

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5095

To amend the Internal Revenue Code of 1986 to improve and simplify compliance with the internal revenue laws, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2002

Mr. THOMAS (for himself, Mr. MCCRERY, Mrs. JOHNSON of Connecticut, and Mr. HOUGHTON) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to improve and simplify compliance with the internal revenue laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “American Competitiveness and Corporate Accountability  
6 Act of 2002”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-  
8 wise expressly provided, whenever in this Act an amend-  
9 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference  
 2 shall be considered to be made to a section or other provi-  
 3 sion of the Internal Revenue Code of 1986.

4 (c) TABLE OF CONTENTS.—

Sec. 1. Short title; etc.

TITLE I—PROVISIONS RELATING TO TAX SHELTERS

Subtitle A—Taxpayer-Related Provisions

- Sec. 101. Clarification of economic substance doctrine.
- Sec. 102. Penalty for failing to disclose reportable transactions.
- Sec. 103. Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc.
- Sec. 104. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 105. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 106. Disallowance of certain partnership loss transfers.
- Sec. 107. Modifications of substantial understatement penalty for nonreportable transactions.

Subtitle B—Promoter-Related Provisions

- Sec. 111. Disclosure of reportable transactions.
- Sec. 112. Failure to furnish information regarding reportable transactions.
- Sec. 113. Modification of penalty for failure to maintain lists of investors.
- Sec. 114. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
- Sec. 115. Penalty on failure to report interests in foreign financial accounts.
- Sec. 116. Frivolous tax submissions.
- Sec. 117. Regulation of individuals practicing before the Department of the Treasury.
- Sec. 118. Penalty on promoters of tax shelters.

Subtitle C—Other Provisions

- Sec. 121. Treatment of stripped interests in bond and preferred stock funds, etc.
- Sec. 122. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
- Sec. 123. Affirmation of consolidated return regulation authority.

TITLE II—PROVISIONS TO REDUCE TAX AVOIDANCE THROUGH CORPORATE EARNINGS STRIPPING AND EXPATRIATION

- Sec. 201. Reduction in potential for earnings stripping by further limiting deduction for interest on certain indebtedness.
- Sec. 202. Tax treatment of expatriated entities.
- Sec. 203. Excise tax on stock compensation of insiders in expatriated corporations.
- Sec. 204. Reporting of taxable mergers and acquisitions.

Sec. 205. Studies.

TITLE III—SIMPLIFICATION OF RULES RELATING TO THE  
TAXATION OF UNITED STATES BUSINESSES OPERATING ABROAD

Subtitle A—Treatment of Controlled Foreign Corporations

- Sec. 301. Repeal of CFC rules on foreign base company sales and service income.
- Sec. 302. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.
- Sec. 303. Look-thru treatment for sales of partnership interests.
- Sec. 304. Repeal of foreign personal holding company rules and foreign investment company rules.
- Sec. 305. Clarification of treatment of pipeline transportation income.
- Sec. 306. Determination of foreign personal holding company income with respect to transactions in commodities.
- Sec. 307. Effective date.

Subtitle B—Provisions Relating to Foreign Tax Credit

- Sec. 311. Interest expense allocation rules.
- Sec. 312. Recharacterization of overall domestic loss.
- Sec. 313. Reduction to 3 foreign tax credit baskets.
- Sec. 314. 10-year foreign tax credit carryforward.
- Sec. 315. Repeal of limitation of foreign tax credit under alternative minimum tax.
- Sec. 316. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.
- Sec. 317. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.

Subtitle C—Other Provisions

- Sec. 321. Application of uniform capitalization rules to foreign persons.
- Sec. 322. United States property not to include certain assets acquired by dealers in ordinary course of trade or business.
- Sec. 323. Treatment of certain dividends of regulated investment companies.
- Sec. 324. Election not to use average exchange rate for foreign tax paid other than in functional currency.
- Sec. 325. Repeal of withholding tax on dividends from certain foreign corporations.
- Sec. 326. Increase in expensing under section 179.
- Sec. 327. Repeal of exclusion for extraterritorial income.
- Sec. 328. Repeal of FSC transitional rules.

TITLE IV—OTHER PROVISIONS

- Sec. 401. Extension of Internal Revenue Service user fees.
- Sec. 402. Extension of customs user fees.
- Sec. 403. Inclusion in gross income of funded deferred compensation of corporate insiders.
- Sec. 404. Simplification of excise tax imposed on bows and arrows.
- Sec. 405. Exclusion from gross income for interest on overpayments of income tax by individuals.

Sec. 406. Deposits made to suspend running of interest on potential underpayments.

Sec. 407. Partial payment of tax liability in installment agreements.

Sec. 408. Extension of transfers of excess pension assets to retiree health accounts.

Sec. 409. Clarification of rules for payment of estimated tax for certain deemed asset sales.

1 **TITLE I—PROVISIONS RELATING**  
 2 **TO TAX SHELTERS**  
 3 **Subtitle A—Taxpayer-Related**  
 4 **Provisions**

5 **SEC. 101. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**  
 6 **TRINE.**

7 (a) IN GENERAL.—Section 7701 is amended by re-  
 8 designating subsection (m) as subsection (n) and by in-  
 9 serting after subsection (l) the following new subsection:

10 “(m) CLARIFICATION OF ECONOMIC SUBSTANCE  
 11 DOCTRINE; ETC.—

12 “(1) GENERAL RULES.—

13 “(A) IN GENERAL.—In applying the eco-  
 14 nomic substance doctrine, the determination of  
 15 whether a transaction has economic substance  
 16 shall be made as provided in this paragraph.

17 “(B) DEFINITION OF ECONOMIC SUB-  
 18 STANCE.—For purposes of subparagraph (A), a  
 19 transaction has economic substance only if—

20 “(i) the transaction changes in a  
 21 meaningful way (apart from Federal in-

1           come tax effects) the taxpayer’s economic  
2           position, and

3           “(ii) the taxpayer has a substantial  
4           nontax purpose for entering into such  
5           transaction and the transaction is a rea-  
6           sonable means of accomplishing such pur-  
7           pose.

8           “(2) ECONOMIC SUBSTANCE DOCTRINE.—For  
9           purposes of this subsection, the term ‘economic sub-  
10          stance doctrine’ means the common law doctrine  
11          under which tax benefits under subtitle A with re-  
12          spect to a transaction are not allowable if the trans-  
13          action does not have economic substance or lacks a  
14          business purpose.

15          “(3) REGULATIONS.—The Secretary shall pre-  
16          scribe such regulations as may be appropriate to  
17          carry out the purposes of this subsection, including  
18          regulations on the application of this subsection to  
19          transactions involving tax-indifferent parties.”

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

1 **SEC. 102. PENALTY FOR FAILING TO DISCLOSE REPORT-**  
2 **ABLE TRANSACTIONS.**

3 (a) IN GENERAL.—Part I of subchapter B of chapter  
4 68 (relating to assessable penalties) is amended by insert-  
5 ing after section 6707 the following new section:

6 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**  
7 **ABLE TRANSACTION INFORMATION WITH RE-**  
8 **TURN.**

9 “(a) IMPOSITION OF PENALTY.—Any person who  
10 fails to include on any return or statement any informa-  
11 tion with respect to a reportable transaction which is re-  
12 quired under section 6011 to be included with such return  
13 or statement shall pay a penalty in the amount determined  
14 under subsection (b).

15 “(b) AMOUNT OF PENALTY.—

16 “(1) IN GENERAL.—Except as provided in para-  
17 graph (2), the amount of the penalty under sub-  
18 section (a) shall be—

19 “(A) \$10,000 in the case of a natural per-  
20 son, and

21 “(B) \$50,000 in any other case.

22 “(2) LISTED TRANSACTION.—The amount of  
23 the penalty under subsection (a) with respect to a  
24 listed transaction shall be—

25 “(A) \$100,000 in the case of a natural  
26 person, and

1                   “(B) \$200,000 in any other case.

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

3                   “(1) REPORTABLE TRANSACTION.—The term  
4                   ‘reportable transaction’ means any transaction with  
5                   respect to which information is required to be in-  
6                   cluded with a return or statement because, as deter-  
7                   mined under regulations prescribed under section  
8                   6011, such transaction is of a type which the Sec-  
9                   retary determines as having a potential for tax  
10                  avoidance or evasion.

11                  “(2) LISTED TRANSACTION.—The term ‘listed  
12                  transaction’ means a reportable transaction which is  
13                  the same as, or similar to, a transaction specifically  
14                  identified by the Secretary as a tax avoidance trans-  
15                  action for purposes of section 6011.

16                  “(d) AUTHORITY TO RESCIND PENALTY.—

17                  “(1) IN GENERAL.—The Commissioner of In-  
18                  ternal Revenue may rescind all or any portion of any  
19                  penalty imposed by this section with respect to any  
20                  violation if—

21                         “(A) the violation is with respect to a re-  
22                         portable transaction other than a listed trans-  
23                         action,

1           “(B) the person on whom the penalty is  
2 imposed has a history of complying with the re-  
3 quirements of this title,

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

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

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

11           “(2) DISCRETION.—The exercise of authority  
12 under paragraph (1) shall be at the sole discretion  
13 of the Commissioner and may be delegated only to  
14 the head of the Office of Tax Shelter Analysis. The  
15 Commissioner, in his sole discretion, may establish a  
16 procedure to determine if a penalty should be re-  
17 ferred to the Commissioner or the head of such Of-  
18 fice for a determination under paragraph (1).

19           “(3) NO APPEAL.—Notwithstanding any other  
20 provision of law, any determination under this sub-  
21 section may not be reviewed in any administrative or  
22 judicial proceeding.

23           “(4) RECORDS.—If a penalty is rescinded under  
24 paragraph (1), the Commissioner shall place in the  
25 file in the Office of the Commissioner the opinion of

1 the Commissioner or the head of the Office of Tax  
2 Shelter Analysis with respect to the determination,  
3 including—

4 “(A) the reasons for the rescission, and

5 “(B) the amount of the penalty rescinded.

6 “(e) COORDINATION WITH OTHER PENALTIES.—The  
7 penalty imposed by this section shall be in addition to any  
8 other penalty imposed by this title.”

9 (b) CONFORMING AMENDMENT.—The table of sec-  
10 tions for part I of subchapter B of chapter 68 is amended  
11 by inserting after the item relating to section 6707 the  
12 following:

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

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

17 (d) REPORT.—The Commissioner of Internal Rev-  
18 enue shall annually report to the Committee on Ways and  
19 Means of the House of Representatives and the Committee  
20 on Finance of the Senate—

21 (1) a summary of the total number and aggre-  
22 gate amount of penalties imposed, and rescinded,  
23 under section 6707A of the Internal Revenue Code  
24 of 1986, and

1           (2) a description of each penalty rescinded  
2           under section 6707(c) of such Code and the reasons  
3           therefor.

4 **SEC. 103. ACCURACY-RELATED PENALTY FOR LISTED**  
5                                   **TRANSACTIONS, OTHER REPORTABLE TRANS-**  
6                                   **ACTIONS HAVING A SIGNIFICANT TAX AVOID-**  
7                                   **ANCE PURPOSE, ETC.**

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

11 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**  
12                                   **ALTY ON UNDERSTATEMENTS WITH RESPECT**  
13                                   **TO REPORTABLE TRANSACTIONS.**

14          “(a) IMPOSITION OF PENALTY.—If a taxpayer has a  
15          reportable transaction understatement for any taxable  
16          year, there shall be added to the tax an amount equal to  
17          20 percent of the amount of such understatement.

18          “(b) REPORTABLE TRANSACTION UNDERSTATE-  
19          MENT.—For purposes of this section—

20                  “(1) IN GENERAL.—The term ‘reportable trans-  
21          action understatement’ means the sum of—

22                                  “(A) the product of—

23    “(i) the amount of the increase (if  
24    any) in taxable income which results from  
25    a difference between the proper tax treat-

1           ment of an item to which this section ap-  
2           plies and the taxpayer’s treatment of such  
3           item (as shown on the taxpayer’s return of  
4           tax), and

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

8                   “(B) the amount of the decrease (if any)  
9           in the aggregate amount of credits determined  
10           under subtitle A which results from a difference  
11           between the taxpayer’s treatment of an item to  
12           which this section applies (as shown on the tax-  
13           payer’s return of tax) and the proper tax treat-  
14           ment of such item.

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

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

24                   “(A) any listed transaction, and

1           “(B) any reportable transaction (other  
2           than a listed transaction) if a significant pur-  
3           pose of such transaction is the avoidance or  
4           evasion of Federal income tax.

5           “(c) HIGHER PENALTY FOR NONDISCLOSED TRANS-  
6   ACTIONS.—Subsection (a) shall be applied by substituting  
7   ‘30 percent’ for ‘20 percent’ with respect to the portion  
8   of any reportable transaction understatement with respect  
9   to which the requirement of section 6664(d)(2)(A) is not  
10 met.

11          “(d) DEFINITIONS OF REPORTABLE AND LISTED  
12   TRANSACTIONS.—For purposes of this section, the terms  
13   ‘reportable transaction’ and ‘listed transaction’ have the  
14   respective meanings given to such terms by section  
15   6707A(c).

16          “(e) SPECIAL RULES.—

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

20                       “(A) the amount of such understatement  
21                       (determined without regard to this paragraph)  
22                       shall be increased by the aggregate amount of  
23                       reportable transaction understatements and  
24                       noneconomic substance transaction understate-  
25                       ments for purposes of determining whether

1 such understatement is a substantial under-  
2 statement under section 6662(d)(1), and

3 “(B) the addition to tax under section  
4 6662(a) shall apply only to the excess of the  
5 amount of the substantial understatement (if  
6 any) after the application of subparagraph (A)  
7 over the aggregate amount of reportable trans-  
8 action understatements and noneconomic sub-  
9 stance transaction understatements.

10 “(2) COORDINATION WITH OTHER PEN-  
11 ALTIES.—

12 “(A) APPLICATION OF FRAUD PENALTY.—  
13 References to an underpayment in section 6663  
14 shall be treated as including references to a re-  
15 reportable transaction understatement and non-  
16 economic substance transaction understate-  
17 ments.

18 “(B) NO DOUBLE PENALTY.—This section  
19 shall not apply to any portion of an understate-  
20 ment on which a penalty is imposed under sec-  
21 tion 6662B or 6663.”

22 “(3) SPECIAL RULE FOR AMENDED RE-  
23 TURNS.—Except as provided in regulations, in no  
24 event shall any tax treatment included with an  
25 amendment or supplement to a return of tax be

1 taken into account in determining the amount of any  
2 reportable transaction understatement or non-  
3 economic substance transaction understatement if  
4 the amendment or supplement is filed after the ear-  
5 lier of the date the taxpayer is first contacted by the  
6 Secretary regarding the examination of the return or  
7 such other date as is specified by the Secretary.

8 “(4) NONECONOMIC SUBSTANCE TRANSACTION  
9 UNDERSTATEMENT.—For purposes of this sub-  
10 section, the term ‘noneconomic substance trans-  
11 action understatement’ has the meaning given to  
12 such term by section 6662B(c).”

13 (b) DETERMINATION OF OTHER UNDERSTATE-  
14 MENTS.—Subparagraph (A) of section 6662(d)(2) is  
15 amended by adding at the end the following flush sen-  
16 tence:

17 “The excess under the preceding sentence shall  
18 be determined without regard to items to which  
19 section 6662A applies and without regard to  
20 items with respect to which a penalty is im-  
21 posed by section 6662B.”

22 (c) REASONABLE CAUSE EXCEPTION.—

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

1       “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-  
2 ABLE TRANSACTION UNDERSTATEMENTS.—

3           “(1) IN GENERAL.—No penalty shall be im-  
4 posed under section 6662A with respect to any por-  
5 tion of a reportable transaction understatement if it  
6 is shown that there was a reasonable cause for such  
7 portion and that the taxpayer acted in good faith  
8 with respect to such portion.

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

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

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

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

21           “(3) RULES RELATING TO REASONABLE BE-  
22 LIEF.—For purposes of paragraph (2)(C)—

23           “(A) IN GENERAL.—A taxpayer shall be  
24 treated as having a reasonable belief with re-

1 spect to the tax treatment of an item only if  
2 such belief—

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

6 “(ii) relates solely to the taxpayer’s  
7 chances of success on the merits of such  
8 treatment and does not take into account  
9 the possibility that a return will not be au-  
10 dited, such treatment will not be raised on  
11 audit, or such treatment will be resolved  
12 through settlement if it is raised.

13 “(B) CERTAIN OPINIONS MAY NOT BE RE-  
14 LIED UPON.—

15 “(i) IN GENERAL.—An opinion of a  
16 tax advisor may not be relied upon to es-  
17 tablish the reasonable belief of a taxpayer  
18 if—

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

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

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

1           “(I) is a material advisor (within  
2           the meaning of section 6111(b)(1))  
3           and participates in the organization,  
4           management, promotion, or sale of  
5           the transaction or is related (within  
6           the meaning of section 267(b) or  
7           707(b)(1)) to any person who so par-  
8           ticipates,

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

12          “(III) has a fee arrangement  
13          with respect to the transaction which  
14          is contingent on all or part of the in-  
15          tended tax benefits from the trans-  
16          action being sustained, or

17          “(IV) as determined under regu-  
18          lations prescribed by the Secretary,  
19          has a continuing financial interest  
20          with respect to the transaction.

21          “(iii) DISQUALIFIED OPINIONS.—For  
22          purposes of clause (i), an opinion is dis-  
23          qualified if the opinion—

1           “(I) is based on unreasonable  
2           factual or legal assumptions (includ-  
3           ing assumptions as to future events),

4           “(II) unreasonably relies on rep-  
5           resentations, statements, findings, or  
6           agreements of the taxpayer or any  
7           other person,

8           “(III) does not identify and con-  
9           sider all relevant facts, or

10           “(IV) fails to meet any other re-  
11           quirement as the Secretary may pre-  
12           scribe.”

13           (2) CONFORMING AMENDMENTS.—

14           (A) Paragraph (1) of section 6664(c) is  
15           amended by striking “this part” and inserting  
16           “section 6662 or 6663”.

17           (B) The heading for subsection (c) of sec-  
18           tion 6664 is amended by inserting “FOR UN-  
19           DERPAYMENTS” after “EXCEPTION”.

20           (d) REDUCTION IN PENALTY FOR SUBSTANTIAL UN-  
21           DERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX  
22           SHELTERS.—Subparagraph (C) of section 6662(d)(2) (re-  
23           lating to substantial understatement of income tax) is  
24           amended to read as follows:

1           “(C) REDUCTION NOT TO APPLY TO TAX  
2           SHELTERS.—

3                   “(i) IN GENERAL.—Subparagraph (B)  
4                   shall not apply to any item attributable to  
5                   a tax shelter.

6                   “(ii) TAX SHELTER.—For purposes of  
7                   clause (i), the term ‘tax shelter’ means—

8                           “(I) a partnership or other enti-  
9                           ty,

10                           “(II) any investment plan or ar-  
11                           rangement, or

12                           “(III) any other plan or arrange-  
13                           ment,

14                   if a significant purpose of such partner-  
15                   ship, entity, plan, or arrangement is the  
16                   avoidance or evasion of Federal income  
17                   tax.”

18           (e) CONFORMING AMENDMENTS.—

19                   (1) Sections 461(i)(3)(C), 1274(b)(3), and  
20                   7525(b) are each amended by striking “section  
21                   6662(d)(2)(C)(iii)” and inserting “section  
22                   6662(d)(2)(C)(ii)”.

23                   (2) The heading for section 6662 is amended to  
24                   read as follows:

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

3 (3) The table of sections for part II of sub-  
 4 chapter A of chapter 68 is amended by striking the  
 5 item relating to section 6662 and inserting the fol-  
 6 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-  
 ments.

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

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

10 **SEC. 104. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
 11 **UTABLE TO TRANSACTIONS LACKING ECO-**  
 12 **NOMIC SUBSTANCE, ETC.**

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

16 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
 17 **UTABLE TO TRANSACTIONS LACKING ECO-**  
 18 **NOMIC SUBSTANCE, ETC.**

19 “(a) **IMPOSITION OF PENALTY.**—If a taxpayer has an  
 20 noneconomic substance transaction understatement for  
 21 any taxable year, there shall be added to the tax an  
 22 amount equal to 40 percent of the amount of such under-  
 23 statement.

1       “(b) REDUCTION OF PENALTY FOR DISCLOSED  
2 TRANSACTIONS.—Subsection (a) shall be applied by sub-  
3 stituting ‘20 percent’ for ‘40 percent’ with respect to the  
4 portion of any noneconomic substance transaction under-  
5 statement with respect to which the relevant facts affect-  
6 ing the tax treatment of the item are adequately disclosed  
7 in accordance with the regulations prescribed under sec-  
8 tion 6011.

9       “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-  
10 DERSTATEMENT.—For purposes of this section—

11           “(1) IN GENERAL.—The term ‘noneconomic  
12 substance transaction understatement’ means any  
13 amount which would be an understatement under  
14 section 6662A(b)(1) if such section only applied to  
15 items attributable to noneconomic substance trans-  
16 actions.

17           “(2) NONECONOMIC SUBSTANCE TRANS-  
18 ACTION.—The term ‘noneconomic substance trans-  
19 action’ means any transaction if—

20                   “(A) the transaction lacks economic sub-  
21 stance (within the meaning of section 7701(m)),  
22 or

23                   “(B) the transaction fails to meet the re-  
24 quirements of any similar rule of law.

1           “(3) EXCEPTION FOR PERSONAL TRANS-  
 2           ACTIONS OF INDIVIDUALS.—In the case of an indi-  
 3           vidual, such term shall not include any transaction  
 4           other than a transaction entered into in connection  
 5           with a trade or business or an activity engaged in  
 6           for the production of income.

7           “(d) COORDINATION WITH OTHER PENALTIES.—

8           “(1) IN GENERAL.—Except as otherwise pro-  
 9           vided in this part, the penalty imposed by this sec-  
 10          tion shall be in addition to any other penalty im-  
 11          posed by this title.

