the home country of the related person, and

“(iii) the related person is compensated on an arm’s-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country’s tax laws.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.

**SEC. 227. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS OF CONTROLLED FOREIGN CORPORATION.**

(a) **IN GENERAL.**—Section 956(c)(2) (relating to exceptions from property treated as United States property) is amended by striking “and” at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting a semicolon, and by adding at the end the following new subparagraphs:

“(L) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

“(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

“(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

“(M) an obligation of a United States person which—

“(i) is not a domestic corporation, and

“(ii) is not—

“(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

“(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any ob-

ligation of such partnership, estate, or trust by the controlled foreign corporation.”

(b) **CONFORMING AMENDMENT.**—Section 956(c)(2) is amended by striking “and (K)” in the last sentence and inserting “, (K), and (L)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

**SEC. 228. PROVIDE EQUAL TREATMENT FOR INTEREST PAID BY FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS.**

(a) **IN GENERAL.**—Paragraph (1) of section 861(a) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following new subparagraph:

“(C) in the case of a foreign partnership in which United States persons do not hold directly or indirectly 20 percent or more of either the capital or profits interests, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.”

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

**SEC. 229. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.**

(a) **IN GENERAL.**—Subparagraph (C) of section 367(d)(2) is amended by adding at the end the following new sentence: “For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.

**SEC. 230. MODIFICATION OF THE TREATMENT OF CERTAIN REIT DISTRIBUTIONS ATTRIBUTABLE TO GAIN FROM SALES OR EXCHANGES OF UNITED STATES REAL PROPERTY INTERESTS.**

(a) **IN GENERAL.**—Paragraph (1) of section 897(h) (relating to look-through of distributions) is amended by adding at the end the following new sentence: “Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.”

(b) **CONFORMING AMENDMENT.**—Paragraph (3) of section 857(b) (relating to capital gains) is amended by adding at the end the following new subparagraph:

“(F) **CERTAIN DISTRIBUTIONS.**—In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

“(i) shall not be included in computing such shareholder’s long-term capital gains, and

“(ii) shall be included in such shareholder’s gross income as a dividend from the real estate investment trust.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.**

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new section:

**“SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.**

“(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—If a corporation elects the application of this section, a tax shall be imposed on the taxpayer in an amount equal to 5.25 percent of—

“(1) the taxpayer’s excess qualified foreign distribution amount, and

“(2) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount.

Such tax shall be imposed in lieu of the tax imposed under section 11 or 55 on the amounts described in paragraphs (1) and (2) for such taxable year.

“(b) EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘excess qualified foreign distribution amount’ means the excess (if any) of—

“(A) the aggregate dividends received by the taxpayer during the taxable year which are—

“(i) from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid, and

“(ii) described in a domestic reinvestment plan which—

“(I) is approved by the taxpayer’s president, chief executive officer, or comparable official before the payment of such dividends and subsequently approved by the taxpayer’s board of directors, management committee, executive committee, or similar body, and

“(II) provides for the reinvestment of such dividends in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation, over

“(B) the base dividend amount.

“(2) BASE DIVIDEND AMOUNT.—The term ‘base dividend amount’ means an amount designated under subsection (c)(7), but not less than the average amount of dividends received during the fixed base period from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid.

“(3) FIXED BASE PERIOD.—

“(A) IN GENERAL.—The term ‘fixed base period’ means each of 3 taxable years which are among the 5 most recent taxable years of the taxpayer ending on or before December 31, 2002, determined by disregarding—

“(i) the 1 taxable year for which the taxpayer had the highest amount of dividends from 1 or more corporations which are controlled foreign corporations relative to the other 4 taxable years, and

“(ii) the 1 taxable year for which the taxpayer had the lowest amount of dividends from such corporations relative to the other 4 taxable years.

“(B) SHORTER PERIOD.—If the taxpayer has fewer than 5 taxable years ending on or before December 31, 2002, then in lieu of applying subparagraph (A), the fixed base period shall include all the taxable years of the taxpayer ending on or before December 31, 2002.

“(C) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) DIVIDENDS.—The term ‘dividend’ has the meaning given such term by section 316, except that the term shall include amounts described in section 951(a)(1)(B), but shall not include amounts described in sections 78 and 959.

“(2) CONTROLLED FOREIGN CORPORATIONS AND UNITED STATES SHAREHOLDERS.—The term ‘controlled foreign corporation’ has the meaning given such term by section 957(a) and the term ‘United States shareholder’ has the meaning given such term by section 951(b).

“(3) FOREIGN TAX CREDITS.—The amount of any income, war, profits, or excess profit taxes paid (or deemed paid under sections 902 and 960) or accrued by the taxpayer with respect to the excess qualified foreign distribution amount for which a credit would be allowable under section 901 in the absence of this section, shall be reduced by 85 percent. No deduction shall be allowed under this chapter for the portion of any tax for which credit is not allowable by reason of the preceding sentence.

“(4) FOREIGN TAX CREDIT LIMITATION.—For purposes of section 904, there shall be disregarded 85 percent of—

“(A) the excess qualified foreign distribution amount,

“(B) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount, and

“(C) the amounts (including assets, gross income, and other relevant bases of apportionment) which are attributable to the excess qualified foreign distribution amount which would, determined without regard to this section, be used to apportion the expenses, losses, and deductions of the taxpayer under section 861 and 864 in determining its taxable income from sources without the United States.

For purposes of applying subparagraph (C), the principles of section 864(e)(3)(A) shall apply.

“(5) TREATMENT OF ACQUISITIONS AND DISPOSITIONS.—Rules similar to the rules of section 41(f)(3) shall apply in the case of acquisitions or dispositions of controlled foreign corporations occurring on or after the first day of the earliest taxable year taken into account in determining the fixed base period.

“(6) TREATMENT OF CONSOLIDATED GROUPS.—Members of an affiliated group of corporations filing a consolidated return under section 1501 shall be treated as a single taxpayer for purposes of this section.

“(7) DESIGNATION OF DIVIDENDS.—Subject to subsection (b)(2), the taxpayer shall designate the particular dividends received during the taxable year from 1 or more corporations which are controlled foreign corporations in which it is a United States shareholder which are dividends excluded from the excess qualified foreign distribution amount. The total amount of such designated dividends shall equal the base dividend amount.

“(8) TREATMENT OF EXPENSES, LOSSES, AND DEDUCTIONS.—Any expenses, losses, or deductions of the taxpayer allowable under subchapter B—

“(A) shall not be applied to reduce the amounts described in subsection (a)(1), and

“(B) shall be applied to reduce other income of the taxpayer (determined without regard to the amounts described in subsection (a)(1)).

“(d) ELECTION.—

“(1) IN GENERAL.—An election under this section shall be made on the taxpayer’s timely filed income tax return for the first taxable year (determined by taking extensions into account) ending 120 days or more after the date of the enactment of this section, and, once made, may be revoked only with the consent of the Secretary.

“(2) ALL CONTROLLED FOREIGN CORPORATIONS.—The election shall apply to all corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder during the taxable year.

“(3) CONSOLIDATED GROUPS.—If a taxpayer is a member of an affiliated group of corporations filing a consolidated return under section 1501 for the taxable year, an election under this section shall be made by the common parent of the affiliated group which includes the taxpayer and shall apply to all members of the affiliated group.

“(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary and appropriate to carry out the purposes of this section, including regulations under section 55 and regulations addressing corporations which, during the fixed base period or thereafter, join or leave an affiliated group of corporations filing a consolidated return.”

(b) CONFORMING AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

“Sec. 965. Toll tax imposed on excess qualified foreign distribution amount.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply only to the first taxable year of the electing taxpayer ending 120 days or more after the date of the enactment of this Act.

**SEC. 232. EXCLUSION OF INCOME DERIVED FROM CERTAIN WAGERS ON HORSE RACES AND DOG RACES FROM GROSS INCOME OF NONRESIDENT ALIEN INDIVIDUALS.**

(a) IN GENERAL.—Subsection (b) of section 872 (relating to exclusions) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and inserting after paragraph (4) the following new paragraph:

“(5) INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.”

(b) CONFORMING AMENDMENT.—Section 883(a)(4) is amended by striking “(5), (6), and (7)” and inserting “(6), (7), and (8)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to wagers made after the date of the enactment of this Act.

**SEC. 233. LIMITATION OF WITHHOLDING TAX FOR PUERTO RICO CORPORATIONS.**

(a) IN GENERAL.—Subsection (b) of section 881 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

“(2) COMMONWEALTH OF PUERTO RICO.—If dividends are received during a taxable year by a corporation—

“(A) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

“(B) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting ‘10 percent’ for ‘30 percent’.”

(b) WITHHOLDING.—Subsection (c) of section 1442 (relating to withholding of tax on foreign corporations) is amended—

(1) by striking “For purposes” and inserting the following:

“(1) GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For purposes”, and

(2) by adding at the end the following new paragraph:

“(2) COMMONWEALTH OF PUERTO RICO.—If dividends are received during a taxable year by a corporation—

“(A) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

“(B) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year, subsection (a) shall be applied for such taxable year by substituting ‘10 percent’ for ‘30 percent’.”

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 881 is amended by striking “GUAM AND VIRGIN ISLANDS CORPORATIONS” in the heading and inserting “POSSESSIONS”.

(2) Paragraph (1) of section 881(b) is amended by striking “IN GENERAL” in the heading and inserting “GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends paid after the date of the enactment of this Act.

**SEC. 234. REPORT ON WTO DISPUTE SETTLEMENT PANELS AND THE APPELLATE BODY.**

Not later than March 31, 2004, the Secretary of Commerce, in consultation with the United States Trade Representative, shall transmit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, regarding whether dispute settlement panels and the Appellate Body of the World Trade Organization have—

(1) added to or diminished the rights of the United States by imposing obligations or restrictions on the use of antidumping, countervailing, and safeguard measures not agreed to under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards;

(2) appropriately applied the standard of review contained in Article 17.6 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994; or

(3) exceeded their authority or terms of reference under the Agreements referred to in paragraph (1).

**SEC. 235. STUDY OF IMPACT OF INTERNATIONAL TAX LAWS ON TAXPAYERS OTHER THAN LARGE CORPORATIONS.**

(a) STUDY.—The Secretary of the Treasury or the Secretary’s delegate shall conduct a study of the impact of Federal international tax rules on taxpayers other than large corporations, including the burdens placed on such taxpayers in complying with such rules.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study conducted under subsection (a), including any recommendations for legislative or administrative changes to reduce the compliance burden on taxpayers other than large corporations and for such other purposes as the Secretary determines appropriate.

**SEC. 236. CONSULTATIVE ROLE FOR SENATE COMMITTEE ON FINANCE IN CONNECTION WITH THE REVIEW OF PROPOSED TAX TREATIES.**

Paragraph 1(j) of Rule XXV of the Standing Rules of the Senate is amended by adding at the end the following:

“(3)(A) Notwithstanding any other rule of the Senate, the Committee on Foreign Relations shall consult with the Committee on Finance with respect to any proposed treaty on taxation prior to reporting such treaty to the Senate.

“(B) The Committee on Foreign Relations shall request in writing the views of the Committee on Finance with respect to any proposed treaty on taxation which is referred to the Committee on Foreign Relations. Not less than 120 days after the date on which such request is made, the Committee on Finance shall respond to such request in writing. If the Committee on Finance does not provide such written response during such 120 day period, the Committee on Finance shall be deemed to have waived the opportunity to submit such views.

“(C) The Committee on Foreign Relations shall consider the views submitted by the Committee on Finance and shall include such views in any report of the treaty to the Senate.”

**TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS**

**Subtitle A—General Provisions**

**SEC. 301. EXPANSION OF QUALIFIED SMALL-ISSUE BOND PROGRAM.**

(a) IN GENERAL.—Subparagraph (F) of section 144(a)(4) (relating to \$10,000,000 limit in certain cases) is amended to read as follows:

“(F) ADDITIONAL CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—With respect to any issue, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed \$10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after the date of the enactment of this Act.

**SEC. 302. EXPENSING OF BROADBAND INTERNET ACCESS EXPENDITURES.**

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 190 the following new section:

**“SEC. 191. BROADBAND EXPENDITURES.**

“(a) TREATMENT OF EXPENDITURES.—

“(1) IN GENERAL.—A taxpayer may elect to treat any qualified broadband expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction.

“(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may prescribe by regulation.

“(b) QUALIFIED BROADBAND EXPENDITURES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified broadband expenditure’ means, with respect to any taxable year, any direct or indirect costs incurred during 2004 and properly taken into account for such taxable year with respect to—

“(A) the purchase or installation of qualified equipment (including any upgrades thereto), and

“(B) the connection of such qualified equipment to any qualified subscriber.

“(2) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any costs incurred with respect to the launching of any satellite equipment.

“(3) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of qualified equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in paragraph (1).

“(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

“(1) IN GENERAL.—Qualified broadband expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

“(A) current generation broadband services are provided through such equipment to qualified subscribers, or

“(B) next generation broadband services are provided through such equipment to qualified subscribers.

“(2) LIMITATION.—

“(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

“(i) the original use of which commences with the taxpayer, and

“(ii) which is placed in service, after December 31, 2003.

“(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

“(i) is originally placed in service after December 31, 2003, by any person, and

“(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the lease-back referred to in clause (ii).

“(d) SPECIAL ALLOCATION RULES.—

“(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified broadband expenditures shall be multiplied by a fraction—

“(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

“(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

“(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

“(A) the numerator of which is the sum of—

“(i) the number of potential qualified subscribers within the rural areas and underserved areas, plus

“(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i),

which the equipment is capable of serving with next generation broadband services, and

“(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

“(e) DEFINITIONS.—For purposes of this section—

“(1) ANTENNA.—The term ‘antenna’ means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

“(2) CABLE OPERATOR.—The term ‘cable operator’ has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

“(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term ‘commercial mobile service carrier’ means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

“(4) CURRENT GENERATION BROADBAND SERVICE.—The term ‘current generation broadband service’ means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

“(5) MULTIPLEXING OR DEMULTIPLEXING.—The term ‘multiplexing’ means the transmission of 2 or more signals over a single channel, and the term ‘demultiplexing’ means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

“(6) NEXT GENERATION BROADBAND SERVICE.—The term ‘next generation broadband service’ means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

“(7) NONRESIDENTIAL SUBSCRIBER.—The term ‘nonresidential subscriber’ means any person who purchases broadband services which are delivered to the permanent place of business of such person.

“(8) OPEN VIDEO SYSTEM OPERATOR.—The term ‘open video system operator’ means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

“(9) OTHER WIRELESS CARRIER.—The term ‘other wireless carrier’ means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the radio transmission of energy.

“(10) PACKET SWITCHING.—The term ‘packet switching’ means controlling or routing the path of any digitized transmission signal which is assembled into packets or cells.

“(11) PROVIDER.—The term ‘provider’ means, with respect to any qualified equipment—

“(A) a cable operator,

“(B) a commercial mobile service carrier,

“(C) an open video system operator,

“(D) a satellite carrier,

“(E) a telecommunications carrier, or

“(F) any other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

“(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to 1 or more subscribers if—

“(A) such a subscriber has been passed by the provider’s equipment and can be connected to such equipment for a standard connection fee,

“(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making more than an insignificant investment with respect to such subscriber,

“(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

“(D) such services have been purchased by 1 or more such subscribers, and

“(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

“(13) QUALIFIED EQUIPMENT.—

“(A) IN GENERAL.—The term ‘qualified equipment’ means equipment which provides current generation broadband services or next generation broadband services—

“(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

“(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

“(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

“(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

“(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

“(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

“(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

“(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

“(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptations, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber’s premises.

“(14) QUALIFIED SUBSCRIBER.—The term ‘qualified subscriber’ means—

“(A) with respect to the provision of current generation broadband services—

“(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

“(ii) any residential subscriber residing in a dwelling located in a rural area or underserved area which is not a saturated market, and

“(B) with respect to the provision of next generation broadband services—

“(i) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

“(ii) any residential subscriber.

“(15) RESIDENTIAL SUBSCRIBER.—The term ‘residential subscriber’ means any individual who purchases broadband services which are delivered to such individual’s dwelling.

“(16) RURAL AREA.—The term ‘rural area’ means any census tract which—

“(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

“(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

“(17) RURAL SUBSCRIBER.—The term ‘rural subscriber’ means any residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

“(18) SATELLITE CARRIER.—The term ‘satellite carrier’ means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-multipoint distribution.

“(19) SATURATED MARKET.—The term ‘saturated market’ means any census tract in which, as of the date of the enactment of this section—

“(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

“(B) such services can be utilized—

“(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

“(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

“(20) SUBSCRIBER.—The term ‘subscriber’ means any person who purchases current generation broadband services or next generation broadband services.

“(21) TELECOMMUNICATIONS CARRIER.—The term ‘telecommunications carrier’ has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

“(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

“(B) does not include a commercial mobile service carrier.

“(22) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term ‘total potential subscriber population’ means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

“(23) UNDERSERVED AREA.—The term ‘underserved area’ means—

“(A) any census tract which is located in—

“(i) an empowerment zone or enterprise community designated under section 1391, or

“(ii) the District of Columbia Enterprise Zone established under section 1400, or

“(B) any census tract—

“(i) the poverty level of which is at least 30 percent (based on the most recent census data), and

“(ii) the median family income of which does not exceed—

“(I) in the case of a census tract located in a metropolitan statistical area, 70 percent of the greater of the metropolitan area median family income or the statewide median family income, and

“(II) in the case of a census tract located in a nonmetropolitan statistical area, 70 percent of the nonmetropolitan statewide median family income.

“(24) UNDERSERVED SUBSCRIBER.—The term ‘underserved subscriber’ means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

“(f) SPECIAL RULES.—

“(1) PROPERTY USED OUTSIDE THE UNITED STATES, ETC., NOT QUALIFIED.—No expenditures shall be taken into account under subsection (a)(1) with respect to the portion of the cost of any property referred to in section 50(b) or with respect to the portion of the cost of any property specified in an election under section 179.

“(2) BASIS REDUCTION.—

“(A) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a)(1).

“(B) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a)(1) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

“(3) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a)(1).”

(b) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) (relating to list of exempt organizations) is amended by striking “or” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “, or”, and by adding at the end the following:

“(v) from the sale of property subject to a lease described in section 191(c)(2)(B), but only to the extent such income does not in any year exceed an amount equal to the qualified broadband expenditures which would be taken into account under section 191 for such year if the mutual or cooperative telephone company was not exempt from taxation and was treated as the owner of the property subject to such lease.”

(c) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) (relating to capital expenditures) is amended by striking “or” at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting “, or”, and by adding at the end the following new subparagraph:

“(I) expenditures for which a deduction is allowed under section 191.”

(2) Section 1016(a) of such Code is amended by striking “and” at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting “, and”, and by adding at the end the following new paragraph:

“(29) to the extent provided in section 191(f)(2).”

(3) The table of sections for part VI of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 190 the following new item:

“Sec. 191. Broadband expenditures.”

(d) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (16), (22), and (23) of section 191(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(19) of such section 191—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(e) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of eliminating or reducing any deduction or portion thereof allowed under section 191 of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the election to deduct qualified broadband expenditures under section 191 of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 191 of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenditures satisfies the requirements of section 191 of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 191 of such Code.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after December 31, 2003.

**SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DETERMINATION OF PRODUCTION PERIOD FOR DISTILLED SPIRITS UNDER SECTION 263A.**

(a) IN GENERAL.—Section 263A(f) of the Internal Revenue Code of 1986 (relating to general exceptions) is amended by adding at the end the following new paragraph:

“(5) EXEMPTION OF NATURAL AGING PROCESS IN DETERMINATION OF PRODUCTION PERIOD FOR DISTILLED SPIRITS.—For purposes of this subsection, the production period for distilled spirits shall be determined without regard to any period allocated to the natural aging process.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to production periods beginning after the date of the enactment of this Act.

**SEC. 304. MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.**

(a) IN GENERAL.—Section 355(b) (defining active conduct of a trade or business) is

amended by adding at the end the following new paragraph:

“(3) SPECIAL RULES RELATING TO ACTIVE BUSINESS REQUIREMENT.—

“(A) IN GENERAL.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation’s separate affiliated group shall be treated as one corporation. For purposes of the preceding sentence, a corporation’s separate affiliated group is the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

“(B) CONTROL.—For purposes of paragraph (2)(D), all distributee corporations which are members of the same affiliated group (as defined in section 1504(a) without regard to section 1504(b)) shall be treated as one distributee corporation.”

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

“(A) it is engaged in the active conduct of a trade or business.”

(2) Section 355(b)(2) is amended by striking the last sentence.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply—

(A) to distributions after the date of the enactment of this Act, and

(B) for purposes of determining the continued qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (b)(1)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) ELECTION TO HAVE AMENDMENTS APPLY.—Paragraph (2) shall not apply if the distributing corporation elects not to have such paragraph apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

**SEC. 305. EXCLUSION OF CERTAIN INDEBTEDNESS OF SMALL BUSINESS INVESTMENT COMPANIES FROM ACQUISITION INDEBTEDNESS.**

(a) IN GENERAL.—Section 514(c) (relating to acquisition indebtedness) is amended by adding at the end the following new paragraph:

“(10) CERTAIN INDEBTEDNESS OF SMALL BUSINESS INVESTMENT COMPANIES.—For purposes of this section, the term ‘acquisition indebtedness’ does not include any indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 which is evidenced by a debenture—

“(A) issued by such company under section 303(a) of such Act, and

“(B) held or guaranteed by the Small Business Administration.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any indebtedness incurred after December 31, 2003, by a small business investment company described in section 514(c)(10) of the Internal Revenue Code of 1986 (as added by this section) with respect to property acquired by such company after such date.

