

108TH CONGRESS
1ST SESSION

S. 665

To amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fishermen, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 2003

Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. ROBERTS, Mr. BROWNBACK, Mrs. LINCOLN, Mr. BURNS, Mr. CRAIG, Mr. CRAPO, Mr. FITZGERALD, Mr. JOHNSON, Mr. HAGEL, Mr. MILLER, Mr. DORGAN, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide tax relief for farmers and fishermen, 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 “Tax Empowerment and Relief for Farmers and Fisher-
6 men (TERFF) Act”.

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.
- Sec. 2. Farm, fishing, and ranch risk management accounts.
- Sec. 3. Exclusion of rental income from self-employment tax.
- Sec. 4. Exclusion of conservation reserve program payments from self-employment tax.
- Sec. 5. Exemption of agricultural bonds from private activity bond volume limits.
- Sec. 6. Modifications to section 512(b)(13).
- Sec. 7. Charitable deduction for contributions of food inventory.
- Sec. 8. Coordinate farmers and fishermen income averaging and the alternative minimum tax.
- Sec. 9. Modification to cooperative marketing rules to include value added processing involving animals.
- Sec. 10. Extension of declaratory judgment procedures to farmers' cooperative organizations.
- Sec. 11. Small ethanol producer credit.
- Sec. 12. Payment of dividends on stock of cooperatives without reducing patronage dividends.
- Sec. 13. Special rules for livestock sold on account of weather-related conditions.

5 **SEC. 2. FARM, FISHING, AND RANCH RISK MANAGEMENT**
 6 **ACCOUNTS.**

7 (a) IN GENERAL.—Subpart C of part II of sub-
 8 chapter E of chapter 1 (relating to taxable year for which
 9 deductions taken) is amended by inserting after section
 10 468B the following new section:

11 **“SEC. 468C. FARM, FISHING, AND RANCH RISK MANAGE-**
 12 **MENT ACCOUNTS.**

13 “(a) DEDUCTION ALLOWED.—In the case of an indi-
 14 vidual engaged in an eligible farming business or commer-
 15 cial fishing, there shall be allowed as a deduction for any
 16 taxable year the amount paid in cash by the taxpayer dur-

1 ing the taxable year to a Farm, Fishing, and Ranch Risk
 2 Management Account (hereinafter referred to as the
 3 ‘FFARRM Account’).

4 “(b) LIMITATION.—

5 “(1) CONTRIBUTIONS.—The amount which a
 6 taxpayer may pay into the FFARRM Account for
 7 any taxable year shall not exceed 20 percent of so
 8 much of the taxable income of the taxpayer (deter-
 9 mined without regard to this section) which is at-
 10 tributable (determined in the manner applicable
 11 under section 1301) to any eligible farming business
 12 or commercial fishing.

13 “(2) DISTRIBUTIONS.—Distributions from a
 14 FFARRM Account may not be used to purchase,
 15 lease, or finance any new fishing vessel, add capacity
 16 to any fishery, or otherwise contribute to the over-
 17 capitalization of any fishery. The Secretary of Com-
 18 merce shall implement regulations to enforce this
 19 paragraph.

20 “(c) ELIGIBLE BUSINESSES.—For purposes of this
 21 section—

22 “(1) ELIGIBLE FARMING BUSINESS.—The term
 23 ‘eligible farming business’ means any farming busi-
 24 ness (as defined in section 263A(e)(4)) which is not

1 a passive activity (within the meaning of section
2 469(c)) of the taxpayer.

3 “(2) COMMERCIAL FISHING.—The term ‘com-
4 mercial fishing’ has the meaning given such term by
5 section (3) of the Magnuson-Stevens Fishery Con-
6 servation and Management Act (16 U.S.C. 1802)
7 but only if such fishing is not a passive activity
8 (within the meaning of section 469(c)) of the tax-
9 payer.

10 “(d) FFARRM ACCOUNT.—For purposes of this sec-
11 tion—

12 “(1) IN GENERAL.—The term ‘FFARRM Ac-
13 count’ means a trust created or organized in the
14 United States for the exclusive benefit of the tax-
15 payer, but only if the written governing instrument
16 creating the trust meets the following requirements:

17 “(A) No contribution will be accepted for
18 any taxable year in excess of the amount al-
19 lowed as a deduction under subsection (a) for
20 such year.