12          “(2) CROSS REFERENCE.—

**“For coordination of penalty with understate-  
 ments under section 6662 and other special rules,  
 see section 6662A(e).”**

13          (b) CLERICAL AMENDMENT.—The table of sections  
 14          for part II of subchapter A of chapter 68 is amended by  
 15          inserting after the item relating to section 6662A the fol-  
 16          lowing new item:

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

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

1 **SEC. 105. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**  
2 **PRIVILEGES RELATING TO TAXPAYER COM-**  
3 **MUNICATIONS.**

4 (a) IN GENERAL.—Section 7525(b) (relating to sec-  
5 tion not to apply to communications regarding corporate  
6 tax shelters) is amended to read as follows:

7 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS  
8 REGARDING TAX SHELTERS.—The privilege under sub-  
9 section (a) shall not apply to any written communication  
10 which is—

11 “(1) between a federally authorized tax practi-  
12 tioner and—

13 “(A) any person,

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

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

18 “(2) in connection with the promotion of the di-  
19 rect or indirect participation of the person in any  
20 tax shelter (as defined in section  
21 6662(d)(2)(C)(ii)).”

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

1 **SEC. 106. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS**  
2 **TRANSFERS.**

3 (a) TREATMENT OF CONTRIBUTED PROPERTY WITH  
4 BUILT-IN LOSS.—Paragraph (1) of section 704(c) is  
5 amended by striking “and” at the end of subparagraph  
6 (A), by striking the period at the end of subparagraph  
7 (B) and inserting “, and”, and by adding at the end the  
8 following:

9 “(C) if any property so contributed has a  
10 built-in loss—

11 “(i) such built-in loss shall be taken  
12 into account only in determining the  
13 amount of items allocated to the contrib-  
14 uting partner, and

15 “(ii) except as provided in regulations,  
16 in determining the amount of items allo-  
17 cated to other partners, the basis of the  
18 contributed property in the hands of the  
19 partnership shall be treated as being equal  
20 to its fair market value immediately after  
21 the contribution.

22 For purposes of subparagraph (C), the term ‘built-  
23 in loss’ means the excess of the adjusted basis of the  
24 property over its fair market value immediately after  
25 the contribution.”

1 (b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-  
2 erty ON TRANSFER OF PARTNERSHIP INTEREST IF  
3 THERE IS SUBSTANTIAL BUILT-IN LOSS.—

4 (1) ADJUSTMENT REQUIRED.—Subsection (a)  
5 of section 743 (relating to optional adjustment to  
6 basis of partnership property) is amended by insert-  
7 ing before the period “or unless the partnership has  
8 a substantial built-in loss immediately after such  
9 transfer”.

10 (2) ADJUSTMENT.—Subsection (b) of section  
11 743 is amended by inserting “or with respect to  
12 which there is a substantial built-in loss immediately  
13 after such transfer” after “section 754 is in effect”.

14 (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743  
15 is amended by adding at the end the following new  
16 subsection:

17 “(d) SUBSTANTIAL BUILT-IN LOSS.—

18 “(1) IN GENERAL.—For purposes of this sec-  
19 tion, a partnership has a substantial built-in loss  
20 with respect to a transfer of an interest in a part-  
21 nership if—

22 “(A) the transferee partner’s proportionate  
23 share of the adjusted basis of the partnership  
24 property exceeds the basis of such partner’s in-  
25 terest in the partnership, and

1 “(B) such excess exceeds the greater of—

2 “(i) \$250,000, or

3 “(ii) 10 percent of the basis of such  
4 partner’s interest in the partnership.

5 “(2) REGULATIONS.—The Secretary shall pre-  
6 scribe such regulations as may be appropriate to  
7 carry out the purposes of paragraph (1) and section  
8 734(d), including regulations aggregating related  
9 partnerships and disregarding property acquired by  
10 the partnership in an attempt to avoid such pur-  
11 poses.”

12 (4) CLERICAL AMENDMENTS.—

13 (A) The section heading for section 743 is  
14 amended to read as follows:

15 **“SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-**  
16 **ERTY WHERE SECTION 754 ELECTION OR**  
17 **SUBSTANTIAL BUILT-IN LOSS.”**

18 (B) The table of sections for subpart C of  
19 part II of subchapter K of chapter 1 is amend-  
20 ed by striking the item relating to section 743  
21 and inserting the following new item:

“Sec. 743. Adjustment to basis of partnership property where sec-  
tion 754 election or substantial built-in loss.”

22 (c) **ADJUSTMENT TO BASIS OF UNDISTRIBUTED**  
23 **PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL**  
24 **BASIS REDUCTION.—**

1           (1) ADJUSTMENT REQUIRED.—Subsection (a)  
2 of section 734 (relating to optional adjustment to  
3 basis of undistributed partnership property) is  
4 amended by inserting before the period “or unless  
5 there is a substantial basis reduction”.

6           (2) ADJUSTMENT.—Subsection (b) of section  
7 734 is amended by inserting “or unless there is a  
8 substantial basis reduction” after “section 754 is in  
9 effect”.

10          (3) SUBSTANTIAL BASIS REDUCTION.—Section  
11 734 is amended by adding at the end the following  
12 new subsection:

13          “(d) SUBSTANTIAL BASIS REDUCTION.—

14               “(1) IN GENERAL.—For purposes of this sec-  
15 tion, there is a substantial basis reduction with re-  
16 spect to a distribution if the sum of the amounts de-  
17 scribed in subparagraphs (A) and (B) of subsection  
18 (b)(2) exceeds the greater of \$250,000 or 10 percent  
19 of the aggregate adjusted basis of partnership prop-  
20 erty immediately after the distribution.

21               “(2) REGULATIONS.—

**“For regulations to carry out this subsection, see  
                  section 743(d)(2).”**

22          (4) CLERICAL AMENDMENTS.—

23               (A) The section heading for section 734 is  
24 amended to read as follows:

1 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**  
 2 **PARTNERSHIP PROPERTY WHERE SECTION**  
 3 **754 ELECTION OR SUBSTANTIAL BASIS RE-**  
 4 **DUCTION.”**

5 (B) The table of sections for subpart B of  
 6 part II of subchapter K of chapter 1 is amend-  
 7 ed by striking the item relating to section 734  
 8 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership prop-  
 erty where section 754 election or substantial basis  
 reduction.”

9 (d) **EFFECTIVE DATES.**—

10 (1) **SUBSECTION (a).**—The amendment made  
 11 by subsection (a) shall apply to contributions made  
 12 after the date of the enactment of this Act.

13 (2) **SUBSECTION (b).**—The amendments made  
 14 by subsection (b) shall apply to transfers after the  
 15 date of the enactment of this Act.

16 (3) **SUBSECTION (c).**—The amendments made  
 17 by subsection (c) shall apply to distributions after  
 18 the date of the enactment of this Act.

19 **SEC. 107. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**  
 20 **MENT PENALTY FOR NONREPORTABLE**  
 21 **TRANSACTIONS.**

22 (a) **SUBSTANTIAL UNDERSTATEMENT OF CORPORA-**  
 23 **TIONS.**—Section 6662(d)(1)(B) (relating to special rule  
 24 for corporations) is amended to read as follows:

1           “(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than  
2           an S corporation or a personal holding company  
3           (as defined in section 542), there is a substan-  
4           tial understatement of income tax for any tax-  
5           able year if the amount of the understatement  
6           for the taxable year exceeds the lesser of—  
7

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

11                      “(ii) \$10,000,000.”

12           (b) REDUCTION FOR UNDERSTATEMENT OF TAX-  
13 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED  
14 ITEM.—Section 6662(d)(2)(B)(i) (relating to substantial  
15 authority) is amended to read as follows:

16                      “(i) the tax treatment of any item by  
17                      the taxpayer if the taxpayer had reason-  
18                      able belief that the tax treatment was more  
19                      likely than not the proper treatment, or”.

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

1           **Subtitle B—Promoter-Related**  
2                           **Provisions**

3   **SEC. 111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

4           (a) IN GENERAL.—Section 6111 (relating to registra-  
5   tion of tax shelters) is amended to read as follows:

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

7           “(a) IN GENERAL.—Each material advisor with re-  
8   spect to any reportable transaction shall make a return  
9   (in such form as the Secretary may prescribe) setting  
10   forth—

11                   “(1) information identifying and describing the  
12   transaction,

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

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

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

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

20                   “(1) MATERIAL ADVISOR.—

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

23                                   “(i) who provides any material aid,  
24                                   assistance, or advice with respect to orga-  
25                                   nizing, promoting, selling, implementing,

1 or carrying out any reportable transaction,  
2 and

3 “(ii) who directly or indirectly derives  
4 gross income in excess of the threshold  
5 amount (or such other amount as may be  
6 prescribed by the Secretary) for such ad-  
7 vice or assistance.

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

10 “(i) \$50,000 in the case of a report-  
11 able transaction substantially all of the tax  
12 benefits from which are provided to nat-  
13 ural persons, and

14 “(ii) \$250,000 in any other case.

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

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

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

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

1           “(3) such rules as may be necessary or appro-  
2           priate to carry out the purposes of this section.”

3           (b) CONFORMING AMENDMENTS.—

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

                  “Sec. 6111. Disclosure of reportable transactions.”

7           (2) So much of section 6112 as precedes sub-  
8           section (c) thereof is amended to read as follows:

9           **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**  
10                   **ACTIONS MUST KEEP LISTS OF ADVISEES,**  
11                   **ETC.**

12           “(a) IN GENERAL.—Each material advisor (as de-  
13           fined in section 6111) with respect to any reportable  
14           transaction (as defined in section 6707A(c)) shall (wheth-  
15           er or not required to file a return under section 6111 with  
16           respect to such transaction) maintain (in such manner as  
17           the Secretary may by regulations prescribe) a list—

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

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

23           (3) Section 6112 is amended—

24                   (A) by redesignating subsection (c) as sub-  
25                   section (b),

1 (B) by inserting “written” before “re-  
 2 quest” in subsection (b)(1) (as so redesign-  
 3 nated), and

4 (C) by striking “shall prescribe” in sub-  
 5 section (b)(2) (as so redesignated) and inserting  
 6 “may prescribe”.

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

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

10 (5)(A) The heading for section 6708 is amend-  
 11 ed to read as follows:

12 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**  
 13 **WITH RESPECT TO REPORTABLE TRANS-**  
 14 **ACTIONS.”**

15 (B) The item relating to section 6708 in the  
 16 table of sections for part I of subchapter B of chap-  
 17 ter 68 is amended to read as follows:

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

18 (c) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to transactions with respect to  
 20 which material aid, assistance, or advice referred to in sec-  
 21 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of  
 22 1986 (as added by this section) is provided after the date  
 23 of the enactment of this Act.

1 **SEC. 112. FAILURE TO FURNISH INFORMATION REGARDING**  
2 **REPORTABLE TRANSACTIONS.**

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

6 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**  
7 **ING REPORTABLE TRANSACTIONS.**

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

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

13 “(2) files false or incomplete information with  
14 the Secretary with respect to such transaction,  
15 such person shall pay a penalty with respect to such return  
16 in the amount determined under subsection (b).

17 “(b) AMOUNT OF PENALTY.—

18 “(1) IN GENERAL.—Except as provided in para-  
19 graph (2), the penalty imposed under subsection (a)  
20 with respect to any failure shall be \$50,000.

21 “(2) LISTED TRANSACTIONS.—The penalty im-  
22 posed under subsection (a) with respect to any listed  
23 transaction shall be an amount equal to the greater  
24 of—

25 “(A) \$200,000, or

1           “(B) 50 percent of the gross income de-  
2           rived by such person with respect to aid, assist-  
3           ance, or advice which is provided with respect  
4           to the listed transaction before the date the re-  
5           turn is filed under section 6111.

6           Subparagraph (B) shall be applied by substituting  
7           ‘75 percent’ for ‘50 percent’ in the case of an inten-  
8           tional failure or act described in subsection (a).

9           “(c) RESCISSION AUTHORITY.—The provisions of  
10          section 6707A(d) (relating to authority of Commissioner  
11          to rescind penalty) shall apply to any penalty imposed  
12          under this section.

13          “(d) REPORTABLE AND LISTED TRANSACTIONS.—  
14          For purposes of this section, the terms ‘reportable trans-  
15          action’ and ‘listed transaction’ have the respective mean-  
16          ings given to such terms by section 6707A(c).”

17          (b) CLERICAL AMENDMENT.—The item relating to  
18          section 6707 in the table of sections for part I of sub-  
19          chapter B of chapter 68 is amended by striking “tax shel-  
20          ters” and inserting “reportable transactions”.

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

1 **SEC. 113. MODIFICATION OF PENALTY FOR FAILURE TO**  
2 **MAINTAIN LISTS OF INVESTORS.**

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

5 “(a) IMPOSITION OF PENALTY.—

6 “(1) IN GENERAL.—If any person who is re-  
7 quired to maintain a list under section 6112(a) fails  
8 to make such list available upon written request to  
9 the Secretary in accordance with section 6112(b)  
10 within 20 business days after the date of such re-  
11 quest, such person shall pay a penalty of \$10,000  
12 for each day of such failure after such 20th day.

13 “(2) REASONABLE CAUSE EXCEPTION.—No  
14 penalty shall be imposed by paragraph (1) with re-  
15 spect to the failure on any day if such failure is due  
16 to reasonable cause.”

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

20 **SEC. 114. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**  
21 **CONDUCT RELATED TO TAX SHELTERS AND**  
22 **REPORTABLE TRANSACTIONS.**

23 (a) IN GENERAL.—Section 7408 (relating to action  
24 to enjoin promoters of abusive tax shelters, etc.) is amend-  
25 ed by redesignating subsection (c) as subsection (d) and

1 by striking subsections (a) and (b) and inserting the fol-  
2 lowing new subsections:

3       “(a) **AUTHORITY TO SEEK INJUNCTION.**—A civil ac-  
4 tion in the name of the United States to enjoin any person  
5 from further engaging in specified conduct may be com-  
6 menced at the request of the Secretary. Any action under  
7 this section shall be brought in the district court of the  
8 United States for the district in which such person resides,  
9 has his principal place of business, or has engaged in spec-  
10 ified conduct. The court may exercise its jurisdiction over  
11 such action (as provided in section 7402(a)) separate and  
12 apart from any other action brought by the United States  
13 against such person.

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

16               “(1) that the person has engaged in any speci-  
17 fied conduct, and

18               “(2) that injunctive relief is appropriate to pre-  
19 vent recurrence of such conduct,

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

23       “(c) **SPECIFIED CONDUCT.**—For purposes of this  
24 section, the term ‘specified conduct’ means any action, or

1 failure to take action, subject to penalty under section  
2 6700, 6701, 6707, or 6708.”

3 (b) CONFORMING AMENDMENTS.—

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

6 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**  
7 **LATED TO TAX SHELTERS AND REPORTABLE**  
8 **TRANSACTIONS.”**

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

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

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

16 **SEC. 115. PENALTY ON FAILURE TO REPORT INTERESTS IN**  
17 **FOREIGN FINANCIAL ACCOUNTS.**

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

20 “(5) FOREIGN FINANCIAL AGENCY TRANS-  
21 ACTION VIOLATION.—

22 “(A) PENALTY AUTHORIZED.—The Sec-  
23 retary of the Treasury may impose a civil  
24 money penalty on any person who violates, or

1 causes any violation of, any provision of section  
2 5314.

3 “(B) AMOUNT OF PENALTY.—

4 “(i) IN GENERAL.—Except as pro-  
5 vided in subparagraph (C), the amount of  
6 any civil penalty imposed under subpara-  
7 graph (A) shall not exceed \$5,000.

8 “(ii) REASONABLE CAUSE EXCEP-  
9 TION.—No penalty shall be imposed under  
10 subparagraph (A) with respect to any vio-  
11 lation if—

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

14 “(II) the amount of the trans-  
15 action or the balance in the account  
16 at the time of the transaction was  
17 properly reported.

18 “(C) WILLFUL VIOLATIONS.—In the case  
19 of any person willfully violating, or willfully  
20 causing any violation of, any provision of sec-  
21 tion 5314—

22 “(i) the maximum penalty under sub-  
23 paragraph (B)(i) shall be increased to the  
24 greater of—

25 “(I) \$25,000, or

1 “(II) the amount (not exceeding  
2 \$100,000) determined under subpara-  
3 graph (D), and

4 “(ii) subparagraph (B)(ii) shall not  
5 apply.

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

8 “(i) in the case of a violation involving  
9 a transaction, the amount of the trans-  
10 action, or

11 “(ii) in the case of a violation involv-  
12 ing a failure to report the existence of an  
13 account or any identifying information re-  
14 quired to be provided with respect to an  
15 account, the balance in the account at the  
16 time of the violation.”

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

20 **SEC. 116. FRIVOLOUS TAX SUBMISSIONS.**

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

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

24 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-  
25 TURNS.—A person shall pay a penalty of \$5,000 if—

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

3                   “(A) does not contain information on  
4                   which the substantial correctness of the self-as-  
5                   sessment may be judged, or

6                   “(B) contains information that on its face  
7                   indicates that the self-assessment is substan-  
8                   tially incorrect; and

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

10                   “(A) is due to a position which is frivolous,  
11                   or

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

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

16                   “(1) IMPOSITION OF PENALTY.—Except as pro-  
17                   vided in paragraph (3), any person who submits a  
18                   specified frivolous submission shall pay a penalty of  
19                   \$5,000.

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

22                           “(A) SPECIFIED FRIVOLOUS SUBMIS-  
23                           SION.—The term ‘specified frivolous submis-  
24                           sion’ means a specified submission if any por-  
25                           tion of such submission—

1           “(i) is based on a position which is  
2           frivolous, or

3           “(ii) reflects a desire to delay or im-  
4           pede the administration of Federal tax  
5           laws.

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

8           “(i) a request for a hearing under—

9                   “(I) section 6320 (relating to no-  
10                  tice and opportunity for hearing upon  
11                  filing of notice of lien), or

12                   “(II) section 6330 (relating to  
13                  notice and opportunity for hearing be-  
14                  fore levy), and

15           “(ii) an application under—

16                   “(I) section 6159 (relating to  
17                  agreements for payment of tax liabil-  
18                  ity in installments),

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

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

23           “(3) OPPORTUNITY TO WITHDRAW SUBMIS-  
24           SION.—If the Secretary provides a person with no-  
25           tice that a submission is a specified frivolous sub-

1 mission and such person withdraws such submission  
2 within 30 days after such notice, the penalty im-  
3 posed under paragraph (1) shall not apply with re-  
4 spect to such submission.

5 “(c) REDUCTION OF PENALTY.—The Secretary may  
6 reduce the amount of any penalty imposed under this sec-  
7 tion if the Secretary determines that such reduction would  
8 promote compliance with and administration of the Fed-  
9 eral tax laws.

10 “(d) PENALTIES IN ADDITION TO OTHER PEN-  
11 ALTIES.—The penalties imposed by this section shall be  
12 in addition to any other penalty provided by law.”

13 (b) CLERICAL AMENDMENT.—The table of sections  
14 for part I of subchapter B of chapter 68 is amended by  
15 striking the item relating to section 6702 and inserting  
16 the following new item:

“Sec. 6702. Frivolous tax submissions.”

17 (c) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to submissions made and issues  
19 raised after the date of the enactment of this Act.

20 **SEC. 117. REGULATION OF INDIVIDUALS PRACTICING BE-**  
21 **FORE THE DEPARTMENT OF THE TREASURY.**

22 (a) CENSURE; IMPOSITION OF PENALTY.—

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

1 (A) by inserting “, or censure,” after “De-  
2 partment”, and

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

5 “The Secretary may impose a monetary penalty on any  
6 representative described in the preceding sentence. If the  
7 representative was acting on behalf of an employer or any  
8 firm or other entity in connection with the conduct giving  
9 rise to such penalty, the Secretary may impose a monetary  
10 penalty on such employer, firm, or entity if it knew, or  
11 reasonably should have known, of such conduct. Such pen-  
12 alty shall not exceed the gross income derived (or to be  
13 derived) from the conduct giving rise to the penalty and  
14 may be in addition to, or in lieu of, any suspension, disbar-  
15 ment, or censure.”

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

19 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of  
20 such title 31 is amended by adding at the end the fol-  
21 lowing new subsection:

22 “(d) Nothing in this section or in any other provision  
23 of law shall be construed to limit the authority of the Sec-  
24 retary of the Treasury to impose standards applicable to  
25 the rendering of written advice with respect to any entity,

1 transaction plan or arrangement, or other plan or arrange-  
 2 ment, which is of a type which the Secretary determines  
 3 as having a potential for tax avoidance or evasion.”

4 **SEC. 118. PENALTY ON PROMOTERS OF TAX SHELTERS.**

5 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-  
 6 TERS.—Section 6700(a) is amended by adding at the end  
 7 the following new sentence: “Notwithstanding the first  
 8 sentence, if an activity with respect to which a penalty  
 9 imposed under this subsection involves a statement de-  
 10 scribed in paragraph (2)(A), the amount of the penalty  
 11 shall be equal to 50 percent of the gross income derived  
 12 (or to be derived) from such activity by the person on  
 13 which the penalty is imposed.”

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

17 **Subtitle C—Other Provisions**

18 **SEC. 121. TREATMENT OF STRIPPED INTERESTS IN BOND**

19 **AND PREFERRED STOCK FUNDS, ETC.**

20 (a) IN GENERAL.—Section 1286 (relating to tax  
 21 treatment of stripped bonds) is amended by redesignating  
 22 subsection (f) as subsection (g) and by inserting after sub-  
 23 section (e) the following new subsection:

24 “(f) TREATMENT OF STRIPPED INTERESTS IN BOND  
 25 AND PREFERRED STOCK FUNDS, ETC.—In the case of an

1 account or entity substantially all of the assets of which  
2 consist of bonds, preferred stock, or a combination thereof,  
3 the Secretary may by regulations provide that rules simi-  
4 lar to the rules of this section and 305(e), as appropriate,  
5 shall apply to interests in such account or entity to which  
6 (but for this subsection) this section or section 305(e), as  
7 the case may be, would not apply.”