**SEC. 306. MODIFIED TAXATION OF IMPORTED ARCHERY PRODUCTS.**

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

“(1) BOWS.—

“(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

“(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

“(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

“(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.”.

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

“(3) ARROWS.—

“(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

“(B) EXCEPTION.—In the case of any arrow of which the shaft or any other component has been previously taxed under paragraph (1) or (2)—

“(i) section 6416(b)(3) shall not apply, and

“(ii) the tax imposed by subparagraph (A) shall be an amount equal to the excess (if any) of—

“(I) the amount of tax imposed by this paragraph (determined without regard to this subparagraph), over

“(II) the amount of tax paid with respect to the tax imposed under paragraph (1) or (2) on such shaft or component.

“(C) ARROW.—For purposes of this paragraph, the term ‘arrow’ means any shaft described in paragraph (2) to which additional components are attached.”.

(c) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

(1) by inserting “(other than broadheads)” after “point”, and

(2) by striking “ARROWS.—” in the heading and inserting “ARROW COMPONENTS.—”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2003.

**SEC. 307. MODIFICATION TO COOPERATIVE MARKETING RULES TO INCLUDE VALUE ADDED PROCESSING INVOLVING ANIMALS.**

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

“(k) COOPERATIVE MARKETING INCLUDES VALUE-ADDED PROCESSING INVOLVING ANIMALS.—For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.”.

(b) CONFORMING AMENDMENT.—Section 521(b) is amended by adding at the end the following new paragraph:

“(7) CROSS REFERENCE.—

“**For treatment of value-added processing involving animals, see section 1388(k).**”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 308. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO FARMERS' COOPERATIVE ORGANIZATIONS.**

(a) IN GENERAL.—Section 7428(a)(1) (relating to declaratory judgments of tax exempt organizations) is amended by striking “or” at the end of subparagraph (B) and by adding at the end the following new subparagraph:

“(D) with respect to the initial classification or continuing classification of a cooperative as an organization described in section 521(b) which is exempt from tax under section 521(a), or”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pleadings filed after the date of the enactment of this Act.

**SEC. 309. TEMPORARY SUSPENSION OF PERSONAL HOLDING COMPANY TAX.**

(a) IN GENERAL.—Section 541 (relating to imposition of personal holding company tax) is amended by adding at the end the following new sentence: “The preceding sentence shall not apply with respect to any taxable year to which section 1(h)(11) (as in effect on the date of the enactment of this sentence) applies.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

**SEC. 310. INCREASE IN SECTION 179 EXPENSING.**

(a) IN GENERAL.—Section 179(b)(2) (relating to reduction in limitation) is amended by inserting “50 percent of” before “the amount”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

**SEC. 311. THREE-YEAR CARRYBACK OF NET OPERATING LOSSES.**

(a) IN GENERAL.—Paragraph (1) of section 172(b) (relating to years to which loss may be carried) is amended by adding at the end the following new subparagraph:

“(I) SPECIAL RULE FOR 2003.—In the case of a net operating loss for any taxable year ending during 2003, subparagraph (A)(i) shall be applied by substituting ‘3’ for ‘2.’.”.

(b) ELECTION TO DISREGARD 3-YEAR CARRYBACK.—Section 172 (relating to net operating loss deduction) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

“(k) ELECTION TO DISREGARD 3-YEAR CARRYBACK FOR CERTAIN NET OPERATING LOSSES.—Any taxpayer entitled to a 3-year carryback under subsection (b)(1)(I) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(I). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer’s return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for such taxable year.”.

(c) TEMPORARY SUSPENSION OF 90 PERCENT LIMIT ON CERTAIN NOL CARRYOVERS.—

(1) IN GENERAL.—Section 56(d)(1)(A)(ii)(I) (relating to general rule defining alternative tax net operating loss deduction) is amended—

(A) by striking “or 2002” and inserting “, 2002, or 2003”, and

(B) by striking “and 2002” and inserting “, 2002, and 2003”.

(d) TECHNICAL CORRECTIONS.—

(1) Subparagraph (H) of section 172(b)(1) is amended by striking “a taxpayer which has”.

(2) Section 102(c)(2) of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147) is amended by striking “before January 1, 2003” and inserting “after December 31, 1990”.

(3)(A) Subclause (I) of section 56(d)(1)(A)(i) is amended by striking “attributable to carryovers”.

(B) Subclause (I) of section 56(d)(1)(A)(ii) is amended—

(i) by striking “for taxable years” and inserting “from taxable years”, and

(ii) by striking “carryforwards” and inserting “carryovers”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to net operating losses for taxable years ending after December 31, 2002.

(2) TECHNICAL CORRECTIONS.—The amendments made by subsection (d) shall take effect as if included in the amendments made by section 102 of the Job Creation and Worker Assistance Act of 2002.

(3) ELECTION.—In the case of a net operating loss for a taxable year ending during 2003—

(A) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before April 15, 2004, and

(B) any election made under section 172(k) (as added by this section) of such Code shall (notwithstanding such section) be treated as timely made if made before April 15, 2004.

**Subtitle B—Manufacturing Relating to Films**  
**SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.**

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 180 the following new section:

**“SEC. 181. TREATMENT OF QUALIFIED FILM AND TELEVISION PRODUCTIONS.**

“(a) ELECTION TO TREAT CERTAIN COSTS OF QUALIFIED FILM AND TELEVISION PRODUCTIONS AS EXPENSES.—

“(1) IN GENERAL.—A taxpayer may elect to treat the cost of any qualified film or television production as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

“(2) DOLLAR LIMITATION.—

“(A) IN GENERAL.—The aggregate cost which may be taken into account under paragraph (1) with respect to each qualified film or television production shall not exceed \$15,000,000.

“(B) HIGHER DOLLAR LIMITATION FOR PRODUCTIONS IN CERTAIN AREAS.—In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

“(i) a low-income community under section 45D, or

“(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa-1 of title 7, United States Code,

subparagraph (A) shall be applied by substituting ‘\$20,000,000’ for ‘\$15,000,000’.

“(b) AMORTIZATION OF REMAINING COSTS.—

“(1) IN GENERAL.—If an election is made under subsection (a) with respect to any qualified film or television production, that portion of the basis of such production in excess of the amount taken into account under subsection (a) shall be allowed as a deduction ratably over the 36-month period beginning with the month in which such production is placed in service.

“(2) NO OTHER DEDUCTION OR AMORTIZATION DEDUCTION ALLOWABLE.—With respect to the basis of any qualified film or television production described in paragraph (1), no other depreciation or amortization deduction shall be allowable.

“(c) ELECTION.—

“(1) IN GENERAL.—An election under subsection (a) with respect to any qualified film or television production shall be made in

such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

“(2) REVOCATION OF ELECTION.—Any election made under subsection (a) may not be revoked without the consent of the Secretary.

“(d) QUALIFIED FILM OR TELEVISION PRODUCTION.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified film or television production’ means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

“(2) PRODUCTION.—

“(A) IN GENERAL.—A production is described in this paragraph if such production is property described in section 168(f)(3). For purposes of a television series, only the first 44 episodes of such series may be taken into account.

“(B) EXCEPTION.—A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

“(3) QUALIFIED COMPENSATION.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The term ‘qualified compensation’ means compensation for services performed in the United States by actors, directors, producers, and other relevant production personnel.

“(B) PARTICIPATIONS AND RESIDUALS EXCLUDED.—The term ‘compensation’ does not include participations and residuals (as defined in section 167(g)(7)(B)).

“(e) APPLICATION OF CERTAIN OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

“(f) TERMINATION.—This section shall not apply to qualified film and television productions commencing after December 31, 2008.”.

(b) CONFORMING AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 180 the following new item:

“Sec. 181. Treatment of qualified film and television productions.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act.

#### SEC. 322. MODIFICATION OF APPLICATION OF INCOME FORECAST METHOD OF DEPRECIATION.

(a) IN GENERAL.—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:

“(7) TREATMENT OF PARTICIPATIONS AND RESIDUALS.—

“(A) IN GENERAL.—For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

“(B) PARTICIPATIONS AND RESIDUALS.—For purposes of this paragraph, the term ‘participations and residuals’ means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

“(C) SPECIAL RULES RELATING TO RECOMPUTATION YEARS.—If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting ‘for each taxable year in such period’ for ‘for such period’.

“(D) OTHER SPECIAL RULES.—

“(i) PARTICIPATIONS AND RESIDUALS.—Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

“(ii) COORDINATION WITH OTHER RULES.—Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B) or sections 263, 263A, 404, 419, or 461(h).

“(E) AUTHORITY TO MAKE ADJUSTMENTS.—The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.”.

(b) DETERMINATION OF INCOME.—Section 167(g)(5) (relating to special rules) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and inserting after subparagraph (D) the following new subparagraph:

“(E) TREATMENT OF DISTRIBUTION COSTS.—For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

#### Subtitle C—Manufacturing Relating to Timber

#### SEC. 331. EXPENSING OF CERTAIN REFORESTATION EXPENDITURES.

(a) IN GENERAL.—So much of subsection (b) of section 194 (relating to amortization of reforestation expenditures) as precedes paragraph (2) is amended to read as follows:

“(b) TREATMENT AS EXPENSES.—

“(1) ELECTION TO TREAT CERTAIN REFORESTATION EXPENDITURES AS EXPENSES.—

“(A) IN GENERAL.—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

“(B) DOLLAR LIMITATION.—The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed \$10,000 (\$5,000 in the case of a separate return by a married individual (as defined in section 7703)).”.

(b) NET AMORTIZABLE BASIS.—Section 194(c)(2) (defining amortizable basis) is amended by inserting “which have not been taken into account under subsection (b)” after “expenditures”.

(c) CONFORMING AMENDMENTS.—

(1) Section 194(b) is amended by striking paragraphs (3) and (4).

(2) Section 194(b)(2) is amended by striking “paragraph (1)” both places it appears and inserting “paragraph (1)(B)”.

(3) Section 194(c) is amended by striking paragraph (4) and inserting the following new paragraphs:

“(4) TREATMENT OF TRUSTS AND ESTATES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

“(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary.

“(5) APPLICATION WITH OTHER DEDUCTIONS.—No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.”.

(4) The heading for section 194 is amended by striking “AMORTIZATION” and inserting “TREATMENT”.

(5) The item relating to section 194 in the table of sections for part VI of subchapter B of chapter 1 is amended by striking “Amortization” and inserting “Treatment”.

(d) REPEAL OF REFORESTATION CREDIT.—

(1) IN GENERAL.—Section 46 (relating to amount of credit) is amended—

(A) by adding “and” at the end of paragraph (1),

(B) by striking “, and” at the end of paragraph (2) and inserting a period, and

(C) by striking paragraph (3).

(2) CONFORMING AMENDMENTS.—

(A) Section 48 is amended—

(i) by striking subsection (b),

(ii) by striking “this subsection” in paragraph (5) of subsection (a) and inserting “subsection (a)”, and

(iii) by redesignating such paragraph (5) as subsection (b).

(B) The heading for section 48 is amended by striking “REFORESTATION CREDIT”.

(C) The item relating to section 48 in the table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by striking “, reforestation credit”.

(D) Section 50(c)(3) is amended by striking “or reforestation credit”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to expenditures paid or incurred after the date of the enactment of this Act.

#### SEC. 332. ELECTION TO TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.

Any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether the taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.

#### SEC. 333. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking “retains an economic interest in such timber” and inserting “either retains an economic interest in such timber or makes an outright sale of such timber”.

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 631(b) is amended by striking “The date of disposal” and inserting “In the case of disposal of timber with a retained economic interest, the date of disposal”.

(2) The heading for section 631(b) is amended by striking “WITH A RETAINED ECONOMIC INTEREST”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the date of the enactment of this Act.

**SEC. 334. MODIFICATION OF SAFE HARBOR RULES FOR TIMBER REITS.**

(a) EXPANSION OF PROHIBITED TRANSACTION SAFE HARBOR.—Section 857(b)(6) (relating to income from prohibited transactions) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraph:

“(D) CERTAIN SALES NOT TO CONSTITUTE PROHIBITED TRANSACTIONS.—For purposes of this part, the term ‘prohibited transaction’ does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) if—

“(i) the trust held the property for not less than 4 years in connection with the trade or business of producing timber,

“(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

“(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

“(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

“(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

“(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

“(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

“(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

“(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year,

“(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, and

“(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**TITLE IV—ADDITIONAL PROVISIONS****Subtitle A—Provisions Designed To Curtail Tax Shelters****SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In any case in which a court determines that the economic sub-

stance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction has economic substance only if—

“(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer’s economic position, and

“(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

“(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

“(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

“(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

“(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

“(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party’s economic income or gain, or

“(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

“(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) TAX-INDIFFERENT PARTY.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to

the transaction have no substantial impact on such person’s liability under subtitle A.

“(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

“(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

“(I) depreciation,

“(II) any tax credit, or

“(III) any other deduction as provided in guidance by the Secretary, and

“(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

**SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.**

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

**“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.**

“(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be \$50,000.

“(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be \$100,000.

“(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

“(A) IN GENERAL.—In the case of a failure under subsection (a) by—

“(i) a large entity, or

“(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

“(B) LARGE ENTITY.—For purposes of subparagraph (A), the term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of \$10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term ‘high net worth individual’ means, with respect to a reportable transaction, a natural person whose net worth exceeds \$2,000,000 immediately before the transaction.

“(c) DEFINITIONS.—For purposes of this section—

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

“(d) AUTHORITY TO RESCIND PENALTY.—

“(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

“(A) the violation is with respect to a reportable transaction other than a listed transaction,

“(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

“(C) it is shown that the violation is due to an unintentional mistake of fact;

“(D) imposing the penalty would be against equity and good conscience, and

“(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

“(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner’s sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

“(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

“(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

“(A) the facts and circumstances of the transaction,

“(B) the reasons for the rescission, and

“(C) the amount of the penalty rescinded.

“(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

“(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

“(B) a description of each penalty rescinded under this subsection and the reasons therefor.

“(e) PENALTY REPORTED TO SEC.—In the case of a person—

“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

“(2) which—

“(A) is required to pay a penalty under this section with respect to a listed transaction,

“(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

“(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

“(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.”

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

“Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

**SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.**

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

**“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.**

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

“(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘reportable transaction understatement’ means the sum of—

“(A) the product of—

“(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer’s treatment of such item (as shown on the taxpayer’s return of tax), and

“(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

“(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer’s treatment of an item to which this section applies (as shown on the taxpayer’s return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

“(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

“(A) any listed transaction, and

“(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

“(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

“(1) IN GENERAL.—Subsection (a) shall be applied by substituting ‘30 percent’ for ‘20 percent’ with respect to the portion of any

reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

“(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

“(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel’s delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

“(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(e) SPECIAL RULES.—

“(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

“(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

“(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

“(2) COORDINATION WITH OTHER PENALTIES.—

“(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

“(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

“(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

“(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term ‘noneconomic substance transaction understatement’ has the meaning given such term by section 6662B(c).

“(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).”**

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

“The excess under the preceding sentence shall be determined without regard to items

to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.”.

(C) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

“(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

“(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

“(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

“(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

“(B) there is or was substantial authority for such treatment, and

“(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

“(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

“(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

“(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

“(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

“(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

“(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

“(I) the tax advisor is described in clause (ii), or

“(II) the opinion is described in clause (iii).

“(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

“(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

“(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

“(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

“(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

“(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts, or

“(IV) fails to meet any other requirement as the Secretary may prescribe.”.

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting “FOR UNDERPAYMENTS” after “EXCEPTION”.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking “(as defined in section 6662(d)(2)(C)(iii))” in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

“(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

“(ii) any investment plan or arrangement,

or

“(iii) any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking “this part” and inserting “section 6662 or 6663”.

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(6)(A) The heading for section 6662 is amended to read as follows:

“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.”.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

**SEC. 404. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

“(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

“(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic sub-

stance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

“(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) CROSS REFERENCES.—

“(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

“(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).”.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

**SEC. 405. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NON-REPORTABLE TRANSACTIONS.**

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

“(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

“(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, \$10,000), or

“(ii) \$10,000,000.”.

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

“(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or”.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or

there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 406. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.**

(a) **IN GENERAL.**—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

“(b) **SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.**—The privilege under subsection (a) shall not apply to any written communication which is—

“(1) between a federally authorized tax practitioner and—

“(A) any person,  
“(B) any director, officer, employee, agent, or representative of the person, or

“(C) any other person holding a capital or profits interest in the person, and

“(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

**SEC. 407. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

(a) **IN GENERAL.**—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

**“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

“(a) **IN GENERAL.**—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

“(1) information identifying and describing the transaction,

“(2) information describing any potential tax benefits expected to result from the transaction, and

“(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

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

“(1) **MATERIAL ADVISOR.**—

“(A) **IN GENERAL.**—The term ‘material advisor’ means any person—

“(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

“(ii) who directly or indirectly derives gross income in excess of the threshold amount for such aid, assistance, or advice.

“(B) **THRESHOLD AMOUNT.**—For purposes of subparagraph (A), the threshold amount is—

“(i) \$50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

“(ii) \$250,000 in any other case.

“(2) **REPORTABLE TRANSACTION.**—The term ‘reportable transaction’ has the meaning given to such term by section 6707A(c).

“(c) **REGULATIONS.**—The Secretary may prescribe regulations which provide—

“(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

“(2) exemptions from the requirements of this section, and

“(3) such rules as may be necessary or appropriate to carry out the purposes of this section.”

(b) **CONFORMING AMENDMENTS.**—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

**“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.**

“(a) **IN GENERAL.**—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

“(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

“(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.”

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting “written” before “request” in paragraph (1)(A), and

(ii) by striking “shall prescribe” in paragraph (2) and inserting “may prescribe”.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.”

(3)(A) The heading for section 6708 is amended to read as follows:

**“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.”**

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.”

(c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.**—Subparagraph (A) of section 6112(b)(1), as redesignated by subsection (b)(2)(B), is amended by adding at the end the following new flush sentence:

“For purposes of this section, the identity of any person on such list shall not be privileged.”

(d) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) **NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.**—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

**SEC. 408. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.**

(a) **IN GENERAL.**—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

**“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.**

“(a) **IN GENERAL.**—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

“(1) fails to file such return on or before the date prescribed therefor, or

“(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

“(b) **AMOUNT OF PENALTY.**—

“(1) **IN GENERAL.**—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be \$50,000.

“(2) **LISTED TRANSACTIONS.**—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

“(A) \$200,000, or

“(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting ‘75 percent’ for ‘50 percent’ in the case of an intentional failure or act described in subsection (a).

“(c) **CERTAIN RULES TO APPLY.**—The provisions of section 6707A(d) shall apply to any penalty imposed under this section.

“(d) **REPORTABLE AND LISTED TRANSACTIONS.**—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).”

(b) **CLERICAL AMENDMENT.**—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking “tax shelters” and inserting “reportable transactions”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

**SEC. 409. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.**

(a) **IN GENERAL.**—Subsection (a) of section 6708 is amended to read as follows:

“(a) **IMPOSITION OF PENALTY.**—

“(1) **IN GENERAL.**—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary’s request, such person shall pay a penalty of \$10,000 for each day of such failure after such 20th day.

“(2) **REASONABLE CAUSE EXCEPTION.**—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

**SEC. 410. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.**

(a) **IN GENERAL.**—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

“(a) **AUTHORITY TO SEEK INJUNCTION.**—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at

the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

“(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

“(1) that the person has engaged in any specified conduct, and

“(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

“(c) SPECIFIED CONDUCT.—For purposes of this section, the term ‘specified conduct’ means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.”

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

**“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.”**

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

**SEC. 411. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.**

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking “realistic possibility of being sustained on its merits” in paragraph (1) and inserting “reasonable belief that the tax treatment in such position was more likely than not the proper treatment”,

(2) by striking “or was frivolous” in paragraph (3) and inserting “or there was no reasonable basis for the tax treatment of such position”, and

(3) by striking “UNREALISTIC” in the heading and inserting “IMPROPER”.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking “\$250” in subsection (a) and inserting “\$1,000”, and

(2) by striking “\$1,000” in subsection (b) and inserting “\$5,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

**SEC. 412. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.**

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

“(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

“(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

“(B) AMOUNT OF PENALTY.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$5,000.

“(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

“(I) such violation was due to reasonable cause, and

“(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

“(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

“(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

“(I) \$25,000, or

“(II) the amount (not exceeding \$100,000) determined under subparagraph (D), and

“(ii) subparagraph (B)(i) shall not apply.

“(D) AMOUNT.—The amount determined under this subparagraph is—

“(i) in the case of a violation involving a transaction, the amount of the transaction, or

“(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

**SEC. 413. FRIVOLOUS TAX SUBMISSIONS.**

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

**“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

“(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of \$5,000 if—

“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

“(2) the conduct referred to in paragraph (1)—

“(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(B) reflects a desire to delay or impede the administration of Federal tax laws.

“(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

“(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of \$5,000.

“(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

“(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

“(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

“(ii) reflects a desire to delay or impede the administration of Federal tax laws.

“(B) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

“(i) a request for a hearing under—

“(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(II) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) an application under—

“(I) section 6159 (relating to agreements for payment of tax liability in installments),

“(II) section 7122 (relating to compromises), or

“(III) section 7811 (relating to taxpayer assistance orders).

“(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

“(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

“(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

“(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking “(A)” and inserting “(A)(i)”;

(B) by striking “(B)” and inserting “(ii)”;

(C) by striking the period at the end of the first sentence and inserting “; or”; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

“(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).”

