

108TH CONGRESS
2D SESSION

H. R. 5395

To amend the Internal Revenue Code of 1986 to make technical corrections,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2004

Mr. THOMAS introduced the following bill; which was referred to the
Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to make
technical corrections, 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.**

4 This Act may be cited as the “Tax Technical Correc-
5 tions Act of 2004”.

6 **SEC. 2. TECHNICAL CORRECTIONS.**

7 (a) AMENDMENTS RELATED TO THE AMERICAN
8 JOBS CREATION ACT OF 2004.—

9 (1) AMENDMENTS RELATED TO SECTION 102 OF
10 THE ACT.—

1 (A) Paragraph (2) of section 199(c) of the
2 Internal Revenue Code of 1986 is amended to
3 read as follows:

4 “(2) ALLOCATION METHOD.—The Secretary
5 shall prescribe rules for the proper allocation of
6 items described in paragraph (1) for purposes of de-
7 termining qualified production activities income.”.

8 (B) Clause (i) of section 199(d)(4)(B) of
9 such Code is amended—

10 (i) by striking “50 percent” and in-
11 sserting “more than 50 percent”, and

12 (ii) by striking “80 percent” and in-
13 sserting “at least 80 percent”.

14 (2) AMENDMENT RELATED TO SECTION 231 OF
15 THE ACT.—Subparagraph (C) of section 1361(c)(1)
16 of such Code is amended to read as follows:

17 “(C) EFFECT OF ADOPTION, ETC.—For
18 purposes of this paragraph, any legally adopted
19 child of an individual, any child who is lawfully
20 placed with an individual for legal adoption by
21 the individual, and any eligible foster child of
22 an individual (within the meaning of section
23 152(f)(1)(C)), shall be treated as a child of
24 such individual by blood.”.

1 (3) AMENDMENT RELATED TO SECTION 248 OF
2 THE ACT.—Subsection (c) of section 1356 of such
3 Code is amended—

4 (A) by striking paragraph (3), and

5 (B) by adding at the end of paragraph (2)

6 the following new flush sentence:

7 “Such term shall not include any core qualifying ac-
8 tivities.”.

9 (4) AMENDMENT RELATED TO SECTION 314 OF
10 THE ACT.—Paragraph (2) of section 55(c) of such
11 Code is amended by striking “regular tax” and in-
12 serting “regular tax liability”.

13 (5) AMENDMENT RELATED TO SECTION 415 OF
14 THE ACT.—Subparagraph (D) of section 904(d)(2)
15 of such Code is amended by inserting “as in effect
16 before its repeal” after “section 954(f)”.

17 (6) AMENDMENTS RELATED TO SECTION 418 OF
18 THE ACT.—

19 (A) The second sentence of section
20 897(h)(1) of such Code is amended by striking
21 “any distribution” and all that follows through
22 “any class of stock” and inserting “any dis-
23 tribution by a real estate investment trust with
24 respect to any class of stock”.

1 (B) Subsection (c) of section 418 of the
2 American Jobs Creation Act of 2004 is amend-
3 ed by striking “taxable years beginning after
4 the date of the enactment of this Act” and in-
5 serting “any distribution by a real estate invest-
6 ment trust which is treated as a deduction for
7 a taxable year of such trust beginning after the
8 date of the enactment of this Act”.

9 (7) AMENDMENTS RELATED TO SECTION 422 OF
10 THE ACT.—

11 (A) Subparagraph (A) of section 965(b)(2)
12 of such Code is amended by inserting “cash”
13 before “dividends”.

14 (B) Paragraph (3) of section 965(b) of
15 such Code is amended by adding at the end the
16 following: “The Secretary may prescribe such
17 regulations as may be necessary or appropriate
18 to prevent the avoidance of the purposes of this
19 paragraph, including regulations which provide
20 that cash dividends shall not be taken into ac-
21 count under subsection (a) to the extent such
22 dividends are attributable to the direct or indi-
23 rect transfer (including through the use of in-
24 tervening entities or capital contributions) of
25 cash or other property from a related person

1 (as so defined) to a controlled foreign corpora-
2 tion.”.