8 (b) CROSS REFERENCE.—Subsection (e) of section  
9 305 is amended by adding at the end the following new  
10 paragraph:

11 “(7) CROSS REFERENCE.—

**“For treatment of stripped interests in certain ac-  
counts or entities holding preferred stock, see sec-  
tion 1286(f).”**

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to purchases and dispositions after  
14 the date of the enactment of this Act.

15 **SEC. 122. MINIMUM HOLDING PERIOD FOR FOREIGN TAX**

16 **CREDIT ON WITHHOLDING TAXES ON INCOME**

17 **OTHER THAN DIVIDENDS.**

18 (a) IN GENERAL.—Section 901 is amended by redес-  
19 ignating subsection (l) as subsection (m) and by inserting  
20 after subsection (k) the following new subsection:

21 “(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING  
22 TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS  
23 ETC.—

1           “(1) IN GENERAL.—In no event shall a credit  
2           be allowed under subsection (a) for any withholding  
3           tax (as defined in subsection (k)) on any item of in-  
4           come or gain with respect to any property if—

5                   “(A) such property is held by the recipient  
6                   of the item for 15 days or less during the 30-  
7                   day period beginning on the date which is 15  
8                   days before the date on which the right to re-  
9                   ceive payment of such item arises, or

10                   “(B) to the extent that the recipient of the  
11                   item is under an obligation (whether pursuant  
12                   to a short sale or otherwise) to make related  
13                   payments with respect to positions in substan-  
14                   tially similar or related property.

15           This paragraph shall not apply to any dividend to  
16           which subsection (k) applies.

17           “(2) EXCEPTION FOR TAXES PAID BY DEAL-  
18           ERS.—

19                   “(A) IN GENERAL.—Paragraph (1) shall  
20                   not apply to any qualified tax with respect to  
21                   any property held in the active conduct in a for-  
22                   eign country of a business as a dealer in such  
23                   property.

24                   “(B) QUALIFIED TAX.—For purposes of  
25                   subparagraph (A), the term ‘qualified tax’

1 means a tax paid to a foreign country (other  
2 than the foreign country referred to in subpara-  
3 graph (A)) if—

4 “(i) the item to which such tax is at-  
5 tributable is subject to taxation on a net  
6 basis by the country referred to in sub-  
7 paragraph (A), and

8 “(ii) such country allows a credit  
9 against its net basis tax for the full  
10 amount of the tax paid to such other for-  
11 eign country.

12 “(C) DEALER.—For purposes of subpara-  
13 graph (A), the term ‘dealer’ means—

14 “(i) with respect to a security, any  
15 person to whom paragraphs (1) and (2) of  
16 subsection (k) would not apply by reason  
17 of paragraph (4) thereof if such security  
18 were stock, and

19 “(ii) with respect to any other prop-  
20 erty, any person with respect to whom  
21 such property is described in section  
22 1221(a)(1).

23 “(D) REGULATIONS.—The Secretary may  
24 prescribe such regulations as may be appro-  
25 priate to carry out this paragraph, including

1 regulations to prevent the abuse of the excep-  
2 tion provided by this paragraph and to treat  
3 other taxes as qualified taxes.

4 “(3) EXCEPTIONS.—The Secretary may by reg-  
5 ulation provide that paragraph (1) shall not apply to  
6 property where the Secretary determines that the  
7 application of paragraph (1) to such property is not  
8 necessary to carry out the purposes of this sub-  
9 section.

10 “(4) CERTAIN RULES TO APPLY.—Rules similar  
11 to the rules of paragraphs (5), (6), and (7) of sub-  
12 section (k) shall apply for purposes of this sub-  
13 section.

14 “(5) DETERMINATION OF HOLDING PERIOD.—  
15 Holding periods shall be determined for purposes of  
16 this subsection without regard to section 1235 or  
17 any similar rule.”

18 (b) CONFORMING AMENDMENT.—The heading of  
19 subsection (k) of section 901 is amended by inserting “ON  
20 DIVIDENDS” after “TAXES”.

21 (c) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to amounts paid or accrued more  
23 than 30 days after the date of the enactment of this Act.

1 **SEC. 123. AFFIRMATION OF CONSOLIDATED RETURN REGU-**  
2 **LATION AUTHORITY.**

3 (a) **IN GENERAL.**—Section 1502 is amended by add-  
4 ing at the end the following new sentence: “In carrying  
5 out the preceding sentence, the Secretary may prescribe  
6 rules that are different from the provisions of chapter 1  
7 that would apply if such corporations filed separate re-  
8 turns.”.

9 (b) **RESULT NOT OVERTURNED.**—Notwithstanding  
10 the amendment made by subsection (a), the Internal Rev-  
11 enue Code of 1986 shall be construed by treating Treasury  
12 Regulation § 1.1502-20(e)(1)(iii) (as in effect on January  
13 1, 2001) as being inapplicable to the factual situation in  
14 *Rite Aid Corporation and Subsidiary Corporations v.*  
15 *United States*, 255 F.3d 1357 (Fed. Cir. 2001).

16 (c) **EFFECTIVE DATE.**—This section, and the amend-  
17 ment made by this section, shall apply to taxable years  
18 beginning before, on, or after the date of the enactment  
19 of this Act.

1 **TITLE II—PROVISIONS TO RE-**  
2 **DUCE TAX AVOIDANCE**  
3 **THROUGH CORPORATE EARN-**  
4 **INGS STRIPPING AND EXPA-**  
5 **TRATION**

6 **SEC. 201. REDUCTION IN POTENTIAL FOR EARNINGS STRIP-**  
7 **PING BY FURTHER LIMITING DEDUCTION**  
8 **FOR INTEREST ON CERTAIN INDEBTEDNESS.**

9 (a) REDUCTION IN POTENTIAL FOR EARNINGS  
10 STRIPPING.—

11 (1) IN GENERAL.—Paragraphs (1) and (2) of  
12 section 163(j) are amended to read as follows:

13 “(1) LIMITATION.—

14 “(A) IN GENERAL.—In the case of a cor-  
15 poration, no deduction shall be allowed under  
16 this chapter for disqualified interest paid or ac-  
17 crued during the taxable year.

18 “(B) MAXIMUM DISALLOWANCE.—

19 “(i) IN GENERAL.—Except as pro-  
20 vided in clause (ii), the amount disallowed  
21 under subparagraph (A) shall not exceed  
22 the corporation’s excess overall interest ex-  
23 pense for the taxable year.

24 “(ii) CORPORATIONS WHICH ARE  
25 MEMBERS OF WORLDWIDE AFFILIATED

1           GROUP.—In the case of a corporation  
2           which is a member of a worldwide affili-  
3           ated group, the amount disallowed under  
4           subparagraph (A) shall not exceed the  
5           greater of—

6                   “(I) the corporation’s excess  
7                   overall interest expense for the taxable  
8                   year, or

9                   “(II) the corporation’s excess do-  
10                  mestic disqualified interest for such  
11                  year.

12           “(C) DISALLOWED AMOUNT CARRIED TO  
13           SUCCEEDING TAXABLE YEAR.—Any amount dis-  
14           allowed under subparagraph (A) for any taxable  
15           year shall be treated as disqualified interest  
16           paid or accrued in the succeeding taxable year  
17           and in the 2nd through 5th succeeding taxable  
18           years to the extent not previously taken into ac-  
19           count under this subparagraph. The amount of  
20           such a carryforward taken into account for any  
21           such succeeding taxable year shall not exceed—

22                   “(i) the excess (if any) of—

23                   “(I) 35 percent of the adjusted  
24                   taxable income of the corporation for  
25                   such succeeding taxable year, over

1                   “(II) the corporation’s net inter-  
2                   est expense for such succeeding tax-  
3                   able year, reduced by

4                   “(ii) amounts carried to such suc-  
5                   ceeding taxable year from taxable years  
6                   preceding the taxable year from which the  
7                   amount is being carried forward.

8                   “(D) SPECIAL RULES FOR CARRYOVER.—

9                   “(i) NO CARRYOVER OF EXCESS DO-  
10                  MESTIC DISQUALIFIED INTEREST.—In the  
11                  case of a corporation which is a member of  
12                  a worldwide affiliated group, the amount  
13                  disallowed under subparagraph (A) for any  
14                  taxable year which may be treated as pro-  
15                  vided in subparagraph (C) shall not exceed  
16                  the excess (if any) of the amount dis-  
17                  allowed over the amount described in sub-  
18                  paragraph (B)(ii)(II) for such year.

19                  “(ii) NO CARRYOVER TO YEAR FOR  
20                  WHICH AMOUNT DISALLOWED.—No  
21                  amount may be carried under this sub-  
22                  paragraph to any taxable year for which  
23                  any amount is disallowed under subpara-  
24                  graph (A).

1           “(2) EXCESS INTEREST EXPENSE.—For pur-  
2           poses of this subsection—

3                   “(A) EXCESS OVERALL INTEREST EX-  
4                   PENSE.—The term ‘excess overall interest ex-  
5                   pense’ means the excess (if any) of—

6                           “(i) the corporation’s net interest ex-  
7                           pense, over

8                           “(ii) 35 percent of the adjusted tax-  
9                           able income of the corporation.

10                   “(B) EXCESS DOMESTIC DISQUALIFIED IN-  
11                   TEREST.—The term ‘excess domestic disquali-  
12                   fied interest’ means the product of—

13                           “(i) the disqualified interest paid or  
14                           accrued by the corporation during the tax-  
15                           able year, and

16                           “(ii) the corporation’s dispro-  
17                           portionate domestic related-party indebtedness  
18                           percentage.”

19           (2) DISPROPORTIONATE DOMESTIC RELATED-  
20           PARTY INDEBTEDNESS PERCENTAGE.—Subsection  
21           (j) of section 163 is amended by redesignating para-  
22           graphs (6), (7), and (8) as paragraphs (7), (8), and  
23           (9), respectively, and by inserting after paragraph  
24           (5) the following new paragraph:

1           “(6) DISPROPORTIONATE DOMESTIC RELATED-  
2 PARTY INDEBTEDNESS PERCENTAGE.—For purposes  
3 of this subsection—

4           “(A) IN GENERAL.—The term ‘dispropor-  
5 tionate domestic related-party indebtedness per-  
6 centage’ means, for any taxable year, the per-  
7 centage (but not greater than 100 percent)  
8 which, as of the close of such taxable year (or  
9 on any other day during the taxable year as the  
10 Secretary may by regulations prescribe)—

11           “(i) the disproportionate indebtedness  
12 of the corporation, bears to

13           “(ii) the related-party indebtedness of  
14 the corporation.

15           “(B) DISPROPORTIONATE INDEBTED-  
16 NESS.—The term ‘disproportionate indebted-  
17 ness’ means the amount by which the total in-  
18 debtedness of the corporation exceeds the  
19 amount which bears the same ratio to the total  
20 indebtedness of the worldwide affiliated group  
21 as—

22           “(i) the money and all other assets of  
23 the corporation, bears to

1                   “(ii) the money and all other assets of  
2                   the worldwide affiliated group of which  
3                   such corporation is a member.

4                   For purposes of determining the money and  
5                   other assets, and indebtedness, of a worldwide  
6                   affiliated group, all members of the same world-  
7                   wide affiliated group shall be treated as 1 cor-  
8                   poration.

9                   “(C) RELATED-PARTY INDEBTEDNESS.—  
10                  The term ‘related-party indebtedness’ means  
11                  any indebtedness of the corporation if the inter-  
12                  est on such indebtedness is disqualified interest.

13                  “(D) WORLDWIDE AFFILIATED GROUP.—

14                  “(i) IN GENERAL.—Except as pro-  
15                  vided in clause (ii), the term ‘worldwide af-  
16                  filiated group’ means an affiliated group as  
17                  defined in section 1504(a), determined  
18                  without regard to paragraphs (2), (3), and  
19                  (4) of section 1504(b).

20                  “(ii) TREATMENT OF CERTAIN FINAN-  
21                  CIAL INSTITUTIONS.—

22                  “(I) IN GENERAL.—All financial  
23                  corporations (as defined in section  
24                  864(e)(6)(B)) which are members of a  
25                  worldwide affiliated group shall be

1 treated as a separate worldwide affili-  
2 ated group (and not as part of any  
3 other worldwide affiliated group) for  
4 purposes of applying this subsection.

5 “(II) DETERMINATION OF DO-  
6 MESTIC DEBT AND ASSETS.—For pur-  
7 poses of this paragraph, all such fi-  
8 nancial corporations which are mem-  
9 bers of the same affiliated group (as  
10 defined in section 1504(a), determined  
11 without regard to paragraph (2) of  
12 section 1504(b)) shall be treated as 1  
13 corporation.

14 “(E) DETERMINATION OF DEBT AND AS-  
15 SETS.—For purposes of this paragraph—

16 “(i) the amount taken into account  
17 with respect to any asset shall be the ad-  
18 justed basis thereof for purposes of deter-  
19 mining gain,

20 “(ii) the amount taken into account  
21 with respect to any indebtedness with  
22 original issue discount shall be its issue  
23 price plus the portion of the original issue  
24 discount previously accrued as determined  
25 under the rules of section 1272 (deter-

1                   mined without regard to subsection (a)(7)  
2                   or (b)(4) thereof), and

3                   “(iii) there shall be such other adjust-  
4                   ments as the Secretary may by regulations  
5                   prescribe.”

6                   (3) CONFORMING AMENDMENT.—Paragraph (9)  
7                   of section 163(j), as redesignated by paragraph (2),  
8                   is amended by inserting “or worldwide affiliated  
9                   group” after “an affiliated group”.

10                  (b) MAINTENANCE OF CURRENT LAW FOR INTEREST  
11 PAID BY TAXABLE REIT SUBSIDIARIES TO REIT.—

12                   (1) EXCEPTION FROM 163(J).—Paragraph (3) of  
13                   section 163(j) is amended by inserting “and” at the  
14                   end of subparagraph (A), by striking “, and” at the  
15                   end of subparagraph (B) and inserting a period, and  
16                   by striking subparagraph (C).

17                   (2) DISALLOWANCE.—Section 856 is amended  
18                   by adding at the end the following new subsection:

19                   “(m) LIMITATION ON DEDUCTION FOR INTEREST ON  
20 CERTAIN INDEBTEDNESS OF TAXABLE REIT SUB-  
21 SIDIARY.—

22                   “(1) LIMITATION.—

23                   “(A) IN GENERAL.—If this subsection ap-  
24                   plies to any taxable REIT subsidiary for any  
25                   taxable year, no deduction shall be allowed

1 under this chapter for disqualified interest paid  
2 or accrued by such subsidiary during such tax-  
3 able year. The amount disallowed under the  
4 preceding sentence shall not exceed the subsidi-  
5 ary's excess interest expense for the taxable  
6 year.

7 “(B) DISALLOWED AMOUNT CARRIED TO  
8 SUCCEEDING TAXABLE YEAR.—Any amount dis-  
9 allowed under subparagraph (A) for any taxable  
10 year shall be treated as disqualified interest  
11 paid or accrued in the succeeding taxable year  
12 (and clause (ii) of paragraph (2)(A) shall not  
13 apply for purposes of applying this subsection  
14 to the amount so treated).

15 “(2) SUBSIDIARIES TO WHICH SUBSECTION AP-  
16 PLIES.—

17 “(A) IN GENERAL.—This subsection shall  
18 apply to any taxable REIT subsidiary for any  
19 taxable year if—

20 “(i) such subsidiary has excess inter-  
21 est expense for such taxable year, and

22 “(ii) the ratio of debt to equity of  
23 such subsidiary as of the close of such tax-  
24 able year (or on any other day during the

1 taxable year as the Secretary may by regu-  
2 lations prescribe) exceeds 1.5 to 1.

3 “(B) EXCESS INTEREST EXPENSE.—

4 “(i) IN GENERAL.—For purposes of  
5 this subsection, the term ‘excess interest  
6 expense’ means the excess (if any) of—

7 “(I) the taxable REIT subsidi-  
8 ary’s net interest expense, over

9 “(II) the sum of 50 percent of  
10 the adjusted taxable income of the  
11 subsidiary plus any excess limitation  
12 carryforward under clause (ii).

13 “(ii) EXCESS LIMITATION  
14 CARRYFORWARD.—If a taxable REIT sub-  
15 sidiary has an excess limitation for any  
16 taxable year, the amount of such excess  
17 limitation shall be an excess limitation  
18 carryforward to the 1st succeeding taxable  
19 year and to the 2nd and 3rd succeeding  
20 taxable years to the extent not previously  
21 taken into account under this clause. The  
22 amount of such a carryforward taken into  
23 account for any such succeeding taxable  
24 year shall not exceed the excess interest  
25 expense for such succeeding taxable year

1 (determined without regard to the  
2 carryforward from the taxable year of such  
3 excess limitation).

4 “(iii) EXCESS LIMITATION.—For pur-  
5 poses of clause (ii), the term ‘excess limita-  
6 tion’ means the excess (if any) of—

7 “(I) 50 percent of the adjusted  
8 taxable income of the subsidiary, over

9 “(II) the subsidiary’s net interest  
10 expense.

11 “(C) RATIO OF DEBT TO EQUITY.—For  
12 purposes of this paragraph, the term ‘ratio of  
13 debt to equity’ means the ratio which the total  
14 indebtedness of the subsidiary bears to the sum  
15 of its money and all other assets reduced (but  
16 not below zero) by such total indebtedness. The  
17 rules of section 163(j)(6)(E) shall apply for  
18 purposes of the preceding sentence.

19 “(3) DISQUALIFIED INTEREST.—For purposes  
20 of this subsection, the term ‘disqualified interest’  
21 means any interest paid or accrued (directly or indi-  
22 rectly) by a taxable REIT subsidiary of a real estate  
23 investment trust to such trust.

24 “(4) OTHER RULES TO APPLY.—Rules similar  
25 to the rules of paragraphs (7), (8), and (9) of sec-

1       tion 163(j) shall apply for purposes of this sub-  
2       section.”

3       (c) EFFECTIVE DATE.—

4           (1) IN GENERAL.—Except as otherwise pro-  
5       vided in this subsection, the amendments made by  
6       this section shall apply to taxable years beginning  
7       after December 31, 2003.

8           (2) EARLIER EFFECTIVE DATE WITH RESPECT  
9       TO EXPATRIATED CORPORATIONS, ETC.—The  
10      amendments made by this section shall apply to tax-  
11      able years ending after March 20, 2002, in the case  
12      of a taxpayer which is—

13           (A) a surrogate foreign corporation, as de-  
14      fined in section 7874(b) of the Internal Rev-  
15      enue Code of 1986 (as added by section 202),

16           (B) a corporation which would be a surro-  
17      gate foreign corporation (as so defined) if “De-  
18      cember 31, 1996” were substituted for “March  
19      20, 2002” in such section 7874(b), and

20           (C) any corporation which is an expatri-  
21      ated entity (as defined in such section 7874(b))  
22      with respect to a corporation described in sub-  
23      paragraph (A) or (B).

24           (3) EARLIER EFFECTIVE DATE FOR RECENT  
25      DEBT.—

1           (A) IN GENERAL.—Subject to subpara-  
2 graph (B), the amendments made by this sec-  
3 tion shall also apply to taxable years ending  
4 after July 10, 2002, and beginning before the  
5 first taxable year to which such amendments  
6 would (without regard to this paragraph) apply.

7           (B) APPLICATION ONLY TO RECENT  
8 DEBT.—In the case of a taxable year to which  
9 the amendments made by this section apply  
10 solely by reason of this paragraph, the increase  
11 in the amount disallowed under section 163(j)  
12 of the Internal Revenue Code of 1986 by reason  
13 of such amendments shall not exceed the  
14 amount of disqualified interest for such year on  
15 indebtedness incurred after July 10, 2002.

16           (4) LIMITATION ON CARRYOVER OF DIS-  
17 ALLOWED INTEREST.—For purposes of applying sec-  
18 tion 163(j)(1)(C) of the Internal Revenue Code of  
19 1986 (as added by this section), amounts carried to  
20 any taxable year beginning after December 31,  
21 2003, shall be treated as disallowed for the most re-  
22 cent taxable year beginning on or before such date.

1 **SEC. 202. TAX TREATMENT OF EXPATRIATED ENTITIES AND**  
2 **THEIR FOREIGN PARENTS.**

3 (a) IN GENERAL.—Subchapter C of chapter 80 (re-  
4 lating to provisions affecting more than one subtitle) is  
5 amended by adding at the end the following new section:

6 **“SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES**  
7 **AND THEIR FOREIGN PARENTS.**

8 “(a) INVERTED CORPORATIONS TREATED AS DOMES-  
9 TIC CORPORATIONS.—

10 “(1) IN GENERAL.—If a foreign incorporated  
11 entity is treated as an inverted domestic corporation,  
12 then, notwithstanding section 7701(a)(4), such enti-  
13 ty shall be treated for purposes of this title as a do-  
14 mestic corporation.

15 “(2) EXCEPTION.—Paragraph (1) shall not  
16 apply for purposes of determining under section 367  
17 whether any shareholder recognizes gain in connec-  
18 tion with the acquisition.

19 “(3) INVERTED DOMESTIC CORPORATION.—For  
20 purposes of this section, a foreign incorporated enti-  
21 ty shall be treated as an inverted domestic corpora-  
22 tion if, pursuant to a plan (or a series of related  
23 transactions)—

24 “(A) the entity completes after March 20,  
25 2002, the direct or indirect acquisition of sub-  
26 stantially all of the properties held directly or

1 indirectly by a domestic corporation or substan-  
2 tially all of the properties constituting a trade  
3 or business of a domestic partnership,

4 “(B) after the acquisition at least 80 per-  
5 cent of the stock (by vote or value) of the entity  
6 is held—

7 “(i) in the case of an acquisition with  
8 respect to a domestic corporation, by  
9 former shareholders of the domestic cor-  
10 poration by reason of holding stock in the  
11 domestic corporation, or

12 “(ii) in the case of an acquisition with  
13 respect to a domestic partnership, by  
14 former partners of the domestic partner-  
15 ship by reason of holding a capital or prof-  
16 its interest in the domestic partnership,  
17 and

18 “(C) the expanded affiliated group which  
19 after the acquisition includes the entity does  
20 not have substantial business activities in the  
21 foreign country in which or under the law of  
22 which the entity is created or organized when  
23 compared to the total business activities of such  
24 expanded affiliated group.