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

(2) in subsection (c), by striking “and (e)” and inserting “(e), and (g)”.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter

68 is amended by striking the item relating to section 6702 and inserting the following new item:

“Sec. 6702. Frivolous tax submissions.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

**SEC. 414. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.**

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting “, or censure,” after “Department”, and

(B) by adding at the end the following new flush sentence:

“The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

“(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”.

**SEC. 415. PENALTY ON PROMOTERS OF TAX SHELTERS.**

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

**SEC. 416. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.**

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

“(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

“(A) the date on which the Secretary is furnished the information so required; or

“(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

**SEC. 417. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.**

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

“(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

“(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

**SEC. 418. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.**

There is authorized to be appropriated \$300,000,000 for each fiscal year beginning after September 30, 2003, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

**Subtitle B—Other Corporate Governance Provisions**

**SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.**

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: “In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.”.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502-20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

**SEC. 422. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.**

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by inserting after the first sentence the following new sentences: “The return of a corporation with respect to income shall also include a declaration signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer), under penalties of perjury, that the chief executive officer ensures that such return complies

with this title and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

**SEC. 423. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.**

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

“(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

“(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION.—Paragraph (1) shall not apply to any amount which the taxpayer establishes constitutes restitution for damage or harm caused by the violation of any law or the potential violation of any law. This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

“(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

“(4) CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—An entity is described in this paragraph if it is—

“(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

“(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after April 27, 2003, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into on or before April 27, 2003. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained on or before April 27, 2003.

**SEC. 424. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.**

(a) DISALLOWANCE OF DEDUCTION.—

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended by adding at the end the following new paragraph:

“(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).”.

(2) CONFORMING AMENDMENTS.—

(A) Section 162(g) is amended—

(i) by striking “If” and inserting:

“(1) TREBLE DAMAGES.—If”, and

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(B) The heading for section 162(g) is amended by inserting "OR PUNITIVE DAMAGES" after "LAWS".

(b) INCLUSION IN INCOME OF PUNITIVE DAMAGES PAID BY INSURER OR OTHERWISE.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 (relating to items specifically included in gross income) is amended by adding at the end the following new section:

**"SEC. 91. PUNITIVE DAMAGES COMPENSATED BY INSURANCE OR OTHERWISE.**

"Gross income shall include any amount paid to or on behalf of a taxpayer as insurance or otherwise by reason of the taxpayer's liability (or agreement) to pay punitive damages."

(2) REPORTING REQUIREMENTS.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

"(f) SECTION TO APPLY TO PUNITIVE DAMAGES COMPENSATION.—This section shall apply to payments by a person to or on behalf of another person as insurance or otherwise by reason of the other person's liability (or agreement) to pay punitive damages."

(3) CONFORMING AMENDMENT.—The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 91. Punitive damages compensated by insurance or otherwise."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages paid or incurred on or after the date of the enactment of this Act.

**SEC. 425. INCREASE IN CRIMINAL MONETARY PENALTY LIMITATION FOR THE UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.**

(a) IN GENERAL.—Section 7206 (relating to fraud and false statements) is amended—

(1) by striking "Any person who—" and inserting "(a) IN GENERAL.—Any person who—", and

(2) by adding at the end the following new subsection:

"(b) INCREASE IN MONETARY LIMITATION FOR UNDERPAYMENT OR OVERPAYMENT OF TAX DUE TO FRAUD.—If any portion of any underpayment (as defined in section 6664(a)) or overpayment (as defined in section 6401(a)) of tax required to be shown on a return is attributable to fraudulent action described in subsection (a), the applicable dollar amount under subsection (a) shall in no event be less than an amount equal to such portion. A rule similar to the rule under section 6663(b) shall apply for purposes of determining the portion so attributable."

(b) INCREASE IN PENALTIES.—

(1) ATTEMPT TO EVADE OR DEFEAT TAX.—Section 7201 is amended—

(A) by striking "\$100,000" and inserting "\$250,000",

(B) by striking "\$500,000" and inserting "\$1,000,000", and

(C) by striking "5 years" and inserting "10 years".

(2) WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.—Section 7203 is amended—

(A) in the first sentence—

(i) by striking "misdemeanor" and inserting "felony", and

(ii) by striking "1 year" and inserting "10 years", and

(B) by striking the third sentence.

(3) FRAUD AND FALSE STATEMENTS.—Section 7206(a) (as redesignated by subsection (a)) is amended—

(A) by striking "\$100,000" and inserting "\$250,000",

(B) by striking "\$500,000" and inserting "\$1,000,000", and

(C) by striking "3 years" and inserting "5 years".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to underpayments and overpayments attributable to actions occurring after the date of the enactment of this Act.

**Subtitle C—Enron-Related Tax Shelter Provisions**

**SEC. 431. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.**

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

"(e) LIMITATIONS ON BUILT-IN LOSSES.—

"(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

"(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

"(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

"(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

"(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

"(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction."

"(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

"(A) IN GENERAL.—If—

"(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

"(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

"(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

"(C) EXCEPTION FOR TRANSFERS WITHIN AFFILIATED GROUP.—Subparagraph (A) shall not apply to any transaction if the transferor owns stock in the transferee meeting the requirements of section 1504(a)(2). In the case of property to which subparagraph (A) does not apply by reason of the preceding sentence, the transferor's basis in the stock received for such property shall not exceed its fair market value immediately after the transfer."

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (re-

lating to liquidation of subsidiary) is amended to read as follows:

"(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

"(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

"(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after February 13, 2003.

**SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.**

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

"(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

"(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to such corporation) which is a partner in the partnership, and

"(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after February 13, 2003.

**SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.**

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking "REMIC, or FASIT" and inserting "or REMIC".

(2) Clause (ii) of section 382(1)(4)(B) is amended by striking "a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies," and inserting "or a REMIC to which part IV of subchapter M applies,".

(3) Paragraph (1) of section 582(c) is amended by striking " , and any regular interest in a FASIT,".

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: "An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result

of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.”.

(B) The last sentence of section 860G(a)(3) is amended by inserting “, and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property” before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding “and” at the end of subparagraph (B), by striking “, and” at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: “For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.”.

(8)(A) Section 860G(a)(3)(A) is amended by striking “or” at the end of clause (i), by inserting “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

“(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

“(II) occurs after the startup day, and

“(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.”.

(B) Section 860G(a)(7)(B) is amended to read as follows:

“(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term ‘qualified reserve fund’ means any reasonably required reserve to—

“(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

“(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).”.

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of paragraph (3)(A).”.

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking “REMIC, or FASIT” and inserting “or REMIC”.

(10) Section 1272(a)(6)(B) is amended by adding at the end the following new flush sentence:

“For purposes of clause (iii), the Secretary shall prescribe regulations permitting the use of a current prepayment assumption, determined as of the close of the accrual period (or such other time as the Secretary may prescribe during the taxable year in which the accrual period ends).”.

(11) Subparagraph (C) of section 7701(a)(19) is amended by adding “and” at the end of

clause (ix), by striking “, and” at the end of clause (x) and inserting a period, and by striking clause (xi).

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on February 14, 2003.

(2) EXCEPTION FOR EXISTING FASITs.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

(B) TRANSFER OF ADDITIONAL ASSETS NOT PERMITTED.—Except as provided in regulations prescribed by the Secretary of the Treasury or the Secretary’s delegate, subparagraph (A) shall cease to apply as of the earliest date after the date of the enactment of this Act that any property is transferred to the FASIT.

**SEC. 434. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.**

(a) IN GENERAL.—Paragraph (2) of section 163(1) is amended by striking “or a related party” and inserting “or equity held by the issuer (or any related party) in any other person”.

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(1) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

“(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.”.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(1), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

“(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term ‘disqualified debt instrument’ does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term ‘dealer in securities’ has the meaning given such term by section 475.”.

(c) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(1) is amended—

(1) by striking “or a related party” in the material preceding subparagraph (A) and inserting “or any other person”, and

(2) by striking “or interest” each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

**SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.**

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade or avoid income tax) is amended to read as follows:

“(a) IN GENERAL.—If—

“(1)(A) any person or persons acquire, directly or indirectly, control of a corporation, or

“(B) any corporation acquires, directly or indirectly, property of another corporation and the basis of such property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and

“(2) the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax,

then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraph (1)(A), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of all shares of all classes of stock of the corporation.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock and property acquired after February 13, 2003.

**SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.**

(a) LIMITATION ON EXCEPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

“Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in only a remote likelihood of an inclusion in gross income under section 951(a)(1)(A)(i).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders with or within which such taxable years of controlled foreign corporations end.

**Subtitle D—Provisions to Discourage Expatriation**

**SEC. 441. TAX TREATMENT OF INVERTED CORPORATE ENTITIES**

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

**“SEC. 7874. RULES RELATING TO INVERTED CORPORATE ENTITIES**

“(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

“(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

“(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

“(A) the entity completes after March 20, 2002, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

“(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

“(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

“(ii) in the case of an acquisition with respect to a domestic partnership, by former

partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

“(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group. Except as provided in regulations, an acquisition of properties of a domestic corporation shall not be treated as described in subparagraph (A) if none of the corporation’s stock was readily tradeable on an established securities market at any time during the 4-year period ending on the date of the acquisition.

“(b) PRESERVATION OF DOMESTIC TAX BASE IN CERTAIN INVERSION TRANSACTIONS TO WHICH SUBSECTION (a) DOES NOT APPLY.—

“(1) IN GENERAL.—If a foreign incorporated entity would be treated as an inverted domestic corporation with respect to an acquired entity if either—

“(A) subsection (a)(2)(A) were applied by substituting ‘after December 31, 1996, and on or before March 20, 2002’ for ‘after March 20, 2002’ and subsection (a)(2)(B) were applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’, or

“(B) subsection (a)(2)(B) were applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’,

then the rules of subsection (c) shall apply to any inversion gain of the acquired entity during the applicable period and the rules of subsection (d) shall apply to any related party transaction of the acquired entity during the applicable period. This subsection shall not apply for any taxable year if subsection (a) applies to such foreign incorporated entity for such taxable year.

“(2) ACQUIRED ENTITY.—For purposes of this section—

“(A) IN GENERAL.—The term ‘acquired entity’ means the domestic corporation or partnership substantially all of the properties of which are directly or indirectly acquired in an acquisition described in subsection (a)(2)(A) to which this subsection applies.

“(B) AGGREGATION RULES.—Any domestic person bearing a relationship described in section 267(b) or 707(b) to an acquired entity shall be treated as an acquired entity with respect to the acquisition described in subparagraph (A).

“(3) APPLICABLE PERIOD.—For purposes of this section—

“(A) IN GENERAL.—The term ‘applicable period’ means the period—

“(i) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(A) to which this subsection applies, and

“(ii) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

“(B) SPECIAL RULE FOR INVERSIONS OCCURRING BEFORE MARCH 21, 2002.—In the case of any acquired entity to which paragraph (1)(A) applies, the applicable period shall be the 10-year period beginning on January 1, 2003.

“(C) TAX ON INVERSION GAINS MAY NOT BE OFFSET.—If subsection (b) applies—

“(1) IN GENERAL.—The taxable income of an acquired entity (or any expanded affiliated group which includes such entity) for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

“(2) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits shall be allowed against the tax imposed by this chapter on an acquired entity for any taxable year described in paragraph (1) only to the extent such tax exceeds the product of—

“(A) the amount of the inversion gain for the taxable year, and

“(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901 inversion gain shall be treated as from sources within the United States.

“(3) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an acquired entity which is a partnership—

“(A) the limitations of this subsection shall apply at the partner rather than the partnership level,

“(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

“(i) the partner’s distributive share of inversion gain of the partnership for such taxable year, plus

“(ii) income or gain required to be recognized for the taxable year by the partner under section 367(a), 741, or 1001, or under any other provision of chapter 1, by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the foreign incorporated entity, and

“(C) the highest rate of tax specified in the rate schedule applicable to the partner under chapter 1 shall be substituted for the rate of tax under paragraph (2)(B).

“(4) INVERSION GAIN.—For purposes of this section, the term ‘inversion gain’ means any income or gain required to be recognized under section 304, 311(b), 367, 1001, or 1248, or under any other provision of chapter 1, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

“(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

“(B) after such acquisition to a foreign related person.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain under subparagraph (B) to the extent the Secretary determines such treatment would not be inconsistent with the purposes of this section.

“(5) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of this section.

“(6) STATUTE OF LIMITATIONS.—

“(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

“(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term ‘pre-inversion year’ means any taxable year if—

“(i) any portion of the applicable period is included in such taxable year, and

“(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(A) is completed.

“(d) SPECIAL RULES APPLICABLE TO ACQUIRED ENTITIES TO WHICH SUBSECTION (b) APPLIES.—

“(1) INCREASES IN ACCURACY-RELATED PENALTIES.—In the case of any underpayment of tax of an acquired entity to which subsection (b) applies—

“(A) section 6662(a) shall be applied with respect to such underpayment by substituting ‘30 percent’ for ‘20 percent’, and

“(B) if such underpayment is attributable to one or more gross valuation understatements, the increase in the rate of penalty under section 6662(h) shall be to 50 percent rather than 40 percent.

“(2) MODIFICATIONS OF LIMITATION ON INTEREST DEDUCTION.—In the case of an acquired entity to which subsection (b) applies, section 163(j) shall be applied—

“(A) without regard to paragraph (2)(A)(ii) thereof, and

“(B) by substituting ‘25 percent’ for ‘50 percent’ each place it appears in paragraph (2)(B) thereof.

“(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) RULES FOR APPLICATION OF SUBSECTION (a)(2).—In applying subsection (a)(2) for purposes of subsections (a) and (b), the following rules shall apply:

“(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (a)(2)(B)—

“(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

“(ii) stock of such entity which is sold in a public offering or private placement related to the acquisition described in subsection (a)(2)(A).

“(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B) are met with respect to such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

“(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

“(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

“(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary—

“(i) to treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock, and

“(ii) to treat stock as not stock.

“(2) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(3) FOREIGN INCORPORATED ENTITY.—The term ‘foreign incorporated entity’ means any entity which is, or but for subsection (a)(1) would be, treated as a foreign corporation for purposes of this title.

“(4) FOREIGN RELATED PERSON.—The term ‘foreign related person’ means, with respect to any acquired entity, a foreign person which—

“(A) bears a relationship to such entity described in section 267(b) or 707(b), or

“(B) is under the same common control (within the meaning of section 482) as such entity.

“(5) SUBSEQUENT ACQUISITIONS BY UNRELATED DOMESTIC CORPORATIONS.—

“(A) IN GENERAL.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly any properties of one or more acquired entities in a transaction with respect to which the requirements of subparagraph (B) are met, this section shall cease to apply to any such acquired entity with respect to which such requirements are met.

“(B) REQUIREMENTS.—The requirements of the subparagraph are met with respect to a transaction involving any acquisition described in subparagraph (A) if—

“(i) before such transaction the domestic corporation did not have a relationship described in section 267(b) or 707(b), and was not under common control (within the meaning of section 482), with the acquired entity, or any member of an expanded affiliated group including such entity, and

“(ii) after such transaction, such acquired entity—

“(I) is a member of the same expanded affiliated group which includes the domestic corporation or has such a relationship or is under such common control with any member of such group, and

“(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which before such acquisition included such entity.

“(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

“(1) the use of related persons, pass-thru or other noncorporate entities, or other intermediaries, or

“(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.”.

(b) INFORMATION REPORTING.—The Secretary of the Treasury shall exercise the Secretary's authority under the Internal Revenue Code of 1986 to require entities involved in transactions to which section 7874 of such Code (as added by subsection (a)) applies to report to the Secretary, shareholders, partners, and such other persons as the Secretary may prescribe such information as is necessary to ensure the proper tax treatment of such transactions.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”.

(d) TRANSITION RULE FOR CERTAIN REGULATED INVESTMENT COMPANIES AND UNIT INVESTMENT TRUSTS.—Notwithstanding section 7874 of the Internal Revenue Code of 1986 (as added by subsection (a)), a regulated investment company, or other pooled fund or trust specified by the Secretary of the Treasury, may elect to recognize gain by reason of section 367(a) of such Code with respect to a transaction under which a foreign incorporated entity is treated as an inverted domestic corporation under section 7874(a) of such Code by reason of an acquisition completed after March 20, 2002, and before January 1, 2004.

**SEC. 442. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.**

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 877 the following new section:

**“SEC. 877A. TAX RESPONSIBILITIES OF EXPATRIATION.**

“(a) GENERAL RULES.—For purposes of this subtitle—

“(1) MARK TO MARKET.—Except as provided in subsections (d) and (f), all property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

“(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

“(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

“(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence.

“(3) EXCLUSION FOR CERTAIN GAIN.—

“(A) IN GENERAL.—The amount which, but for this paragraph, would be includible in the gross income of any individual by reason of this section shall be reduced (but not below zero) by \$600,000. For purposes of this paragraph, allocable expatriation gain taken into account under subsection (f)(2) shall be treated in the same manner as an amount required to be includible in gross income.

“(B) COST-OF-LIVING ADJUSTMENT.—

“(i) IN GENERAL.—In the case of an expatriation date occurring in any calendar year after 2003, the \$600,000 amount under subparagraph (A) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting ‘calendar year 2002’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of \$1,000, such amount shall be rounded to the next lower multiple of \$1,000.

“(4) ELECTION TO CONTINUE TO BE TAXED AS UNITED STATES CITIZEN.—

“(A) IN GENERAL.—If a covered expatriate elects the application of this paragraph—

“(i) this section (other than this paragraph and subsection (i)) shall not apply to the expatriate, but

“(ii) in the case of property to which this section would apply but for such election, the expatriate shall be subject to tax under this title in the same manner as if the individual were a United States citizen.

“(B) REQUIREMENTS.—Subparagraph (A) shall not apply to an individual unless the individual—

“(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary may require,

“(ii) consents to the waiver of any right of the individual under any treaty of the United States which would preclude assessment or collection of any tax which may be imposed by reason of this paragraph, and

“(iii) complies with such other requirements as the Secretary may prescribe.

“(C) ELECTION.—An election under subparagraph (A) shall apply to all property to which this section would apply but for the election and, once made, shall be irrevocable. Such election shall also apply to property the basis of which is determined in whole or in part by reference to the property with respect to which the election was made.

“(b) ELECTION TO DEFER TAX.—

“(1) IN GENERAL.—If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of

subsection (a), the payment of the additional tax attributable to such property shall be postponed until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

“(2) DETERMINATION OF TAX WITH RESPECT TO PROPERTY.—For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

“(3) TERMINATION OF POSTPONEMENT.—No tax may be postponed under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

“(4) SECURITY.—

“(A) IN GENERAL.—No election may be made under paragraph (1) with respect to any property unless adequate security is provided to the Secretary with respect to such property.

“(B) ADEQUATE SECURITY.—For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

“(i) it is a bond in an amount equal to the deferred tax amount under paragraph (2) for the property, or

“(ii) the taxpayer otherwise establishes to the satisfaction of the Secretary that the security is adequate.

“(5) WAIVER OF CERTAIN RIGHTS.—No election may be made under paragraph (1) unless the taxpayer consents to the waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

“(6) ELECTIONS.—An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable. An election may be made under paragraph (1) with respect to an interest in a trust with respect to which gain is required to be recognized under subsection (f)(1).

“(7) INTEREST.—For purposes of section 6601—

“(A) the last date for the payment of tax shall be determined without regard to the election under this subsection, and

“(B) section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(c) COVERED EXPATRIATE.—For purposes of this section—

“(1) IN GENERAL.—Except as provided in paragraph (2), the term ‘covered expatriate’ means an expatriate.

“(2) EXCEPTIONS.—An individual shall not be treated as a covered expatriate if—

“(A) the individual—

“(i) became a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

“(ii) has not been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) during the 5 taxable years ending with the taxable year during which the expatriation date occurs, or

“(B)(i) the individual’s relinquishment of United States citizenship occurs before such individual attains age 18½, and

“(ii) the individual has been a resident of the United States (as so defined) for not more than 5 taxable years before the date of relinquishment.

“(d) EXEMPT PROPERTY; SPECIAL RULES FOR PENSION PLANS.—

“(1) EXEMPT PROPERTY.—This section shall not apply to the following:

“(A) UNITED STATES REAL PROPERTY INTERESTS.—Any United States real property interest (as defined in section 897(c)(1)), other than stock of a United States real property holding corporation which does not, on the day before the expatriation date, meet the requirements of section 897(c)(2).

“(B) SPECIFIED PROPERTY.—Any property or interest in property not described in subparagraph (A) which the Secretary specifies in regulations.

“(2) SPECIAL RULES FOR CERTAIN RETIREMENT PLANS.—

“(A) IN GENERAL.—If a covered expatriate holds on the day before the expatriation date any interest in a retirement plan to which this paragraph applies—

“(i) such interest shall not be treated as sold for purposes of subsection (a)(1), but

“(ii) an amount equal to the present value of the expatriate’s nonforfeitable accrued benefit shall be treated as having been received by such individual on such date as a distribution under the plan.

“(B) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—In the case of any distribution on or after the expatriation date to or on behalf of the covered expatriate from a plan from which the expatriate was treated as receiving a distribution under subparagraph (A), the amount otherwise includible in gross income by reason of the subsequent distribution shall be reduced by the excess of the amount includible in gross income under subparagraph (A) over any portion of such amount to which this subparagraph previously applied.

“(C) TREATMENT OF SUBSEQUENT DISTRIBUTIONS BY PLAN.—For purposes of this title, a retirement plan to which this paragraph applies, and any person acting on the plan’s behalf, shall treat any subsequent distribution described in subparagraph (B) in the same manner as such distribution would be treated without regard to this paragraph.

