

110TH CONGRESS  
2D SESSION

# H. R. 6595

To amend the Internal Revenue Code of 1986 to provide middle class tax relief while closing tax loopholes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2008

Mr. WALZ of Minnesota (for himself, Mr. ELLISON, Mr. EMANUEL, and Mr. HILL) 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 provide middle class tax relief while closing tax loopholes, 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 “Middle Class Tax Fairness Act of 2008”.

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

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

3 (c) TABLE OF CONTENTS.—The table of contents for  
 4 this Act is as follows:

Sec. 1. Short title, etc.

#### TITLE I—TAX RELIEF PROVISIONS

Sec. 101. Temporary increase in standard deduction.

Sec. 102. Additional standard deduction for real property taxes for non-  
 itemizers.

Sec. 103. Refundable child credit.

#### TITLE II—REVENUE PROVISIONS

Sec. 201. Income of partners for performing investment management services  
 treated as ordinary income received for performance of serv-  
 ices.

Sec. 202. Limitation of deduction for income attributable to domestic produc-  
 tion of oil, gas, or primary products thereof.

Sec. 203. Limitation on treaty benefits for certain deductible payments.

Sec. 204. Returns relating to payments made in settlement of payment card  
 and third party network transactions.

Sec. 205. High income individuals subject to overall limitation on itemized de-  
 ductions and phaseout of deductions for personal exemptions.

Sec. 206. Nonqualified deferred compensation from certain tax indifferent par-  
 ties.

Sec. 207. Broker reporting of customer's basis in securities transactions.

Sec. 208. Repeal of worldwide allocation of interest.

Sec. 209. Clarification of economic substance doctrine.

#### TITLE III—DEFICIT REDUCTION

Sec. 301. Deficit reduction.

## 5 **TITLE I—TAX RELIEF** 6 **PROVISIONS**

### 7 **SEC. 101. TEMPORARY INCREASE IN STANDARD DEDUC-** 8 **TION.**

9 (a) IN GENERAL.—Section 63(c) is amended by add-  
 10 ing at the end the following new paragraph:

11 “(7) INCREASE IN BASIC STANDARD DEDUC-  
 12 TION FOR 2008 AND 2009.—In the case of any taxable

1 year beginning in 2008 or 2009, for purposes of  
2 paragraph (1)(A), the basic standard deduction for  
3 any such taxable year shall, in lieu of the amount  
4 determined under paragraph (2), be 200 percent of  
5 the amount in effect under paragraph (2) for such  
6 taxable year, determined after the application of  
7 paragraph (4).”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 subsection (a) shall apply to taxable years beginning after  
10 December 31, 2007.

11 **SEC. 102. ADDITIONAL STANDARD DEDUCTION FOR REAL**  
12 **PROPERTY TAXES FOR NONITEMIZERS.**

13 (a) IN GENERAL.—Section 63(c)(1) (defining stand-  
14 ard deduction) is amended by striking “and” at the end  
15 of subparagraph (A), by striking the period at the end  
16 of subparagraph (B) and inserting “, and”, and by adding  
17 at the end the following new subparagraph:

18 “(C) in the case of any taxable year begin-  
19 ning in 2008 or 2009, the real property tax de-  
20 duction.”.

21 (b) DEFINITION.—Section 63(c), as amended, is  
22 amended by adding at the end the following new para-  
23 graph:

1           “(8) REAL PROPERTY TAX DEDUCTION.—For  
2 purposes of paragraph (1), the real property tax de-  
3 duction is the lesser of—

4                   “(A) the amount allowable as a deduction  
5 under this chapter for State and local taxes de-  
6 scribed in section 164(a)(1), or

7                   “(B) \$350 (\$700 in the case of a joint re-  
8 turn).

9 Any taxes taken into account under section 62(a)  
10 shall not be taken into account under this para-  
11 graph.”.

12       (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to taxable years beginning after  
14 December 31, 2007.

15 **SEC. 103. REFUNDABLE CHILD CREDIT.**

16       (a) MODIFICATION OF THRESHOLD AMOUNT.—  
17 Clause (i) of section 24(d)(1)(B) is amended by inserting  
18 “(\$8,500 in the case of taxable years beginning in 2008  
19 or 2009)” after “\$10,000”.

20       (b) EFFECTIVE DATE.—The amendment made by  
21 subsection (a) shall apply to taxable years beginning after  
22 December 31, 2007.

1 **TITLE II—REVENUE PROVISIONS**

2 **SEC. 201. INCOME OF PARTNERS FOR PERFORMING IN-**  
 3 **VESTMENT MANAGEMENT SERVICES TREAT-**  
 4 **ED AS ORDINARY INCOME RECEIVED FOR**  
 5 **PERFORMANCE OF SERVICES.**

6 (a) IN GENERAL.—Part I of subchapter K of chapter  
 7 1 is amended by adding at the end the following new sec-  
 8 tion:

9 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
 10 **VESTMENT MANAGEMENT SERVICES TO**  
 11 **PARTNERSHIP.**

12 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF  
 13 PARTNERSHIP ITEMS.—For purposes of this title, in the  
 14 case of an investment services partnership interest—

15 “(1) IN GENERAL.—Notwithstanding section  
 16 702(b)—

17 “(A) any net income with respect to such  
 18 interest for any partnership taxable year shall  
 19 be treated as ordinary income for the perform-  
 20 ance of services, and

21 “(B) any net loss with respect to such in-  
 22 terest for such year, to the extent not dis-  
 23 allowed under paragraph (2) for such year,  
 24 shall be treated as an ordinary loss.