1           “(4) TERMINATION.—This subsection shall not  
2           apply to any acquisition completed after March 20,  
3           2005.

4           “(b) TAX ON INVERSION GAIN OF EXPATRIATED EN-  
5           TITIES.—

6           “(1) IN GENERAL.—The taxable income of an  
7           expatriated entity for any taxable year which in-  
8           cludes any portion of the applicable period shall in  
9           no event be less than the inversion gain of the entity  
10          for the taxable year.

11          “(2) EXPATRIATED ENTITY.—For purposes of  
12          this subsection—

13                 “(A) IN GENERAL.—The term ‘expatriated  
14                 entity’ means—

15                         “(i) the domestic corporation or part-  
16                         nership referred to in subparagraph (B)(i)  
17                         with respect to which a foreign incor-  
18                         porated entity is a surrogate foreign cor-  
19                         poration, and

20                         “(ii) any United States person who is  
21                         related (within the meaning of section  
22                         267(b) or 707(b)(1)) to a domestic cor-  
23                         poration or partnership described in clause  
24                         (i).

1           “(B) SURROGATE FOREIGN CORPORA-  
2           TION.—A foreign incorporated entity shall be  
3           treated as a surrogate foreign corporation if,  
4           pursuant to a plan (or a series of related trans-  
5           actions)—

6                   “(i) the entity completes after March  
7                   20, 2002, the direct or indirect acquisition  
8                   of substantially all of the properties held  
9                   directly or indirectly by a domestic cor-  
10                  poration or substantially all of the prop-  
11                  erties constituting a trade or business of a  
12                  domestic partnership, and

13                   “(ii) after the acquisition at least 60  
14                   percent of the stock (by vote or value) of  
15                   the entity is held—

16                           “(I) in the case of an acquisition  
17                           with respect to a domestic corpora-  
18                           tion, by former shareholders of the  
19                           domestic corporation by reason of  
20                           holding stock in the domestic corpora-  
21                           tion, or

22                           “(II) in the case of an acquisition  
23                           with respect to a domestic partner-  
24                           ship, by former partners of the do-  
25                           mestic partnership by reason of hold-

1                   ing a capital or profits interest in the  
2                   domestic partnership.

3                   The term ‘surrogate foreign corporation’ shall  
4                   not include an inverted domestic corporation.

5                   “(c) GENERAL DEFINITIONS AND SPECIAL RULES.—

6                   “(1) FOREIGN INCORPORATED ENTITY.—For  
7                   purposes of this section, the term ‘foreign incor-  
8                   porated entity’ means any entity which is, or but for  
9                   subsection (a) would be, treated as a foreign cor-  
10                  poration for purposes of this title.

11                  “(2) EXPANDED AFFILIATED GROUP.—The  
12                  term ‘expanded affiliated group’ means an affiliated  
13                  group as defined in section 1504(a) but without re-  
14                  gard to section 1504(b), except that section 1504(a)  
15                  shall be applied by substituting ‘more than 50 per-  
16                  cent’ for ‘at least 80 percent’ each place it appears.

17                  “(3) CERTAIN STOCK DISREGARDED.—There  
18                  shall not be taken into account in determining own-  
19                  ership under subsections (a)(3)(B) and  
20                  (b)(2)(B)(ii)—

21                                 “(i) stock held by members of the ex-  
22                                 panded affiliated group which includes the  
23                                 foreign incorporated entity, or

24                                 “(ii) stock of such foreign incor-  
25                                 porated entity which is sold in a public of-

1                   fering related to the acquisition described  
2                   in subsection (a)(3)(A) or (b)(2)(B)(i), re-  
3                   spectively.

4                   “(4) PLAN DEEMED IN CERTAIN CASES.—If a  
5                   foreign incorporated entity acquires directly or indi-  
6                   rectly substantially all of the properties of a domes-  
7                   tic corporation or partnership during the 4-year pe-  
8                   riod beginning on the date which is 2 years before  
9                   the ownership requirements of subsections (a)(3)(B)  
10                  and (b)(2)(B)(ii) are met, such actions shall be  
11                  treated as pursuant to a plan.

12                  “(5) CERTAIN TRANSFERS DISREGARDED.—The  
13                  transfer of properties or liabilities (including by con-  
14                  tribution or distribution) shall be disregarded if such  
15                  transfers are part of a plan a principal purpose of  
16                  which is to avoid the purposes of this section.

17                  “(6) SPECIAL RULE FOR RELATED PARTNER-  
18                  SHIPS.—For purposes of applying subsections  
19                  (a)(3)(B) and (b)(2)(B)(ii) to the acquisition of a  
20                  domestic partnership, except as provided in regula-  
21                  tions, all partnerships which are under common con-  
22                  trol (within the meaning of section 482) shall be  
23                  treated as 1 partnership.

24                  “(7) REGULATIONS.—The Secretary shall pre-  
25                  scribe such regulations as may be appropriate to de-

1       termine whether a corporation is an inverted domes-  
2       tic corporation or surrogate foreign corporation, in-  
3       cluding regulations—

4               “(A) to treat warrants, options, contracts  
5               to acquire stock, convertible debt interests, and  
6               other similar interests as stock, and

7               “(B) to treat stock as not stock.

8       “(d) DEFINITIONS RELATING TO TAX ON INVERSION  
9       GAIN.—For purposes of subsection (b)—

10              “(1) APPLICABLE PERIOD.—The term ‘applica-  
11              ble period’ means the period—

12                      “(A) beginning on the first date properties  
13                      are acquired as part of the acquisition described  
14                      in subsection (b)(2)(B)(i), and

15                      “(B) ending on the date which is 10 years  
16                      after the last date properties are acquired as  
17                      part of such acquisition.

18              “(2) INVERSION GAIN.—The term ‘inversion  
19              gain’ means the income or gain recognized by reason  
20              of the transfer during the applicable period of stock  
21              or other properties by an expatriated entity, and any  
22              income received or accrued during the applicable pe-  
23              riod by reason of a license of any property by an ex-  
24              patriated entity —

1           “(A) as part of the acquisition described in  
2           subsection (b)(2)(B)(i), or

3           “(B) after such acquisition if the transfer  
4           is to a foreign related person.

5           Subparagraph (B) shall not apply to property de-  
6           scribed in section 1221(a)(1) in the hands of the ex-  
7           patriated entity.

8           “(4) FOREIGN RELATED PERSON.—The term  
9           ‘foreign related person’ means, with respect to any  
10          expatriated entity, a foreign person which—

11           “(A) is related (within the meaning of sec-  
12          tion 267(b) or 707(b)(1)) to such entity, or

13           “(B) is under the same common control  
14          (within the meaning of section 482) as such en-  
15          tity.

16          “(e) SPECIAL RULES RELATING TO TAX ON INVER-  
17          SION GAIN.—

18           “(1) CREDITS NOT ALLOWED AGAINST TAX ON  
19          INVERSION GAIN.—Credits (other than the credit al-  
20          lowed by section 901) shall be allowed against the  
21          tax imposed by this chapter on an expatriated entity  
22          for any taxable year described in subsection (b) only  
23          to the extent such tax exceeds the product of—

24           “(A) the amount of the inversion gain for  
25          the taxable year, and

1           “(B) the highest rate of tax specified in  
2           section 11(b)(1).

3           For purposes of determining the credit allowed by  
4           section 901, inversion gain shall be treated as from  
5           sources within the United States.

6           “(2) SPECIAL RULES FOR PARTNERSHIPS.—In  
7           the case of an expatriated entity which is a  
8           partnership—

9                   “(A) subsection (b) shall apply at the part-  
10                   ner rather than the partnership level,

11                   “(B) the inversion gain of any partner for  
12                   any taxable year shall be equal to the sum of—

13                           “(i) the partner’s distributive share of  
14                           inversion gain of the partnership for such  
15                           taxable year, plus

16                                   “(ii) gain recognized for the taxable  
17                                   year by the partner by reason of the trans-  
18                                   fer during the applicable period of any  
19                                   partnership interest of the partner in such  
20                                   partnership to the surrogate foreign cor-  
21                                   poration, and

22                   “(C) the highest rate of tax specified in  
23                   the rate schedule applicable to the partner  
24                   under this chapter shall be substituted for the  
25                   rate of tax referred to in paragraph (1).

1           “(3) COORDINATION WITH SECTION 172 AND  
2           MINIMUM TAX.—Rules similar to the rules of para-  
3           graphs (3) and (4) of section 860E(a) shall apply  
4           for purposes of subsection (b).

5           “(4) STATUTE OF LIMITATIONS.—

6           “(A) IN GENERAL.—The statutory period  
7           for the assessment of any deficiency attrib-  
8           utable to the inversion gain of any taxpayer for  
9           any pre-inversion year shall not expire before  
10          the expiration of 3 years from the date the Sec-  
11          retary is notified by the taxpayer (in such man-  
12          ner as the Secretary may prescribe) of the ac-  
13          quisition described in subsection (b)(2)(B)(i) to  
14          which such gain relates and such deficiency  
15          may be assessed before the expiration of such  
16          3-year period notwithstanding the provisions of  
17          any other law or rule of law which would other-  
18          wise prevent such assessment.

19          “(B) PRE-INVERSION YEAR.—For purposes  
20          of subparagraph (A), the term ‘pre-inversion  
21          year’ means any taxable year if—

22                  “(i) any portion of the applicable pe-  
23                  riod is included in such taxable year, and

1                   “(ii) such year ends before the taxable  
2                   year in which the acquisition described in  
3                   subsection (b)(2)(B)(i) is completed.

4           “(f) SPECIAL RULE FOR TREATIES.—Nothing in sec-  
5 tion 894 or 7852(d) or in any other provision of law shall  
6 be construed as permitting an exemption, by reason of any  
7 treaty obligation of the United States heretofore or here-  
8 after entered into, from the provisions of this section.

9           “(g) REGULATIONS.—The Secretary shall provide  
10 such regulations as are necessary to carry out this section,  
11 including regulations providing for such adjustments to  
12 the application of this section as are necessary to prevent  
13 the avoidance of the purposes of this section, including the  
14 avoidance of such purposes through—

15                   “(1) the use of related persons, pass-through or  
16                   other noncorporate entities, or other intermediaries,  
17                   or

18                   “(2) transactions designed to have persons  
19                   cease to be (or not become) members of expanded  
20                   affiliated groups or related persons.”.

21           “(b) CONFORMING AMENDMENT.—The table of sec-  
22 tions for subchapter C of chapter 80 is amended by adding  
23 at the end the following new item:

                  “Sec. 7874. Rules relating to expatriated entities and their for-  
                  eign parents.”

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years ending after  
3 March 20, 2002.

4 **SEC. 203. EXCISE TAX ON STOCK COMPENSATION OF INSID-**  
5 **ERS IN EXPATRIATED CORPORATIONS.**

6 (a) IN GENERAL.—Subtitle D is amended by adding  
7 at the end the following new chapter:

8 **“CHAPTER 48—STOCK COMPENSATION OF**  
9 **INSIDERS IN EXPATRIATED CORPORA-**  
10 **TIONS**

“Sec. 5000A. Stock compensation of insiders in expatriated cor-  
porations.

11 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN EXPA-**  
12 **TRIATED CORPORATIONS.**

13 “(a) IMPOSITION OF TAX.—In the case of an indi-  
14 vidual who is a disqualified individual with respect to any  
15 expatriated corporation, there is hereby imposed on such  
16 person a tax equal to 20 percent of the value (determined  
17 under subsection (b)) of the specified stock compensation  
18 held (directly or indirectly) by or for the benefit of such  
19 individual or a member of such individual’s family (as de-  
20 fined in section 267) at any time during the 12-month  
21 period beginning on the date which is 6 months before  
22 the expatriation date.

23 “(b) VALUE.—For purposes of subsection (a)—

1           “(1) IN GENERAL.—The value of specified stock  
2           compensation shall be—

3                   “(A) in the case of a stock option, the fair  
4           value of such option, and

5                   “(B) in any other case, the fair market  
6           value of such compensation.

7           “(2) DATE FOR DETERMINING VALUE.—The  
8           determination of value shall be made—

9                   “(A) in the case of specified stock com-  
10          pensation held on the expatriation date, on such  
11          date,

12                   “(B) in the case of such compensation  
13          which is canceled during the 6 months before  
14          the expatriation date, on the day before such  
15          cancellation, and

16                   “(C) in the case of such compensation  
17          which is granted after the expatriation date, on  
18          the date such compensation is granted.

19          “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN  
20          RECOGNIZED.—Subsection (a) shall apply to any disquali-  
21          fied individual with respect to an expatriated corporation  
22          only if gain (if any) on any stock in such corporation is  
23          recognized in whole or part by any shareholder by reason  
24          of the acquisition referred to in section 7874(b)(2)(B)(i)

1 (determined by substituting ‘July 10, 2002’ for ‘March  
2 20, 2002’) with respect to such corporation.

3 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON  
4 COMPENSATION.—Subsection (a) shall not apply to—

5 “(1) any stock option which is exercised on the  
6 expatriation date or during the 6-month period be-  
7 fore such date and to the stock acquired in such ex-  
8 ercise, and

9 “(2) any stock option or stock which is sold or  
10 exchanged during such period in a transaction in  
11 which gain or loss is recognized in full.

12 “(e) DEFINITIONS.—For purposes of this section—

13 “(1) DISQUALIFIED INDIVIDUAL.—The term  
14 ‘disqualified individual’ means, with respect to a cor-  
15 poration, any individual who, at any time during the  
16 12-month period beginning on the date which is 6  
17 months before the expatriation date—

18 “(A) is subject to the requirements of sec-  
19 tion 16(a) of the Securities Exchange Act of  
20 1934 with respect to such corporation or any  
21 member of the expanded affiliated group which  
22 includes such corporation, or

23 “(B) would be subject to such require-  
24 ments if such corporation or member were an

1 issuer of equity securities referred to in such  
2 section.

3 “(2) EXPATRIATED CORPORATION; EXPATRIA-  
4 TION DATE.—

5 “(A) EXPATRIATED CORPORATION.—The  
6 term ‘expatriated corporation’ means any cor-  
7 poration which would be an expatriated entity  
8 (as defined in section 7874(b)(2)) if—

9 “(i) section 7874(b)(2)(B) were ap-  
10 plied by substituting ‘July 10, 2002’ for  
11 ‘March 20, 2002’, and

12 “(ii) the last sentence of section  
13 7874(b)(2)(B) did not apply.

14 Such term includes any predecessor or suc-  
15 cessor of such a corporation.

16 “(B) EXPATRIATION DATE.—The term ‘ex-  
17 patriation date’ means, with respect to a cor-  
18 poration, the date on which the corporation  
19 first becomes an expatriated corporation.

20 “(3) SPECIFIED STOCK COMPENSATION.—

21 “(A) IN GENERAL.—The term ‘specified  
22 stock compensation’ means payment (or right  
23 to payment) granted by the expatriated cor-  
24 poration (or by any member of the expanded af-  
25 filiated group which includes such corporation)

1 to any person in connection with the perform-  
2 ance of services by a disqualified individual for  
3 such corporation or member if the value of such  
4 payment or right is based on (or determined by  
5 reference to) the value (or change in value) of  
6 stock in such corporation (or any such mem-  
7 ber).

8 “(B) EXCEPTIONS.—Such term shall not  
9 include—

10 “(i) any option to which part II of  
11 subchapter D of chapter 1 applies, or

12 “(ii) any payment or right to payment  
13 from a plan referred to in section  
14 280G(b)(6).

15 “(4) EXPANDED AFFILIATED GROUP.—The  
16 term ‘expanded affiliated group’ means an affiliated  
17 group (as defined in section 1504(a) without regard  
18 to section 1504(b)); except that section 1504(a)  
19 shall be applied by substituting ‘more than 50 per-  
20 cent’ for ‘at least 80 percent’ each place it appears.

21 “(f) SPECIAL RULES.—For purposes of this  
22 section—

23 “(1) CANCELLATION OF RESTRICTION.—The  
24 cancellation of a restriction which by its terms will  
25 never lapse shall be treated as a grant.

1           “(2) PAYMENT OR REIMBURSEMENT OF TAX BY  
2 CORPORATION TREATED AS SPECIFIED STOCK COM-  
3 PENSATION.—Any payment of the tax imposed by  
4 this section directly or indirectly by the expatriated  
5 corporation or by any member of the expanded affili-  
6 ated group which includes such corporation—

7           “(A) shall be treated as specified stock  
8 compensation, and

9           “(B) shall not be allowed as a deduction  
10 under any provision of chapter 1.

11           “(3) CERTAIN RESTRICTIONS IGNORED.—  
12 Whether there is specified stock compensation, and  
13 the value thereof, shall be determined without regard  
14 to any restriction other than a restriction which by  
15 its terms will never lapse.

16           “(4) PROPERTY TRANSFERS.—Any transfer of  
17 property shall be treated as a payment and any right  
18 to a transfer of property shall be treated as a right  
19 to a payment.

20           “(5) OTHER ADMINISTRATIVE PROVISIONS.—  
21 For purposes of subtitle F, any tax imposed by this  
22 section shall be treated as a tax imposed by subtitle  
23 A.

1       “(g) REGULATIONS.—The Secretary shall prescribe  
2 such regulations as may be necessary or appropriate to  
3 carry out the purposes of this section.”

4       (b) DENIAL OF DEDUCTION.—

5           (1) IN GENERAL.—Paragraph (6) of section  
6 275(a) is amended by inserting “48,” after “46,”.

7           (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-  
8 PENSATION REDUCED BY PAYMENT OF EXCISE TAX  
9 ON SPECIFIED STOCK COMPENSATION.—Paragraph  
10 (4) of section 162(m) is amended by adding at the  
11 end the following new subparagraph:

12                   “(G) COORDINATION WITH EXCISE TAX ON  
13 SPECIFIED STOCK COMPENSATION.—The dollar  
14 limitation contained in paragraph (1) with re-  
15 spect to any covered employee shall be reduced  
16 (but not below zero) by the amount of any pay-  
17 ment (with respect to such employee) of the tax  
18 imposed by section 5000A directly or indirectly  
19 by the expatriated corporation (as defined in  
20 such section) or by any member of the ex-  
21 panded affiliated group (as defined in such sec-  
22 tion) which includes such corporation.”

23       (c) CONFORMING AMENDMENTS.—

24           (1) The last sentence of section 3121(v)(2)(A)  
25 is amended by inserting before the period “or to any

1 specified stock compensation (as defined in section  
2 5000A) on which tax is imposed by section 5000A”.

3 (2) The table of chapters for subtitle D is  
4 amended by adding at the end the following new  
5 item:

“Chapter 48. Stock compensation of insiders in expatriated cor-  
porations.”

6 (d) **EFFECTIVE DATE.**—The amendments made by  
7 this section shall take effect on July 11, 2002; except that  
8 periods before such date shall not be taken into account  
9 in applying the periods in subsections (a) and (e)(1) of  
10 section 5000A of the Internal Revenue Code of 1986, as  
11 added by this section.

12 **SEC. 204. REPORTING OF TAXABLE MERGERS AND ACQUISI-**  
13 **TIONS.**

14 (a) **IN GENERAL.**—Subpart B of part III of sub-  
15 chapter A of chapter 61 is amended by inserting after sec-  
16 tion 6043 the following new section:

17 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

18 “(a) **IN GENERAL.**—The acquiring corporation in any  
19 taxable acquisition shall make a return (according to the  
20 forms or regulations prescribed by the Secretary) setting  
21 forth—

22 “(1) a description of the acquisition,

1           “(2) the name and address of each shareholder  
2           of the acquired corporation who is required to recog-  
3           nize gain (if any) as a result of the acquisition,

4           “(3) the amount of money and the fair market  
5           value of other property transferred to each such  
6           shareholder as part of such acquisition, and

7           “(4) such other information as the Secretary  
8           may prescribe.

9   To the extent provided by the Secretary, the requirements  
10 of this section applicable to the acquiring corporation shall  
11 be applicable to the acquired corporation and not to the  
12 acquiring corporation.

13       “(b) NOMINEE REPORTING.—Any person who holds  
14 stock as a nominee for another person shall furnish in the  
15 manner prescribed by the Secretary to such other person  
16 the information provided by the corporation under sub-  
17 section (d).

18       “(c) TAXABLE ACQUISITION.—For purposes of this  
19 section, the term ‘taxable acquisition’ means any acquisi-  
20 tion by a corporation of stock in or property of another  
21 corporation if any shareholder of the acquired corporation  
22 is required to recognize gain (if any) as a result of such  
23 acquisition.

24       “(d) STATEMENTS TO BE FURNISHED TO SHARE-  
25 HOLDERS.—Every person required to make a return under

1 subsection (a) shall furnish to each shareholder whose  
2 name is required to be set forth in such return a written  
3 statement showing—

4 “(1) the name, address, and phone number of  
5 the information contact of the person required to  
6 make such return,

7 “(2) the information required to be shown on  
8 such return with respect to such shareholder, and

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

11 The written statement required under the preceding sen-  
12 tence shall be furnished to the shareholder on or before  
13 January 31 of the year following the calendar year during  
14 which the taxable acquisition occurred.”

15 (b) ASSESSABLE PENALTIES.—

16 (1) Subparagraph (B) of section 6724(d)(1)  
17 (relating to definitions) is amended by redesignating  
18 clauses (ii) through (xvii) as clauses (iii) through  
19 (xviii), respectively, and by inserting after clause (i)  
20 the following new clause:

21 “(ii) section 6043A(a) (relating to re-  
22 turns relating to taxable mergers and ac-  
23 quisitions),”.