“(D) APPLICABLE PLANS.—This paragraph shall apply to—

“(i) any qualified retirement plan (as defined in section 4974(c)),

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

“(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

“(e) DEFINITIONS.—For purposes of this section—

“(1) EXPATRIATE.—The term ‘expatriate’ means—

“(A) any United States citizen who relinquishes citizenship, and

“(B) any long-term resident of the United States who—

“(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

“(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) EXPATRIATION DATE.—The term ‘expatriation date’ means—

“(A) the date an individual relinquishes United States citizenship, or

“(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

“(3) RELINQUISHMENT OF CITIZENSHIP.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

“(A) the date the individual renounces such individual’s United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

“(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

“(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

“(D) the date a court of the United States cancels a naturalized citizen’s certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

“(4) LONG-TERM RESIDENT.—The term ‘long-term resident’ has the meaning given to such term by section 877(e)(2).

“(f) SPECIAL RULES APPLICABLE TO BENEFICIARIES’ INTERESTS IN TRUST.—

“(1) IN GENERAL.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

“(A) the individual shall not be treated as having sold such interest,

“(B) such interest shall be treated as a separate share in the trust, and

“(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

“(ii) the separate trust shall be treated as having sold its assets on the day before the expatriation date for their fair market value and as having distributed all of its assets to the individual as of such time, and

“(iii) the individual shall be treated as having recontributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual’s share in the trust.

“(2) SPECIAL RULES FOR INTERESTS IN QUALIFIED TRUSTS.—

“(A) IN GENERAL.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

“(i) paragraph (1) and subsection (a) shall not apply, and

“(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

“(B) AMOUNT OF TAX.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

“(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

“(ii) the balance in the deferred tax account immediately before the distribution determined without regard to any increases

under subparagraph (C)(ii) after the 30th day preceding the distribution.

“(C) DEFERRED TAX ACCOUNT.—For purposes of subparagraph (B)(ii)—

“(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the tax which would have been imposed on the allocable expatriation gain with respect to the trust interest if such gain had been included in gross income under subsection (a).

“(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined (on the balance in the account at the time the interest accrues), for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for such periods, except that section 6621(a)(2) shall be applied by substituting ‘5 percentage points’ for ‘3 percentage points’ in subparagraph (B) thereof.

“(iii) DECREASE FOR TAXES PREVIOUSLY PAID.—The balance in the tax deferred account shall be reduced—

“(I) by the amount of taxes imposed by subparagraph (A) on any distribution to the person holding the trust interest, and

“(II) in the case of a person holding a nonvested interest, to the extent provided in regulations, by the amount of taxes imposed by subparagraph (A) on distributions from the trust with respect to nonvested interests not held by such person.

“(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain with respect to any beneficiary’s interest in a trust is the amount of gain which would be allocable to such beneficiary’s vested and nonvested interests in the trust if the beneficiary held directly all assets allocable to such interests.

“(E) TAX DEDUCTED AND WITHHELD.—

“(i) IN GENERAL.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld by the trustees from the distribution to which it relates.

“(ii) EXCEPTION WHERE FAILURE TO WAIVE TREATY RIGHTS.—If an amount may not be deducted and withheld under clause (i) by reason of the distributee failing to waive any treaty right with respect to such distribution—

“(I) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax, and

“(II) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

“(F) DISPOSITION.—If a trust ceases to be a qualified trust at any time, a covered expatriate disposes of an interest in a qualified trust, or a covered expatriate holding an interest in a qualified trust dies, then, in lieu of the tax imposed by subparagraph (A)(ii), there is hereby imposed a tax equal to the lesser of—

“(i) the tax determined under paragraph (1) as if the day before the expatriation date were the date of such cessation, disposition, or death, whichever is applicable, or

“(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

“(G) DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

“(i) QUALIFIED TRUST.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

“(ii) VESTED INTEREST.—The term ‘vested interest’ means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

“(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

“(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

“(v) COORDINATION WITH RETIREMENT PLAN RULES.—This subsection shall not apply to an interest in a trust which is part of a retirement plan to which subsection (d)(2) applies.

“(3) DETERMINATION OF BENEFICIARIES’ INTEREST IN TRUST.—

“(A) DETERMINATIONS UNDER PARAGRAPH (1).—For purposes of paragraph (1), a beneficiary’s interest in a trust shall be based upon all relevant facts and circumstances, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

“(B) OTHER DETERMINATIONS.—For purposes of this section—

“(i) CONSTRUCTIVE OWNERSHIP.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the trust beneficiaries for purposes of this section.

“(ii) TAXPAYER RETURN POSITION.—A taxpayer shall clearly indicate on its income tax return—

“(I) the methodology used to determine that taxpayer’s trust interest under this section, and

“(II) if the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary’s trust interest under this section.

“(g) TERMINATION OF DEFERRALS, ETC.—In the case of any covered expatriate, notwithstanding any other provision of this title—

“(1) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

“(2) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

“(h) IMPOSITION OF TENTATIVE TAX.—

“(1) IN GENERAL.—If an individual is required to include any amount in gross income under subsection (a) for any taxable year, there is hereby imposed, immediately before the expatriation date, a tax in an amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

“(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

“(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

“(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

“(i) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

“(1) IMPOSITION OF LIEN.—

“(A) IN GENERAL.—If a covered expatriate makes an election under subsection (a)(4) or (b) which results in the deferral of any tax imposed by reason of subsection (a), the deferred amount (including any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

“(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate’s income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

“(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expatriation date and continue until—

“(A) the liability for tax by reason of this section is satisfied or has become unenforceable by reason of lapse of time, or

“(B) it is established to the satisfaction of the Secretary that no further tax liability may arise by reason of this section.

“(3) CERTAIN RULES APPLY.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

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

(b) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102 (relating to gifts, etc. not included in gross income) is amended by adding at the end the following new subsection:

“(d) GIFTS AND INHERITANCES FROM COVERED EXPATRIATES.—

“(1) IN GENERAL.—Subsection (a) shall not exclude from gross income the value of any property acquired by gift, bequest, devise, or inheritance from a covered expatriate after the expatriation date. For purposes of this subsection, any term used in this subsection which is also used in section 877A shall have the same meaning as when used in section 877A.

“(2) EXCEPTIONS FOR TRANSFERS OTHERWISE SUBJECT TO ESTATE OR GIFT TAX.—Paragraph (1) shall not apply to any property if either—

“(A) the gift, bequest, devise, or inheritance is—

“(i) shown on a timely filed return of tax imposed by chapter 12 as a taxable gift by the covered expatriate, or

“(ii) included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed return of tax imposed by chapter 11 of the estate of the covered expatriate, or

“(B) no such return was timely filed but no such return would have been required to be filed even if the covered expatriate were a citizen or long-term resident of the United States.”

(c) DEFINITION OF TERMINATION OF UNITED STATES CITIZENSHIP.—Section 7701(a) is amended by adding at the end the following new paragraph:

“(48) TERMINATION OF UNITED STATES CITIZENSHIP.—

“(A) IN GENERAL.—An individual shall not cease to be treated as a United States citizen before the date on which the individual’s citizenship is treated as relinquished under section 877A(e)(3).

“(B) DUAL CITIZENS.—Under regulations prescribed by the Secretary, subparagraph (A) shall not apply to an individual who became at birth a citizen of the United States and a citizen of another country.”

(d) INELIGIBILITY FOR VISA OR ADMISSION TO UNITED STATES.—

(1) IN GENERAL.—Section 212(a)(10)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

“(E) FORMER CITIZENS NOT IN COMPLIANCE WITH EXPATRIATION REVENUE PROVISIONS.—Any alien who is a former citizen of the United States who relinquishes United States citizenship (within the meaning of section 877A(e)(3) of the Internal Revenue Code of 1986) and who is not in compliance with section 877A of such Code (relating to expatriation).”

(2) AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—Section 6103(1) (relating to disclosure of returns and return information) for purposes other than tax administration) is amended by adding at the end the following new paragraph:

“(19) DISCLOSURE TO DENY VISA OR ADMISSION TO CERTAIN EXPATRIATES.—Upon written request of the Attorney General or the Attorney General’s delegate, the Secretary shall disclose whether an individual is in compliance with section 877A (and if not in compliance, any items of noncompliance) to officers and employees of the Federal agency responsible for administering section 212(a)(10)(E) of the Immigration and Nationality Act solely for the purpose of, and to the extent necessary in, administering such section 212(a)(10)(E).”

(B) SAFEGUARDS.—

(i) TECHNICAL AMENDMENTS.—Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961), is amended by striking “or (17)” after “any other person described in subsection (1)(16)” each place it appears and inserting “or (18)”.

(ii) CONFORMING AMENDMENTS.—Section 6103(p)(4) (relating to safeguards), as amended by clause (i), is amended by striking “or (18)” after “any other person described in subsection (1)(16)” each place it appears and inserting “(18), or (19)”.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to individuals who relinquish United States citizenship on or after the date of the enactment of this Act.

(B) TECHNICAL AMENDMENTS.—The amendments made by paragraph (2)(B)(i) shall take effect as if included in the amendments made by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961).

(e) CONFORMING AMENDMENTS.—

(1) Section 877 is amended by adding at the end the following new subsection:

“(g) APPLICATION.—This section shall not apply to an expatriate (as defined in section 877A(e)) whose expatriation date (as so defined) occurs on or after February 5, 2003.”

(2) Section 2107 is amended by adding at the end the following new subsection:

“(f) APPLICATION.—This section shall not apply to any expatriate subject to section 877A.”

(3) Section 2501(a)(3) is amended by adding at the end the following new subparagraph:

“(F) APPLICATION.—This paragraph shall not apply to any expatriate subject to section 877A.”

(4)(A) Paragraph (1) of section 6039G(d) is amended by inserting “or 877A” after “section 877”.

(B) The second sentence of section 6039G(e) is amended by inserting “or who relinquishes

United States citizenship (within the meaning of section 877A(e)(3)) after “877(a)”.

(C) Section 6039G(f) is amended by inserting “or 877A(e)(2)(B)” after “877(e)(1)”.

(f) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter N of chapter 1 is amended by inserting after the item relating to section 877 the following new item:

“Sec. 877A. Tax responsibilities of expatriation.”.

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to expatriates (within the meaning of section 877A(e) of the Internal Revenue Code of 1986, as added by this section) whose expatriation date (as so defined) occurs on or after February 5, 2003.

(2) GIFTS AND BEQUESTS.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to gifts and bequests received on or after February 5, 2003, from an individual or the estate of an individual whose expatriation date (as so defined) occurs after such date.

(3) DUE DATE FOR TENTATIVE TAX.—The due date under section 877A(h)(2) of the Internal Revenue Code of 1986, as added by this section, shall in no event occur before the 90th day after the date of the enactment of this Act.

**SEC. 443. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.**

(a) IN GENERAL.—Subtitle D is amended by adding at the end the following new chapter: **“CHAPTER 48—STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

**“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN INVERTED CORPORATIONS.**

“(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any inverted corporation, there is hereby imposed on such person a tax equal to 20 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual’s family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the inversion date.

“(b) VALUE.—For purposes of subsection (a)—

“(1) IN GENERAL.—The value of specified stock compensation shall be—

“(A) in the case of a stock option (or other similar right) or any stock appreciation right, the fair value of such option or right, and

“(B) in any other case, the fair market value of such compensation.

“(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

“(A) in the case of specified stock compensation held on the inversion date, on such date,

“(B) in the case of such compensation which is canceled during the 6 months before the inversion date, on the day before such cancellation, and

“(C) in the case of such compensation which is granted after the inversion date, on the date such compensation is granted.

“(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an inverted corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(A) (determined by

substituting ‘July 10, 2002’ for ‘March 20, 2002’ with respect to such corporation.

“(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

“(1) any stock option which is exercised on the inversion date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the inversion date with respect to the stock acquired pursuant to such exercise, and

“(2) any specified stock compensation which is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which gain or loss is recognized in full.

“(e) DEFINITIONS.—For purposes of this section—

“(1) DISQUALIFIED INDIVIDUAL.—The term ‘disqualified individual’ means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the inversion date—

“(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

“(B) would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

“(2) INVERTED CORPORATION; INVERSION DATE.—

“(A) INVERTED CORPORATION.—The term ‘inverted corporation’ means any corporation to which subsection (a) or (b) of section 7874 applies determined—

“(i) by substituting ‘July 10, 2002’ for ‘March 20, 2002’ in section 7874(a)(2)(A), and

“(ii) without regard to subsection (b)(1)(A).

Such term includes any predecessor or successor of such a corporation.

“(B) INVERSION DATE.—The term ‘inversion date’ means, with respect to a corporation, the date on which the corporation first becomes an inverted corporation.

“(3) SPECIFIED STOCK COMPENSATION.—

“(A) IN GENERAL.—The term ‘specified stock compensation’ means payment (or right to payment) granted by the inverted corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

“(B) EXCEPTIONS.—Such term shall not include—

“(i) any option to which part II of subchapter D of chapter 1 applies, or

“(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

“(4) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group (as defined in section 1504(a)) without regard to section 1504(b)(3); except that section 1504(a) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(f) SPECIAL RULES.—For purposes of this section—

“(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

“(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the inverted corporation or by any member of the expanded affiliated group which includes such corporation—

“(A) shall be treated as specified stock compensation, and

“(B) shall not be allowed as a deduction under any provision of chapter 1.

“(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

“(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

“(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

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

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting “48,” after “46.”.

(2) \$1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

“(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 5000A directly or indirectly by the inverted corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.”.

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period “or to any specified stock compensation (as defined in section 5000A) on which tax is imposed by section 5000A”.

(2) The table of chapters for subtitle D is amended by adding at the end the following new item:

“Chapter 48. Stock compensation of insiders in inverted corporations.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 11, 2002; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 5000A of the Internal Revenue Code of 1986, as added by this section.

**SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.**

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking “source and character” and inserting “amount, source, or character”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

**SEC. 445. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.**

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

**“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

“(a) IN GENERAL.—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

“(1) a description of the acquisition,

“(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

“(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

“(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

“(b) **NOMINEE REPORTING.**—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

“(c) **TAXABLE ACQUISITION.**—For purposes of this section, the term ‘taxable acquisition’ means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

“(d) **STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.**—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

“(1) the name, address, and phone number of the information contact of the person required to make such return,

“(2) the information required to be shown on such return with respect to such shareholder, and

“(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.”

(b) **ASSESSABLE PENALTIES.**—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xvii) as clauses (iii) through (xviii), respectively, and by inserting after clause (i) the following new clause:

“(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions).”

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (AA) as subparagraphs (G) through (BB), respectively, and by inserting after subparagraph (E) the following new subparagraph:

“(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).”

(c) **CLERICAL AMENDMENT.**—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

#### Subtitle E—International Tax

#### SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) **IN GENERAL.**—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

“(A) obligations of the United States, money, or deposits with—

“(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

“(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

#### SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) **IN GENERAL.**—Section 332 is amended by adding at the end the following new subsection:

“(d) **RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.**—

“(1) **IN GENERAL.**—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

“(A) subsection (a) and section 331 shall not apply to such distribution, and

“(B) such distribution shall be treated as a distribution to which section 301 applies.

“(2) **APPLICABLE HOLDING COMPANY.**—For purposes of this subsection—

“(A) **IN GENERAL.**—The term ‘applicable holding company’ means any domestic corporation—

“(i) which is a common parent of an affiliated group,

“(ii) stock of which is directly owned by the distributee foreign corporation,

“(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

“(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

“(B) **AFFILIATED GROUP.**—For purposes of this subsection, the term ‘affiliated group’ has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

“(3) **COORDINATION WITH SUBPART F.**—If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

“(4) **REGULATIONS.**—The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act.

#### SEC. 453. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) **ORIGINAL ISSUE DISCOUNT.**—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) **SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.**—

“(i) **IN GENERAL.**—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957),

or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is included during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

“(ii) **SECRETARIAL AUTHORITY.**—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.”

(b) **INTEREST AND OTHER DEDUCTIBLE AMOUNTS.**—Section 267(a)(3) is amended—

(1) by striking “The Secretary” and inserting:

“(A) **IN GENERAL.**—The Secretary”, and

(2) by adding at the end the following new subparagraph:

“(B) **SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.**—

“(i) **IN GENERAL.**—Notwithstanding subparagraph (A), in the case of any amount payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent such amount is included during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

“(ii) **SECRETARIAL AUTHORITY.**—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

#### SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) **IN GENERAL.**—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

“Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

#### SEC. 455. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.

(a) **IN GENERAL.**—Section 904(f)(3) (relating to dispositions) is amended by adding at the end the following new subparagraph:

“(D) **APPLICATION TO DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATIONS.**—In the case of any disposition by a taxpayer of any share of stock in a controlled foreign corporation (as defined in section 957), this paragraph shall apply to such disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

**SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.**

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

“(1) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

“(1) IN GENERAL.—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

“(A) such property is held by the recipient of the item for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

“(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

“(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

“(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term ‘qualified tax’ means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

“(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

“(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

“(C) DEALER.—For purposes of subparagraph (A), the term ‘dealer’ means—

“(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

“(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

“(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

“(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

“(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

“(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.”

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting “ON DIVIDENDS” after “TAXES”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

**Subtitle F—Other Revenue Provisions  
PART I—FINANCIAL INSTRUMENTS**

**SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.**

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.”

(b) CROSS REFERENCE.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

“(7) CROSS REFERENCE.—

“**For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).**”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

**SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERSHIPS AND S CORPORATIONS.**

(a) IN GENERAL.—Section 168(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

“(A) IN GENERAL.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

“(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

“(i) the corporation’s allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

“(ii) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation’s allocable share of such interest expense.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 463. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.**

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

“(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

“(A) a debtor corporation transfers stock, or

“(B) a debtor partnership transfers a capital or profits interest in such partnership, to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of

money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

**SEC. 464. MODIFICATION OF STRADDLE RULES.**

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

“(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

“(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

“(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

“(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.”

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

“(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and”, and

(B) by adding at the end the following new flush sentence:

“The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.”

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.”

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

“(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is

part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

“(A) terminated the position for its fair market value immediately before the settlement, and

“(B) sold the property so delivered by the taxpayer at its fair market value.”.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Section 1092(d)(3) is repealed.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking “; except that the term ‘personal property’ shall include stock”.

(d) REPEAL OF QUALIFIED COVERED CALL EXCEPTION.—Section 1092(c)(4) is amended by adding at the end the following new subparagraph:

“(I) TERMINATION.—This paragraph shall not apply to any position established on or after the date of the enactment of this subparagraph.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

**SEC. 465. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADEABLE DEBT.**

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradeable) is amended by striking “is issued by a corporation or a government or political subdivision thereof and”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

**PART II—CORPORATIONS AND PARTNERSHIPS**

**SEC. 466. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.**

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: “In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.”.

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting “with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355” after “section 368(a)(1)(D)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

**SEC. 467. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.**

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: “Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

**SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.**

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking “possessing—” and all that follows through “(B)” and inserting “possessing”.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

“(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

“(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

“(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

“(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

“(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.”

“(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP DISTRIBUTIONS AND TRANSFERS OF PARTNERSHIP INTERESTS.**

(a) IN GENERAL.—Section 754 is repealed.

(b) ADJUSTMENT TO BASIS OF UNDISTRICTED PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking “, with respect to which the election provided in section 754 is in effect,” in the matter preceding paragraph (1) of subsection (b),

(2) by striking “(as adjusted by section 732(d))” both places it appears in subsection (b),

(3) by striking the last sentence of subsection (b),

(4) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively, and

(5) by striking “OPTIONAL” in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 743 is amended—

(1) by striking “with respect to which the election provided in section 754 is in effect” in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively,

(3) by adding at the end the following new subsection:

“(c) ELECTION TO ADJUST BASIS FOR TRANSFERS UPON DEATH OF PARTNER.—Subsection (a) shall not apply and no adjustments shall be made in the case of any transfer of an interest in a partnership upon the death of a partner unless an election to do so is made by the partnership. Such an election shall

apply with respect to all such transfers of interests in the partnership. Any election under section 754 in effect on the date of the enactment of this subsection shall constitute an election made under this subsection. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.”, and

(4) by striking “OPTIONAL” in the heading.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking “section 734(b) (relating to the optional adjustment)” and inserting “section 734(a) (relating to the adjustment)”, and

(B) by striking “section 743(b) (relating to the optional adjustment)” and inserting “section 743(a) (relating to the adjustment)”.

(3) Section 761(e)(2) is amended by striking “optional”.

(4) Section 774(a) is amended by striking “743(b)” both places it appears and inserting “743(a)”.

(5) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking “Optional”.

(6) The item relating to section 743 in the table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking “Optional”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transfers and distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b)(2) and (d)(1) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

**PART III—DEPRECIATION AND AMORTIZATION**

**SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.**

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

**SEC. 472. SERVICE CONTRACTS TREATED IN SAME MANNER AS LEASES FOR RULES RELATING TO TAX-EXEMPT USE PROPERTY.**

(a) IN GENERAL.—Section 168(h)(7) (defining lease) is amended by adding at the end the

following: "Such term shall also include any service contract or other similar arrangement."

(b) LEASE TERM.—Section 168(i)(3) (relating to lease term) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR SERVICE CONTRACTS.—In the case of any service contract or other similar arrangement treated as a lease under subsection (h)(7), the lease term shall be determined in the same manner as a lease."