21 “(B) The trustee is a bank (as defined in
22 section 408(n)) or another person who dem-
23 onstrates to the satisfaction of the Secretary
24 that the manner in which such person will ad-

1 minister the trust will be consistent with the re-
 2 quirements of this section.

3 “(C) The assets of the trust consist en-
 4 tirely of cash or of obligations which have ade-
 5 quate stated interest (as defined in section
 6 1274(c)(2)) and which pay such interest not
 7 less often than annually.

8 “(D) All income of the trust is distributed
 9 currently to the grantor.

10 “(E) The assets of the trust will not be
 11 commingled with other property except in a
 12 common trust fund or common investment
 13 fund.

14 “(2) ACCOUNT TAXED AS GRANTOR TRUST.—
 15 The grantor of a FFARRM Account shall be treated
 16 for purposes of this title as the owner of such Ac-
 17 count and shall be subject to tax thereon in accord-
 18 ance with subpart E of part I of subchapter J of
 19 this chapter (relating to grantors and others treated
 20 as substantial owners).

21 “(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

22 “(1) IN GENERAL.—Except as provided in para-
 23 graph (2), there shall be includible in the gross in-
 24 come of the taxpayer for any taxable year—

“(A) any amount distributed from a FFARRM Account of the taxpayer during such taxable year, and

“(B) any deemed distribution under—

“(i) subsection (f)(1) (relating to deposits not distributed within 5 years),

“(ii) subsection (f)(2) (relating to cessation in eligible farming business), and

“(iii) subparagraph (B) or (C) of subsection (f)(3) (relating to prohibited transactions and pledging account as security).

“(2) EXCEPTIONS.—Paragraph (1)(A) shall not apply to—

“(A) any distribution to the extent attributable to income of the Account, and

“(B) the distribution of any contribution paid during a taxable year to a FFARRM Account to the extent that such contribution exceeds the limitation applicable under subsection (b) if requirements similar to the requirements of section 408(d)(4) are met.

For purposes of subparagraph (A), distributions shall be treated as first attributable to income and then to other amounts.

“(f) SPECIAL RULES.—

1 “(1) TAX ON DEPOSITS IN ACCOUNT WHICH
2 ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

3 “(A) IN GENERAL.—If, at the close of any
4 taxable year, there is a nonqualified balance in
5 any FFARRM Account—

6 “(i) there shall be deemed distributed
7 from such Account during such taxable
8 year an amount equal to such balance, and

9 “(ii) the taxpayer’s tax imposed by
10 this chapter for such taxable year shall be
11 increased by 10 percent of such deemed
12 distribution.

13 The preceding sentence shall not apply if an
14 amount equal to such nonqualified balance is
15 distributed from such Account to the taxpayer
16 before the due date (including extensions) for
17 filing the return of tax imposed by this chapter
18 for such year (or, if earlier, the date the tax-
19 payer files such return for such year).

20 “(B) NONQUALIFIED BALANCE.—For pur-
21 poses of subparagraph (A), the term ‘non-
22 qualified balance’ means any balance in the Ac-
23 count on the last day of the taxable year which
24 is attributable to amounts deposited in such Ac-
25 count before the 4th preceding taxable year.

1 “(C) ORDERING RULE.—For purposes of
 2 this paragraph, distributions from a FFARRM
 3 Account (other than distributions of current in-
 4 come) shall be treated as made from deposits in
 5 the order in which such deposits were made, be-
 6 ginning with the earliest deposits.

7 “(2) CESSATION IN ELIGIBLE BUSINESS.—At
 8 the close of the first disqualification period after a
 9 period for which the taxpayer was engaged in an eli-
 10 gible farming business or commercial fishing, there
 11 shall be deemed distributed from the FFARRM Ac-
 12 count of the taxpayer an amount equal to the bal-
 13 ance in such Account (if any) at the close of such
 14 disqualification period. For purposes of the pre-
 15 ceding sentence, the term ‘disqualification period’
 16 means any period of 2 consecutive taxable years for
 17 which the taxpayer is not engaged in an eligible
 18 farming business or commercial fishing.