24 (2) Paragraph (2) of section 6724(d) is amend-  
25 ed by redesignating subparagraphs (F) through

1 (AA) as subparagraphs (G) through (BB), respec-  
2 tively, and by inserting after subparagraph (E) the  
3 following new subparagraph:

4 “(F) subsections (b) and (d) of section  
5 6043A (relating to returns relating to taxable  
6 mergers and acquisitions).”.

7 (c) CLERICAL AMENDMENT.—The table of sections  
8 for subpart B of part III of subchapter A of chapter 61  
9 is amended by inserting after the item relating to section  
10 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to acquisitions after the date of  
13 the enactment of this Act.

14 **SEC. 205. STUDIES.**

15 (a) TRANSFER PRICING RULES.—The Secretary of  
16 the Treasury or the Secretary’s delegate shall conduct a  
17 study regarding the effectiveness of current transfer pric-  
18 ing rules and compliance efforts in ensuring that cross-  
19 border transfers and other related-party transactions, par-  
20 ticularly transactions involving intangible assets, service  
21 contracts, or leases cannot be used improperly to shift in-  
22 come out of the United States. The study shall include  
23 a review of the contemporaneous documentation and pen-  
24 alty rules under section 6662 of the Internal Revenue

1 Code of 1986, a review of the regulatory and administra-  
2 tive guidance implementing the principles of section 482  
3 of such Code to transactions involving intangible property  
4 and services and to cost-sharing arrangements and an ex-  
5 amination of whether increased disclosure of cross-border  
6 transactions should be required. The study shall set forth  
7 specific recommendations to address all abuses identified  
8 in the study. Not later than December 31, 2002, such Sec-  
9 retary or delegate shall submit to the Congress a report  
10 of such study.

11 (b) INCOME TAX TREATIES.—The Secretary of the  
12 Treasury or the Secretary's delegate shall conduct a study  
13 of United States income tax treaties to identify any inap-  
14 propriate reductions in United States withholding tax that  
15 provide opportunities for shifting income out of the United  
16 States, and to evaluate whether existing anti-abuse mecha-  
17 nisms are operating properly. The study shall include spe-  
18 cific recommendations to address all inappropriate uses of  
19 tax treaties. Not later than December 31, 2002, such Sec-  
20 retary or delegate shall submit to the Congress a report  
21 of such study.

22 (c) IMPACT OF EXPATRIATION PROVISIONS.—The  
23 Secretary of the Treasury or the Secretary's delegate shall  
24 conduct a study of the impact of the provisions of this  
25 title on corporate earnings stripping and expatriation. The

1 study shall include such recommendations as such Sec-  
2 retary or delegate may have to improve the impact of such  
3 provisions in carrying out the purposes of this title. Not  
4 later than December 31, 2004, such Secretary or delegate  
5 shall submit to the Congress a report of such study.

6 **TITLE III—SIMPLIFICATION OF**  
7 **RULES RELATING TO THE**  
8 **TAXATION OF UNITED STATES**  
9 **BUSINESSES OPERATING**  
10 **ABROAD**

11 **Subtitle A—Treatment of**  
12 **Controlled Foreign Corporations**

13 **SEC. 301. REPEAL OF CFC RULES ON FOREIGN BASE COM-**  
14 **PANY SALES AND SERVICES INCOME.**

15 (a) IN GENERAL.—Subsection (a) of section 954 (re-  
16 lating to foreign base company income) is amended by  
17 striking paragraphs (2) and (3) and by redesignating  
18 paragraphs (4) and (5) as paragraphs (2) and (3), respec-  
19 tively.

20 (b) CERTAIN SALES.—Paragraph (1) of section  
21 954(c) is amended by adding at the end the following new  
22 subparagraph:

23 “(H) CERTAIN SALES.—Income (whether  
24 in the form of profits, commissions, fees, or  
25 otherwise) derived in connection with the pur-

1           chase of personal property from a related per-  
2           son and its sale to any person, the sale of per-  
3           sonal property to any person on behalf of a re-  
4           lated person, the purchase of personal property  
5           from any person and its sale to a related per-  
6           son, or the purchase of personal property from  
7           any person on behalf of a related person  
8           where—

9                   “(i) the property which is purchased  
10                   (or in the case of property sold on behalf  
11                   of a related person, the property which is  
12                   sold) is manufactured, produced, grown, or  
13                   extracted in the United States, and

14                   “(ii) the property is sold for use, con-  
15                   sumption, or disposition in the United  
16                   States, or, in the case of property pur-  
17                   chased on behalf of a related person, is  
18                   purchased for use, consumption, or disposi-  
19                   tion in the United States.”

20           (c) CONFORMING AMENDMENTS.—

21                   (1) Clause (iii) of section 952(c)(1)(B) is  
22                   amended by striking subclauses (III) and (IV) and  
23                   by redesignating subclauses (V) and (VI) as sub-  
24                   clauses (III) and (IV), respectively.

1           (2) Section 953(c)(6)(A) is amended by striking  
2           “section 954(d)(3)” and inserting “section  
3           954(b)(9)”.

4           (3) Subsection (b) of section 954 is amended by  
5           adding at the end the following new paragraph:

6           “(9) RELATED PERSON DEFINED.—For pur-  
7           poses of this subsection, a person is a related person  
8           with respect to a controlled foreign corporation if—

9                   “(A) such person is an individual, corpora-  
10                  tion, partnership, trust, or estate which con-  
11                  trols, or is controlled by, the controlled foreign  
12                  corporation, or

13                  “(B) such person is a corporation, partner-  
14                  ship, trust, or estate which is controlled by the  
15                  same person or persons which control the con-  
16                  trolled foreign corporation.

17           For purposes of the preceding sentence, control  
18           means, with respect to a corporation, the ownership,  
19           directly or indirectly, of stock possessing more than  
20           50 percent of the total voting power of all classes of  
21           stock entitled to vote or of the total value of stock  
22           of such corporation. In the case of a partnership,  
23           trust, or estate, control means the ownership, di-  
24           rectly or indirectly, of more than 50 percent (by  
25           value) of the beneficial interests in such partnership,

1 trust, or estate. For purposes of this paragraph,  
2 rules similar to the rules of section 958 shall apply.”

3 (4) Paragraph (5) of section 954(b) is amended  
4 by striking “the foreign base company sales income,  
5 the foreign base company services income,”.

6 (5) Section 954 is amended by striking sub-  
7 sections (d) and (e).

8 (6) Sections 552(e)(2), 861(e)(2)(B),  
9 904(d)(2)(H), 953(e), 955(b), 958(b), 971(f),  
10 988(e)(3)(C), 1297(b)(2), 1298(d)(3), and  
11 1298(e)(2)(B) are each amended by striking  
12 “954(d)(3)” each place it appears and inserting  
13 “954(b)(9)”.

14 **SEC. 302. LOOK-THRU TREATMENT OF PAYMENTS BE-**  
15 **TWEEN RELATED CONTROLLED FOREIGN**  
16 **CORPORATIONS UNDER FOREIGN PERSONAL**  
17 **HOLDING COMPANY INCOME RULES.**

18 Subsection (c) of section 954 is amended by adding  
19 after paragraph (3) the following new paragraph:

20 “(4) LOOK-THRU IN THE CASE OF RELATED  
21 CONTROLLED FOREIGN CORPORATIONS.—For pur-  
22 poses of this subsection, dividends, interest, rents,  
23 and royalties received from a controlled foreign cor-  
24 poration which is a related person (as defined in  
25 subsection (b)(9)) shall not be treated as foreign

1 personal holding company income to the extent at-  
2 tributable (determined under rules similar to the  
3 rules of subparagraphs (C) and (D) of section  
4 904(d)(3)) to income of the related person which is  
5 not subpart F income (as defined in section 952).”

6 **SEC. 303. LOOK-THRU TREATMENT FOR SALES OF PART-**  
7 **nership Interests.**

8 Section 954(c) (defining foreign personal holding  
9 company income) is amended by adding after paragraph  
10 (4) the following new paragraph:

11 “(5) LOOK-THROUGH RULE FOR CERTAIN  
12 PARTNERSHIP SALES.—

13 “(A) IN GENERAL.—In the case of any  
14 sale by a controlled foreign corporation of an  
15 interest in a partnership with respect to which  
16 such corporation is a 25-percent owner, such  
17 corporation shall be treated for purposes of this  
18 subsection as selling the proportionate share of  
19 the assets of the partnership attributable to  
20 such interest.

21 “(B) 25-PERCENT OWNER.—For purposes  
22 of this paragraph, the term ‘25-percent owner’  
23 means a controlled foreign corporation which  
24 owns 25 percent or more of the capital or prof-  
25 its interest in the partnership. The constructive

1 ownership rules of section 958(b) shall apply  
2 for purposes of the preceding sentence.”

3 **SEC. 304. REPEAL OF FOREIGN PERSONAL HOLDING COM-**  
4 **PANY RULES AND FOREIGN INVESTMENT**  
5 **COMPANY RULES.**

6 (a) GENERAL RULE.—The following provisions are  
7 hereby repealed:

8 (1) Part III of subchapter G of chapter 1 (re-  
9 lating to foreign personal holding companies).

10 (2) Section 1246 (relating to gain on foreign in-  
11 vestment company stock).

12 (3) Section 1247 (relating to election by foreign  
13 investment companies to distribute income cur-  
14 rently).

15 (b) EXEMPTION OF FOREIGN CORPORATIONS FROM  
16 PERSONAL HOLDING COMPANY RULES.—

17 (1) IN GENERAL.—Subsection (c) of section  
18 542 (relating to exceptions) is amended—

19 (A) by striking paragraph (5) and insert-  
20 ing the following:

21 “(5) a foreign corporation,”

22 (B) by striking paragraphs (7) and (10)  
23 and by redesignating paragraphs (8) and (9) as  
24 paragraphs (7) and (8), respectively,

1 (C) by inserting “and” at the end of para-  
2 graph (7) (as so redesignated), and

3 (D) by striking “; and” at the end of para-  
4 graph (8) (as so redesignated) and inserting a  
5 period.

6 (2) TREATMENT OF INCOME FROM PERSONAL  
7 SERVICE CONTRACTS.—Paragraph (1) of section  
8 954(c) is amended by adding at the end the fol-  
9 lowing new subparagraph:

10 “(H) PERSONAL SERVICE CONTRACTS.—

11 “(i) Amounts received under a con-  
12 tract under which the corporation is to fur-  
13 nish personal services; if some person other  
14 than the corporation has the right to des-  
15 ignate (by name or by description) the in-  
16 dividual who is to perform the services, or  
17 if the individual who is to perform the  
18 services is designated (by name or by de-  
19 scription) in the contract; and

20 “(ii) amounts received from the sale  
21 or other disposition of such a contract.

22 This subparagraph shall apply with respect to  
23 amounts received for services under a particular  
24 contract only if at some time during the taxable  
25 year 25 percent or more in value of the out-

1 standing stock of the corporation is owned, di-  
2 rectly or indirectly, by or for the individual who  
3 has performed, is to perform, or may be des-  
4 ignated (by name or by description) as the one  
5 to perform, such services.”

6 (c) CONFORMING AMENDMENTS.—

7 (1) Paragraph (2) of section 171(c) is  
8 amended—

9 (A) by striking “, or by a foreign personal  
10 holding company, as defined in section 552”,  
11 and

12 (B) by striking “, or a foreign personal  
13 holding company”.

14 (2) Paragraph (2) of section 245(a) is amended  
15 by striking “foreign personal holding company or”

16 (3) Section 312 is amended by striking sub-  
17 section (j).

18 (4) Subsection (m) of section 312 is amended  
19 by striking “, a foreign investment company (within  
20 the meaning of section 1246(b)), or a foreign per-  
21 sonal holding company (within the meaning of sec-  
22 tion 552)”.

23 (5) Subsection (e) of section 443 is amended by  
24 striking paragraph (3) and by redesignating para-

1 graphs (4) and (5) as paragraphs (3) and (4), re-  
2 spectively.

3 (6) Subparagraph (B) of section 465(c)(7) is  
4 amended to by adding “or” at the end of clause (i),  
5 by striking clause (ii), and by redesignating clause  
6 (iii) as clause (ii).

7 (7) Paragraph (1) of section 543(b) is amended  
8 by inserting “and” at the end of subparagraph (A),  
9 by striking “, and” at the end of subparagraph (B)  
10 and inserting a period, and by striking subparagraph  
11 (C).

12 (8) Paragraph (1) of section 562(b) is amended  
13 by striking “or a foreign personal holding company  
14 described in section 552”.

15 (9) Section 563 is amended—

16 (A) by striking subsection (c),

17 (B) by redesignating subsection (d) as sub-  
18 section (e), and

19 (C) by striking “subsection (a), (b), or (c)”  
20 in subsection (e) (as so redesignated) and in-  
21 serting “subsection (a) or (b)”.

22 (10) Subsection (d) of section 751 is amended  
23 by adding “and” at the end of paragraph (2), by  
24 striking paragraph (3), by redesignating paragraph  
25 (4) as paragraph (3), and by striking “paragraph

1 (1), (2), or (3)” in paragraph (3) (as so redesignated) and inserting “paragraph (1) or (2)”.

3 (11) 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.

7 (12)(A) Subparagraph (A) of section 898(b)(1) is amended to read as follows:

9 “(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and”.

12 (B) Subparagraph (B) of section 898(b)(2) is amended by striking “and sections 551(f) and 554, whichever are applicable,”.

15 (C) Paragraph (3) of section 898(b) is amended to read as follows:

17 “(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).”

1           (D) Subsection (c) of section 898 is amended to  
2 read as follows:

3           “(c) DETERMINATION OF REQUIRED YEAR.—

4           “(1) IN GENERAL.—The required year is—

5           “(A) the majority U.S. shareholder year,

6 or

7           “(B) if there is no majority U.S. share-  
8 holder year, the taxable year prescribed under  
9 regulations.

10           “(2) 1-MONTH DEFERRAL ALLOWED.—A speci-  
11 fied foreign corporation may elect, in lieu of the tax-  
12 able year under paragraph (1)(A), a taxable year be-  
13 ginning 1 month earlier than the majority U.S.  
14 shareholder year.

15           “(3) MAJORITY U.S. SHAREHOLDER YEAR.—

16           “(A) IN GENERAL.—For purposes of this  
17 subsection, the term ‘majority U.S. shareholder  
18 year’ means the taxable year (if any) which, on  
19 each testing day, constituted the taxable year  
20 of—

21           “(i) each United States shareholder  
22 described in subsection (b)(2)(A), and

23           “(ii) each United States shareholder  
24 not described in clause (i) whose stock was  
25 treated as owned under subsection

1 (b)(2)(B) by any shareholder described in  
2 such clause.

3 “(B) TESTING DAY.—The testing days  
4 shall be—

5 “(i) the first day of the corporation’s  
6 taxable year (determined without regard to  
7 this section), or

8 “(ii) the days during such representa-  
9 tive period as the Secretary may pre-  
10 scribe.”

11 (13) Clause (ii) of section 904(d)(2)(A) is  
12 amended to read as follows:

13 “(ii) CERTAIN AMOUNTS INCLUDED.—  
14 Except as provided in clause (iii), the term  
15 ‘passive income’ includes, except as pro-  
16 vided in subparagraph (E)(iii) or para-  
17 graph (3)(I), any amount includible in  
18 gross income under section 1293 (relating  
19 to certain passive foreign investment com-  
20 panies).”

21 (14)(A) Subparagraph (A) of section 904(g)(1)  
22 is amended by adding “or” at the end of clause (i),  
23 by striking clause (ii), and by redesignating clause  
24 (iii) as clause (ii).

1           (B) The paragraph heading of paragraph (2) of  
2 section 904(g) is amended by striking “FOREIGN  
3 PERSONAL HOLDING OR”.

4           (15) Section 951 is amended by striking sub-  
5 sections (c) and (d) and by redesignating subsections  
6 (e) and (f) as subsections (c) and (d), respectively.

7           (16) Paragraph (3) of section 989(b) is amend-  
8 ed by striking “, 551(a),”.

9           (17) Paragraph (5) of section 1014(b) is  
10 amended by inserting “and before January 1,  
11 2003,” after “August 26, 1937,”.

12           (18) Subsection (a) of section 1016 is amended  
13 by striking paragraph (13) and by redesignating the  
14 following paragraphs accordingly.

15           (19)(A) Paragraph (3) of section 1212(a) is  
16 amended to read as follows:

17           “(3) SPECIAL RULES ON CARRYBACKS.—A net  
18 capital loss of a corporation shall not be carried  
19 back under paragraph (1)(A) to a taxable year—

20                   “(A) for which it is a regulated investment  
21 company (as defined in section 851), or

22                   “(B) for which it is a real estate invest-  
23 ment trust (as defined in section 856).”

1           (B) The amendment made by subparagraph (A)  
2 shall apply to taxable years beginning after Decem-  
3 ber 31, 2004.

4           (20) Section 1223 is amended by striking para-  
5 graph (10) and by redesignating the following para-  
6 graphs accordingly.

7           (21) Subsection (d) of section 1248 is amended  
8 by striking paragraph (5) and by redesignating  
9 paragraphs (6) and (7) as paragraphs (5) and (6),  
10 respectively.

11           (22) Paragraph (2) of section 1260(c) is  
12 amended by striking subparagraphs (H) and (I) and  
13 by redesignating subparagraph (J) as subparagraph  
14 (H).

15           (23) Subparagraph (F) of section 1291(b)(3) is  
16 amended by striking “551(d), 959(a),” and inserting  
17 “959(a)”.

18           (24) Paragraph (2) of section 1294(a) is  
19 amended to read as follows:

20           “(2) ELECTION NOT PERMITTED WHERE  
21 AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION  
22 951.—The taxpayer may not make an election under  
23 paragraph (1) with respect to the undistributed  
24 PFIC earnings tax liability attributable to a quali-  
25 fied electing fund for the taxable year if any amount

1 is includible in the gross income of the taxpayer  
2 under section 951 with respect to such fund for such  
3 taxable year.”

4 (25) Section 6035 is hereby repealed.

5 (26) Subparagraph (D) of section 6103(e)(1) is  
6 amended by striking clause (iv) and redesignating  
7 clauses (v) and (vi) as clauses (iv) and (v), respec-  
8 tively.

9 (27) Subparagraph (B) of section 6501(e)(1) is  
10 amended to read as follows:

11 “(B) CONSTRUCTIVE DIVIDENDS.—If the  
12 taxpayer omits from gross income an amount  
13 properly includible therein under section  
14 951(a), the tax may be assessed, or a pro-  
15 ceeding in court for the collection of such tax  
16 may be done without assessing, at any time  
17 within 6 years after the return was filed.”

18 (28) Subsection (a) of section 6679 is  
19 amended—

20 (A) by striking “6035, 6046, and 6046A”  
21 in paragraph (1) and inserting “6046 and  
22 6046A”, and

23 (B) by striking paragraph (3).

1           (29) Sections 170(f)(10)(A), 508(d), 4947, and  
2           4948(e)(4) are each amended by striking  
3           “556(b)(2),” each place it appears.

4           (30) The table of parts for subchapter G of  
5           chapter 1 is amended by striking the item relating  
6           to part III.

7           (31) The table of sections for part IV of sub-  
8           chapter P of chapter 1 is amended by striking the  
9           items relating to sections 1246 and 1247.

10          (32) The table of sections for subpart A of part  
11          III of subchapter A of chapter 61 is amended by  
12          striking the item relating to section 6035.

13 **SEC. 305. CLARIFICATION OF TREATMENT OF PIPELINE**  
14 **TRANSPORTATION INCOME.**

15          Section 954(g)(1) (defining foreign base company oil  
16          related income) is amended by striking “or” at the end  
17          of subparagraph (A), by striking the period at the end  
18          of subparagraph (B) and inserting “, or”, and by inserting  
19          after subparagraph (B) the following new subparagraph:

20                         “(C) the pipeline transportation of oil or  
21                         gas within such foreign country.”

1 **SEC. 306. DETERMINATION OF FOREIGN PERSONAL HOLD-**  
2 **ING COMPANY INCOME WITH RESPECT TO**  
3 **TRANSACTIONS IN COMMODITIES.**

4 (a) IN GENERAL.—Clauses (i) and (ii) of section  
5 954(e)(1)(C) (relating to commodity transactions) are  
6 amended to read as follows:

7 “(i) arise out of commodity hedging  
8 transactions (as defined in paragraph  
9 (6)(A)),

10 “(ii) are active business gains or  
11 losses from the sale of commodities, but  
12 only if substantially all of the controlled  
13 foreign corporation’s commodities are  
14 property described in paragraph (1), (2),  
15 or (8) of section 1221(a), or”.

16 (b) DEFINITION AND SPECIAL RULES.—Subsection  
17 (c) of section 954 is amended by adding after paragraph  
18 (5) the following new paragraph:

19 “(6) DEFINITION AND SPECIAL RULES RELAT-  
20 ING TO COMMODITY TRANSACTIONS.—

21 “(A) COMMODITY HEDGING TRANS-  
22 ACTIONS.—For purposes of paragraph  
23 (1)(C)(i), the term ‘commodity hedging trans-  
24 action’ means any transaction with respect to a  
25 commodity if such transaction—

1 “(i) is a hedging transaction as de-  
2 fined in section 1221(b)(2), determined—

3 “(I) without regard to subpara-  
4 graph (A)(ii) thereof,

5 “(II) by applying subparagraph  
6 (A)(i) thereof by substituting ‘ordi-  
7 nary property or property described in  
8 section 1231(b)’ for ‘ordinary prop-  
9 erty’, and

10 “(III) by substituting ‘controlled  
11 foreign corporation’ for ‘taxpayer’  
12 each place it appears, and

13 “(ii) is clearly identified as such in ac-  
14 cordance with section 1221(a)(7).

15 “(B) REGULATIONS.—The Secretary shall  
16 prescribe such regulations as are appropriate to  
17 carry out the purposes of paragraph (1)(C) in  
18 the case of transactions involving related par-  
19 ties.”