(c) CONFORMING AMENDMENTS.—Section 168(g)(3)(A) is amended—

(1) by inserting "(as defined in subsection (h)(7))" after "lease" the first place it appears, and

(2) by inserting "(as determined under subsection (i)(3))" after "term".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to leases and service contracts or other similar arrangements entered into after the date of the enactment of this Act.

#### SEC. 473. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause: "(iv) initial clearing and grading land improvements with respect to gas utility property."

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

"(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant."

(c) CONFORMING AMENDMENTS.—The table contained in section 168(g)(3)(B) is amended—

(1) by inserting "or (E)(iv)" after "(E)(iii)", and

(2) by adding at the end the following new item:

"(F) ..... 25".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

#### SEC. 474. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.

(a) IN GENERAL.—Section 179(b) (relating to limitations) is amended by adding at the end the following new paragraph:

"(G) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

"(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed \$25,000.

"(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'sport utility vehicle' means any 4-wheeled vehicle which—

"(I) is manufactured primarily for use on public streets, roads, and highways,

"(II) is not subject to section 280F, and

"(III) is rated at not more than 14,000 pounds gross vehicle weight.

"(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

"(I) does not have the primary load carrying device or container attached,

"(II) has a seating capacity of more than 12 individuals,

"(III) is designed for more than 9 individuals in seating rearward of the driver's seat,

"(IV) is equipped with an open cargo area, or a covered box not readily accessible from

the passenger compartment, of at least 72.0 inches in interior length, or

"(V) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

#### SEC. 475. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

"(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

"(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

"(i) the amount of start-up expenditures with respect to the active trade or business, or

"(ii) \$5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed \$50,000, and

"(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking "AMORTIZE" and inserting "DEDUCT" in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

"(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

"(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

"(A) the amount of organizational expenditures with respect to the taxpayer, or

"(B) \$5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed \$50,000, and

"(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business."

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

"(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenses—

"(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

"(i) the amount of organizational expenses with respect to the partnership, or

"(ii) \$5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed \$50,000, and

"(B) the remainder of such organizational expenses shall be allowed as a deduction rat-

ably over the 180-month period beginning with the month in which the partnership begins business.

"(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking "AMORTIZATION" and inserting "DEDUCTION" in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

#### SEC. 476. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new section:

#### "SEC. 470. DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

"(a) GENERAL RULE.—The aggregate amount of deductions otherwise allowable to the taxpayer with respect to tax-exempt use property for any taxable year shall not exceed the aggregate amount of income includible in gross income of the taxpayer for the taxable year with respect to such property.

"(b) DISALLOWED DEDUCTION CARRIED TO NEXT YEAR.—Except as otherwise provided in this section, any deduction with respect to any tax-exempt use property which is disallowed under subsection (a) shall, subject to the limitation under subsection (a), be treated as a deduction with respect to such property in the next taxable year.

"(c) TAX-EXEMPT USE PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'tax-exempt use property' has the meaning given such term by section 168(h), except that such section shall be applied without regard to paragraphs (2)(C)(ii) and (3).

"(2) SPECIAL RULES FOR SERVICE CONTRACTS AND SIMILAR ARRANGEMENTS.—If tangible property is subject to a service contract or other similar arrangement between a taxpayer (or any related person) and any tax-exempt entity, such contract or arrangement shall be treated in the same manner as if it were a lease for purposes of determining whether such property is tax-exempt use property under paragraph (1).

"(d) SPECIAL RULES.—

"(1) ALLOCABLE DEDUCTIONS.—Subsection (a) shall apply to—

"(A) any deduction directly allocable to any tax-exempt use property, and

"(B) a proper share of other deductions that are not directly allocable to such property.

"(2) PROPERTY CEASING TO BE TAX-EXEMPT USE PROPERTY.—If property of a taxpayer ceases to be tax-exempt use property in the hands of the taxpayer—

"(A) any unused deduction allocable to such property under subsection (b) shall only be allowable as a deduction for any taxable year to the extent of any net income of the taxpayer allocable to such property, and

"(B) any portion of such unused deduction remaining after application of subparagraph (A) shall, subject to the limitation of subparagraph (A), be treated as a deduction allocable to such property in the next taxable year.

“(3) DISPOSITION OF ENTIRE INTEREST IN PROPERTY.—If during the taxable year a taxpayer disposes of the taxpayer’s entire interest in tax-exempt use property, rules similar to the rules of section 469(g) shall apply for purposes of this section.

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

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

“Sec. 470. Deductions allocable to property used by governments or other tax-exempt entities.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to leases and service contracts or similar arrangements entered into after the date of the enactment of this Act.

#### PART IV—ADMINISTRATIVE PROVISIONS

##### SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: “The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

##### SEC. 482. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking “December 31, 2004” and inserting “September 30, 2013”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

##### SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) GENERAL RULE.—If—

(1) a taxpayer eligible to participate in—

(A) the Department of the Treasury’s Offshore Voluntary Compliance Initiative, or

(B) the Department of the Treasury’s voluntary disclosure initiative which applies to the taxpayer by reason of the taxpayer’s underreporting of United States income tax liability through financial arrangements which rely on the use of offshore arrangements which were the subject of the initiative described in subparagraph (A), and

(2) any interest or applicable penalty is imposed with respect to any arrangement to which any initiative described in paragraph (1) applied or to any underpayment of Federal income tax attributable to items arising in connection with any arrangement described in paragraph (1),

then, notwithstanding any other provision of law, the amount of such interest or penalty shall be equal to twice that determined without regard to this section.

(b) DEFINITIONS AND RULES.—For purposes of this section—

(1) APPLICABLE PENALTY.—The term “applicable penalty” means any penalty, addition to tax, or fine imposed under chapter 68 of the Internal Revenue Code of 1986.

(2) VOLUNTARY OFFSHORE COMPLIANCE INITIATIVE.—The term “Voluntary Offshore Compliance Initiative” means the program established by the Department of the Treasury in January of 2003 under which any taxpayer was eligible to voluntarily disclose previously undisclosed income on assets

placed in offshore accounts and accessed through credit card and other financial arrangements.

(3) PARTICIPATION.—A taxpayer shall be treated as having participated in the Voluntary Offshore Compliance Initiative if the taxpayer submitted the request in a timely manner and all information requested by the Secretary of the Treasury or his delegate within a reasonable period of time following the request.

(c) EFFECTIVE DATE.—The provisions of this section shall apply to interest, penalties, additions to tax, and fines with respect to any taxable year if as of the date of the enactment of this Act, the assessment of any tax, penalty, or interest with respect to such taxable year is not prevented by the operation of any law or rule of law.

##### SEC. 484. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking “satisfy liability for payment of” and inserting “make payment on”, and

(B) by inserting “full or partial” after “facilitate”.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting “full” before “payment”.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159, as amended by this Act, is amended by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively, and inserting after subsection (c) the following new subsection:

“(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

##### SEC. 485. EXTENSION OF CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking “March 31, 2004” and inserting “September 30, 2013”.

##### SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

##### “SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

“(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

“(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

“(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment

of tax) which the taxpayer requests in writing.

“(d) PAYMENT OF INTEREST.—

“(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

“(2) DISPUTABLE TAX.—

“(A) IN GENERAL.—For purposes of this section, the term ‘disputable tax’ means the amount of tax specified at the time of the deposit as the taxpayer’s reasonable estimate of the maximum amount of any tax attributable to disputable items.

“(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

“(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

“(A) DISPUTABLE ITEM.—The term ‘disputable item’ means any item of income, gain, loss, deduction, or credit if the taxpayer—

“(i) has a reasonable basis for its treatment of such item, and

“(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer’s treatment of such item.

“(B) 30-DAY LETTER.—The term ‘30-day letter’ means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

“(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

“(e) USE OF DEPOSITS.—

“(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

“(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.”.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

“Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84-58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

##### SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

##### “SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

“(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

“(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term ‘qualified tax collection contract’ means any contract which—

“(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

“(A) to locate and contact any taxpayer specified by the Secretary,

“(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 3 years, and

“(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

“(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

“(3) prohibits subcontractors from—

“(A) having contacts with taxpayers,

“(B) providing quality assurance services, and

“(C) composing debt collection notices, and

“(4) permits subcontractors to perform other services only with the approval of the Secretary.

“(c) FEES.—The Secretary may retain and use an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

“(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

“(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

“(f) CROSS REFERENCES.—

“(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

“(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).”

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting “6306,” before “7651”.

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

**“SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.**

“(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any

person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

“(b) MODIFICATIONS.—For purposes of subsection (a)—

“(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

“(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

“(3) Such civil action shall not be an exclusive remedy with respect to such person.

“(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.”

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

“Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.”

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

“(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.”

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

“(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b)) of the Internal Revenue Code of 1986 if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.”

(e) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

## PART V—MISCELLANEOUS PROVISIONS

### SEC. 491. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

“(I) Any vaccine against hepatitis A.”

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking “October 18, 2000” and inserting “May 8, 2003”.

(c) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by this section shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

### SEC. 492. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

“(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

### SEC. 493. CLARIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 501(c)(15)(A) is amended to read as follows:

“(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

“(i) the gross receipts for the taxable year do not exceed \$600,000, and

“(ii) more than 50 percent of such gross receipts consist of premiums.”

(b) CONTROLLED GROUP RULE.—Section 501(c)(15)(C) is amended by inserting “, except that in applying section 1563 for purposes of section 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded” before the period at the end.

(c) CONFORMING AMENDMENT.—Clause (i) of section 831(b)(2)(A) is amended by striking “exceed \$350,000 but”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

### SEC. 494. DEFINITION OF INSURANCE COMPANY FOR SECTION 831.

(a) IN GENERAL.—Section 831 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) INSURANCE COMPANY DEFINED.—For purposes of this section, the term ‘insurance company’ has the meaning given to such term by section 816(a).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

### SEC. 495. LIMITATIONS ON DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) DEDUCTION ALLOWED ONLY TO THE EXTENT OF BASIS.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking “or” at the end of clause (i), by adding “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) of any patent, copyright, trademark, trade name, trade secret, know-how, software, or similar property, or applications or registrations of such property.”

(b) TREATMENT OF CONTRIBUTIONS WHERE DONOR RECEIVES INTEREST.—Section 170(e) is amended by adding at the end the following new paragraph:

“(7) SPECIAL RULES FOR CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY WHERE DONOR RECEIVES INTEREST.—

“(A) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed under this section

with respect to a contribution of property described in paragraph (1)(B)(iii) if the taxpayer after the contribution has any interest in the property other than a qualified interest.

“(B) CONTRIBUTIONS WITH QUALIFIED INTEREST.—If a taxpayer after a contribution of property described in paragraph (1)(B)(iii) has a qualified interest in the property—

“(i) any payment pursuant to the qualified interest shall be treated as ordinary income and shall be includible in gross income of the taxpayer for the taxable year in which the payment is received by the taxpayer, and

“(ii) subsection (f)(3) and section 1011(b) shall not apply to the transfer of the property from the taxpayer to the donee.

“(C) QUALIFIED INTEREST.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘qualified interest’ means, with respect to any taxpayer, a right to receive from the donee a percentage (not greater than 50 percent) of any royalty payment received by the donee with respect to property described in paragraph (1)(B)(iii) (other than copyrights which are described in section 1221(a)(3) or 1231(b)(1)(C)) contributed by the taxpayer to the donee.

“(ii) SECRETARIAL AUTHORITY.—

“(I) IN GENERAL.—Except as provided in subclause (II), the Secretary may by regulation or other administrative guidance treat as a qualified interest the right to receive other payments from the donee, but only if the donee does not possess a right to receive any payment (whether royalties or otherwise) from a third party with respect to the contributed property.

“(II) EXCEPTIONS.—The Secretary may not treat as a qualified interest the right to receive any payment which provides a benefit to the donor which is greater than the benefit retained by the donee or the right to receive any portion of the proceeds from the sale of the property contributed.

“(iii) LIMITATION.—An interest shall be treated as a qualified interest under this subparagraph only if the taxpayer has no right to receive any payment described in clause (i) or (ii)(I) after the earlier of the date on which the legal life of the contributed property expires or the date which is 20 years after the date of the contribution.”

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6050L(a) (relating to returns regarding certain dispositions of donated property) is amended—

(A) by striking “If” and inserting:

“(1) DISPOSITIONS OF DONATED PROPERTY.—If”

(B) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and

(C) by adding at the end the following new paragraph:

“(2) PAYMENTS OF QUALIFIED INTERESTS.—Each donee of property described in section 170(e)(1)(B)(iii) which makes a payment to a donor pursuant to a qualified interest (as defined in section 170(e)(7)) during any calendar year shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

“(A) the name, address, and TIN of the payor and the payee with respect to such a payment,

“(B) a description, and date of contribution, of the property to which the qualified interest relates,

“(C) the dates and amounts of any royalty payments received by the donee with respect to such property,

“(D) the date and the amount of the payment pursuant to the qualified interest, and

“(E) a description of the terms of the qualified interest.”

(2) CONFORMING AMENDMENTS.—

(A) The heading for section 6050L is amended by striking “CERTAIN DISPOSITIONS OF”.

(B) The item relating to section 6050L in the table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking “certain dispositions of”.

(d) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other administrative guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after October 1, 2003.

**SEC. 496. REPEAL OF 10-PERCENT REHABILITATION TAX CREDIT.**

Section 47 is amended by adding at the end the following new subsection:

“(e) TERMINATION.—This section shall not apply to expenditures described in subsection (a)(1) incurred in taxable years beginning after December 31, 2003.”

**SEC. 497. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.**

(a) IN GENERAL.—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking “age 14” and inserting “age 18”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

**SA 3133.** Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 59, line 13, insert “section 453(a) of” after “by”.

On page 60, line 3, insert “section 453(a) of” after “by”.

On page 68, strike lines 10 through 14, and insert the following:

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(2) SUBSECTION (c)(29).—The amendments made by subsection (c)(29) shall apply to disclosures of return or return information with respect to taxable years beginning after December 31, 2004.

On page 98, line 3, strike “September 24, 2004” and insert “December 31, 2004”.

On page 98, between lines 3 and 4, insert the following:

**SECTION 237. INTEREST PAYMENTS DEDUCTIBLE WHERE DISQUALIFIED GUARANTEE HAS NO ECONOMIC EFFECT.**

(a) IN GENERAL.—Section 163(j)(6)(D)(ii) (relating to exceptions to disqualified guarantee) is amended—

(1) by striking “or” at the end of subclause (I),

(2) by striking the period at the end of subclause (II) and inserting “, or”,

(3) by inserting after subclause (II) the following new subclause:

“(III) in the case of a guarantee by a foreign person, to the extent of the amount that the taxpayer establishes to the satisfaction of the Secretary that the taxpayer could have borrowed from an unrelated person without the guarantee.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to guarantees issued on or after the date of the enactment of this Act.

On page 125, line 25, strike “December 31, 2003” and insert “the date which is 30 days after the date of the enactment of this Act”.

Beginning on page 135, line 17, strike all through page 136, line 2, and insert the following:

“(i) which is—

“(I) described in section 501(c)(3) or 501(c)(6) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct research, or

“(II) organized and operated primarily to conduct research in the public interest (within the meaning of section 501(c)(3)),

On page 137, lines 18 and 19, strike “which is energy research”.

On page 139, lines 9 and 10, strike “Energy Tax Incentives Act of 2003” and insert “Jumpstart Our Business Strength (JOBS) Act”.

On page 14, line 18, of Senate amendment number 3118, as passed, strike “2” and insert “3”.

On page 14, line 21, of Senate amendment number 3118, as passed, insert “for such taxable year” after “United States”.

Beginning on page 212, line 9, strike all through page 213, line 3, and insert the following:

(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking “If” and inserting:

“(1) TREBLE DAMAGES.—If”, and

(C) by adding at the end the following new paragraph:

“(2) PUNITIVE DAMAGES.—No deduction shall be allowed under this chapter for any amount paid or incurred for punitive damages in connection with any judgment in, or settlement of, any action. This paragraph shall not apply to punitive damages described in section 104(c).”

(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting “OR PUNITIVE DAMAGES” after “LAWS”.

On page 225, line 14, strike “paragraph (3)(A)” and insert “this subparagraph”.

On page 228, line 1, strike “(c)” and insert “(d)”.

On page 228, line 8, strike “(d)” and insert “(e)”.

On page 230, line 17, add a period at the end.

On page 245, strike lines 5 through 7, and insert the following:

(1) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

On page 286, strike lines 6 through 10, and insert the following:

(1) Subparagraph (B) of section 6724(d)(1) (defining information return) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

On page 286, strike lines 14 through 18, and insert the following:

(2) Paragraph (2) of section 6724(d) (relating to definitions) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

On page 301, line 7, strike “168(j)” and insert “163(j)”.

On page 311, line 10, insert beginning double quotation marks before the beginning single quotation mark.

On page 311, line 14, insert beginning double quotation marks before the beginning single quotation mark.

On page 311, line 19, insert beginning double quotation marks before the beginning single quotation mark.

On page 345, strike lines 13 through 19, and insert the following:

“(C) FEES AND EXPENSES.—The Secretary may retain and use—

“(1) an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract, and

“(2) an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service.

The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

On page 346, between lines 4 and 5, insert the following:

“(f) APPLICATION OF SECTION.—In no event may the term of any qualified tax collection contract extend beyond the date which is 5 years after the date of the enactment of this section.

On page 346, line 5, strike “(f)” and insert “(g)”.

On page 349, between lines 11 and 12, insert the following:

(e) BIENNIAL REPORT.—The Secretary of the Treasury shall biennially submit (beginning in 2005) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with respect to qualified tax collection contracts under section 6306 of the Internal Revenue Code of 1986 (as added by this section) which includes—

(1) a complete cost benefit analysis,

(2) the impact of such contracts on collection enforcement staff levels in the Internal Revenue Service,

(3) the amounts collected and the collection costs incurred (directly and indirectly),

(4) an evaluation of contractor performance,

(5) a disclosure safeguard report in a form similar to that required under section 6103(p)(5) of such Code, and

(6) a measurement plan which includes a comparison of the best practices used by the private collectors with the Internal Revenue Service’s own collection techniques and mechanisms to identify and capture information on successful collection techniques used by the contractors which could be adopted by the Internal Revenue Service.

On page 349, line 12, strike “(e)” and insert “(f)”.

Beginning on page 349, line 15, strike all through page 353, line 24, and insert the following:

#### SEC. 488. WHISTLEBLOWER REFORMS.

(a) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

(1) by striking “The Secretary” and inserting “(a) IN GENERAL.—The Secretary”,

(2) by striking “and” at the end of paragraph (1) and inserting “or”,

(3) by striking “(other than interest)”, and

(4) by adding at the end the following new subsections:

“(b) AWARDS TO WHISTLEBLOWERS.—

“(1) IN GENERAL.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary’s attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

“(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION.—

“(A) IN GENERAL.—In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual’s information and the role of such individual and any legal representative of such individual in contributing to such action.

“(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

“(3) APPEAL OF AWARD DETERMINATION.—Any determination regarding an award under paragraph (1) or (2) shall be subject to the filing by the individual described in such paragraph of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute) and such review shall be subject to the rules under section 7461(b)(1).

“(4) APPLICATION OF THIS SUBSECTION.—This subsection shall apply with respect to any action—

“(A) against any taxpayer, but in the case of any individual, only if such individual’s gross income exceeds \$200,000 for any taxable year subject to such action, and

“(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed \$20,000.

“(5) ADDITIONAL RULES.—

“(A) NO CONTRACT NECESSARY.—No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

“(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented by counsel.

“(C) AWARD NOT SUBJECT TO INDIVIDUAL ALTERNATIVE MINIMUM TAX.—No award received under this subsection shall be included in

gross income for purposes of determining alternative minimum taxable income.

“(c) WHISTLEBLOWER OFFICE.—

“(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the ‘Whistleblower Office’ which—

“(A) shall analyze information received from any individual described in subsection (b) and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office,

“(B) shall monitor any action taken with respect to such matter,

“(C) shall inform such individual that it has accepted the individual’s information for further review,

“(D) may require such individual and any legal representative of such individual to not disclose any information so provided,

“(E) may ask for additional assistance from such individual or any legal representative of such individual, and

“(F) shall determine the amount to be awarded to such individual under subsection (b).

“(2) FUNDING FOR OFFICE.—From the amounts available for expenditure under subsection (a), the Whistleblower Office shall be credited with an amount equal to the awards made under subsection (b). These funds shall be used to maintain the Whistleblower Office and also to reimburse other Internal Revenue Service offices for related costs, such as costs of investigation and collection.

“(3) REQUEST FOR ASSISTANCE.—

“(A) IN GENERAL.—Any assistance requested under paragraph (1)(E) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under subparagraph (A). To the extent the disclosure of any returns or return information to the individual or legal representative is required for the performance of such assistance, such disclosure shall be pursuant to a contract entered into between the Secretary and the recipients of such disclosure subject to section 6103(n).

“(B) FUNDING OF ASSISTANCE.—From the funds made available to the Whistleblower Office under paragraph (2), the Whistleblower Office may reimburse the costs incurred by any legal representative in providing assistance described in subparagraph (A).”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to information provided on or after the date of the enactment of this Act.

On page 354, line 12, strike “May 8, 2003” and insert “the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act”.

Beginning on page 355, line 17, strike all through page 357, line 24, and insert the following:

#### SEC. 493. MODIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) PREMIUMS AS PERCENTAGE OF GROSS RECEIPTS INCREASED.—Section 501(c)(15)(A)(i)(II) is amended by striking “50 percent” and inserting “60 percent”.