19 “(3) CERTAIN RULES TO APPLY.—Rules similar
 20 to the following rules shall apply for purposes of this
 21 section:

22 “(A) Section 220(f)(8) (relating to treat-
 23 ment after death of account holder).

1 “(B) Section 408(e)(2) (relating to loss of
2 exemption of account where individual engages
3 in prohibited transaction).

4 “(C) Section 408(e)(4) (relating to effect
5 of pledging account as security).

6 “(D) Section 408(g) (relating to commu-
7 nity property laws).

8 “(E) Section 408(h) (relating to custodial
9 accounts).

10 “(4) TIME WHEN PAYMENTS DEEMED MADE.—
11 For purposes of this section, a taxpayer shall be
12 deemed to have made a payment to a FFARRM Ac-
13 count on the last day of a taxable year if such pay-
14 ment is made on account of such taxable year and
15 is made on or before the due date (without regard
16 to extensions) for filing the return of tax for such
17 taxable year.

18 “(5) INDIVIDUAL.—For purposes of this sec-
19 tion, the term ‘individual’ shall not include an estate
20 or trust.

21 “(6) DEDUCTION NOT ALLOWED FOR SELF-EM-
22 PLOYMENT TAX.—The deduction allowable by reason
23 of subsection (a) shall not be taken into account in
24 determining an individual’s net earnings from self-

1 employment (within the meaning of section 1402(a))
 2 for purposes of chapter 2.

3 “(g) REPORTS.—The trustee of a FFARRM Account
 4 shall make such reports regarding such Account to the
 5 Secretary and to the person for whose benefit the Account
 6 is maintained with respect to contributions, distributions,
 7 and such other matters as the Secretary may require
 8 under regulations. The reports required by this subsection
 9 shall be filed at such time and in such manner and fur-
 10 nished to such persons at such time and in such manner
 11 as may be required by such regulations.”.

12 (b) TAX ON EXCESS CONTRIBUTIONS.—

13 (1) Subsection (a) of section 4973 (relating to
 14 tax on excess contributions to certain tax-favored ac-
 15 counts and annuities) is amended by striking “or”
 16 at the end of paragraph (3), by redesignating para-
 17 graph (4) as paragraph (5), and by inserting after
 18 paragraph (3) the following new paragraph:

19 “(4) a FFARRM Account (within the meaning
 20 of section 468C(d)), or”.

21 (2) Section 4973 is amended by adding at the
 22 end the following new subsection:

23 “(g) EXCESS CONTRIBUTIONS TO FFARRM AC-
 24 COUNTS.—For purposes of this section, in the case of a
 25 FFARRM Account (within the meaning of section

1 468C(d)), the term ‘excess contributions’ means the
 2 amount by which the amount contributed for the taxable
 3 year to the Account exceeds the amount which may be con-
 4 tributed to the Account under section 468C(b) for such
 5 taxable year. For purposes of this subsection, any con-
 6 tribution which is distributed out of the FFARM Ac-
 7 count in a distribution to which section 468C(e)(2)(B) ap-
 8 plies shall be treated as an amount not contributed.”.

9 (3) The section heading for section 4973 is
 10 amended to read as follows:

11 **“SEC. 4973. EXCESS CONTRIBUTIONS TO CERTAIN AC-**
 12 **COUNTS, ANNUITIES, ETC.”.**

13 (4) The table of sections for chapter 43 is
 14 amended by striking the item relating to section
 15 4973 and inserting the following new item:

“Sec. 4973. Excess contributions to certain accounts, annuities,
 etc.”.

16 (c) TAX ON PROHIBITED TRANSACTIONS.—

17 (1) Subsection (c) of section 4975 (relating to
 18 tax on prohibited transactions) is amended by add-
 19 ing at the end the following new paragraph:

20 “(6) SPECIAL RULE FOR FFARM ACCOUNTS.—

21 A person for whose benefit a FFARM Account
 22 (within the meaning of section 468C(d)) is estab-
 23 lished shall be exempt from the tax imposed by this
 24 section with respect to any transaction concerning

1 such account (which would otherwise be taxable
 2 under this section) if, with respect to such trans-
 3 action, the account ceases to be a FFARRM Ac-
 4 count by reason of the application of section
 5 468C(f)(3)(A) to such account.”.