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

23 **SEC. 307. EFFECTIVE DATE.**

24 Except as otherwise provided in this subtitle, the  
25 amendments made by this subtitle shall apply to taxable

1 years of foreign corporations beginning after December  
2 31, 2002, and taxable years of United States persons own-  
3 ing stock in such corporations with or within which such  
4 corporations' taxable years end.

## 5 **Subtitle B—Provisions Relating to** 6 **Foreign Tax Credit**

### 7 **SEC. 311. INTEREST EXPENSE ALLOCATION RULES.**

8 (a) ALLOCATION ON WORLDWIDE BASIS.—

9 (1) IN GENERAL.—Paragraphs (1) and (2) of  
10 section 864(e) (relating to rules for allocating inter-  
11 est, etc.) are amended to read as follows:

12 “(1) ALLOCATION AND APPORTIONMENT OF IN-  
13 TEREST EXPENSE.—

14 “(A) IN GENERAL.—The taxable income of  
15 each domestic corporation which is a member of  
16 a worldwide affiliated group shall be determined  
17 by allocating and apportioning interest expense  
18 of each member as if all members of such group  
19 were a single corporation.

20 “(B) TREATMENT OF WORLDWIDE AFFILI-  
21 ATED GROUP.—The taxable income of the do-  
22 mestic members of a worldwide affiliated group  
23 from sources outside the United States shall be  
24 determined by allocating and apportioning the  
25 interest expense of such domestic members to

1 such income in an amount equal to the excess  
2 (if any) of—

3 “(i) the total interest expense of the  
4 worldwide affiliated group multiplied by  
5 the ratio which the foreign assets of the  
6 worldwide affiliated group bears to all the  
7 assets of the worldwide affiliated group,  
8 over

9 “(ii) the interest expense of all foreign  
10 corporations which are members of the  
11 worldwide affiliated group to the extent  
12 such interest expense of such foreign cor-  
13 porations would have been allocated and  
14 apportioned to foreign source income if  
15 this subsection were applied to a group  
16 consisting of all the foreign corporations in  
17 such worldwide affiliated group.

18 “(C) WORLDWIDE AFFILIATED GROUP.—  
19 For purposes of this paragraph, the term  
20 ‘worldwide affiliated group’ means an affiliated  
21 group as defined in section 1504(a), determined  
22 without regard to paragraphs (2), (3), and (4)  
23 of section 1504(b).

24 “(2) ALLOCATION AND APPORTIONMENT OF  
25 OTHER EXPENSES.—Expenses other than interest

1 which are not directly allocable or apportioned to  
2 any specific income producing activity shall be allo-  
3 cated and apportioned as if all members of the affili-  
4 ated group were a single corporation. For purposes  
5 of the preceding sentence, the term ‘affiliated group’  
6 has the meaning given such term by section 1504  
7 (determined without regard to paragraph (4) of sec-  
8 tion 1504(b)).”

9 (2) CONFORMING AMENDMENTS.—

10 (A) Clauses (i) and (ii) of section  
11 864(e)(4)(B) are each amended by striking “af-  
12 filiated group” and inserting “worldwide affili-  
13 ated group (as defined in paragraph (1)(C))”.

14 (B) Subsection (e) of section 864 is  
15 amended by striking paragraph (6).

16 (b) TREATMENT OF FINANCIAL INSTITUTIONS.—

17 (1) TREATMENT AS SEPARATE WORLDWIDE  
18 GROUP.—

19 (A) IN GENERAL.—Paragraph (5) of sec-  
20 tion 864(e) is amended by striking so much of  
21 such paragraph as precedes subparagraph (C),  
22 by redesignating subparagraphs (C) and (D) as  
23 subparagraphs (B) and (C), respectively, and  
24 by inserting before subparagraph (B) (as so re-  
25 designated) the following:

1           “(5) TREATMENT OF CERTAIN FINANCIAL IN-  
2           STITUTIONS.—

3           “(A) IN GENERAL.—For purposes of para-  
4           graph (1), any corporation described in sub-  
5           paragraph (B) shall be treated as an includible  
6           corporation for purposes of section 1504 only  
7           for purposes of applying this subsection sepa-  
8           rately to corporations so described.”

9           (B) CONFORMING AMENDMENT.—Subpara-  
10          graph (C) of section 864(e)(5), as redesignated  
11          by subparagraph (A), is amended by striking  
12          “subparagraph (C)” and inserting “subpara-  
13          graph (B)”.

14          (2) ELECTION TO EXPAND FINANCIAL INSTITU-  
15          TION GROUP OF WORLDWIDE GROUP.—Subsection  
16          (e) of section 864 is amended by inserting after  
17          paragraph (5) the following new paragraph:

18          “(6) ELECTION TO EXPAND FINANCIAL INSTI-  
19          TUTION GROUP OF WORLDWIDE GROUP.—

20          “(A) IN GENERAL.—If a worldwide affili-  
21          ated group elects the application of this sub-  
22          section, all financial corporations which—

23                  “(i) are members of such worldwide  
24                  affiliated group, but

1                   “(ii) are not corporations described in  
2                   paragraph (5)(B),  
3                   shall be treated as described in paragraph  
4                   (5)(B) for purposes of applying paragraph  
5                   (5)(A). This subsection (other than this para-  
6                   graph) shall apply to any such group in the  
7                   same manner as this subsection (other than this  
8                   paragraph) applies to the pre-election worldwide  
9                   affiliated group of which such group is a part.

10                   “(B) FINANCIAL CORPORATION.—For pur-  
11                   poses of this paragraph, the term ‘financial cor-  
12                   poration’ means any corporation if at least 80  
13                   percent of its gross income is income described  
14                   in section 904(d)(2)(C)(ii) and the regulations  
15                   thereunder which is derived from transactions  
16                   with persons who are not related (within the  
17                   meaning of section 267(b) or 707(b)(1)) to the  
18                   corporation. For purposes of the preceding sen-  
19                   tence, there shall be disregarded any item of in-  
20                   come or gain from a transaction or series of  
21                   transactions a principal purpose of which is the  
22                   qualification of any corporation as a financial  
23                   corporation.

24                   “(C) ANTIABUSE RULES.—In the case of a  
25                   corporation which is a member of an electing fi-

1 nancial institution group, to the extent that  
2 such corporation—

3 “(i) distributes dividends or makes  
4 other distributions with respect to its stock  
5 after the date of the enactment of this  
6 paragraph to any member of the pre-elec-  
7 tion worldwide affiliated group (other than  
8 to a member of the electing financial insti-  
9 tution group) in excess of the greater of—

10 “(I) its average annual dividend  
11 (expressed as a percentage of current  
12 earnings and profits) during the 5-  
13 taxable-year period ending with the  
14 taxable year preceding the taxable  
15 year, or

16 “(II) 25 percent of its average  
17 annual earnings and profits for such  
18 5-taxable-year period, or

19 “(ii) deals with any person in any  
20 manner not clearly reflecting the income of  
21 the corporation (as determined under prin-  
22 ciples similar to the principles of section  
23 482),

24 an amount of indebtedness of the electing fi-  
25 nancial institution group equal to the excess

1 distribution or the understatement or overstate-  
2 ment of income, as the case may be, shall be re-  
3 characterized (for the taxable year and subse-  
4 quent taxable years) for purposes of this para-  
5 graph as indebtedness of the worldwide affili-  
6 ated group (excluding the electing financial in-  
7 stitution group). If a corporation has not been  
8 in existence for 5 taxable years, this subpara-  
9 graph shall be applied with respect to the pe-  
10 riod it was in existence.

11 “(D) ELECTION.—An election under this  
12 paragraph with respect to any financial institu-  
13 tion group may be made only by the common  
14 parent of the pre-election worldwide affiliated  
15 group and may be made only for the first tax-  
16 able year beginning after December 31, 2002,  
17 in which such affiliated group includes 1 or  
18 more financial corporations. Such an election,  
19 once made, shall apply to all financial corpora-  
20 tions which are members of the electing finan-  
21 cial institution group for such taxable year and  
22 all subsequent years unless revoked with the  
23 consent of the Secretary.

24 “(E) DEFINITIONS RELATING TO  
25 GROUPS.—For purposes of this paragraph—

1           “(i) PRE-ELECTION WORLDWIDE AF-  
2           FILIATED GROUP.—The term ‘pre-election  
3           worldwide affiliated group’ means, with re-  
4           spect to a corporation, the worldwide affili-  
5           ated group of which such corporation  
6           would (but for an election under this para-  
7           graph) be a member for purposes of apply-  
8           ing paragraph (1).

9           “(ii) ELECTING FINANCIAL INSTITU-  
10          TION GROUP.—The term ‘electing financial  
11          institution group’ means the group of cor-  
12          porations to which this subsection applies  
13          separately by reason of the application of  
14          paragraph (5)(A) and which includes fi-  
15          nancial corporations by reason of an elec-  
16          tion under subparagraph (A).

17          “(F) REGULATIONS.—The Secretary shall  
18          prescribe such regulations as may be appro-  
19          priate to carry out this subsection, including  
20          regulations—

21                 “(i) providing for the direct allocation  
22                 of interest expense in other circumstances  
23                 where such allocation would be appropriate  
24                 to carry out the purposes of this sub-  
25                 section,

1           “(ii) preventing assets or interest ex-  
2           pense from being taken into account more  
3           than once, and

4           “(iii) dealing with changes in mem-  
5           bers of any group (through acquisitions or  
6           otherwise) treated under this paragraph as  
7           an affiliated group for purposes of this  
8           subsection.”.

9           (c) EXPANSION OF REGULATORY AUTHORITY.—  
10 Paragraph (7) of section 864(e) is amended—

11           (1) by inserting before the comma at the end of  
12           subparagraph (B) “and in other circumstances  
13           where such allocation would be appropriate to carry  
14           out the purposes of this subsection”, and

15           (2) by striking “and” at the end of subpara-  
16           graph (E), by redesignating subparagraph (F) as  
17           subparagraph (G), and by inserting after subpara-  
18           graph (E) the following new subparagraph:

19           “(F) preventing assets or interest expense  
20           from being taken into account more than once,  
21           and”.

22           (e) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to taxable years beginning after  
24 December 31, 2002.

1 **SEC. 312. RECHARACTERIZATION OF OVERALL DOMESTIC**  
2 **LOSS.**

3 (a) GENERAL RULE.—Section 904 is amended by re-  
4 designating subsections (g), (h), (i), (j), and (k) as sub-  
5 sections (h), (i), (j), (k), and (l) respectively, and by in-  
6 serting after subsection (f) the following new subsection:

7 “(g) RECHARACTERIZATION OF OVERALL DOMESTIC  
8 LOSS.—

9 “(1) GENERAL RULE.—For purposes of this  
10 subpart and section 936, in the case of any taxpayer  
11 who sustains an overall domestic loss for any taxable  
12 year beginning after December 31, 2002, that por-  
13 tion of the taxpayer’s taxable income from sources  
14 within the United States for each succeeding taxable  
15 year which is equal to the lesser of—

16 “(A) the amount of such loss (to the extent  
17 not used under this paragraph in prior taxable  
18 years), or

19 “(B) 50 percent of the taxpayer’s taxable  
20 income from sources within the United States  
21 for such succeeding taxable year,  
22 shall be treated as income from sources without the  
23 United States (and not as income from sources with-  
24 in the United States).

25 “(2) OVERALL DOMESTIC LOSS DEFINED.—For  
26 purposes of this subsection—

1           “(A) IN GENERAL.—The term ‘overall do-  
2           mestic loss’ means any domestic loss to the ex-  
3           tent such loss offsets taxable income from  
4           sources without the United States for the tax-  
5           able year or for any preceding taxable year by  
6           reason of a carryback. For purposes of the pre-  
7           ceding sentence, the term ‘domestic loss’ means  
8           the amount by which the gross income for the  
9           taxable year from sources within the United  
10          States is exceeded by the sum of the deductions  
11          properly apportioned or allocated thereto (deter-  
12          mined without regard to any carryback from a  
13          subsequent taxable year).

14          “(B) TAXPAYER MUST HAVE ELECTED  
15          FOREIGN TAX CREDIT FOR YEAR OF LOSS.—  
16          The term ‘overall domestic loss’ shall not in-  
17          clude any loss for any taxable year unless the  
18          taxpayer chose the benefits of this subpart for  
19          such taxable year.

20          “(3) CHARACTERIZATION OF SUBSEQUENT IN-  
21          COME.—

22                 “(A) IN GENERAL.—Any income from  
23                 sources within the United States that is treated  
24                 as income from sources without the United  
25                 States under paragraph (1) shall be allocated

1 among and increase the income categories in  
2 proportion to the loss from sources within the  
3 United States previously allocated to those in-  
4 come categories.

5 “(B) INCOME CATEGORY.—For purposes of  
6 this paragraph, the term ‘income category’ has  
7 the meaning given such term by subsection  
8 (f)(5)(E)(i).

9 “(4) COORDINATION WITH SUBSECTION (f).—  
10 The Secretary shall prescribe such regulations as  
11 may be necessary to coordinate the provisions of this  
12 subsection with the provisions of subsection (f).”

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 535(d)(2) is amended by striking  
15 “section 904(g)(6)” and inserting “section  
16 904(h)(6)”.

17 (2) Subparagraph (A) of section 936(a)(2) is  
18 amended by striking “section 904(f)” and inserting  
19 “subsections (f) and (g) of section 904”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to losses for taxable years begin-  
22 ning after December 31, 2002.

23 **SEC. 313. REDUCTION TO 3 FOREIGN TAX CREDIT BASKETS.**

24 (a) IN GENERAL.—Paragraph (1) of section 904(d)  
25 (relating to separate application of section with respect to

1 certain categories of income) is amended to read as fol-  
2 lows:

3           “(1) IN GENERAL.—The provisions of sub-  
4 sections (a), (b), and (c) and sections 902, 907, and  
5 960 shall be applied separately with respect to in-  
6 come described in each of the following items of in-  
7 come:

8                   “(A) passive income and other passive cat-  
9 egory income,

10                   “(B) financial services income, and

11                   “(C) income other than income described  
12 in subparagraph (A) or (B).”

13           (b) OTHER PASSIVE CATEGORY INCOME.—Subpara-  
14 graph (A) of section 904(d)(2) is amended by adding at  
15 the end the following new clause:

16                   “(v) OTHER PASSIVE CATEGORY IN-  
17 COME.—The term ‘other passive category  
18 income’ means—

19                           “(I) dividends from a DISC or  
20 former DISC (as defined in section  
21 992(a)) to the extent such dividends  
22 are treated as income from sources  
23 without the United States,

1           “(II) taxable income attributable  
2           to foreign trade income (within the  
3           meaning of section 923(b)), and

4           “(III) distributions from a FSC  
5           (or a former FSC) out of earnings  
6           and profits attributable to foreign  
7           trade income (within the meaning of  
8           section 923(b)) or interest or carrying  
9           charges (as defined in section  
10          927(d)(1)) derived from a transaction  
11          which results in foreign trade income  
12          (as defined in section 923(b)).”

13          (c) CONFORMING AMENDMENTS.—

14           (1) Paragraph (2) of section 904(d) is amended  
15          by striking subparagraphs (B) and (D).

16           (2)(A) Subclause (III) of section  
17          904(d)(2)(C)(i) is amended to read as follows:

18                   “(III) high-taxed export financ-  
19                   ing interest.”

20           (B) Subparagraph (C) of section 904(d)(2) is  
21          amended by adding at the end the following new  
22          clause:

23                   “(iv) HIGH-TAXED EXPORT FINANC-  
24                   ING INTEREST.—The term ‘high-taxed ex-

1 port financing interest' means any interest  
2 if—

3 “(I) such interest is subject to a  
4 withholding tax of a foreign country  
5 or possession of the United States (or  
6 other tax determined on a gross  
7 basis), and

8 “(II) the rate of such tax appli-  
9 cable to such interest is at least 5 per-  
10 cent.

11 The Secretary may by regulations provide  
12 that export financing interest (not other-  
13 wise high-taxed export financing interest)  
14 shall be treated as high-taxed export fi-  
15 nancing interest where necessary to pre-  
16 vent avoidance of the purposes of this sub-  
17 paragraph, and a tax shall not be treated  
18 as a withholding tax or other tax imposed  
19 on a gross basis if such tax is in the na-  
20 ture of a prepayment of a tax imposed on  
21 a net basis.”

22 (3) Clause (iii) of section 904(d)(2)(C) is  
23 amended to read as follows:

24 “(iii) EXCEPTIONS.—The term ‘finan-  
25 cial services income’ does not include—

1                   “(I) in the case of a corporation,  
2                   dividends from noncontrolled section  
3                   902 corporations out of earnings and  
4                   profits accumulated in taxable years  
5                   beginning before January 1, 2003,  
6                   and

7                   “(II) any export financing inter-  
8                   est which is not high-taxed export fi-  
9                   nancing interest.”

10                   (4) Subparagraph (E) of section 904(d)(2) is  
11                   amended by striking clause (ii) and by redesignating  
12                   clauses (iii) and (iv) as clauses (ii) and (iii), respec-  
13                   tively.

14                   (5) Clause (i) of section 904(d)(3)(F) is amend-  
15                   ed to read as follows:

16                   “(i) IN GENERAL.—Except as pro-  
17                   vided in clause (ii), the separate categories  
18                   are—

19                   “(I) passive income and other  
20                   passive category income, and

21                   “(II) financial services income.”

22                   (6) Paragraph (3) of section 904(d) is amended  
23                   by striking subparagraph (H) and by redesignating  
24                   subparagraph (I) as subparagraph (H).

1           (7) Paragraph (2) of section 904(d) is amended  
2           by adding at the end the following new subpara-  
3           graph:

4                   “(I) TRANSITIONAL RULE FOR 2002  
5                   CHANGES.—For purposes of paragraph (1),  
6                   taxes carried from any taxable year beginning  
7                   before January 1, 2003, to any taxable year be-  
8                   ginning on or after such date, with respect to  
9                   any item of income shall be treated as described  
10                  in the subparagraph of paragraph (1) in which  
11                  such income would be described were such taxes  
12                  paid or accrued in a taxable year beginning on  
13                  or after such date.”

14          (d) EFFECTIVE DATE.—The amendments made by  
15          this section shall apply to taxable years beginning after  
16          December 31, 2002.

17          **SEC. 314. 10-YEAR FOREIGN TAX CREDIT CARRYFORWARD.**

18          (a) GENERAL RULE.—Section 904(c) (relating to  
19          carryback and carryover of excess tax paid) is amended  
20          by striking “in the first, second, third, fourth, or fifth”  
21          and inserting “in any of the first 10”.

22          (b) EXCESS EXTRACTION TAXES.—Paragraph (1) of  
23          section 907(f) is amended by striking “in the first, second,  
24          third, fourth, or fifth” and inserting “in any of the first  
25          10”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to excess foreign taxes which (with-  
3 out regard to the amendments made by this section) may  
4 be carried to any taxable year beginning after December  
5 31, 2002.

6 **SEC. 315. REPEAL OF LIMITATION OF FOREIGN TAX CREDIT**  
7 **UNDER ALTERNATIVE MINIMUM TAX.**

8 (a) IN GENERAL.—Section 59(a) (relating to alter-  
9 native minimum tax foreign tax credit) is amended by  
10 striking paragraph (2) and by redesignating paragraphs  
11 (3) and (4) as paragraphs (2) and (3), respectively.

12 (b) CONFORMING AMENDMENT.—Section  
13 53(d)(1)(B)(i)(II) is amended by striking “and if section  
14 59(a)(2) did not apply”.

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to taxable years beginning after  
17 December 31, 2002.

18 **SEC. 316. LOOK-THRU RULES TO APPLY TO DIVIDENDS**  
19 **FROM NONCONTROLLED SECTION 902 COR-**  
20 **PORATIONS.**

21 (a) IN GENERAL.—Section 904(d)(4) (relating to  
22 look-thru rules apply to dividends from noncontrolled sec-  
23 tion 902 corporations) is amended to read as follows:

24 “(4) LOOK-THRU APPLIES TO DIVIDENDS FROM  
25 NONCONTROLLED SECTION 902 CORPORATIONS.—

1           “(A) IN GENERAL.—For purposes of this  
2 subsection, any dividend from a noncontrolled  
3 section 902 corporation with respect to the tax-  
4 payer shall be treated as income in a separate  
5 category in proportion to the ratio of—

6                   “(i) the portion of earnings and prof-  
7 its attributable to income in such category,  
8 to

9                   “(ii) the total amount of earnings and  
10 profits.

11           “(B) SPECIAL RULES.—For purposes of  
12 this paragraph—

13                   “(i) IN GENERAL.—Rules similar to  
14 the rules of paragraph (3)(F) shall apply.

15                   “(ii) EARNINGS AND PROFITS.—

16                           “(I) IN GENERAL.—The rules of  
17 section 316 shall apply.

18                           “(II) REGULATIONS.—The Sec-  
19 retary may prescribe regulations re-  
20 garding the treatment of distributions  
21 out of earnings and profits for periods  
22 before the taxpayer’s acquisition of  
23 the stock to which the distributions  
24 relate.

1           “(iii) DIVIDENDS NOT ALLOCABLE TO  
2           SEPARATE CATEGORY.—The portion of any  
3           dividend from a noncontrolled section 902  
4           corporation which is not treated as income  
5           in a separate category under subparagraph  
6           (A) shall be treated as a dividend to which  
7           subparagraph (A) does not apply.

8           “(iv) LOOK-THRU WITH RESPECT TO  
9           CARRYFORWARDS OF CREDIT.—Rules simi-  
10          lar to subparagraph (A) also shall apply to  
11          any carryforward under subsection (c)  
12          from a taxable year beginning before Janu-  
13          ary 1, 2003, of tax allocable to a dividend  
14          from a noncontrolled section 902 corpora-  
15          tion with respect to the taxpayer.”.

16          (b) CONFORMING AMENDMENTS.—

17               (1) Subparagraph (E) of section 904(d)(1), as  
18               in effect both before and after the amendments  
19               made by section 1105 of the Taxpayer Relief Act of  
20               1997, is hereby repealed.