3 (C) Paragraph (1) of section 965(c) of
4 such Code is amended to read as follows:

5 “(1) APPLICABLE FINANCIAL STATEMENT.—

6 The term ‘applicable financial statement’ means—

7 “(A) with respect to a United States
8 shareholder which is required to file a financial
9 statement with the Securities and Exchange
10 Commission (or which is included in such a
11 statement so filed by another person), the most
12 recent audited annual financial statement (in-
13 cluding the notes which form an integral part
14 of such statement) of such shareholder (or
15 which includes such shareholder)—

16 “(i) which was so filed on or before
17 June 30, 2003, and

18 “(ii) which was certified on or before
19 June 30, 2003, as being prepared in ac-
20 cordance with generally accepted account-
21 ing principles, and

22 “(B) with respect to any other United
23 States shareholder, the most recent audited fi-
24 nancial statement (including the notes which
25 form an integral part of such statement) of such

1 shareholder (or which includes such share-
2 holder)—

3 “(i) which was certified on or before
4 June 30, 2003, as being prepared in ac-
5 cordance with generally accepted account-
6 ing principles, and

7 “(ii) which is used for the purposes of
8 a statement or report—

9 “(I) to creditors,

10 “(II) to shareholders, or

11 “(III) for any other substantial
12 nontax purpose.”.

13 (D) Paragraph (2) of section 965(d) of
14 such Code is amended by striking “properly al-
15 located and apportioned” and inserting “di-
16 rectly allocable”.

17 (E) Subsection (d) of section 965 of such
18 Code is amended by adding at the end the fol-
19 lowing new paragraph:

20 “(4) COORDINATION WITH SECTION 78.—Sec-
21 tion 78 shall not apply to any tax which is not allow-
22 able as a credit under section 901 by reason of this
23 subsection.”.

24 (F) The last sentence of section 965(e)(1)
25 of such Code is amended by inserting “which

1 are imposed by foreign countries and posses-
2 sions of the United States and are” after
3 “taxes”.

4 (8) AMENDMENTS RELATED TO SECTION 501 OF
5 THE ACT.—

6 (A) Subparagraph (A) of section 164(b)(5)
7 of such Code is amended to read as follows:

8 “(A) ELECTION TO DEDUCT STATE AND
9 LOCAL SALES TAXES IN LIEU OF STATE AND
10 LOCAL INCOME TAXES.—At the election of the
11 taxpayer for the taxable year, subsection (a)
12 shall be applied—

13 “(i) without regard to the reference to
14 State and local income taxes, and

15 “(ii) as if State and local general sales
16 taxes were referred to in a paragraph
17 thereof.”.

18 (B) Clause (ii) of section 56(b)(1)(A) of
19 such Code is amended by inserting “or clause
20 (ii) of section 164(b)(5)(A)” before the period
21 at the end.

22 (9) AMENDMENT RELATED TO SECTION 835 OF
23 THE ACT.—The last sentence of paragraph (3) of
24 section 860G(a) of such Code is amended by striking

1 “treated as secured” and inserting “treated as prin-
2 cipally secured”.

3 (10) AMENDMENTS RELATED TO SECTION 885
4 OF THE ACT.—

5 (A) Paragraph (2) of section 26(b) of such
6 Code is amended by striking “and” at the end
7 of subparagraph (R), by striking the period at
8 the end of subparagraph (S) and inserting “,
9 and”, and by adding at the end the following
10 new subparagraph:

11 “(T) subsections (a)(1)(B)(i) and
12 (b)(4)(A) of section 409A (relating to interest
13 and additional tax with respect to certain de-
14 ferred compensation).”.

15 (B) Clause (ii) of section 409A(a)(4)(C) of
16 such Code is amended by striking “first”.

17 (C)(i) Notwithstanding section 885(d)(1)
18 of the American Jobs Creation Act of 2004,
19 subsection (b) of section 409A of such Code
20 shall take effect on January 1, 2005.

21 (ii) Not later than 90 days after the date
22 of the enactment of this Act, the Secretary of
23 the Treasury shall issue guidance under which
24 a nonqualified deferred compensation plan
25 which is in violation of the requirements of sec-

1 tion 409A(b) of such Code shall be treated as
2 not having violated such requirements if such
3 plan comes into conformance with such require-
4 ments during such limited period as the Sec-
5 retary may specify in such guidance.

6 (D) Subsection (f) of section 885 of the
7 American Jobs Creation Act of 2004 is amend-
8 ed by striking “December 31, 2004” the first
9 place it appears and inserting “January 1,
10 2005”.

11 (11) EFFECTIVE DATE.—The amendments
12 made by this subsection shall take effect as if in-
13 cluded in the provisions of the American Jobs Cre-
14 ation Act of 2004 to which they relate.

15 (b) AMENDMENTS RELATED TO THE WORKING FAM-
16 ILIES TAX RELIEF ACT OF 2004.—

17 (1) AMENDMENT RELATED TO SECTION 203 OF
18 THE ACT.—Subparagraph (B) of section 21(b)(1) of
19 the Internal Revenue Code of 1986 is amended by
20 inserting “(as defined in section 152, determined
21 without regard to subsections (b)(1), (b)(2), and
22 (d)(1)(B))” after “dependent of the taxpayer”.