6 (2) Paragraph (1) of section 4975(e) is amend-
 7 ed by redesignating subparagraphs (E) and (F) as
 8 subparagraphs (F) and (G), respectively, and by in-
 9 serting after subparagraph (D) the following new
 10 subparagraph:

11 “(E) a FFARRM Account described in
 12 section 468C(d),”.

13 (d) FAILURE TO PROVIDE REPORTS ON FFARRM
 14 ACCOUNTS.—Paragraph (2) of section 6693(a) (relating
 15 to failure to provide reports on certain tax-favored ac-
 16 counts or annuities) is amended by redesignating subpara-
 17 graphs (C) and (D) as subparagraphs (D) and (E), re-
 18 spectively, and by inserting after subparagraph (B) the
 19 following new subparagraph:

20 “(C) section 468C(g) (relating to
 21 FFARRM Accounts),”.

22 (e) CLERICAL AMENDMENT.—The table of sections
 23 for subpart C of part II of subchapter E of chapter 1 is
 24 amended by inserting after the item relating to section
 25 468B the following new item:

“Sec. 468C. Farm, Fishing and Ranch Risk Management Accounts.”.

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

4 **SEC. 3. EXCLUSION OF RENTAL INCOME FROM SELF-EM-**
5 **PLOYMENT TAX.**

6 (a) INTERNAL REVENUE CODE.—Section
7 1402(a)(1)(A) (relating to net earnings from self-employ-
8 ment) is amended by striking “an arrangement” and in-
9 serting “a written lease agreement”.

10 (b) SOCIAL SECURITY ACT.—Section 211(a)(1)(A) of
11 the Social Security Act is amended by striking “an ar-
12 rangement” and inserting “a written lease agreement”.

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

16 **SEC. 4. EXCLUSION OF CONSERVATION RESERVE PRO-**
17 **GRAM PAYMENTS FROM SELF-EMPLOYMENT**
18 **TAX.**

19 (a) INTERNAL REVENUE CODE.—Section 1402(a)(1)
20 (relating to net earnings from self-employment) is amend-
21 ed by inserting “and including payments under section
22 1233(2) of the Food Security Act of 1985 (16 U.S.C.
23 3833(2))” after “crop shares”.

1 (b) SOCIAL SECURITY ACT.—Section 211(a)(1) of
 2 the Social Security Act is amended by inserting “and in-
 3 cluding payments under section 1233(2) of the Food Secu-
 4 rity Act of 1985 (16 U.S.C. 3833(2))” after “crop
 5 shares”.

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

9 **SEC. 5. EXEMPTION OF AGRICULTURAL BONDS FROM PRI-**
 10 **VATE ACTIVITY BOND VOLUME LIMITS.**

11 (a) IN GENERAL.—Section 146(g) (relating to excep-
 12 tion for certain bonds) is amended by striking “and” at
 13 the end of paragraph (3), by striking the period at the
 14 end of paragraph (4) and inserting “, and”, and by insert-
 15 ing after paragraph (4) the following new paragraph:

16 “(5) any qualified small issue bond described in
 17 section 144(a)(12)(B)(ii).”.

18 (b) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to bonds issued after the date of
 20 the enactment of this Act.

21 **SEC. 6. MODIFICATIONS TO SECTION 512(b)(13).**

22 (a) IN GENERAL.—Paragraph (13) of section 512(b)
 23 (relating to special rules for certain amounts received from
 24 controlled entities) is amended by redesignating subpara-

1 graph (E) as subparagraph (F) and by inserting after sub-
 2 paragraph (D) the following new subparagraph:

3 “(E) PARAGRAPH TO APPLY ONLY TO EX-
 4 CESS PAYMENTS.—

5 “(i) IN GENERAL.—Subparagraph (A)
 6 shall apply only to the portion of a speci-
 7 fied payment received or accrued by the
 8 controlling organization that exceeds the
 9 amount which would have been paid or ac-
 10 crued if such payment met the require-
 11 ments prescribed under section 482.