21               (2) Section 904(d)(2)(C)(iii), as so in effect, is  
22               amended by striking subclause (II) and by redesignig-  
23               nating subclause (III) as subclause (II).



1 ceding sentence shall, for purposes of applying such  
2 sentence, be treated as actually owned by such per-  
3 son. The Secretary may prescribe such regulations  
4 as may be necessary to carry out the purposes of  
5 this paragraph, including rules to account for special  
6 partnership allocations of dividends, credits, and  
7 other incidents of ownership of stock in determining  
8 proportionate ownership.”

9 (b) EFFECTIVE DATE.—The amendment made by  
10 this section shall apply to taxes of foreign corporations  
11 for taxable years of such corporations beginning after De-  
12 cember 31, 2002.

## 13 **Subtitle C—Other Provisions**

### 14 **SEC. 321. APPLICATION OF UNIFORM CAPITALIZATION** 15 **RULES TO FOREIGN PERSONS.**

16 (a) IN GENERAL.—Section 263A(c) (relating to ex-  
17 ceptions) is amended by adding at the end the following  
18 new paragraph:

19 “(7) FOREIGN PERSONS.—Except for purposes  
20 of applying sections 871(b)(1) and 882(a)(1), this  
21 section shall not apply to any taxpayer who is not  
22 a United States person if such taxpayer capitalizes  
23 costs of produced property or property acquired for  
24 resale by applying the method used to ascertain the  
25 income, profit, or loss for purposes of reports or

1 statements to shareholders, partners, other propri-  
2 etors, or beneficiaries, or for credit purposes.”

3 (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall apply to taxable years beginning after  
5 December 31, 2002. Section 481 of the Internal Revenue  
6 Code of 1986 shall not apply to any change in a method  
7 of accounting by reason of such amendment.

8 **SEC. 322. UNITED STATES PROPERTY NOT TO INCLUDE**  
9 **CERTAIN ASSETS ACQUIRED BY DEALERS IN**  
10 **ORDINARY COURSE OF TRADE OR BUSINESS.**

11 (a) **IN GENERAL.**—Section 956(c)(2) (relating to ex-  
12 ceptions from property treated as United States property)  
13 is amended by striking “and” at the end of subparagraph  
14 (J), by striking the period at the end of subparagraph (K)  
15 and inserting “; and”, and by adding at the end the fol-  
16 lowing new subparagraph:

17 “(L) securities acquired and held by a con-  
18 trolled foreign corporation in the ordinary  
19 course of its business as a dealer in securities  
20 if (i) the dealer accounts for the securities as  
21 securities held primarily for sale to customers  
22 in the ordinary course of business, and (ii) the  
23 dealer disposes of the securities (or such securi-  
24 ties mature while held by the dealer) within a  
25 period consistent with the holding of securities

1           for sale to customers in the ordinary course of  
2           business.”

3           (b) CONFORMING AMENDMENT.—Section 956(c)(2)  
4 is amended by striking “and (K)” in the last sentence and  
5 inserting “, (K), and (L)”.

6           (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to taxable years of foreign corpora-  
8 tions beginning after December 31, 2002, and to taxable  
9 years of United States shareholders with or within which  
10 such taxable years of foreign corporations end.

11 **SEC. 323. TREATMENT OF CERTAIN DIVIDENDS OF REGU-**  
12 **LATED INVESTMENT COMPANIES.**

13           (a) TREATMENT OF CERTAIN DIVIDENDS.—

14           (1) NONRESIDENT ALIEN INDIVIDUALS.—Sec-  
15 tion 871 (relating to tax on nonresident alien indi-  
16 viduals) is amended by redesignating subsection (k)  
17 as subsection (l) and by inserting after subsection (j)  
18 the following new subsection:

19           “(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REG-  
20 ULATED INVESTMENT COMPANIES.—

21           “(1) INTEREST-RELATED DIVIDENDS.—

22           “(A) IN GENERAL.—Except as provided in  
23 subparagraph (B), no tax shall be imposed  
24 under paragraph (1)(A) of subsection (a) on

1 any interest-related dividend received from a  
2 regulated investment company.

3 “(B) EXCEPTIONS.—Subparagraph (A)  
4 shall not apply—

5 “(i) to any interest-related dividend  
6 received from a regulated investment com-  
7 pany by a person to the extent such divi-  
8 dend is attributable to interest (other than  
9 interest described in subparagraph (E) (i)  
10 or (iii)) received by such company on in-  
11 debtedness issued by such person or by any  
12 corporation or partnership with respect to  
13 which such person is a 10-percent share-  
14 holder,

15 “(ii) to any interest-related dividend  
16 with respect to stock of a regulated invest-  
17 ment company unless the person who  
18 would otherwise be required to deduct and  
19 withhold tax from such dividend under  
20 chapter 3 receives a statement (which  
21 meets requirements similar to the require-  
22 ments of subsection (h)(5)) that the bene-  
23 ficial owner of such stock is not a United  
24 States person, and

1           “(iii) to any interest-related dividend  
2           paid to any person within a foreign coun-  
3           try (or any interest-related dividend pay-  
4           ment addressed to, or for the account of,  
5           persons within such foreign country) dur-  
6           ing any period described in subsection  
7           (h)(6) with respect to such country.

8           Clause (iii) shall not apply to any dividend with  
9           respect to any stock which was acquired on or  
10          before the date of the publication of the Sec-  
11          retary’s determination under subsection (h)(6).

12          “(C) INTEREST-RELATED DIVIDEND.—For  
13          purposes of this paragraph, an interest-related  
14          dividend is any dividend (or part thereof) which  
15          is designated by the regulated investment com-  
16          pany as an interest-related dividend in a writ-  
17          ten notice mailed to its shareholders not later  
18          than 60 days after the close of its taxable year.  
19          If the aggregate amount so designated with re-  
20          spect to a taxable year of the company (includ-  
21          ing amounts so designated with respect to divi-  
22          dends paid after the close of the taxable year  
23          described in section 855) is greater than the  
24          qualified net interest income of the company for  
25          such taxable year, the portion of each distribu-

1           tion which shall be an interest-related dividend  
2           shall be only that portion of the amounts so  
3           designated which such qualified net interest in-  
4           come bears to the aggregate amount so des-  
5           ignated.

6           “(D) QUALIFIED NET INTEREST IN-  
7           COME.—For purposes of subparagraph (C), the  
8           term ‘qualified net interest income’ means the  
9           qualified interest income of the regulated in-  
10          vestment company reduced by the deductions  
11          properly allocable to such income.

12          “(E) QUALIFIED INTEREST INCOME.—For  
13          purposes of subparagraph (D), the term ‘quali-  
14          fied interest income’ means the sum of the fol-  
15          lowing amounts derived by the regulated invest-  
16          ment company from sources within the United  
17          States:

18                 “(i) Any amount includible in gross  
19                 income as original issue discount (within  
20                 the meaning of section 1273) on an obliga-  
21                 tion payable 183 days or less from the date  
22                 of original issue (without regard to the pe-  
23                 riod held by the company).

24                 “(ii) Any interest includible in gross  
25                 income (including amounts recognized as

1 ordinary income in respect of original issue  
2 discount or market discount or acquisition  
3 discount under part V of subchapter P and  
4 such other amounts as regulations may  
5 provide) on an obligation which is in reg-  
6 istered form; except that this clause shall  
7 not apply to—

8 “(I) any interest on an obligation  
9 issued by a corporation or partnership  
10 if the regulated investment company  
11 is a 10-percent shareholder in such  
12 corporation or partnership, and

13 “(II) any interest which is treat-  
14 ed as not being portfolio interest  
15 under the rules of subsection (h)(4).

16 “(iii) Any interest referred to in sub-  
17 section (i)(2)(A) (without regard to the  
18 trade or business of the regulated invest-  
19 ment company).

20 “(iv) Any interest-related dividend in-  
21 cludable in gross income with respect to  
22 stock of another regulated investment com-  
23 pany.

24 “(F) 10-PERCENT SHAREHOLDER.—For  
25 purposes of this paragraph, the term ‘10-per-

1 cent shareholder' has the meaning given such  
2 term by subsection (h)(3)(B).

3 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

4 “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), no tax shall be imposed  
6 under paragraph (1)(A) of subsection (a) on  
7 any short-term capital gain dividend received  
8 from a regulated investment company.

9 “(B) EXCEPTION FOR ALIENS TAXABLE  
10 UNDER SUBSECTION (a)(2).—In the case of divi-  
11 dends received from a regulated investment  
12 company before January 1, 2003, subparagraph  
13 (A) shall not apply in the case of any non-  
14 resident alien individual subject to tax under  
15 subsection (a)(2).

16 “(C) SHORT-TERM CAPITAL GAIN DIVI-  
17 DEND.—For purposes of this paragraph, a  
18 short-term capital gain dividend is any dividend  
19 (or part thereof) which is designated by the reg-  
20 ulated investment company as a short-term cap-  
21 ital gain dividend in a written notice mailed to  
22 its shareholders not later than 60 days after the  
23 close of its taxable year. If the aggregate  
24 amount so designated with respect to a taxable  
25 year of the company (including amounts so des-

1           ignated with respect to dividends paid after the  
2           close of the taxable year described in section  
3           855) is greater than the qualified short-term  
4           gain of the company for such taxable year, the  
5           portion of each distribution which shall be a  
6           short-term capital gain dividend shall be only  
7           that portion of the amounts so designated  
8           which such qualified short-term gain bears to  
9           the aggregate amount so designated.

10           “(D) QUALIFIED SHORT-TERM GAIN.—For  
11           purposes of subparagraph (C), the term ‘quali-  
12           fied short-term gain’ means the excess of the  
13           net short-term capital gain of the regulated in-  
14           vestment company for the taxable year over the  
15           net long-term capital loss (if any) of such com-  
16           pany for such taxable year. For purposes of this  
17           subparagraph—

18                   “(i) the net short-term capital gain of  
19                   the regulated investment company shall be  
20                   computed by treating any short-term cap-  
21                   ital gain dividend includible in gross in-  
22                   come with respect to stock of another regu-  
23                   lated investment company as a short-term  
24                   capital gain, and

1           “(ii) the excess of the net short-term  
2           capital gain for a taxable year over the net  
3           long-term capital loss for a taxable year (to  
4           which an election under section 4982(e)(4)  
5           does not apply) shall be determined with-  
6           out regard to any net capital loss or net  
7           short-term capital loss attributable to  
8           transactions after October 31 of such year,  
9           and any such net capital loss or net short-  
10          term capital loss shall be treated as arising  
11          on the 1st day of the next taxable year.

12          To the extent provided in regulations, clause  
13          (ii) shall apply also for purposes of computing  
14          the taxable income of the regulated investment  
15          company.”

16          (2) FOREIGN CORPORATIONS.—Section 881 (re-  
17          lating to tax on income of foreign corporations not  
18          connected with United States business) is amended  
19          by redesignating subsection (e) as subsection (f) and  
20          by inserting after subsection (d) the following new  
21          subsection:

22          “(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS  
23          OF REGULATED INVESTMENT COMPANIES.—

24                 “(1) INTEREST-RELATED DIVIDENDS.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), no tax shall be imposed  
3           under paragraph (1) of subsection (a) on any  
4           interest-related dividend (as defined in section  
5           871(k)(1)) received from a regulated investment  
6           company.

7           “(B) EXCEPTION.—Subparagraph (A)  
8           shall not apply—

9                   “(i) to any dividend referred to in sec-  
10                   tion 871(k)(1)(B), and

11                   “(ii) to any interest-related dividend  
12                   received by a controlled foreign corporation  
13                   (within the meaning of section 957(a)) to  
14                   the extent such dividend is attributable to  
15                   interest received by the regulated invest-  
16                   ment company from a person who is a re-  
17                   lated person (within the meaning of section  
18                   864(d)(4)) with respect to such controlled  
19                   foreign corporation.

20           “(C) TREATMENT OF DIVIDENDS RE-  
21           CEIVED BY CONTROLLED FOREIGN CORPORA-  
22           TIONS.—The rules of subsection (c)(5)(A) shall  
23           apply to any interest-related dividend received  
24           by a controlled foreign corporation (within the  
25           meaning of section 957(a)) to the extent such

1 dividend is attributable to interest received by  
2 the regulated investment company which is de-  
3 scribed in clause (ii) of section 871(k)(1)(E)  
4 (and not described in clause (i) or (iii) of such  
5 section).

6 “(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—  
7 No tax shall be imposed under paragraph (1) of sub-  
8 section (a) on any short-term capital gain dividend  
9 (as defined in section 871(k)(2)) received from a  
10 regulated investment company.”

11 (3) WITHHOLDING TAXES.—

12 (A) Section 1441(c) (relating to excep-  
13 tions) is amended by adding at the end the fol-  
14 lowing new paragraph:

15 “(12) CERTAIN DIVIDENDS RECEIVED FROM  
16 REGULATED INVESTMENT COMPANIES.—

17 “(A) IN GENERAL.—No tax shall be re-  
18 quired to be deducted and withheld under sub-  
19 section (a) from any amount exempt from the  
20 tax imposed by section 871(a)(1)(A) by reason  
21 of section 871(k).

22 “(B) SPECIAL RULE.—For purposes of  
23 subparagraph (A), clause (i) of section  
24 871(k)(1)(B) shall not apply to any dividend  
25 unless the regulated investment company knows

1 that such dividend is a dividend referred to in  
2 such clause. A similar rule shall apply with re-  
3 spect to the exception contained in section  
4 871(k)(2)(B).”

5 (B) Section 1442(a) (relating to with-  
6 holding of tax on foreign corporations) is  
7 amended—

8 (i) by striking “and the reference in  
9 section 1441(c)(10)” and inserting “the  
10 reference in section 1441(c)(10)”, and

11 (ii) by inserting before the period at  
12 the end the following: “, and the references  
13 in section 1441(c)(12) to sections 871(a)  
14 and 871(k) shall be treated as referring to  
15 sections 881(a) and 881(e) (except that for  
16 purposes of applying subparagraph (A) of  
17 section 1441(c)(12), as so modified, clause  
18 (ii) of section 881(e)(1)(B) shall not apply  
19 to any dividend unless the regulated invest-  
20 ment company knows that such dividend is  
21 a dividend referred to in such clause)”.

22 (b) ESTATE TAX TREATMENT OF INTEREST IN CER-  
23 TAIN REGULATED INVESTMENT COMPANIES.—Section  
24 2105 (relating to property without the United States for

1 estate tax purposes) is amended by adding at the end the  
2 following new subsection:

3 “(d) STOCK IN A RIC.—

4 “(1) IN GENERAL.—For purposes of this sub-  
5 chapter, stock in a regulated investment company  
6 (as defined in section 851) owned by a nonresident  
7 not a citizen of the United States shall not be  
8 deemed property within the United States in the  
9 proportion that, at the end of the quarter of such in-  
10 vestment company’s taxable year immediately pre-  
11 ceding a decedent’s date of death (or at such other  
12 time as the Secretary may designate in regulations),  
13 the assets of the investment company that were  
14 qualifying assets with respect to the decedent bore  
15 to the total assets of the investment company.

16 “(2) QUALIFYING ASSETS.—For purposes of  
17 this subsection, qualifying assets with respect to a  
18 decedent are assets that, if owned directly by the de-  
19 cedent, would have been—

20 “(A) amounts, deposits, or debt obligations  
21 described in subsection (b) of this section,

22 “(B) debt obligations described in the last  
23 sentence of section 2104(c), or

24 “(C) other property not within the United  
25 States.”

1 (c) TREATMENT OF REGULATED INVESTMENT COM-  
2 PANIES UNDER SECTION 897.—

3 (1) Paragraph (1) of section 897(h) is amended  
4 by striking “REIT” each place it appears and in-  
5 serting “qualified investment entity”.

6 (2) Paragraphs (2) and (3) of section 897(h)  
7 are amended to read as follows:

8 “(2) SALE OF STOCK IN DOMESTICALLY CON-  
9 TROLLED ENTITY NOT TAXED.—The term ‘United  
10 States real property interest’ does not include any  
11 interest in a domestically controlled qualified invest-  
12 ment entity.

13 “(3) DISTRIBUTIONS BY DOMESTICALLY CON-  
14 TROLLED QUALIFIED INVESTMENT ENTITIES.—In  
15 the case of a domestically controlled qualified invest-  
16 ment entity, rules similar to the rules of subsection  
17 (d) shall apply to the foreign ownership percentage  
18 of any gain.”

19 (3) Subparagraphs (A) and (B) of section  
20 897(h)(4) are amended to read as follows:

21 “(A) QUALIFIED INVESTMENT ENTITY.—  
22 The term ‘qualified investment entity’ means  
23 any real estate investment trust and any regu-  
24 lated investment company.

1           “(B) DOMESTICALLY CONTROLLED.—The  
2           term ‘domestically controlled qualified invest-  
3           ment entity’ means any qualified investment en-  
4           tity in which at all times during the testing pe-  
5           riod less than 50 percent in value of the stock  
6           was held directly or indirectly by foreign per-  
7           sons.”

8           (4) Subparagraphs (C) and (D) of section  
9           897(h)(4) are each amended by striking “REIT”  
10          and inserting “qualified investment entity”.

11          (5) The subsection heading for subsection (h) of  
12          section 897 is amended by striking “REITS” and  
13          inserting “CERTAIN INVESTMENT ENTITIES”.

14          (d) EFFECTIVE DATE.—

15           (1) IN GENERAL.—Except as otherwise pro-  
16           vided in this subsection, the amendments made by  
17           this section shall apply to dividends with respect to  
18           taxable years of regulated investment companies be-  
19           ginning after the date of the enactment of this Act.

20           (2) ESTATE TAX TREATMENT.—The amend-  
21           ment made by subsection (b) shall apply to estates  
22           of decedents dying after the date of the enactment  
23           of this Act.

24           (3) CERTAIN OTHER PROVISIONS.—The amend-  
25           ments made by subsection (c) (other than paragraph

1 (1) thereof) shall take effect on the date of the en-  
2 actment of this Act.

3 **SEC. 324. ELECTION NOT TO USE AVERAGE EXCHANGE**  
4 **RATE FOR FOREIGN TAX PAID OTHER THAN**  
5 **IN FUNCTIONAL CURRENCY.**

6 (a) IN GENERAL.—Paragraph (1) of section 986(a)  
7 (relating to determination of foreign taxes and foreign cor-  
8 poration’s earnings and profits) is amended by redesi-  
9 gnating subparagraph (D) as subparagraph (E) and by in-  
10 serting after subparagraph (C) the following new subpara-  
11 graph:

12 “(D) ELECTIVE EXCEPTION FOR TAXES  
13 PAID OTHER THAN IN FUNCTIONAL CUR-  
14 RENCY.—

15 “(i) IN GENERAL.—At the election of  
16 the taxpayer, subparagraph (A) shall not  
17 apply to any foreign income taxes the li-  
18 ability for which is denominated in any  
19 currency other than in the taxpayer’s func-  
20 tional currency.

21 “(ii) APPLICATION TO QUALIFIED  
22 BUSINESS UNITS.—An election under this  
23 subparagraph may apply to foreign income  
24 taxes attributable to a qualified business

1 unit in accordance with regulations pre-  
2 scribed by the Secretary.

3 “(iii) ELECTION.—Any such election  
4 shall apply to the taxable year for which  
5 made and all subsequent taxable years un-  
6 less revoked with the consent of the Sec-  
7 retary.”

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to taxable years beginning after  
10 December 31, 2002.

11 **SEC. 325. REPEAL OF WITHHOLDING TAX ON DIVIDENDS**  
12 **FROM CERTAIN FOREIGN CORPORATIONS.**

13 (a) IN GENERAL.—Paragraph (2) of section 871(i)  
14 (relating to tax not to apply to certain interest and divi-  
15 dends) is amended by adding at the end the following new  
16 subparagraph:

17 “(D) Dividends paid by a foreign corpora-  
18 tion.”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 this section shall apply to payments made after December  
21 31, 2002.

22 **SEC. 326. INCREASE IN EXPENSING UNDER SECTION 179.**

23 (a) INCREASE IN DOLLAR LIMITATIONS.—

1           (1) IN GENERAL.—Paragraph (1) of section  
2           179(b) (relating to dollar limitation) is amended to  
3           read as follows:

4           “(1) DOLLAR LIMITATION.—The aggregate cost  
5           which may be taken into account under subsection  
6           (a) for any taxable year shall not exceed \$25,000  
7           (\$40,000 in the case of taxable years beginning after  
8           December 31, 2012).”

9           (2) INCREASE IN PHASEOUT THRESHOLD.—  
10          Paragraph (2) of section 179(b) is amended by in-  
11          serting before the period “(\$325,000 in the case of  
12          taxable years beginning after December 31, 2012).”.

13          (b) INFLATION ADJUSTMENTS.—

14          (1) IN GENERAL.—Subsection (b) of section  
15          179 is amended by redesignating paragraphs (3) and  
16          (4) as paragraphs (4) and (5), respectively, and by  
17          inserting after paragraph (2) the following new  
18          paragraph:

19          “(3) INFLATION ADJUSTMENT.—In the case of  
20          any taxable year beginning in a calendar year after  
21          2004, the dollar amounts contained in paragraphs  
22          (1) and (2) which would (but for this paragraph)  
23          apply to such taxable year shall be increased by an  
24          amount equal to the product of—

25                  “(A) such dollar amount, and

1           “(B) the cost-of-living adjustment deter-  
2           mined under section 1(f)(3) for the calendar  
3           year in which the taxable year begins, deter-  
4           mined by substituting in subparagraph (B)  
5           thereof—

6                   “(i) ‘calendar year 2003’ for ‘calendar  
7                   year 1992’ with respect to the \$25,000  
8                   and \$200,000 amounts, and

9                   “(ii) ‘calendar year 2011’ for ‘cal-  
10                  endar year 1992’ with respect to the  
11                  \$40,000 and \$325,000 amounts.

12           If any amount after adjustment under the preceding  
13           sentence is not a multiple of \$1,000, such amount  
14           shall be rounded to the next lowest multiple of  
15           \$1,000.”