(b) LIMITATION ON NET WRITTEN PREMIUMS INCREASED.—Section 831(b)(2) (relating to companies to which this subsection applies) is amended—

(1) by striking “\$1,200,000” and inserting “\$1,890,000”, and

(2) by adding at the end the following new subparagraph:

“(C) INFLATION ADJUSTMENTS.—

“(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, the dollar amount in subparagraph (A)(i) shall be increased by an amount equal to—

“(I) such dollar amount, multiplied by

“(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar

year in which the taxable year begins, by substituting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

“(i) ROUNDING.—If the amount in subparagraph (A)(i) as increased under clause (i) is not a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.”

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(2) TRANSITION RULE FOR COMPANIES IN RECEIVERSHIP OR LIQUIDATION.—In the case of a company or association which—

(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date such proceeding ends (or, if later, December 31, 2004) or December 31, 2007.

Beginning on page 358, line 1, strike all through page 363, line 21, and insert the following:

**SEC. 494. TREATMENT OF CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.**

(a) IN GENERAL.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking “or” at the end of clause (i), by adding “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) of any patent, copyright, trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property.”

(b) ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—Section 170(e) is amended by adding at the end the following new paragraph:

“(7) ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—

“(A) IN GENERAL.—In the case of a charitable contribution of any property described in paragraph (1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in paragraph (1)(B)(ii)), if—

“(i) the lesser of—

“(I) 5 percent of the fair market value of such property (determined at the time of such contribution), or

“(II) \$1,000,000, exceeds

“(ii) the amount of such contribution as determined under paragraph (1),

then the amount of the charitable contribution of such property otherwise taken into account under this section shall equal the amount determined under clause (i).”

(c) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—Section 170 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—

“(1) TREATMENT AS ADDITIONAL CONTRIBUTION.—In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a)

for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

“(2) QUALIFIED DONEE INCOME.—For purposes of this subsection, the term ‘qualified donee income’ means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

“(3) ALLOCATION OF QUALIFIED DONEE INCOME TO TAXABLE YEARS OF DONOR.—For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

“(4) 10-YEAR LIMITATION.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

“(5) BENEFIT LIMITED TO LIFE OF INTELLECTUAL PROPERTY.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

“(6) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term ‘applicable percentage’ means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

| <b>“Taxable Year of Donor Applicable Percentage:</b> |     |
|--|-----|
| <b>Ending On or After</b>                            |     |
| <b>Date of Contribution:</b>                         |     |
| 1st or 2d .....                                      | 100 |
| 3rd .....  | 90  |
| 4th .....  | 80  |
| 5th .....  | 70  |
| 6th .....  | 60  |
| 7th .....  | 50  |
| 8th .....  | 40  |
| 9th .....  | 30  |
| 10th .....   | 20  |
| 11th or 12th .....                                   | 10. |

“(7) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTION.—For purposes of this subsection, the term ‘qualified intellectual property contribution’ means any charitable contribution of qualified intellectual property—

“(A) the amount of which taken into account under this section—

“(i) is reduced by reason of subsection (e)(1), or

“(ii) determined under subsection (e)(7), and

“(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

“(8) QUALIFIED INTELLECTUAL PROPERTY.—For purposes of this subsection, the term ‘qualified intellectual property’ means property described in subsection (e)(1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

“(9) OTHER SPECIAL RULES.—

“(A) APPLICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Any increase under this subsection of the deduction provided under subparagraph (a) shall be treated for purposes of subsection (b) as a deduction

which is attributable to a charitable contribution to the donee to which such increase relates.

“(B) NET INCOME DETERMINED BY DONEE.—The net income taken into account under paragraph (2) shall not exceed the amount of such income reported under section 6050L(b)(1).

“(C) DEDUCTION LIMITED TO 12 TAXABLE YEARS.—Except as may be provided under subparagraph (D)(1), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

“(D) REGULATIONS.—The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

“(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

“(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee’s exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.”

(d) REPORTING REQUIREMENTS.—Section 6050L (relating to returns relating to certain dispositions of donated property) is amended to read as follows:

**“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED PROPERTY.**

“(a) DISPOSITIONS OF DONATED PROPERTY.—

“(1) IN GENERAL.—If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

“(A) the name, address, and TIN of the donor,

“(B) a description of the property,

“(C) the date of the contribution,

“(D) the amount received on the disposition, and

“(E) the date of such disposition.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) CHARITABLE DEDUCTION PROPERTY.—The term ‘charitable deduction property’ means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds \$5,000.

“(B) PUBLICLY TRADED SECURITIES.—The term ‘publicly traded securities’ means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

“(b) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTIONS.—

“(1) IN GENERAL.—Each donee with respect to a qualified intellectual property contribution shall make a return (at such time and in such form and manner as the Secretary may by regulations prescribe) with respect to each specified taxable year of the donee showing—

“(A) the name, address, and TIN of the donor,

“(B) a description of the qualified intellectual property contributed,

“(C) the date of the contribution, and

“(D) the amount of net income of the donee for the taxable year which is properly allocable to the qualified intellectual property (determined without regard to paragraph (9)(B) of section 170(m) and with the modifications described in paragraphs (4) and (5) of such section).

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) IN GENERAL.—Terms used in this subsection which are also used in section 170(m) have the respective meanings given such terms in such section.

“(B) SPECIFIED TAXABLE YEAR.—The term ‘specified taxable year’ means, with respect to any qualified intellectual property contribution, any taxable year of the donee any portion of which is part of the 10-year period beginning on the date of such contribution.

“(C) STATEMENT TO BE FURNISHED TO DONORS.—Every person making a return under subsection (a) or (b) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.”.

(e) PROCESSING FEE.—Section 170, as amended by subsection (b), is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) PROCESSING FEE.—In the case of a deduction allowed for any taxable year under this section with respect to a charitable contribution of any property described in subsection (e)(1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)), the taxpayer shall include, with the taxpayer’s return of tax including such deduction, a fee equal to 1 percent of the amount of such deduction. Such fee shall be credited by the Secretary to the operations of the Exempt Organizations unit within the Internal Revenue Service.”.

(f) MODIFICATION OF SUBSTANTIAL VALUATIONS MISSTATEMENT PENALTY FOR CHARITABLE CONTRIBUTIONS OF PROPERTY.—

(1) SUBSTANTIAL MISSTATEMENTS.—Section 6662(e)(1)(A) (relating to substantial valuation misstatements under chapter 1) is amended by inserting “(50 percent or more in the case of a charitable contribution of any property described in section 170(e)(1)(B)(iii))” after “200 percent or more”.

(2) GROSS MISSTATEMENTS.—Section 6662(h)(2)(A) (defining gross valuation misstatements) is amended by striking clause (ii) and inserting the following new clauses:

“(ii) ‘100 percent or more’ for ‘50 percent or more’.

“(iii) ‘25 percent or less’ for ‘50 percent or less’, and”.

(g) ANTI-ABUSE RULES.—The Secretary of the Treasury—

(1) may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of paragraphs (1)(B)(iii) and (7) of section 170(e) of the Internal Revenue Code of 1986 (as added by subsections (a) and (b)), including preventing—

(A) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(B) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(C) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply, and

(2) shall prescribe guidance on appraisal standards for contributions of property described in section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by this section).

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after the date of the enactment of this Act.

Beginning on page 363, line 22, strike all through page 364, line 3.

On page 420, strike lines 1 through 8, and insert the following:

“(A) IN GENERAL.—The term ‘motorsports entertainment complex’ means a racing track facility which—

“(i) is permanently situated on land, and

“(ii) during the 36-month period following the first day of the month in which the asset is placed in service, is scheduled to host 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

On page 421, at the end of line 9, add end quotation marks and a period.

On page 421, strike lines 10 through 20.

On page 421, line 24, strike “Act.” and insert “Act and before January 1, 2008.”.

On page 425, line 19, strike “45E” and insert “45D”.

On page 425, line 20, strike “45d” and insert “45e”.

On page 438, in the matter following line 22, strike “Native American new markets tax credit” and insert “New markets tax credit for Native American reservations”.

On page 440, line 1, strike “(f)” and insert “(h)”.

On page 484, line 4, strike “45F” and insert “45H”.

On page 488, line 2, strike “grade” and insert “at grade”.

On page 488, line 5, strike “rail” and insert “train”.

On page 502, line 19, strike “3(20)” and insert “103(20)”.

On page 502, line 20, strike “1974” and insert “1994”.

On page 504, between lines 6 and 7, insert the following:

**SEC. 639. CREDIT FOR INVESTMENT IN TECHNOLOGY TO MAKE MOTION PICTURES MORE ACCESSIBLE TO THE DEAF AND HARD OF HEARING.**

(a) IN GENERAL.—

(1) ALLOWANCE OF CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

**“SEC. 45T. EXPENDITURES TO PROVIDE ACCESS TO MOTION PICTURES FOR THE DEAF AND HARD OF HEARING.**

“(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the motion picture accessibility credit for any taxable year shall be an amount equal to 50 percent of the qualified expenditures made by the eligible taxpayer during the taxable year.

“(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term ‘eligible taxpayer’ means a taxpayer who is in the business of—

“(1) showing motion pictures to the public in theaters, or

“(2) producing or distributing such motion pictures.

“(c) QUALIFIED EXPENDITURES.—For purposes of this section, the term ‘qualified expenditures’ means amounts paid or incurred by the taxpayer for the purpose of making motion pictures accessible to individuals who are deaf or hard of hearing through the use of captioning technology.

“(d) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so allowed.

“(e) NO DOUBLE BENEFIT.—In the case of the credit determined under this section, no deduction or credit shall be allowed for such amount under any other provision of this chapter.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking “plus” at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting “, plus”, and by adding at the end the following new paragraph:

“(32) the motion picture accessibility credit determined under section 45T(a).”.

(B) Subsection (a) of section 1016, as amended by this Act, is amended by striking “and” at the end of paragraph (38), by striking the period at the end of paragraph (39) and inserting “, and”, and by adding at the end the following new paragraph:

“(40) in the case of property with respect to which a credit was allowed under section 45T, to the extent provided in section 45T(d).”.

(b) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules) is amended by adding at the end the following new paragraph:

“(16) NO CARRYBACK OF MOTION PICTURE ACCESSIBILITY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the motion picture accessibility credit determined under section 45T may be carried to a taxable year beginning before January 1, 2004.”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45S the following new item:

“Sec. 45T. Expenditures to provide access to motion pictures for the deaf and hard of hearing.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

On page 504, line 14, insert “, as amended by this Act,” after “income”.

On page 504, line 16, strike “(18)” and insert “(19)”.

On page 522, line 17, strike “(18)” and insert “(19)”.

On page 524, line 18, insert “or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A))” after “Code”.

On page 535, line 8, strike “December 31, 2003” and insert “December 31, 2001”.

On page 557, between lines 9 and 10, insert the following:

**SEC. 660. REPEAL OF APPLICATION OF BELOW-MARKET LOAN RULES TO AMOUNTS PAID TO CERTAIN CONTINUING CARE FACILITIES.**

(a) IN GENERAL.—Section 7872(c)(1) (relating to below-market loans to which section applies) is amended—

(1) by striking subparagraph (F), and

(2) by striking “(C), or (F)” in subparagraph (E) and inserting “or (C)”.

(b) FULL EXCEPTION.—Section 7872(g) (relating to exception for certain loans to qualified continuing care facilities) is amended—

(1) by striking “made by a lender to a qualified continuing care facility pursuant to a continuing care contract” in paragraph (1) and inserting “owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and”.

(2) by striking “increased personal care services or” in paragraph (3)(C),

(3) by adding at the end of paragraph (3) the following new flush sentence:

“The Secretary shall issue guidance which limits such term to contracts which provide to an individual or individual’s spouse only facilities, care, and services described in this paragraph which are customarily offered by continuing care facilities.”

(4) by inserting “independent living unit” after “all of the” in paragraph (4)(A)(ii),

(5) by striking paragraphs (2) and (5),

(6) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, and

(7) by striking “CERTAIN” in the heading thereof.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to calendar years beginning after 2004.

On page 559, strike lines 6 through 17, and insert the following:

**SEC. 663. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.**

(a) **IN GENERAL.**—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking “1-year period (18-month period in the case of taxable years beginning before January 1, 2004)” both places it appears and inserting “18-month period”.

(b) **EXCEPTION FOR GROSS MISSTATEMENT.**—Section 6404(g)(2) (relating to exceptions) is amended by striking “or” at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

“(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or”.

(c) **EXCEPTION FOR LISTED AND REPORTABLE TRANSACTIONS.**—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking “or” at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

“(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction or listed transaction (as defined in 6707A(c)); or”.

(d) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) **EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.**—The amendments made by subsection (c) shall apply with respect to interest accruing after May 5, 2004.

Beginning on page 559, line 20, strike all through page 578, line 16, and insert the following:

**SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS.**

(a) **IN GENERAL.**—Subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new section:

**“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED COMPENSATION UNDER NONQUALIFIED DEFERRED COMPENSATION PLANS.**

“(a) **RULES RELATING TO CONSTRUCTIVE RECEIPT.**—

“(1) **IN GENERAL.**—

“(A) **GROSS INCOME INCLUSION.**—If at any time during a taxable year a nonqualified deferred compensation plan—

“(i) fails to meet the requirements of paragraphs (2), (3), (4), and (5), or

“(ii) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

“(B) **INTEREST AND ADDITIONAL TAX PAYABLE WITH RESPECT TO PREVIOUSLY DEFERRED COMPENSATION.**—

“(i) **IN GENERAL.**—If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year of inclusion shall be increased by the sum of—

“(I) the amount of interest determined under clause (ii), and

“(II) an amount equal to 10 percent of the compensation which is required to be included in gross income.

“(ii) **INTEREST.**—For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

“(2) **DISTRIBUTIONS.**—

“(A) **IN GENERAL.**—The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

“(i) except as provided in subparagraph (B)(i), separation from service (as determined by the Secretary),

“(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

“(iii) death,

“(iv) a specified time (or pursuant to a fixed schedule) specified under the plan as of the date of the deferral of such compensation,

“(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

“(vi) the occurrence of an unforeseeable emergency.

“(B) **SPECIAL RULES.**—

“(i) **SEPARATION FROM SERVICE OF SPECIFIED EMPLOYEES.**—In the case of specified employees, the requirement of subparagraph (A)(i) is met only if distributions may not be made earlier than 6 months after the date of separation from service. For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i)) of a corporation the stock in which is publicly traded on an established securities market or otherwise.

“(ii) **CHANGES IN OWNERSHIP OR CONTROL.**—In the case of a participant who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934, the requirement of subparagraph (A)(v) is met only if distributions may not be made earlier than 1 year after the date of the change in ownership or effective control.

“(iii) **UNFORESEEABLE EMERGENCY.**—For purposes of subparagraph (A)(vi)—

“(I) **IN GENERAL.**—The term ‘unforeseeable emergency’ means a severe financial hardship to the participant or beneficiary resulting from a sudden and unexpected illness or accident of the participant or beneficiary, the participant’s or beneficiary’s spouse, or the participant’s or beneficiary’s dependent (as defined in section 152(a)), loss of the participant’s or beneficiary’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary.

“(II) **LIMITATION ON DISTRIBUTIONS.**—The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emer-

gency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant’s or beneficiary’s assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

“(C) **DISABLED.**—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

“(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

“(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant’s employer.

“(3) **INVESTMENT OPTIONS.**—The requirements of this paragraph are met if the plan provides that the investment options a participant may elect under the plan—

“(A) are comparable to the investment options which a participant may elect under the defined contribution plan of the employer which—

“(i) meets the requirement of section 401(a) and includes a trust exempt from taxation under section 501(a), and

“(ii) has the fewest investment options, or

“(B) if there is no such defined contribution plan, meet such requirements as the Secretary may prescribe (including requirements limiting such options to permissible investment options specified by the Secretary).

“(4) **ACCELERATION OF BENEFITS.**—The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided by the Secretary in regulations.

“(5) **ELECTIONS.**—

“(A) **IN GENERAL.**—The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

“(B) **INITIAL DEFERRAL DECISION.**—The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant’s election only if the election to defer such compensation is made during the preceding taxable year or at such other time as provided in regulations. In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

“(C) **CHANGES IN TIME AND FORM OF DISTRIBUTION.**—The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

“(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

“(ii) in the case an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the first payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

“(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

A plan shall be treated as failing to meet the requirements of this subparagraph if the plan permits more than 1 subsequent election to delay any payment.

“(b) RULES RELATING TO FUNDING.—

“(1) OFFSHORE PROPERTY IN A TRUST.—In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, such assets shall be treated for purposes of section 83 as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

“(A) at the time set aside if such assets are located outside of the United States, or

“(B) at the time transferred if such assets are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

“(2) EMPLOYER’S FINANCIAL HEALTH.—In the case of a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 as of the earlier of—

“(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer’s financial health, or

“(B) the date on which assets are so restricted.

“(3) INCOME INCLUSION FOR OFFSHORE TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

“(4) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO TRANSFERRED PROPERTY.—

“(A) IN GENERAL.—If amounts are required to be included in gross income by reason of paragraph (1) or (2) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

“(i) the amount of interest determined under subparagraph (B), and

“(ii) an amount equal to 10 percent of the amounts required to be included in gross income.

“(B) INTEREST.—For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1) or (2) been includable in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

“(c) NO INFERENCE ON EARLIER INCOME INCLUSION.—Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other

rule of law later than the time provided in this section.

“(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) NONQUALIFIED DEFERRED COMPENSATION PLAN.—The term ‘nonqualified deferred compensation plan’ means any plan that provides for the deferral of compensation, other than—

“(A) a qualified employer plan, and

“(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

“(2) QUALIFIED EMPLOYER PLAN.—The term ‘qualified employer plan’ means—

“(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5), and

“(B) any eligible deferred compensation plan (within the meaning of section 457(b)) of an employer described in section 457(e)(1)(A).

“(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The term ‘plan’ includes any agreement or arrangement, including an agreement or arrangement that includes one person.

“(4) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person’s rights to such compensation are conditioned upon the future performance of substantial services by any individual.

“(5) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

“(6) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—This section shall not apply to any nonelective deferred compensation to which section 457 does not apply by reason of section 457(e)(12), but only if such compensation is provided under a nonqualified deferred compensation plan which was in existence on May 1, 2004, and which was providing nonelective deferred compensation described in section 457(e)(12) on such date. If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.

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

“(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

“(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

“(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

“(4) defining financial health for purposes of subsection (b)(2), and

“(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.”

(b) APPLICATION OF GOLDEN PARACHUTE PAYMENT PROVISIONS.—Section 280G of such Code (relating to golden parachute payments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

“(e) SPECIAL RULES FOR CERTAIN PAYMENTS FROM NONQUALIFIED DEFERRED COMPENSATION PLANS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, an applicable payment shall be treated as an excess parachute payment for purposes of this section and section 4999.

“(2) COORDINATION WITH OTHER PAYMENTS.—

“(A) APPLICABLE PAYMENTS WHICH ARE PARACHUTE PAYMENTS.—If any applicable payment is a parachute payment (determined without regard to subsection (b)(2)(A)(ii))—

“(i) except as provided in paragraph (4), this section shall be applied to such payment in the same manner as if this subsection had not been enacted, and

“(ii) if such application results in an excess parachute payment, any tax under section 4999 on the excess parachute payment shall be in addition to the tax imposed by reason of paragraph (1).

“(B) APPLICABLE PAYMENTS WHICH ARE NOT PARACHUTE PAYMENTS.—An applicable payment not described in subparagraph (A) shall be taken into account in determining whether any payment described in subparagraph (A) or any payment which is not an applicable payment is a parachute payment under subsection (b)(2).

“(3) APPLICABLE PAYMENT.—For purposes of this subsection, the term ‘applicable payment’ means any distribution (including any distribution treated as a parachute payment without regard to this subsection) from a nonqualified deferred compensation plan (as defined in section 409A(d)) which is made—

“(A) to a participant who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934, and

“(B) during the 1-year period following a change in the ownership or effective control of the corporation or in the ownership of a substantial portion of the assets of the corporation.

Such terms shall not include any distribution by reason of the death of the participant or the participant becoming disabled (within the meaning of section 409A(a)(2)(C)).

“(4) NO DOUBLE COUNTING.—Under regulations, proper adjustments shall be made in the application of this subsection to prevent a deduction from being disallowed more than once.”

(c) W-2 FORMS.—

(1) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking “and” at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting “, and”, and by inserting after paragraph (12) the following new paragraph:

“(13) the total amount of deferrals under a nonqualified deferred compensation plan (within the meaning of section 409A(d)).”

(2) THRESHOLD.—Subsection (a) of section 6051 is amended by adding at the end the following: “In the case of the amounts required to be shown by paragraph (13), the Secretary may (by regulation) establish a minimum amount of deferrals below which paragraph (13) does not apply.”

(d) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 414(b) is amended by inserting “409A,” after “408(p).”

(2) Section 414(c) is amended by inserting “409A,” after “408(p).”

(3) The table of sections for such subpart A is amended by adding at the end the following new item:

“Sec. 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.”

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred

in taxable years beginning after December 31, 2004.

(2) EARNINGS ATTRIBUTABLE TO AMOUNT PREVIOUSLY DEFERRED.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

(f) GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.

(g) GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance providing a limited period during which an individual participating in a nonqualified deferred compensation plan adopted on or before December 31, 2004, may, without violating the requirements of paragraphs (2), (3), (4), and (5) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), terminate participation or cancel an outstanding deferral election with regard to amounts earned after December 31, 2004, if such amounts are includible in income as earned.

**SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE EXERCISE OF STOCK OPTIONS AND RESTRICTED STOCK GAINS THROUGH DEFERRED COMPENSATION ARRANGEMENTS.**

(a) IN GENERAL.—Section 83 (relating to property transferred in connection with performance of services) is amending by adding at the end the following new subsection:

“(i) PROHIBITION ON ADDITIONAL DEFERRAL THROUGH DEFERRED COMPENSATION ARRANGEMENTS.—If a taxpayer exchanges—

“(1) an option to purchase employer securities—

“(A) to which subsection (a) applies, or

“(B) which is described in subsection (e)(3), or

“(2) employer securities or any other property based on employer securities transferred to the taxpayer,

for a right to receive future payments, then, notwithstanding any other provision of this title, there shall be included in gross income for the taxable year of the exchange an amount equal to the present value of such right (or such other amount as the Secretary may by regulations specify). For purposes of this subsection, the term ‘employer securities’ includes any security issued by the employer.”.

(b) CONTROLLED GROUP RULES.—Section 414(t)(2) is amended by inserting “83(i),” after “79.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any exchange after December 31, 2004.

On page 581, strike lines 1 through 20, and insert the following:

**SEC. 675. APPLICATION OF BASIS RULES TO EMPLOYER AND EMPLOYEE CONTRIBUTIONS ON BEHALF OF NONRESIDENT ALIENS.**

(a) IN GENERAL.—Section 72 (relating to annuities and certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (w) as subsection (x) and by inserting after subsection (v) the following new subsection:

“(w) APPLICATION OF BASIS RULES TO EMPLOYER AND EMPLOYEE CONTRIBUTIONS MADE ON BEHALF OF NONRESIDENT ALIENS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in gross income of a distributee who is a citizen or resident of the

United States, the investment in the contract shall not include any applicable nontaxable contributions.

“(2) APPLICABLE NONTAXABLE CONTRIBUTION.—For purposes of this subsection, the term ‘applicable nontaxable contribution’ means any employer or employee contribution—

“(A) which was made with respect to compensation for labor or personal services by an employee who, at the time the services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, but only if such compensation is treated as from sources without the United States, and

“(B) which was not subject to income tax under the laws of the United States or any foreign country.

“(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions on or after the date of the enactment of this Act.

On page 596, strike lines 8 through 10, and insert the following:

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

On page 596, line 22, strike “Section 904(h)” and insert “Section 904(i), as redesignated by this Act.”.

Beginning on page 598, line 17, strike all through 601, line 7, and insert the following:

(a) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking “Pension Funding Equity Act of 2004” and inserting “Jumpstart Our Business Strength (JOBS) Act”.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking “Pension Funding Equity Act of 2004” and inserting “Jumpstart Our Business Strength (JOBS) Act”.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended by striking “Pension Funding Equity Act of 2004” and inserting “Jumpstart Our Business Strength (JOBS) Act”.

(b) MINIMUM COST REQUIREMENTS.—

(1) IN GENERAL.—Section 420(c)(3)(E) is amended by adding at the end the following new clause:

“(i) INSIGNIFICANT COST REDUCTIONS PERMITTED.—

“(I) IN GENERAL.—An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

“(II) ELIGIBLE EMPLOYER.—For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer. For purposes of this

subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer’s gross receipts.”.

(2) CONFORMING AMENDMENT.—Section 420(c)(3)(E) is amended by striking “The Secretary” and inserting:

“(i) IN GENERAL.—The Secretary”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

On page 606, line 18, insert “, as amended by section 882(c) of this Act,” after “penalties”.

On page 606, line 21, strike “6717” and insert “6720a”.

On page 607, line 18, insert “, as amended by section 882(c) of this Act,” after “chapter 68”.

On page 607, in the matter after line 20, strike “6717” and insert “6720A”.

On page 608, line 4, insert “, as amended by this Act,” after “vaccine”.

On page 608, line 6, strike “(M)” and insert “(N)”.

On page 608, strike lines 8 through 11.

On page 612, line 10, strike the end quotation marks and second period.

On page 624, line 7, strike “or”.

On page 624, line 11, strike the period and insert “, or”.

On page 624, between lines 11 and 12, insert the following:

“(VI) the Tennessee Valley Authority.

On page 624, lines 13 and 14, strike “A person described in subparagraph (A)(ii)” and insert “A person described in subclause (I), (II), (III), (IV), or (V) of subparagraph (A)(ii)”.

On page 625, between lines 21 and 22, insert the following:

“(D) USE BY TVA.—

“(i) IN GENERAL.—Notwithstanding any other provision of law, in the case of a person described in subparagraph (A)(ii)(VI), any credit to which subparagraph (A)(i) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n-4(e)) as an annual return on the appropriations investment and an annual repayment sum.

“(ii) TREATMENT OF CREDITS.—The aggregate amount of credits described in subparagraph (A)(i) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

“(iii) CREDIT CARRYOVER.—With respect to any fiscal year, if the aggregate amount of credits described in subparagraph (A)(i) with respect to such person exceeds the aggregate amount of payment obligations described in clause (i), the excess amount shall remain available for application as credits against the amounts of such payment obligations in succeeding fiscal years in the same manner as described in this subparagraph.

On page 625, line 22, strike “(D)” and insert “(E)”.

On page 626, line 3, strike “(E)” and insert “(F)”.

On page 626, line 8, strike “(g)” and insert “(f)”.

On page 627, line 14, insert “, as amended by this Act,” after “etc.”.

On page 627, line 16, strike “30B” and insert “30C”.

On page 652, strike lines 2 through 17, and insert the following:

(1) Section 1016(a) is amended by striking “and” at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting “, and”, and by adding at the end the following new paragraph:

“(33) to the extent provided in section 30C(f)(4).”

(2) Section 55(c)(2), as amended by this Act, is amended by inserting “30C(e),” after “30(b)(2).”

(3) Section 6501(m) is amended by inserting “30C(f)(9),” after “30(d)(4).”

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30B the following new item:

“Sec. 30C. Alternative motor vehicle credit.”

(c) EFFECTIVE DATE.—The amendments made by

On page 658, line 3, strike “30C” and insert “30D”.

On page 659, line 21, strike “30B” and insert “30C”.

Beginning on page 662, line 21, strike all through page 663, line 9, and insert the following:

(1) Section 1016(a), as amended by this Act, is amended by striking “and” at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting “, and”, and by adding at the end the following new paragraph:

“(34) to the extent provided in section 30D(f).”

(2) Section 55(c)(2), as amended by this Act, is amended by inserting “30D(e),” after “30C(e).”

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 30C the following new item:

“Sec. 30D. Clean-fuel vehicle refueling property credit.”

(e) EFFECTIVE DATE.—The amendments made by

On page 665, line 7, strike “section 30B(d)(4)” and insert “section 30C(d)(4).”

On page 670, line 12, insert “, as amended by this Act,” after the end parenthetical.

On page 670, line 14, strike “(k)” and insert “(l).”

On page 702, line 3, strike “Section 904(h)” and insert “Section 904(i), as redesignated and amended by this Act.”

On page 702, strike lines 8 through 15, and insert the following:

(1) Section 1016(a), as amended by this Act, is amended by striking “and” at the end of paragraph (33), by striking the period at the end of paragraph (34) and inserting “, and”, and by adding at the end the following new paragraph:

“(35) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C.”

On page 715, line 22, strike “(30)” and insert “(34).”

On page 715, line 23, strike “(31)” and insert “(35).”

On page 716, line 1, strike “(32)” and insert “(36).”

On page 716, strike lines 9 through 15, and insert the following:

(4) Section 263(a)(1), as amended by this Act, is amended by striking “or” at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting “, or”, and by inserting after subparagraph (I) the following new subparagraph:

“(J) expenditures for which a deduction is allowed under section 179B.”

On page 717, line 13, insert “, as amended by this Act,” after “rules”).”

On page 717, line 15, strike “(15)” and insert “(16).”

On page 719, line 7, strike “(16)” and insert “(17).”

On page 734, lines 16 and 17, strike “Section 904(h), as amended by this Act,” and insert

“Section 904(i), as redesignated and amended by this Act.”

On page 734, line 25, strike “(31)” and insert “(35).”

On page 735, line 1, strike “(32)” and insert “(36).”

On page 735, line 3, strike “(33)” and insert “(37).”

Beginning on page 747, line 23, strike all through page 748, line 5, and insert the following:

(a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking “and” at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting “, and”, and by adding at the end the following new paragraph:

“(3) the qualifying advanced clean coal technology unit credit.”

On page 780, strike lines 16 through 21, and insert the following:

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking “and” at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

“(iii) any natural gas gathering line, and”.

On page 781, line 3, strike “(17)” and insert “(18).”

On page 782, in the matter following line 2, strike “(C)(ii)” and insert “(C)(iii).”

On page 783, line 22, strike the end quotation marks and second period.

On page 784, line 4, strike “(H)” and insert “(I).”

On page 784, line 5, strike “(I)” and insert “(J).”

On page 784, line 7, strike “(J)” and insert “(K).”

On page 784, line 17, strike “(32)” and insert “(36).”

On page 784, line 18, strike “(33)” and insert “(37).”

On page 784, line 20, strike “(34)” and insert “(38).”

On page 785, line 1, strike “(5)” and insert “(6).”

On page 793, line 15, strike “(33)” and insert “(37).”

On page 793, line 16, strike “(34)” and insert “(38).”

On page 793, line 19, strike “(35)” and insert “(39).”

On page 795, line 5, insert “, as amended by this Act,” after “production”).”

On page 805, line 3, strike the semicolon and insert a colon.

On page 805, line 8, insert “of subsection (f)” before “owned”.

On page 805, line 11, strike the end quotation marks and second period.

On page 807, line 2, insert “, as amended by this Act,” after “38(b).”

On page 808, strike lines 8 through 12, and insert the following:

(G) Subsection (a) of section 772, as amended by this Act, is amended by striking paragraph (10) and by redesignating paragraphs (11) and (12) as paragraphs (10) and (11), respectively.

On page 810, strike lines 12 through 18, and insert the following:

(a) IN GENERAL.—Section 168(e)(3)(E) (defining 15-year property), as amended by this Act, is amended by striking “and” at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting “, and”, and by adding at the end the following new clause:

“(v) any natural gas distribution line.”

On page 810, in the matter after line 23, strike “(E)(iv)” and insert “(E)(v).”

On page 814, line 5, strike “(18)” and insert “(19).”

On page 818, strike lines 19 through 25, and insert the following:

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking “and” at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

“(iv) any Alaska natural gas pipeline, and”.

On page 819, line 5, strike “(18)” and insert “(19).”

On page 820, line 2, strike “(C)(ii)” and insert “(C)(iii).”

On page 820, in the matter following line 2, strike “(C)(iii)” and insert “(C)(iv).”

On page 820, line 3, strike the beginning quotation marks.

On page 840, line 14, insert “, as amended by this Act,” after “modifications”).”

On page 840, line 17, strike “(18)” and insert “(20).”

On page 849, line 20, strike “5211 and 5242” and insert “871 and 880”.

On page 855, lines 1 and 2, strike “, as amended by section 5101 of this Act.”

On page 862, line 3, insert “, as amended by this Act,” after “credit”).”

On page 862, strike lines 10 through 19, and insert the following:

(1)(A) Section 87, as amended by this Act, is amended—

(i) by striking “and” at the end of paragraph (1),

(ii) by striking the period at the end of paragraph (2) and inserting “, and”,

(iii) by adding at the end the following new paragraph:

“(3) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40B(a).”, and

(iv) by striking “FUEL CREDIT” in the heading and inserting “AND BIODESEL FUELS CREDITS”.

Beginning on page 862, line 24, strike all through page 863, line 5, and insert the following:

(2) Section 196(c), as amended by this Act, is amended by striking “and” at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting “, and”, and by adding at the end the following new paragraph:

“(13) the biodiesel fuels credit determined under section 40B(a).”.

On page 872, strike lines 1 through 8, and insert the following:

(M) Subparagraph (B) of section 6724(d)(1), as amended by this Act, is amended by striking clause (xvi) and by redesignating clauses (xvii), (xviii), and (xix) as clauses (xvi), (xvii), and (xviii), respectively.

(N) Paragraph (2) of section 6724(d), as amended by this Act, is amended by striking subparagraph (X) and by redesignating subparagraphs (Y), (Z), (AA), (BB), and (CC) as subparagraphs (X), (Y), (Z), (AA), and (BB), respectively.

On page 878, line 8, strike “PENALTY—” and insert “PENALTY.—”.

On page 883, line 7, strike “section 5211 of”.

On page 883, lines 17 and 18, strike “section 5211 of”.

On page 884, lines 6 and 7, strike “section 5221 of”.

On page 885, lines 8 and 9, strike “section 5211 of”.

On page 885, lines 21 and 22, strike “section 5221 of”.

On page 886, line 18, strike “section 5232 of”.

On page 888, line 10, strike “section 5232 of”.

On page 889, line 13, strike “section 5241 of”.

On page 890, line 11, strike “section 5241 of”.

On page 890, line 16, strike the second period.

On page 890, line 18, strike “section 5242 of”.

On page 890, line 22, strike the second period.

On page 891, line 22, strike "section 5242 of".

On page 892, line 17, strike "section 5242 of".

On page 895, lines 18 and 19, strike "section 5245 of".

On page 898, lines 20 and 21, strike "section 5102 of".

On page 902, lines 24 and 25, strike "section 5152 of".

On page 903, line 10, strike "section 5251 of".

On page 904, line 15, strike "section 5251 of".

On page 906, lines 12 and 13, strike ", as amended by section 5001 of this Act."

On page 907, lines 12 and 13, strike ", as amended by section 5001 of this Act."

On page 909, line 19, strike "section 5211 of".

On page 910, lines 20 and 21, strike "section 5211 of".

On page 912, lines 9 and 10, strike "section 5243 of".

On page 912, lines 12 through 14, strike "as added by section 5242 of this Act and redesignated by section 5243 of this Act" and insert "as added and redesignated by this Act".

On page 912, lines 20 and 21, strike "section 5241 of".

On page 912, line 24, strike the space after the beginning quotation marks.

On page 913, strike lines 1 and 2, and insert the following:

(II) in the heading, by inserting "OR REPORTABLE LIQUIDS" after "TAXABLE FUEL".

On page 913, line 5, strike "section 5241 of".

On page 914, line 8, strike "section 5252 of".

On page 919, strike lines 3 through 9, and insert the following:

"(C) SPECIAL RULE FOR USE BY CERTAIN TAX-EXEMPT ORGANIZATIONS.—For purposes of subparagraph (A), the use-based test shall be determined without regard to any use in a vehicle by an organization which is described in section 501(c) and exempt from tax under section 501(a)."

On page 931, after line 18, add the following:

**SEC. 899B. CREDIT FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.**

(a) ALLOWANCE OF QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end the following new paragraph:

"(4) the qualifying pollution control equipment credit."

(b) AMOUNT OF QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit), as amended by this Act, is amended by inserting after section 48A the following new section:

**"SEC. 48B. QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.**

"(a) IN GENERAL.—For purposes of section 46, the qualifying pollution control equipment credit for any taxable year is an amount equal to 15 percent of the basis of the qualifying pollution control equipment placed in service at a qualifying facility during such taxable year.

"(b) QUALIFYING POLLUTION CONTROL EQUIPMENT.—For purposes of this section, the term 'qualifying pollution control equipment' means any technology installed in or on a qualifying facility to reduce air emissions of any pollutant regulated by the Environmental Protection Agency under the Clean Air Act, including thermal oxidizers,

regenerative thermal oxidizers, scrubber systems, evaporative control systems, vapor recovery systems, flair systems, bag houses, cyclones, continuous emissions monitoring systems, and low nitric oxide burners.

"(c) QUALIFYING FACILITY.—For purposes of this section, the term 'qualifying facility' means any facility which produces not less than 1,000,000 gallons of ethanol during the taxable year.

"(d) SPECIAL RULE FOR CERTAIN SUBSIDIZED PROPERTY.—Rules similar to section 48(a)(4) shall apply for purposes of this section.

"(e) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection."

(c) RECAPTURE OF CREDIT WHERE EMISSIONS REDUCTION OFFSET IS SOLD.—Paragraph (1) of section 50(a) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) SPECIAL RULE FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.—For purposes of subparagraph (A), any investment property which is qualifying pollution control equipment (as defined in section 48B(b)) shall cease to be investment credit property with respect to a taxpayer if such taxpayer receives a payment in exchange for a credit for emission reductions attributable to such qualifying pollution control equipment for purposes of an offset requirement under part D of title I of the Clean Air Act."

(d) SPECIAL RULE FOR BASIS REDUCTION; RECAPTURE OF CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property), as amended by this Act, is amended by inserting "or qualifying pollution control equipment credit" after "energy credit".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

**SA 3134.** Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 19, beginning with line 25, strike through line 3 on page 98 and insert the following:

"(a) ALLOWANCE OF DEDUCTION.—There shall be allowed as a deduction an amount equal to 9 percent of the qualified production activities income of the taxpayer for the taxable year.

"(b) DEDUCTION LIMITED TO WAGES PAID.—

"(1) IN GENERAL.—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W-2 wages of the employer for the taxable year.

"(2) W-2 WAGES.—For purposes of paragraph (1), the term 'W-2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with

respect to employment of employees of the taxpayer during the taxpayer's taxable year.

"(3) SPECIAL RULES.—

"(A) PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity, the limitation under this subsection shall apply at the entity level.

"(B) ACQUISITIONS AND DISPOSITIONS.—The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

"(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified production activities income' means an amount equal to the portion of the modified taxable income of the taxpayer which is attributable to domestic production activities.

"(2) REDUCTION FOR TAXABLE YEARS BEGINNING BEFORE 2013.—The amount otherwise determined under paragraph (1) (the 'unreduced amount') shall not exceed—

"(A) in the case of taxable years beginning before 2010, the product of the unreduced amount and the domestic/worldwide fraction, and

"(B) in the case of taxable years beginning in 2010, 2011, or 2012, an amount equal to the sum of—

"(i) the product of the unreduced amount and the domestic/worldwide fraction, plus

"(ii) the applicable percentage of an amount equal to the unreduced amount minus the amount determined under clause (i).

For purposes of subparagraph (B)(ii), the applicable percentage is 25 percent for 2010, 50 percent for 2011, and 75 percent for 2012.

"(d) DETERMINATION OF INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this section—

"(1) IN GENERAL.—The portion of the modified taxable income which is attributable to domestic production activities is so much of the modified taxable income for the taxable year as does not exceed—

"(A) the taxpayer's domestic production gross receipts for such taxable year, reduced by

"(B) the sum of—

"(i) the costs of goods sold that are allocable to such receipts,

"(ii) other deductions, expenses, or losses directly allocable to such receipts, and

"(iii) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

"(2) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

"(3) SPECIAL RULES FOR DETERMINING COSTS.—

"(A) IN GENERAL.—For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its fair market value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

"(B) EXPORTS FOR FURTHER MANUFACTURE.—In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference

between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

“(4) MODIFIED TAXABLE INCOME.—The term ‘modified taxable income’ means taxable income computed without regard to the deduction allowable under this section.

“(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this section—

“(1) IN GENERAL.—The term ‘domestic production gross receipts’ means the gross receipts of the taxpayer which are derived from—

“(A) any sale, exchange, or other disposition of, or

“(B) any lease, rental, or license of, qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

“(2) SPECIAL RULES FOR CERTAIN PROPERTY.—In the case of any qualifying production property described in subsection (f)(1)(C)—

“(A) such property shall be treated for purposes of paragraph (1) as produced in significant part by the taxpayer within the United States if more than 50 percent of the aggregate development and production costs are incurred by the taxpayer within the United States, and

“(B) if a taxpayer acquires such property before such property begins to generate substantial gross receipts, any development or production costs incurred before the acquisition shall be treated as incurred by the taxpayer for purposes of subparagraph (A) and paragraph (1).

“(f) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

“(1) IN GENERAL.—Except as otherwise provided in this paragraph, the term ‘qualifying production property’ means—

“(A) any tangible personal property,

“(B) any computer software, and

“(C) any property described in section 168(f) (3) or (4), including any underlying copyright or trademark.

“(2) EXCLUSIONS FROM QUALIFYING PRODUCTION PROPERTY.—The term ‘qualifying production property’ shall not include—

“(A) consumable property that is sold, leased, or licensed by the taxpayer as an integral part of the provision of services,

“(B) oil or gas,

“(C) electricity,

“(D) water supplied by pipeline to the consumer,

“(E) utility services, or

“(F) any film, tape, recording, book, magazine, newspaper, or similar property the market for which is primarily topical or otherwise essentially transitory in nature.

“(g) DOMESTIC/WORLDWIDE FRACTION.—For purposes of this section—

“(1) IN GENERAL.—The term ‘domestic/worldwide fraction’ means a fraction (not greater than 1)—

“(A) the numerator of which is the value of the domestic production of the taxpayer, and

“(B) the denominator of which is the value of the worldwide production of the taxpayer.

“(2) VALUE OF DOMESTIC PRODUCTION.—The value of domestic production is the excess (if any) of—

“(A) the domestic production gross receipts, over

“(B) the cost of purchased inputs allocable to such receipts that are deductible under this chapter for the taxable year.

“(3) PURCHASED INPUTS.—

“(A) IN GENERAL.—Purchased inputs are any of the following items acquired by purchase:

“(i) Services (other than services of employees) used in manufacture, production, growth, or extraction activities.

“(ii) Items consumed in connection with such activities.

“(iii) Items incorporated as part of the property being manufactured, produced, grown, or extracted.

“(B) SPECIAL RULE.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of this subsection.