12 “(ii) ADDITION TO TAX FOR VALU-
 13 ATION MISSTATEMENTS.—The tax imposed
 14 by this chapter on the controlling organiza-
 15 tion shall be increased by an amount equal
 16 to 20 percent of the larger of—

17 “(I) such excess determined with-
 18 out regard to any amendment or sup-
 19 plement to a return of tax, or

20 “(II) such excess determined
 21 with regard to all such amendments
 22 and supplements.”.

23 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendment made by
2 this section shall apply to payments received or ac-
3 crued after December 31, 2000.

4 (2) PAYMENTS SUBJECT TO BINDING CONTRACT
5 TRANSITION RULE.—If the amendments made by
6 section 1041 of the Taxpayer Relief Act of 1997 did
7 not apply to any amount received or accrued in the
8 first 2 taxable years beginning on or after the date
9 of the enactment of the Taxpayer Relief Act of 1997
10 under any contract described in subsection (b)(2) of
11 such section, such amendments also shall not apply
12 to amounts received or accrued under such contract
13 before January 1, 2001.

14 **SEC. 7. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF**
15 **FOOD INVENTORY.**

16 (a) IN GENERAL.—Subsection (e) of section 170 (re-
17 lating to certain contributions of ordinary income and cap-
18 ital gain property) is amended by adding at the end the
19 following new paragraph:

20 “(7) APPLICATION OF PARAGRAPH (3) TO CER-
21 TAIN CONTRIBUTIONS OF FOOD INVENTORY.—For
22 purposes of this section—

23 “(A) EXTENSION TO INDIVIDUALS.—In the
24 case of a charitable contribution of apparently
25 wholesome food—

1 “(i) paragraph (3)(A) shall be applied
 2 without regard to whether the contribution
 3 is made by a C corporation, and

4 “(ii) in the case of a taxpayer other
 5 than a C corporation, the aggregate
 6 amount of such contributions from any
 7 trade or business (or interest therein) of
 8 the taxpayer for any taxable year which
 9 may be taken into account under this sec-
 10 tion shall not exceed 10 percent of the tax-
 11 payer’s net income from any such trade or
 12 business, computed without regard to this
 13 section, for such taxable year.

14 “(B) LIMITATION ON REDUCTION.—In the
 15 case of a charitable contribution of apparently
 16 wholesome food, notwithstanding paragraph
 17 (3)(B), the amount of the reduction determined
 18 under paragraph (1)(A) shall not exceed the
 19 amount by which the fair market value of such
 20 property exceeds twice the basis of such prop-
 21 erty.

22 “(C) DETERMINATION OF BASIS.—If a
 23 taxpayer—

24 “(i) does not account for inventories
 25 under section 471, and

1 “(ii) is not required to capitalize indi-
 2 rect costs under section 263A,
 3 the taxpayer may elect, solely for purposes of
 4 paragraph (3)(B), to treat the basis of any ap-
 5 parently wholesome food as being equal to 25
 6 percent of the fair market value of such food.

7 “(D) DETERMINATION OF FAIR MARKET
 8 VALUE.—In the case of a charitable contribu-
 9 tion of apparently wholesome food which is a
 10 qualified contribution (within the meaning of
 11 paragraph (3), as modified by subparagraph
 12 (A) of this paragraph) and which, solely by rea-
 13 son of internal standards of the taxpayer or
 14 lack of market, cannot or will not be sold, the
 15 fair market value of such contribution shall be
 16 determined—

17 “(i) without regard to such internal
 18 standards or such lack of market and

19 “(ii) by taking into account the price
 20 at which the same or substantially the
 21 same food items (as to both type and qual-
 22 ity) are sold by the taxpayer at the time of
 23 the contribution (or, if not so sold at such
 24 time, in the recent past).

1 “(E) APPARENTLY WHOLESOME FOOD.—
 2 For purposes of this paragraph, the term ‘ap-
 3 parently wholesome food’ has the meaning given
 4 such term by section 22(b)(2) of the Bill Emer-
 5 son Good Samaritan Food Donation Act (42
 6 U.S.C. 1791(b)(2)), as in effect on the date of
 7 the enactment of this paragraph.”.