16           (2) CONFORMING AMENDMENT.—Subparagraph  
17           (B) of section 179(b)(5), as redesignated by para-  
18           graph (1), is amended by striking “paragraph (3)”  
19           and inserting “paragraph (4)”.

20           (c) EFFECTIVE DATE.—The amendments made by  
21           this section shall apply to taxable years beginning after  
22           December 31, 2002.

23   **SEC. 327. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**  
24                   **INCOME.**

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

1 (b) CONFORMING AMENDMENTS.—

2 (1) Subpart E of part III of subchapter N of  
3 chapter 1 (relating to qualifying foreign trade in-  
4 come) is hereby repealed.

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

7 (3) The table of sections for part III of sub-  
8 chapter B of chapter 1 is amended by striking the  
9 item relating to section 114.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to taxable years beginning after  
12 December 31, 2002.

13 **SEC. 328. REPEAL OF FSC TRANSITIONAL RULES.**

14 (a) IN GENERAL.—Subsections (c) and (d) of section  
15 5 of the FSC Repeal and Extraterritorial Income Exclu-  
16 sion Act of 2000 are hereby repealed.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to taxable years beginning after  
19 the calendar year which includes the date of the enactment  
20 of this Act.

1 **TITLE IV—OTHER PROVISIONS**

2 **SEC. 401. EXTENSION OF INTERNAL REVENUE SERVICE**

3 **USER FEES.**

4 (a) IN GENERAL.—Chapter 77 (relating to miscella-  
5 neous provisions) is amended by adding at the end the  
6 following new section:

7 **“SEC. 7527. INTERNAL REVENUE SERVICE USER FEES.**

8 “(a) GENERAL RULE.—The Secretary shall establish  
9 a program requiring the payment of user fees for—

10 “(1) requests to the Internal Revenue Service  
11 for ruling letters, opinion letters, and determination  
12 letters, and

13 “(2) other similar requests.

14 “(b) PROGRAM CRITERIA.—

15 “(1) IN GENERAL.—The fees charged under the  
16 program required by subsection (a)—

17 “(A) shall vary according to categories (or  
18 subcategories) established by the Secretary,

19 “(B) shall be determined after taking into  
20 account the average time for (and difficulty of)  
21 complying with requests in each category (and  
22 subcategory), and

23 “(C) shall be payable in advance.

24 “(2) EXEMPTIONS, ETC.—

1           “(A) IN GENERAL.—The Secretary shall  
2 provide for such exemptions (and reduced fees)  
3 under such program as the Secretary deter-  
4 mines to be appropriate.

5           “(B) EXEMPTION FOR CERTAIN REQUESTS  
6 REGARDING PENSION PLANS.—The Secretary  
7 shall not require payment of user fees under  
8 such program for requests for determination  
9 letters with respect to the qualified status of a  
10 pension benefit plan maintained solely by 1 or  
11 more eligible employers or any trust which is  
12 part of the plan. The preceding sentence shall  
13 not apply to any request—

14                   “(i) made after the later of—

15                           “(I) the fifth plan year the pen-  
16 sion benefit plan is in existence, or

17                           “(II) the end of any remedial  
18 amendment period with respect to the  
19 plan beginning within the first 5 plan  
20 years, or

21                           “(ii) made by the sponsor of any pro-  
22 totype or similar plan which the sponsor  
23 intends to market to participating employ-  
24 ers.

1                   “(C) DEFINITIONS AND SPECIAL RULES.—

2                   For purposes of subparagraph (B)—

3                   “(i) PENSION BENEFIT PLAN.—The  
4                   term ‘pension benefit plan’ means a pen-  
5                   sion, profit-sharing, stock bonus, annuity,  
6                   or employee stock ownership plan.

7                   “(ii) ELIGIBLE EMPLOYER.—The  
8                   term ‘eligible employer’ means an eligible  
9                   employer (as defined in section  
10                  408(p)(2)(C)(i)(I)) which has at least 1  
11                  employee who is not a highly compensated  
12                  employee (as defined in section 414(q))  
13                  and is participating in the plan. The deter-  
14                  mination of whether an employer is an eli-  
15                  gible employer under subparagraph (B)  
16                  shall be made as of the date of the request  
17                  described in such subparagraph.

18                  “(iii) DETERMINATION OF AVERAGE  
19                  FEES CHARGED.—For purposes of any de-  
20                  termination of average fees charged, any  
21                  request to which subparagraph (B) applies  
22                  shall not be taken into account.

23                  “(3) AVERAGE FEE REQUIREMENT.—The aver-  
24                  age fee charged under the program required by sub-

1 section (a) shall not be less than the amount deter-  
 2 mined under the following table:

<b>“Category</b>	<b>Average Fee</b>
Employee plan ruling and opinion .....	\$250
Exempt organization ruling .....	\$350
Employee plan determination .....	\$300
Exempt organization determination .....	\$275
Chief counsel ruling .....	\$200.

3 “(c) **TERMINATION.**—No fee shall be imposed under  
 4 this section with respect to requests made after December  
 5 31, 2012.”

6 (b) **CONFORMING AMENDMENTS.**—

7 (1) The table of sections for chapter 77 is  
 8 amended by adding at the end the following new  
 9 item:

“Sec. 7527. Internal Revenue Service user fees.”.

10 (2) Section 10511 of the Revenue Act of 1987  
 11 is repealed.

12 (3) Section 620 of the Economic Growth and  
 13 Tax Relief Reconciliation Act of 2001 is repealed.

14 (c) **LIMITATIONS.**—Notwithstanding any other provi-  
 15 sion of law, any fees collected pursuant to section 7527  
 16 of the Internal Revenue Code of 1986, as added by sub-  
 17 section (a), shall not be expended by the Internal Revenue  
 18 Service unless provided by an appropriations Act.

19 (d) **EFFECTIVE DATE.**—The amendments made by  
 20 this section shall apply to requests made after the date  
 21 of the enactment of this Act.

1 **SEC. 402. EXTENSION OF CUSTOMS USER FEES.**

2 (a) IN GENERAL.—Section 13031(j)(3) of the Con-  
3 solidated Omnibus Budget Reconciliation Act of 1985 (19  
4 U.S.C. 58c(j)(3)) is amended by striking “September 30,  
5 2003” and inserting “December 31, 2012”.

6 (b) CUSTOMS AUTOMATION FUND.—Section  
7 13031(f) of the Consolidated Omnibus Budget Reconcili-  
8 ation Act of 1985 (19 U.S.C. 58c(f)) is amended—

9 (1) in paragraph (1), by striking subparagraph  
10 (B) and inserting the following:

11 “(B) amounts deposited into the Customs Com-  
12 mercial Automation Account under paragraph (5).”;

13 (2) in paragraph (4), by striking “(other than  
14 the excess fees determined by the Secretary under  
15 paragraph (5))”; and

16 (3) by striking paragraph (5) and inserting the  
17 following:

18 “(5)(A) There is created within the general fund of  
19 the Treasury a separate account that shall be known as  
20 the ‘Customs Commercial Automation Account’. In each  
21 of fiscal years 2003, 2004, and 2005 there shall be depos-  
22 ited into the Customs Commercial Automation Account  
23 from fees collected under subsection (a)(9)(A),  
24 \$350,000,000.

25 “(B) There is authorized to be appropriated from the  
26 Customs Commercial Automation Account in fiscal years

1 2003 through 2005 such amounts as are available in that  
2 Account for the development, establishment, and imple-  
3 mentation of the Automated Commercial Environment  
4 computer system for the processing of merchandise that  
5 is entered or released. Amounts appropriated pursuant to  
6 this subparagraph are authorized to remain available until  
7 expended.

8 “(C) In adjusting the fee imposed by subsection  
9 (a)(9)(A) for fiscal year 2006, the Secretary of the Treas-  
10 ury shall reduce the amount estimated to be collected in  
11 fiscal year 2006 by the amount by which total fees depos-  
12 ited to the Customs Commercial Automation Account dur-  
13 ing fiscal years 2003, 2004, and 2005 exceed total appro-  
14 priations from that Account.”.

15 **SEC. 403. INCLUSION IN GROSS INCOME OF FUNDED DE-**  
16 **FERRED COMPENSATION OF CORPORATE IN-**  
17 **SIDERS.**

18 (a) IN GENERAL.—Subpart A of part I of subchapter  
19 D of chapter 1 is amended by adding at the end the fol-  
20 lowing new section:

21 **“SEC. 409A. INCLUSION IN GROSS INCOME OF FUNDED DE-**  
22 **FERRED COMPENSATION OF CORPORATE IN-**  
23 **SIDERS.**

24 “(a) IN GENERAL.—If an employer maintains a fund-  
25 ed deferred compensation plan—

1           “(1) compensation of any disqualified individual  
2           which is deferred under such funded deferred com-  
3           pensation plan shall be included in the gross income  
4           of the disqualified individual or beneficiary for the  
5           1st taxable year in which there is no substantial risk  
6           of forfeiture of the rights to such compensation, and

7           “(2) the tax treatment of any amount made  
8           available under the plan to a disqualified individual  
9           or beneficiary shall be determined under section 72  
10          (relating to annuities, etc.).

11          “(b) FUNDED DEFERRED COMPENSATION PLAN.—  
12          For purposes of this section—

13                 “(1) IN GENERAL.—The term ‘funded deferred  
14                 compensation plan’ means any plan providing for the  
15                 deferral of compensation unless—

16                         “(A) the employee’s rights to the com-  
17                         pensation deferred under the plan are no great-  
18                         er than the rights of a general creditor of the  
19                         employer, and

20                         “(B) all amounts set aside (directly or in-  
21                         directly) for purposes of paying the deferred  
22                         compensation, and all income attributable to  
23                         such amounts, remain (until made available to  
24                         the participant or other beneficiary) solely the  
25                         property of the employer (without being re-

1           stricted to the provision of benefits under the  
2           plan), and

3                   “(C) the amounts referred to in subpara-  
4                   graph (B) are available to satisfy the claims of  
5                   the employer’s general creditors at all times  
6                   (not merely after bankruptcy or insolvency).

7           Such term shall not include a qualified employer  
8           plan.

9                   “(2) SPECIAL RULES.—

10                   “(A) EMPLOYEE’S RIGHTS.—A plan shall  
11                   be treated as failing to meet the requirements  
12                   of paragraph (1)(A) unless—

13                           “(i) the compensation deferred under  
14                           the plan is payable only upon separation  
15                           from service, death, or at a specified time  
16                           (or pursuant to a fixed schedule), and

17                           “(ii) the plan does not permit the ac-  
18                           celeration of the time such deferred com-  
19                           pensation is payable by reason of any  
20                           event.

21           If the employer and employee agree to a modi-  
22           fication of the plan that accelerates the time for  
23           payment of any deferred compensation, then all  
24           compensation previously deferred under the  
25           plan shall be includible in gross income for the

1 taxable year during which such modification  
2 takes effect and the taxpayer shall pay interest  
3 at the underpayment rate on the underpay-  
4 ments that would have occurred had the de-  
5 ferred compensation been includible in gross in-  
6 come on the earliest date that there is no sub-  
7 stantial risk of forfeiture of the rights to such  
8 compensation.

9 “(B) CREDITOR’S RIGHTS.—A plan shall  
10 be treated as failing to meet the requirements  
11 of paragraph (1)(B) with respect to amounts  
12 set aside in a trust unless—

13 “(i) the employee has no beneficial in-  
14 terest in the trust,

15 “(ii) assets in the trust are available  
16 to satisfy claims of general creditors at all  
17 times (not merely after bankruptcy or in-  
18 solvency), and

19 “(iii) there is no factor that would  
20 make it more difficult for general creditors  
21 to reach the assets in the trust than it  
22 would be if the trust assets were held di-  
23 rectly by the employer in the United  
24 States.

1           Except as provided in regulations prescribed by  
2           the Secretary, such a factor shall include the lo-  
3           cation of the trust outside the United States.

4           “(c) DISQUALIFIED INDIVIDUAL.—For purposes of  
5 this section, the term ‘disqualified individual’ means, with  
6 respect to a corporation, any individual—

7           “(1) who is subject to the requirements of sec-  
8 tion 16(a) of the Securities Exchange Act of 1934  
9 with respect to such corporation, or

10           “(2) who would be subject to such requirements  
11 if such corporation were an issuer of equity securi-  
12 ties referred to in such section.

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

15           “(1) QUALIFIED EMPLOYER PLAN.—The term  
16 ‘qualified employer plan’ means—

17           “(A) any plan, contract, pension, account,  
18 or trust described in subparagraph (A) or (B)  
19 of section 219(g)(5), and

20           “(B) any other plan of an organization ex-  
21 empt from tax under subtitle A.

22           “(2) PLAN INCLUDES ARRANGEMENTS, ETC.—  
23 The term ‘plan’ includes any agreement or arrange-  
24 ment.



1           ducer, or importer of any bow which has a draw  
2           weight of 30 pounds or more, a tax equal to 11  
3           percent of the price for which so sold.

4           “(B) ARCHERY EQUIPMENT.—There is  
5           hereby imposed on the sale by the manufac-  
6           turer, producer, or importer—

7                   “(i) of any part or accessory suitable  
8                   for inclusion in or attachment to a bow de-  
9                   scribed in subparagraph (A), and

10                   “(ii) of any quiver or broadhead suit-  
11                   able for use with an arrow described in  
12                   paragraph (3),

13           a tax equal to 11 percent of the price for which  
14           so sold.”.

15           (b) ARROWS.—Section 4161(b) (relating to bows and  
16           arrows, etc.) is amended by redesignating paragraph (3)  
17           as paragraph (4) and inserting after paragraph (2) the  
18           following:

19                   “(3) ARROWS.—

20                   “(A) IN GENERAL.—There is hereby im-  
21                   posed on the sale by the manufacturer, pro-  
22                   ducer, or importer of any arrow, a tax equal to  
23                   12 percent of the price for which so sold.

24                   “(B) EXCEPTION.—The tax imposed by  
25                   subparagraph (A) on an arrow shall not apply

1 if the arrow contains an arrow shaft subject to  
2 the tax imposed by paragraph (2).

3 “(C) ARROW.—For purposes of this para-  
4 graph, the term ‘arrow’ means any shaft de-  
5 scribed in paragraph (2) to which additional  
6 components are attached.”.

7 (c) CONFORMING AMENDMENT.—The heading of sec-  
8 tion 4161(b)(2) (relating to arrows) is amended by strik-  
9 ing “ARROWS.—” and inserting “ARROW COMPO-  
10 NENTS.—”.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to articles sold by the manufac-  
13 turer, producer, or importer after December 31, 2001.

14 **SEC. 405. EXCLUSION FROM GROSS INCOME FOR INTEREST**  
15 **ON OVERPAYMENTS OF INCOME TAX BY INDI-**  
16 **VIDUALS.**

17 (a) IN GENERAL.—Part III of subchapter B of chap-  
18 ter 1 (relating to items specifically excluded from gross  
19 income) is amended by inserting after section 139 the fol-  
20 lowing new section:

1 **“SEC. 139A. EXCLUSION FROM GROSS INCOME FOR INTER-**  
2 **EST ON OVERPAYMENTS OF INCOME TAX BY**  
3 **INDIVIDUALS.**

4 “(a) IN GENERAL.—In the case of an individual,  
5 gross income shall not include interest paid under section  
6 6611 on any overpayment of tax imposed by this subtitle.

7 “(b) EXCEPTION.—Subsection (a) shall not apply in  
8 the case of a failure to claim items resulting in the over-  
9 payment on the original return if the Secretary determines  
10 that the principal purpose of such failure is to take advan-  
11 tage of subsection (a).

12 “(c) SPECIAL RULE FOR DETERMINING MODIFIED  
13 ADJUSTED GROSS INCOME.—For purposes of this title,  
14 interest not included in gross income under subsection (a)  
15 shall not be treated as interest which is exempt from tax  
16 for purposes of sections 32(i)(2)(B) and 6012(d) or any  
17 computation in which interest exempt from tax under this  
18 title is added to adjusted gross income.”.

19 (b) CLERICAL AMENDMENT.—The table of sections  
20 for part III of subchapter B of chapter 1 is amended by  
21 inserting after the item relating to section 139 the fol-  
22 lowing new item:

“Sec. 139A. Exclusion from gross income for interest on over-  
payments of income tax by individuals.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to interest received in calendar  
3 years beginning after December 31, 2006.

4 **SEC. 406. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**  
5 **TEREST ON POTENTIAL UNDERPAYMENTS.**

6 (a) IN GENERAL.—Subchapter A of chapter 67 (re-  
7 lating to interest on underpayments) is amended by add-  
8 ing at the end the following new section:

9 **“SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF IN-**  
10 **TEREST ON POTENTIAL UNDERPAYMENTS,**  
11 **ETC.**

12 “(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN  
13 AS PAYMENT OF TAX.—A taxpayer may make a cash de-  
14 posit with the Secretary which may be used by the Sec-  
15 retary to pay any tax imposed under subtitle A or B or  
16 chapter 41, 42, 43, or 44 which has not been assessed  
17 at the time of the deposit. Such a deposit shall be made  
18 in such manner as the Secretary shall prescribe.

19 “(b) NO INTEREST IMPOSED.—To the extent that  
20 such deposit is used by the Secretary to pay tax, for pur-  
21 poses of section 6601 (relating to interest on underpay-  
22 ments), the tax shall be treated as paid when the deposit  
23 is made.

24 “(c) RETURN OF DEPOSIT.—Except in a case where  
25 the Secretary determines that collection of tax is in jeop-

1 ardy, the Secretary shall return to the taxpayer any  
2 amount of the deposit (to the extent not used for a pay-  
3 ment of tax) which the taxpayer requests in writing.

4 “(d) PAYMENT OF INTEREST.—

5 “(1) IN GENERAL.—For purposes of section  
6 6611 (relating to interest on overpayments), a de-  
7 posit which is returned to a taxpayer shall be treated  
8 as a payment of tax for any period to the extent  
9 (and only to the extent) attributable to a disputable  
10 tax for such period. Under regulations prescribed by  
11 the Secretary, rules similar to the rules of section  
12 6611(b)(2) shall apply.

13 “(2) DISPUTABLE TAX.—

14 “(A) IN GENERAL.—For purposes of this  
15 section, the term ‘disputable tax’ means the  
16 amount of tax specified at the time of the de-  
17 posit as the taxpayer’s reasonable estimate of  
18 the maximum amount of any tax attributable to  
19 disputable items.

20 “(B) SAFE HARBOR BASED ON 30-DAY  
21 LETTER.—In the case of a taxpayer who has  
22 been issued a 30-day letter, the maximum  
23 amount of tax under subparagraph (A) shall  
24 not be less than the amount of the proposed de-  
25 ficiency specified in such letter.

1           “(3) OTHER DEFINITIONS.—For purposes of  
2 paragraph (2)—

3           “(A) DISPUTABLE ITEM.—The term ‘dis-  
4 putable item’ means any item of income, gain,  
5 loss, deduction, or credit if the taxpayer—

6           “(i) has a reasonable basis for its  
7 treatment of such item, and

8           “(ii) reasonably believes that the Sec-  
9 retary also has a reasonable basis for dis-  
10 allowing the taxpayer’s treatment of such  
11 item.

12           “(B) 30-DAY LETTER.—The term ‘30-day  
13 letter’ means the first letter of proposed defi-  
14 ciency which allows the taxpayer an opportunity  
15 for administrative review in the Internal Rev-  
16 enue Service Office of Appeals.

17           “(4) RATE OF INTEREST.—The rate of interest  
18 allowable under this subsection shall be the Federal  
19 short-term rate determined under section 6621(b),  
20 compounded daily.

21           “(e) USE OF DEPOSITS.—

22           “(1) PAYMENT OF TAX.—Except as otherwise  
23 provided by the taxpayer, deposits shall be treated  
24 as used for the payment of tax in the order depos-  
25 ited.



1           (1) Section 6159(a) (relating to authorization  
2 of agreements) is amended—

3           (A) by striking “satisfy liability for pay-  
4 ment of” and inserting “make payment on”,  
5 and

6           (B) by inserting “full or partial” after “fa-  
7 cilitate”.

8           (2) Section 6159(e) (relating to Secretary re-  
9 quired to enter into installment agreements in cer-  
10 tain cases) is amended in the matter preceding para-  
11 graph (1) by inserting “full” before “payment”.

12       (b) REQUIREMENT TO REVIEW PARTIAL PAYMENT  
13 AGREEMENTS EVERY TWO YEARS.—Section 6159 is  
14 amended by redesignating subsections (d) and (e) as sub-  
15 sections (e) and (f), respectively, and inserting after sub-  
16 section (c) the following new subsection:

17       “(d) SECRETARY REQUIRED TO REVIEW INSTALL-  
18 MENT AGREEMENTS FOR PARTIAL COLLECTION EVERY  
19 TWO YEARS.—In the case of an agreement entered into  
20 by the Secretary under subsection (a) for partial collection  
21 of a tax liability, the Secretary shall review the agreement  
22 at least once every 2 years.”.

23       (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to agreements entered into on or  
25 after the date of the enactment of this Act.

1 **SEC. 408. EXTENSION OF TRANSFERS OF EXCESS PENSION**  
2 **ASSETS TO RETIREE HEALTH ACCOUNTS.**

3 Paragraph (5) of section 420(b) (relating to expira-  
4 tion) is amended by striking “December 31, 2005” and  
5 inserting “December 31, 2012”.

6 **SEC. 409. CLARIFICATION OF RULES FOR PAYMENT OF ES-**  
7 **TIMATED TAX FOR CERTAIN DEEMED ASSET**  
8 **SALES.**

9 (a) **IN GENERAL.**—Paragraph (13) of section 338(h)  
10 (relating to tax on deemed sale not taken into account for  
11 estimated tax purposes) is amended by adding at the end  
12 the following: “The preceding sentence shall not apply  
13 with respect to a qualified stock purchase for which an  
14 election is made under paragraph (10).”.

15 (b) **EFFECTIVE DATE.**—The amendment made by  
16 subsection (a) shall apply to transactions occurring after  
17 the date of the enactment of this Act.

○