23 (2) AMENDMENT RELATED TO SECTION 207 OF
24 THE ACT.—Subparagraph (A) of section 223(d)(2)
25 of such Code is amended by inserting “, determined

1 without regard to subsections (b)(1), (b)(2), and
2 (d)(1)(B) thereof” after “section 152”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall take effect as if included in
5 the provisions of the Working Families Tax Relief
6 Act of 2004 to which they relate.

7 (c) AMENDMENT RELATED TO THE JOBS AND
8 GROWTH TAX RELIEF RECONCILIATION ACT OF 2003.—

9 (1) AMENDMENT RELATED TO SECTION 201 OF
10 THE ACT.—Subparagraph (D) of section
11 1400L(b)(2) of the Internal Revenue Code of 1986
12 is amended by striking “September 11, 2004” and
13 inserting “January 1, 2005”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by this subsection shall take effect as if included in
16 section 201 of the Jobs and Growth Tax Relief and
17 Reconciliation Act of 2003.

18 (d) AMENDMENTS RELATED TO THE TRADE ACT OF
19 2002.—

20 (1) Paragraph (4) of section 6103(p) of the In-
21 ternal Revenue Code of 1986 is amended by striking
22 “(l)(16), (17), (19), or (20)” each place it appears
23 and inserting “(l)(16), (18), (19), or (20)”.

24 (2) The Internal Revenue Code of 1986 shall be
25 applied and administered as if the amendments

1 made by section 408(a)(24) of the Working Families
2 Tax Relief Act of 2004 had never been enacted.

3 (e) AMENDMENT RELATED TO THE VICTIMS OF TER-
4 RORISM TAX RELIEF ACT OF 2001.—

5 (1) AMENDMENT RELATED TO SECTION 201 OF
6 THE ACT.—Paragraph (17) of section 6103(l) of the
7 Internal Revenue Code of 1986 is amended by strik-
8 ing “subsection (f), (i)(7), or (p)” and inserting
9 “subsection (f), (i)(8), or (p)”.

10 (2) EFFECTIVE DATE.—The amendment made
11 by this subsection shall take effect as if included in
12 section 201 of the Victims of Terrorism Tax Relief
13 Act of 2001.

14 (f) AMENDMENTS RELATED TO THE TAXPAYER RE-
15 LIEF ACT OF 1997.—

16 (1) AMENDMENTS RELATED TO SECTION 1055
17 OF THE ACT.—

18 (A) The last sentence of section 6411(a) of
19 the Internal Revenue Code of 1986 is amended
20 by striking “6611(f)(3)(B)” and inserting
21 “6611(f)(4)(B)”.

22 (B) Paragraph (4) of section 6601(d) of
23 such Code is amended by striking
24 “6611(f)(3)(A)” and inserting “6611(f)(4)(A)”.

1 (2) AMENDMENT RELATED TO SECTION 1144 OF
2 THE ACT.—Subparagraph (B) of section
3 6038B(a)(1) of such Code is amended by inserting
4 “or” at the end.

5 (3) EFFECTIVE DATE.—The amendments made
6 by this subsection shall take effect as if included in
7 the provisions of the Taxpayer Relief Act of 1997 to
8 which they relate.

9 (g) CLERICAL CORRECTIONS.—

10 (1) Subparagraph (E) of section 26(b)(2) of the
11 Internal Revenue Code of 1986 is amended by strik-
12 ing “section 530(d)(3)” and inserting “section
13 530(d)(4)”.

14 (2)(A) Subclause (II) of section 38(c)(2)(A)(ii)
15 of such Code is amended by striking “or the New
16 York Liberty Zone business employee credit or the
17 specified credits” and inserting “, the New York
18 Liberty Zone business employee credit, and the spec-
19 ified credits”.

20 (B) Subclause (II) of section 38(c)(3)(A)(ii) of
21 such Code is amended by striking “or the specified
22 credits” and inserting “and the specified credits”.

23 (3) Subparagraph (A) of section 39(a)(1) of
24 such Code is amended by striking “each of the 1
25 taxable years” and by inserting “the taxable year”.

1 (4)(A) Subsection (a) of section 62 of such
2 Code is amended—

3 (i) by redesignating paragraph (19) (relat-
4 ing to costs involving discrimination suits, etc.),
5 as added by section 703 of the American Jobs
6 Creation Act of 2004, as paragraph (20), and

7 (ii) by moving such paragraph after para-
8 graph (19) (relating to health savings ac-
9 counts).