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

11 **SEC. 8. COORDINATE FARMERS AND FISHERMEN INCOME**
 12 **AVERAGING AND THE ALTERNATIVE MIN-**
 13 **IMUM TAX.**

14 (a) IN GENERAL.—Section 55(c) (defining regular
 15 tax) is amended by redesignating paragraph (2) as para-
 16 graph (3) and by inserting after paragraph (1) the fol-
 17 lowing new paragraph:

18 “(2) COORDINATION WITH INCOME AVERAGING
 19 FOR FARMERS AND FISHERMEN.—Solely for pur-
 20 poses of this section, section 1301 (relating to aver-
 21 aging of farm and fishing income) shall not apply in
 22 computing the regular tax.”.

23 (b) ALLOWING INCOME AVERAGING FOR FISHER-
 24 MEN.—

1 (1) IN GENERAL.—Section 1301(a) is amended
 2 by striking “farming business” and inserting “farm-
 3 ing business or fishing business”.

4 (2) DEFINITION OF ELECTED FARM INCOME.—

5 (A) IN GENERAL.—Clause (i) of section
 6 1301(b)(1)(A) is amended by inserting “or fish-
 7 ing business” before the semicolon.

8 (B) CONFORMING AMENDMENT.—Subpara-
 9 graph (B) of section 1301(b)(1) is amended by
 10 inserting “or fishing business” after “farming
 11 business” both places it occurs.

12 (3) DEFINITION OF FISHING BUSINESS.—Sec-
 13 tion 1301(b) is amended by adding at the end the
 14 following new paragraph:

15 “(4) FISHING BUSINESS.—The term ‘fishing
 16 business’ means the conduct of commercial fishing
 17 as defined in section 3 of the Magnuson-Stevens
 18 Fishery Conservation and Management Act (16
 19 U.S.C. 1802).”.

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 **SEC. 9. MODIFICATION TO COOPERATIVE MARKETING**
 2 **RULES TO INCLUDE VALUE ADDED PROC-**
 3 **ESSING INVOLVING ANIMALS.**

4 (a) IN GENERAL.—Section 1388 (relating to defini-
 5 tions and special rules) is amended by adding at the end
 6 the following new subsection:

7 “(k) COOPERATIVE MARKETING INCLUDES VALUE-
 8 ADDED PROCESSING INVOLVING ANIMALS.—For pur-
 9 poses of section 521 and this subchapter, the term ‘mar-
 10 keting the products of members or other producers’ in-
 11 cludes feeding the products of members or other producers
 12 to cattle, hogs, fish, chickens, or other animals and selling
 13 the resulting animals or animal products.”.

14 (b) CONFORMING AMENDMENT.—Section 521(b) is
 15 amended by adding at the end the following new para-
 16 graph:

17 “(7) CROSS REFERENCE.—

**“For treatment of value-added processing involv-
 ing animals, see section 1388(k).”.**

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

1 **SEC. 10. EXTENSION OF DECLARATORY JUDGMENT PROCE-**
 2 **DURES TO FARMERS' COOPERATIVE ORGANI-**
 3 **ZATIONS.**

4 (a) IN GENERAL.—Section 7428(a)(1) (relating to
 5 declaratory judgments of tax exempt organizations) is
 6 amended by striking “or” at the end of subparagraph (B)
 7 and by adding at the end the following new subparagraph:

8 “(D) with respect to the initial classifica-
 9 tion or continuing classification of a cooperative
 10 as described in section 521(b) which is exempt
 11 from tax under section 521(a), or”.

12 (b) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply with respect to pleadings filed after
 14 the date of the enactment of this Act.

15 **SEC. 11. SMALL ETHANOL PRODUCER CREDIT.**

16 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO
 17 PATRONS OF A COOPERATIVE.—Section 40(g) (relating to
 18 alcohol used as fuel) is amended by adding at the end the
 19 following new paragraph:

20 “(6) ALLOCATION OF SMALL ETHANOL PRO-
 21 DUCER CREDIT TO PATRONS OF COOPERATIVE.—

22 “(A) ELECTION TO ALLOCATE.—

23 “(i) IN GENERAL.—In the case of a
 24 cooperative organization described in sec-
 25 tion 1381(a), any portion of the credit de-
 26 termined under subsection (a)(3) for the

1 taxable year may, at the election of the or-
 2 ganization, be apportioned pro rata among
 3 patrons of the organization on the basis of
 4 the quantity or value of business done with
 5 or for such patrons for the taxable year.