“(4) VALUE OF WORLDWIDE PRODUCTION.—

“(A) IN GENERAL.—The value of worldwide production shall be determined under the principles of paragraph (2), except that—

“(i) worldwide production gross receipts shall be taken into account, and

“(ii) paragraph (3)(B) shall not apply.

“(B) WORLDWIDE PRODUCTION GROSS RECEIPTS.—The worldwide production gross receipts is the amount that would be determined under subsection (e) if such subsection were applied without any reference to the United States.

“(h) DEFINITIONS AND SPECIAL RULES.—

“(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity—

“(A) subject to the provisions of paragraph (2) and subsection (b)(3)(A), this section shall be applied at the shareholder, partner, or similar level, and

“(B) the Secretary shall prescribe rules for the application of this section, including rules relating to—

“(i) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

“(ii) additional reporting requirements.

“(2) EXCLUSION FOR PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—

“(A) IN GENERAL.—If any amount described in paragraph (1) or (3) of section 1385 (a)—

“(i) is received by a person from an organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products, and

“(ii) is allocable to the portion of the qualified production activities income of the organization which is deductible under subsection (a) and designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

then such person shall be allowed an exclusion from gross income with respect to such amount. The taxable income of the organization shall not be reduced under section 1382 by the portion of any such amount with respect to which an exclusion is allowable to a person by reason of this paragraph.

“(B) SPECIAL RULES.—For purposes of applying subparagraph (A), in determining the qualified production activities income of the organization under this section—

“(i) there shall not be taken into account in computing the organization’s modified taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

“(ii) the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

“(3) SPECIAL RULE FOR AFFILIATED GROUPS.—

“(A) IN GENERAL.—All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

“(B) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined—

“(i) by substituting ‘50 percent’ for ‘80 percent’ each place it appears, and

“(ii) without regard to paragraphs (2) and (4) of section 1504(b).

For purposes of determining the domestic/worldwide fraction under subsection (g), clause (ii) shall be applied by also disregarding paragraphs (3) and (8) of section 1504(b).

“(4) COORDINATION WITH MINIMUM TAX.—The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, alternative minimum taxable income shall be taken into account in determining the deduction under this section.

“(5) ORDERING RULE.—The amount of any other deduction allowable under this chapter shall be determined as if this section had not been enacted.

“(6) TRADE OR BUSINESS REQUIREMENT.—This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

“(7) POSSESSIONS, ETC.—

“(A) IN GENERAL.—For purposes of subsections (d) and (e), the term ‘United States’ includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

“(B) SPECIAL RULES FOR APPLYING WAGE LIMITATION.—For purposes of applying the limitation under subsection (b) for any taxable year—

“(i) the determination of W-2 wages of a taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in a jurisdiction described in subparagraph (A), and

“(ii) in determining the amount of any credit allowable under section 30A or 936 for the taxable year, there shall not be taken into account any wages which are taken into account in applying such limitation.

“(8) COORDINATION WITH TRANSITION RULES.—For purposes of this section—

“(A) domestic production gross receipts shall not include gross receipts from any transaction if the binding contract transition relief of section 101(c)(2) of the Jumpstart Our Business Strength (JOBS) Act applies to such transaction, and

“(B) any deduction allowed under section 101(e) of such Act shall be disregarded in determining the portion of the taxable income which is attributable to domestic production gross receipts.”.

(b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to disallowance of items not deductible in computing earnings and profits) is amended by adding at the end the following new clause:

“(v) DEDUCTION FOR DOMESTIC PRODUCTION.—Clause (i) shall not apply to any amount allowable as a deduction under section 199.”.

(c) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

“Sec. 199. Income attributable to domestic production activities.”.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) APPLICATION OF SECTION 15.—Section 15 of the Internal Revenue Code of 1986 shall apply to the amendments made by this section as if they were changes in a rate of tax.

**SA 3135.** Mr. COLEMAN submitted an amendment intended to be proposed by

him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

**TITLE IX—NON-REVENUE PROVISIONS**

**SEC. 901. CUSTOMS SERVICES.**

Section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)) is amended—

(1) by striking “(1) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than paragraph (2)),” and inserting:

“(1) IN GENERAL.—

“(A) SCHEDULED FLIGHTS.—Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than subparagraph (B) and paragraph (2)),”;

(2) by adding at the end the following:

“(B) CHARTER FLIGHTS.—If a charter air carrier (as defined in section 40102(13) of title 49, United States Code) specifically requests that customs border patrol services for passengers and their baggage be provided for a charter flight arriving after normal operating hours at a customs border patrol serviced airport and overtime funds for those services are not available, the appropriate customs border patrol officer may assign sufficient customs employees (if available) to perform any such services, which could lawfully be performed during regular hours of operation, and any overtime fees incurred in connection with such service shall be paid by the charter air carrier.”.

**SA 3136.** Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

**SEC. \_\_\_\_ . TAXATION OF CERTAIN SETTLEMENT FUNDS.**

(a) IN GENERAL.—Subsection (g) of section 468B (relating to clarification of taxation of certain funds) is amended to read as follows:

“(g) CLARIFICATION OF TAXATION OF CERTAIN FUNDS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

“(2) EXEMPTION FROM TAX FOR CERTAIN SETTLEMENT FUNDS.—An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if—

“(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,

“(B) it is created for the receipt of settlement payments as directed by a government

entity for the sole purpose of resolving or satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

“(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and

“(D) upon termination, any remaining funds will be disbursed upon instructions by such government entity in accordance with applicable law.

For purposes of this paragraph, the term ‘government entity’ means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

**SA 3137.** Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

**TITLE V—MISCELLANEOUS PROVISIONS**  
**SEC. 501. NEGOTIATIONS REGARDING CURRENCY VALUATION.**

(a) FINDINGS.—Congress makes the following findings:

(1) The currency of the People’s Republic of China, known as the yuan or renminbi, is artificially pegged at a level significantly below its market value. Economists estimate the yuan to be undervalued by between 15 percent and 40 percent or an average of 27.5 percent.

(2) The undervaluation of the yuan provides the People’s Republic of China with a significant trade advantage by making exports less expensive for foreign consumers and by making foreign products more expensive for Chinese consumers. The effective result is a significant subsidization of China’s exports and a virtual tariff on foreign imports.

(3) The Government of the People’s Republic of China has intervened in the foreign exchange markets to hold the value of the yuan within an artificial trading range. China’s foreign reserves are estimated to be over \$350,000,000,000 as of September 2003, and have increased by over \$110,000,000,000 in the last 12 months.

(4) China’s undervalued currency, China’s trade advantage from that undervaluation, and the Chinese Government’s intervention in the value of its currency violates the spirit and letter of the world trading system of which the People’s Republic of China is now a member.

(5) The Government of the People’s Republic of China has failed to promptly address concerns or to provide a definitive timetable for resolution of these concerns raised by the United States and the international community regarding the value of its currency.

(6) Article XXI of the GATT 1994 (as defined in section 2(1)(B) of the Uruguay Round Agreements Act (19 U.S.C. 3501(1)(B))) allows a member of the World Trade Organization to take any action which it considers nec-

essary for the protection of its essential security interests. Protecting the United States manufacturing sector is essential to the interests of the United States.

(b) NEGOTIATIONS AND CERTIFICATION REGARDING THE CURRENCY VALUATION POLICY OF THE PEOPLE’S REPUBLIC OF CHINA.—

(1) IN GENERAL.—Notwithstanding the provisions of title I of Public Law 106-286 (19 U.S.C. 2431 note), on and after the date that is 180 days after the date of enactment of this Act, unless a certification described in paragraph (2) has been made to Congress, in addition to any other duty, there shall be imposed a rate of duty of 27.5 percent ad valorem on any article that is the growth, product, or manufacture of the People’s Republic of China, imported directly or indirectly into the United States.

(2) CERTIFICATION.—The certification described in this paragraph means a certification by the President to Congress that the People’s Republic of China is no longer acquiring foreign exchange reserves to prevent the appreciation of the rate of exchange between its currency and the United States dollar for purposes of gaining an unfair competitive advantage in international trade. The certification shall also include a determination that the currency of the People’s Republic of China has undergone a substantial upward revaluation placing it at or near its fair market value.

(3) ALTERNATIVE CERTIFICATION.—If the President certifies to Congress 180 days after the date of enactment of this Act that the People’s Republic of China has made a good faith effort to revalue its currency upward placing it at or near its fair market value, the President may delay the imposition of the tariffs described in paragraph (1) for an additional 180 days. If at the end of the 180-day period the President determines that China has developed and started actual implementation of a plan to revalue its currency, the President may delay imposition of the tariffs for an additional 12 months, so that the People’s Republic of China shall have time to implement the plan.

(4) NEGOTIATIONS.—Beginning on the date of enactment of this Act, the Secretary of the Treasury, in consultation with the United States Trade Representative, shall begin negotiations with the People’s Republic of China to ensure that the People’s Republic of China adopts a process that leads to a substantial upward currency revaluation within 180 days after the date of enactment of this Act. Because various Asian governments have also been acquiring substantial foreign exchange reserves in an effort to prevent appreciation of their currencies for purposes of gaining an unfair competitive advantage in international trade, and because the People’s Republic of China has concerns about the value of those currencies, the Secretary shall also seek to convene a multilateral summit to discuss exchange rates with representatives of various Asian governments and other interested parties, including representatives of other G-7 nations.

**SA 3138.** Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 35, between lines 11 and 12, insert the following:

**SEC. 103. DEDUCTION FOR UNITED STATES PRODUCTION ACTIVITIES INCLUDES INCOME RELATED TO CERTAIN ARCHITECTURAL AND ENGINEERING SERVICES.**

(a) IN GENERAL.—Paragraph (1) of section 199(e) (relating to domestic production gross receipts), as added by section 102, is amended to read as follows:

“(1) IN GENERAL.—

“(A) RECEIPTS FROM QUALIFYING PRODUCTION PROPERTY.—The term ‘domestic production gross receipts’ means the gross receipts of the taxpayer which are derived from—

“(i) any sale, exchange, or other disposition of, or

“(ii) any lease, rental, or license of, qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

“(B) RECEIPTS FROM CERTAIN SERVICES.—

“(i) IN GENERAL.—Such term also includes the applicable percentage of gross receipts of the taxpayer which are derived from any engineering or architectural services performed in the United States for construction projects in the United States.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined under the following table:

| In the case of any tax-<br>year beginning in— | The applicable percent-<br>age is— |
|---|------------------------------------|
| 2004, 2005, 2006, 2007, or 2008 .....         | 25                                 |
| 2009, 2010, 2011, or 2012 .....               | 50                                 |
| 2013 or thereafter .....                      | 100.                               |

(b) LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES WITH RESPECT TO COVERED EMPLOYEES.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

“(2) EXPENSES TREATED AS COMPENSATION.—Expenses for goods, services, and facilities—

“(A) in the case of a covered employee (within the meaning of section 162(m)(3)), to the extent that the expenses do not exceed the amount of the expenses treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to such covered employee on the taxpayer’s return of tax under this chapter and as wages to such covered employee for purposes of chapter 24 (relating to withholding of income tax at source on wages), and

“(B) in the case of any other employee, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to such employee on the taxpayer’s return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).”.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act, and section 15 of the Internal Revenue Code of 1986 shall apply to the amendment made by this subsection as if it were a change in the rate of tax.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to expenses incurred after the date of the enactment of this Act and before January 1, 2006.

**SA 3139.** Mr. SPECTER submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production

activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 35, between lines 11 and 12, insert the following:

**SEC. 103. MANUFACTURER’S TAX EQUITY CREDIT AGAINST PAYROLL TAXES IN LIEU OF DEDUCTION.**

(a) IN GENERAL.—Subchapter C of chapter 21 is amended by redesignating section 3128 as section 3129 and inserting after section 3127 the following new section:

**“SEC. 3128. MANUFACTURER’S TAX EQUITY CREDIT.**

“(a) GENERAL RULE.—In the case of a qualified manufacturer who elects application of this section for any taxable year, there shall be allowed a credit against the taxes imposed by this chapter during the taxable year an amount equal to 10 percent of qualified health benefit plan costs paid during the taxable year.

“(b) QUALIFIED MANUFACTURER.—For purposes of this section, the term ‘qualified manufacturer’ means any taxpayer 50 percent or more of whose gross receipts from activities performed within the United States during the taxable year were domestic production gross receipts (within the meaning of section 199(e)).

“(c) QUALIFIED HEALTH BENEFIT PLAN COSTS.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified health benefit plan costs’ means any costs paid by the qualified manufacturer for a qualified health benefit plan with respect to qualified plan participants and their spouses and dependents (as defined by section 152), but only if the amount of costs paid by the qualified manufacturer is equal to or greater than 50 percent of the cost of coverage for such qualified plan participants under such plan.

“(2) QUALIFIED HEALTH BENEFIT PLAN.—The term ‘qualified health benefit plan’ means an employee welfare benefit plan (within the meaning of section 3(3) of the Employee Retirement Income Security Act of 1974) which provides health benefits.

“(3) QUALIFIED PLAN PARTICIPANTS.—The term ‘qualified plan participants’ means employees and former employees of the qualified manufacturer—

“(A) who participate in a qualified health benefit plan of the qualified manufacturer,

“(B) who are between the ages of 55 and 64, and

“(C)(i) in the case of a participant who is an employee of such qualified manufacturer during the taxable year, whose services for such qualified manufacturer for such year are performed predominantly in the United States, and

“(ii) in the case of a participant who is a former employee of such qualified manufacturer, whose services for such qualified manufacturer were performed predominantly in the United States during the period such participant was an employee.

“(d) DENIAL OF DEDUCTION FOR INCOME ATTRIBUTABLE TO UNITED STATES PRODUCTION.—No deduction shall be allowed under section 199 for any qualified manufacturer for any taxable year for which such qualified manufacturer elects the application of this section.

“(e) SPECIAL RULE FOR AFFILIATED GROUPS.—Rules similar to the rules of section 199(h)(3) shall apply for purposes of this section.”.

(b) TRANSFER OF FUNDS.—The Secretary of the Treasury shall transfer from the general revenues of the Federal Government an amount sufficient so as to ensure that the income and balances of the trust funds under

section 201 of the Social Security Act are not reduced as a result of the application of the amendment made by subsection (a).

(c) DETERMINATION OF BENEFITS.—In making any determination of benefits under title II of the Social Security Act and part A of title XVIII of such Act, the Commissioner of Social Security shall disregard the effect of the amendment made by subsection (a) on any individual’s earnings record.

(d) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 21 is amended by striking the last 2 items and inserting the following:

“Sec. 3128. Manufacturer’s tax equity credit.

“Sec. 3129. Short title.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

**SA 3140.** Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

**TITLE IX—OFFICE OF FEDERAL PROCUREMENT POLICY ACT IMPROVEMENTS**

**SEC. 901. PREFERENCE FOR DOMESTIC BIDDERS.**  
The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

**“SEC. 43. PREFERENCE FOR DOMESTIC BIDDERS.**

“(a) The head of an executive agency entering into a contract shall give preference to a company submitting an offer on the contract that manufactures in the United States the article, material, or supply for which the offer is solicited, if—

“(1) that company’s offer is substantially the same as an offer made by a company that does not manufacture the article, material, or supply in the United States; or

“(2) that company is the only company that manufactures in the United States the article, material, or supply for which the offer is solicited.

“(b)(1) Not later than 60 days after the end of each fiscal year, the head of each executive agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by such executive agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

“(2) The report for a fiscal year under paragraph (1) shall separately indicate the following information:

“(A) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

“(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act (41 U.S.C. 10a et seq.).

“(C) A summary of—

“(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

“(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

“(3) The head of each executive agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.”.

**SEC. 902. REQUIREMENTS FOR WAIVERS.**

(a) PUBLIC INTEREST WAIVER UNDER BUY AMERICAN ACT.—Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended by adding at the end the following new subsection (e):

“(e) LIMITATION ON PUBLIC INTEREST WAIVER UNDER BUY AMERICAN ACT.—A determination under section 2(a) of the Buy American Act (41 U.S.C. 10a(a)) that it is not in the public interest to enter into a contract in accordance with such Act may not be made after a notice of solicitation of offers for the contract is published in accordance with this section and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).”

(b) REQUIREMENTS UNDER BUY AMERICAN ACT.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.), as amended by this Act, is further amended by adding at the end the following new section:

**“SEC. 44. REQUIREMENTS UNDER BUY AMERICAN ACT.**

“(a) USE OUTSIDE THE UNITED STATES.—(1) Section 2(a) of the Buy American Act (41 U.S.C. 10a(a)) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

“(2) In any case in which the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

“(b) DOMESTIC AVAILABILITY.—The head of an executive agency may not make a determination under section 2(a) of the Buy American Act (41 U.S.C. 10a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of that executive agency has conducted a study and, on the basis of such study, determined that—

“(1) domestic production cannot be initiated to meet the procurement needs; and

“(2) a comparable article, material, or supply is not available from a company in the United States.”

**SEC. 903. DUAL-USE TECHNOLOGIES.**

The head of an executive agency (as defined in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1))) may not enter into a contract, nor permit a subcontract under a contract of the executive agency, with a foreign entity that involves giving the foreign entity plans, manuals, or other information related to a dual-use item or technology on the Commerce Control List unless approval for providing such plans, manuals, or information has been obtained in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and the Export Administration Regulations (15 C.F.R. part 730 et seq.).

**SEC. 904. CLERICAL AMENDMENT.**

The table of contents in section 1(b) of the Office of Federal Procurement Policy Act is amended by adding at the end the following new items:

“Sec. 43. Preference for domestic bidders.

“Sec. 44. Requirements under Buy American Act.”

**SA 3141.** Mr. KYL submitted an amendment intended to be proposed by

him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 557, between lines 9 and 10, insert the following:

**SEC. 660. SENSE OF CONGRESS REGARDING THE WORLD TRADE ORGANIZATION DECISION ON INTERNET GAMBLING.**

(a) FINDINGS.—Congress finds the following:

(1) Gambling through the Internet, which has grown rapidly, opens up the possibility of immediate, individual, 24-hour access in every home to the full range of wagering opportunities on sporting events or casino-like contests.

(2) The number of Internet gambling websites has increased from about 2 dozen to over 2,000 in the last 9 years, with an estimated \$5,000,000,000 wagered over the Internet in 2003 alone.

(3) Internet gambling fosters criminal activity, as up to 90 percent of pathological gamblers commit crimes to pay off their wagering debts.

(4) The Department of State has noted that Internet gambling “represents yet another powerful vehicle for criminals to launder funds from illicit sources as well as to evade taxes” and the chief of the Federal Bureau of Investigation’s Financial Crimes Section has testified that Internet gambling is a “haven for money laundering activities”.

(5) There are Federal and State laws in the United States which restrict Internet gambling services, and these laws are consistent with the World Trade Organization obligations of the United States.

(6) The United States is currently involved in World Trade Organization proceedings in which the nation of Antigua and Barbuda has challenged these laws.

(7) A World Trade Organization panel has ruled, as a result of these proceedings, that the United States must allow access to the United States market by foreign Internet gambling businesses.

(8) The World Trade Organization is likely to authorize Antigua and Barbuda to impose tariffs on products from the United States unless the United States agrees to change its antigambling laws.

(9) The United States benefits from participating in international organizations such as the World Trade Organization, but the United States must also be vigilant about protecting American interests when decisions by such organizations encroach upon United States sovereignty.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States disagrees with the decision of the World Trade Organization panel regarding the Internet gambling laws of the United States, and

(2) the United States should vigorously defend its right to enact legislation protecting United States interests against organized crime and money laundering and protecting the integrity of United States sporting events.

**NOTICES OF HEARINGS/MEETINGS****SUBCOMMITTEE ON FORESTRY, CONSERVATION AND RURAL REVITALIZATION**

Mr. COCHRAN. Mr. President, I announce that the Subcommittee on For-

estry, Conservation and Rural Revitalization of the Committee on Agriculture, Nutrition, and Forestry will conduct a hearing on May 11, 2004, in SD-628 at 10 a.m. The purpose of this hearing will be to examine conservation programs of the 2002 Farm Bill.

**COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY**

Mr. COCHRAN. Mr. President, I announce that the Committee on Agriculture, Nutrition, and Forestry will conduct a hearing on May 13, 2004, in SD-106 at 10 a.m. The purpose of this hearing will be to conduct a review of the Commodity Futures Trading Commission regulatory issues. Dr. James E. Newsome, Chairman of the Commodity Futures Trading Commission, will testify before the committee.

**UNANIMOUS CONSENT AGREEMENT—S. 1637**

Mr. FRIST. Mr. President, I ask unanimous consent immediately following the period for morning business on Tuesday, the time until 12 noon be equally divided between the two leaders or their designees prior to the cloture vote on S. 1637, the FSC JOBS bill. I further ask consent that if cloture is invoked, notwithstanding the provisions of rule XXII, the Senate then proceed immediately to a vote in relation to the pending Cantwell amendment, No. 3114, with no amendment in order to the amendment prior to the vote. Further, I ask consent that if a point of order is raised and the motion to waive is subsequently agreed to, then the Cantwell amendment be agreed to.

Mr. REID. That is without any intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered.

**ORDERS FOR TUESDAY, MAY 11, 2004**

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:45 a.m. on Tuesday, May 11. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for up to 60 minutes, with the first half hour under the control of the Democratic leader or his designee, and the second half hour under the control of the majority leader or his designee; provided that following morning business, the Senate proceed to S. 1637, as under the previous order.

I further ask consent that the Senate recess from 12:30 p.m., or upon conclusion of the vote in relation to the Cantwell amendment, until 2:15 p.m. for the weekly party luncheons.

Mr. REID. Mr. President, as happens around here a lot of the time, the real