10 (B) Subsection (e) of section 62 of such Code
11 is amended by striking “subsection (a)(19)” and in-
12 serting “subsection (a)(20)”.

13 (5) Subsection (d) of section 121 of such Code
14 is amended by redesignating paragraph (10) (relat-
15 ing to property acquired in like-kind exchange), as
16 added by section 840 of the American Jobs Creation
17 Act of 2004, as paragraph (11).

18 (6) Paragraph (2) of section 221(d) of such
19 Code is amended by striking “this Act” and insert-
20 ing “the Taxpayer Relief Act of 1997”.

21 (7) Subparagraph (B) of section 332(d)(1) of
22 such Code is amended by striking “distribution to
23 which section 301 applies” and inserting “distribu-
24 tion of property to which section 301 applies”.

1 (8) The matter following clause (iv) of section
2 415(n)(3)(C) of such Code is amended by striking
3 “clauses” and inserting “clause”.

4 (9) Paragraph (1) of section 512(b) of such
5 Code is amended by striking “section 512(a)(5)”
6 and inserting “subsection (a)(5)”.

7 (10)(A) Subsection (b) of section 512 of such
8 Code is amended—

9 (i) by redesignating paragraph (18) (relat-
10 ing to the treatment of gain or loss on sale or
11 exchange of certain brownfield sites), as added
12 by section 702 of the American Jobs Creation
13 Act of 2004, as paragraph (19), and

14 (ii) by moving such paragraph to the end
15 of such subsection.

16 (B) Subparagraph (E) of section 514(b)(1) of
17 such Code is amended by striking “section
18 512(b)(18)” and inserting “section 512(b)(19)”.

19 (11)(A) Subsection (b) of section 530 of such
20 Code is amended by striking paragraph (3) and by
21 redesignating paragraphs (4) and (5) as paragraphs
22 (3) and (4), respectively.

23 (B) Clause (ii) of section 530(b)(2)(A) of such
24 Code is amended by striking “paragraph (4)” and
25 inserting “paragraph (3)”.

1 (12) Clause (i) of section 954(c)(1)(C) of such
2 Code is amended by striking “paragraph (4)(A)”
3 and inserting “paragraph (5)(A)”.

4 (13) Subparagraph (F) of section 954(c)(1) of
5 such Code is amended by striking “Net income from
6 notional principal contracts.” after “INCOME FROM
7 NOTIONAL PRINCIPAL CONTRACTS.—”.

8 (14) The matter preceding clause (i) of section
9 1031(h)(2)(B) of such Code is amended by striking
10 “subparagraph” and inserting “subparagraphs”.

11 (15) Paragraphs (1) and (2) of section 1375(d)
12 of such Code are each amended by striking “sub-
13 chapter C” and inserting “accumulated”.

14 (16) Each of the following provisions of such
15 Code are amended by striking “General Accounting
16 Office” each place it appears therein and inserting
17 “Government Accountability Office”:

18 (A) Clause (ii) of section 1400E(c)(4)(A).

19 (B) Paragraph (1) of section 6050M(b).

20 (C) Subparagraphs (A), (B)(i), and (B)(ii)
21 of section 6103(i)(8).

22 (D) Paragraphs (3)(C)(i), (4), (5), and
23 (6)(B) of section 6103(p).

24 (E) Subsection (e) of section 8021.

1 (17) Section 3401 of such Code is amended by
2 redesignating subsection (h) as subsection (g).

3 (18) Paragraph (2) of section 4161(a) of such
4 Code is amended to read as follows:

5 “(2) 3 PERCENT RATE OF TAX FOR ELECTRIC
6 OUTBOARD MOTORS.—In the case of an electric out-
7 board motor, paragraph (1) shall be applied by sub-
8 stituting ‘3 percent’ for ‘10 percent’.”.

9 (19) Subparagraph (C) of section 4261(e)(4) of
10 such Code is amended by striking “imposed sub-
11 section (b)” and inserting “imposed by subsection
12 (b)”.

13 (20) Section 6427 of such Code is amended by
14 striking subsection (o) and redesignating subsection
15 (p) as subsection (o).

16 (21) Subsection (a) of section 4980D of such
17 Code is amended by striking “plans” and inserting
18 “plan”.

19 (22) The matter following clause (iii) of section
20 6045(e)(5)(A) of such Code is amended by striking
21 “for ‘\$250,000.’” and all that follows through “to
22 the Treasury.” and inserting “for ‘\$250,000’. The
23 Secretary may by regulation increase the dollar
24 amounts under this subparagraph if the Secretary

- 1 determines that such an increase will not materially
- 2 reduce revenues to the Treasury.”.

○