6 “(ii) FORM AND EFFECT OF ELEC-
 7 TION.—An election under clause (i) for any
 8 taxable year shall be made on a timely
 9 filed return for such year. Such election,
 10 once made, shall be irrevocable for such
 11 taxable year.

12 “(B) TREATMENT OF ORGANIZATIONS AND
 13 PATRONS.—The amount of the credit appor-
 14 tioned to patrons under subparagraph (A)—

15 “(i) shall not be included in the
 16 amount determined under subsection (a)
 17 with respect to the organization for the
 18 taxable year,

19 “(ii) shall be included in the amount
 20 determined under subsection (a) for the
 21 taxable year of each patron for which the
 22 patronage dividends for the taxable year
 23 described in subparagraph (A) are included
 24 in gross income, and

1 “(iii) shall be included in gross income
 2 of such patrons for the taxable year in the
 3 manner and to the extent provided in sec-
 4 tion 87.

5 “(C) SPECIAL RULES FOR DECREASE IN
 6 CREDITS FOR TAXABLE YEAR.—If the amount
 7 of the credit of a cooperative organization de-
 8 termined under subsection (a)(3) for a taxable
 9 year is less than the amount of such credit
 10 shown on the return of the cooperative organi-
 11 zation for such year, an amount equal to the
 12 excess of—

13 “(i) such reduction, over

14 “(ii) the amount not apportioned to
 15 such patrons under subparagraph (A) for
 16 the taxable year,

17 shall be treated as an increase in tax imposed
 18 by this chapter on the organization. Such in-
 19 crease shall not be treated as tax imposed by
 20 this chapter for purposes of determining the
 21 amount of any credit under this chapter or for
 22 purposes of section 55.”.

23 (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER
 24 CREDIT.—

1 (1) DEFINITION OF SMALL ETHANOL PRO-
 2 DUCER.—Section 40(g) (relating to definitions and
 3 special rules for eligible small ethanol producer cred-
 4 it) is amended by striking “30,000,000” each place
 5 it appears and inserting “60,000,000”.

6 (2) SMALL ETHANOL PRODUCER CREDIT NOT A
 7 PASSIVE ACTIVITY CREDIT.—Clause (i) of section
 8 469(d)(2)(A) is amended by striking “subpart D”
 9 and inserting “subpart D, other than section
 10 40(a)(3),”.

11 (3) ALLOWING CREDIT AGAINST ENTIRE REG-
 12 ULAR TAX AND MINIMUM TAX.—

13 (A) IN GENERAL.—Subsection (c) of sec-
 14 tion 38 (relating to limitation based on amount
 15 of tax), as amended by section 301(b) of the
 16 Job Creation and Worker Assistance Act of
 17 2002, is amended by redesignating paragraph
 18 (4) as paragraph (5) and by inserting after
 19 paragraph (3) the following new paragraph:

20 “(4) SPECIAL RULES FOR SMALL ETHANOL
 21 PRODUCER CREDIT.—

22 “(A) IN GENERAL.—In the case of the
 23 small ethanol producer credit—

1 “(i) this section and section 39 shall
 2 be applied separately with respect to the
 3 credit, and

4 “(ii) in applying paragraph (1) to the
 5 credit—

6 “(I) the amounts in subpara-
 7 graphs (A) and (B) thereof shall be
 8 treated as being zero, and

9 “(II) the limitation under para-
 10 graph (1) (as modified by subclause
 11 (I)) shall be reduced by the credit al-
 12 lowed under subsection (a) for the
 13 taxable year (other than the small
 14 ethanol producer credit).

15 “(B) SMALL ETHANOL PRODUCER CRED-
 16 IT.—For purposes of this subsection, the term
 17 ‘small ethanol producer credit’ means the credit
 18 allowable under subsection (a) by reason of sec-
 19 tion 40(a)(3).”.

20 (B) CONFORMING AMENDMENTS.—Sub-
 21 clause (II) of section 38(c)(2)(A)(ii), as amend-
 22 ed by section 301(b)(2) of the Job Creation and
 23 Worker Assistance Act of 2002, and subclause
 24 (II) of section 38(c)(3)(A)(ii), as added by sec-
 25 tion 301(b)(1) of such Act, are each amended

1 by inserting “or the small ethanol producer
2 credit” after “employee credit”.

3 (4) SMALL ETHANOL PRODUCER CREDIT NOT
4 ADDED BACK TO INCOME UNDER SECTION 87.—Sec-
5 tion 87 (relating to income inclusion of alcohol fuel
6 credit) is amended to read as follows:

7 **“SEC. 87. ALCOHOL FUEL CREDIT.**

8 “Gross income includes an amount equal to the sum
9 of—

10 “(1) the amount of the alcohol mixture credit
11 determined with respect to the taxpayer for the tax-
12 able year under section 40(a)(1), and

13 “(2) the alcohol credit determined with respect
14 to the taxpayer for the taxable year under section
15 40(a)(2).”.

16 (c) CONFORMING AMENDMENT.—Section 1388 (re-
17 lating to definitions and special rules for cooperative orga-
18 nizations) is amended by adding at the end the following
19 new subsection:

20 “(k) CROSS REFERENCE.—For provisions relating to
21 the apportionment of the alcohol fuels credit between coop-
22 erative organizations and their patrons, see section
23 40(g)(6).”.

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

4 **SEC. 12. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
 5 **TIVES WITHOUT REDUCING PATRONAGE**
 6 **DIVIDENDS.**

7 (a) IN GENERAL.—Subsection (a) of section 1388
 8 (relating to patronage dividend defined) is amended by
 9 adding at the end the following new sentence: “For pur-
 10 poses of paragraph (3), net earnings shall not be reduced
 11 by amounts paid during the year as dividends on capital
 12 stock or other proprietary capital interests of the organiza-
 13 tion to the extent that the articles of incorporation or by-
 14 laws of such organization or other contract with patrons
 15 provide that such dividends are in addition to amounts
 16 otherwise payable to patrons which are derived from busi-
 17 ness done with or for patrons during the taxable year.”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply to distributions in taxable years
 20 beginning after the date of the enactment of this Act.

21 **SEC. 13. SPECIAL RULES FOR LIVESTOCK SOLD ON AC-**
 22 **COUNT OF WEATHER-RELATED CONDITIONS.**

23 (a) RULES FOR REPLACEMENT OF INVOLUNTARILY
 24 CONVERTED LIVESTOCK.—Subsection (e) of section 1033
 25 (relating to involuntary conversions) is amended—

1 (1) by striking “CONDITIONS.—For purposes”
 2 and inserting “CONDITIONS.—

3 “(1) IN GENERAL.—For purposes”, and

4 (2) by adding at the end the following new
 5 paragraph:

6 “(2) EXTENSION OF REPLACEMENT PERIOD.—

7 “(A) IN GENERAL.—In the case of
 8 drought, flood, or other weather-related condi-
 9 tions described in paragraph (1) which result in
 10 the area being designated as eligible for assist-
 11 ance by the Federal Government, subsection
 12 (a)(2)(B) shall be applied with respect to any
 13 converted property by substituting ‘4 years’ for
 14 ‘2 years’.

15 “(B) FURTHER EXTENSION BY SEC-
 16 RETARY.—The Secretary may extend on a re-
 17 gional basis the period for replacement under
 18 this section (after the application of subpara-
 19 graph (A)) for such additional time as the Sec-
 20 retary determines appropriate if the weather-re-
 21 lated conditions which resulted in such applica-
 22 tion continue for more than 3 years.”.

23 (b) INCOME INCLUSION RULES.—Section 451(e) (re-
 24 lating to special rule for proceeds from livestock sold on
 25 account of drought, flood, or other weather-related condi-

1 tions) is amended by adding at the end the following new
2 paragraph:

3 “(3) SPECIAL ELECTION RULES.—If section
4 1033(e)(2) applies to a sale or exchange of livestock
5 described in paragraph (1), the election under para-
6 graph (1) shall be deemed valid if made during the
7 replacement period described in such section.”.

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

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