1 All items of income, gain, deduction, and loss which  
2 are taken into account in computing net income or  
3 net loss shall be treated as ordinary income or ordi-  
4 nary loss (as the case may be).

5 “(2) TREATMENT OF LOSSES.—

6 “(A) LIMITATION.—Any net loss with re-  
7 spect to such interest shall be allowed for any  
8 partnership taxable year only to the extent that  
9 such loss does not exceed the excess (if any)  
10 of—

11 “(i) the aggregate net income with re-  
12 spect to such interest for all prior partner-  
13 ship taxable years, over

14 “(ii) the aggregate net loss with re-  
15 spect to such interest not disallowed under  
16 this subparagraph for all prior partnership  
17 taxable years.

18 “(B) CARRYFORWARD.—Any net loss for  
19 any partnership taxable year which is not al-  
20 lowed by reason of subparagraph (A) shall be  
21 treated as an item of loss with respect to such  
22 partnership interest for the succeeding partner-  
23 ship taxable year.

24 “(C) BASIS ADJUSTMENT.—No adjustment  
25 to the basis of a partnership interest shall be

1 made on account of any net loss which is not  
2 allowed by reason of subparagraph (A).

3 “(D) EXCEPTION FOR BASIS ATTRIB-  
4 UTABLE TO PURCHASE OF A PARTNERSHIP IN-  
5 TEREST.—In the case of an investment services  
6 partnership interest acquired by purchase, para-  
7 graph (1)(B) shall not apply to so much of any  
8 net loss with respect to such interest for any  
9 taxable year as does not exceed the excess of—

10 “(i) the basis of such interest imme-  
11 diately after such purchase, over

12 “(ii) the aggregate net loss with re-  
13 spect to such interest to which paragraph  
14 (1)(B) did not apply by reason of this sub-  
15 paragraph for all prior taxable years.

16 Any net loss to which paragraph (1)(B) does  
17 not apply by reason of this subparagraph shall  
18 not be taken into account under subparagraph  
19 (A).

20 “(E) PRIOR PARTNERSHIP YEARS.—Any  
21 reference in this paragraph to prior partnership  
22 taxable years shall only include prior partner-  
23 ship taxable years to which this section applies.

24 “(3) NET INCOME AND LOSS.—For purposes of  
25 this section—

1           “(A) NET INCOME.—The term ‘net in-  
2           come’ means, with respect to any investment  
3           services partnership interest, for any partner-  
4           ship taxable year, the excess (if any) of—

5                   “(i) all items of income and gain  
6                   taken into account by the holder of such  
7                   interest under section 702 with respect to  
8                   such interest for such year, over

9                   “(ii) all items of deduction and loss so  
10                  taken into account.

11           “(B) NET LOSS.—The term ‘net loss’  
12           means with respect to such interest for such  
13           year, the excess (if any) of the amount de-  
14           scribed in subparagraph (A)(ii) over the amount  
15           described in subparagraph (A)(i).

16           “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

17                   “(1) GAIN.—Any gain on the disposition of an  
18                   investment services partnership interest shall be  
19                   treated as ordinary income for the performance of  
20                   services.

21                   “(2) LOSS.—Any loss on the disposition of an  
22                   investment services partnership interest shall be  
23                   treated as an ordinary loss to the extent of the ex-  
24                   cess (if any) of—



1           “(A) the aggregate net income with respect  
2           to such interest for all partnership taxable  
3           years, over

4           “(B) the aggregate net loss with respect to  
5           such interest allowed under subsection (a)(2)  
6           for all partnership taxable years.

7           “(3) DISPOSITION OF PORTION OF INTEREST.—

8           In the case of any disposition of an investment serv-  
9           ices partnership interest, the amount of net loss  
10          which otherwise would have (but for subsection  
11          (a)(2)(C)) applied to reduce the basis of such inter-  
12          est shall be disregarded for purposes of this section  
13          for all succeeding partnership taxable years.

14          “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-  
15          ERTY.—In the case of any distribution of property  
16          by a partnership with respect to any investment  
17          services partnership interest held by a partner—

18                 “(A) the excess (if any) of—

19                         “(i) the fair market value of such  
20                         property at the time of such distribution,  
21                         over

22                         “(ii) the adjusted basis of such prop-  
23                         erty in the hands of the partnership,  
24                         shall be taken into account as an increase in  
25                         such partner’s distributive share of the taxable

1 income of the partnership (except to the extent  
2 such excess is otherwise taken into account in  
3 determining the taxable income of the partner-  
4 ship),

5 “(B) such property shall be treated for  
6 purposes of subpart B of part II as money dis-  
7 tributed to such partner in an amount equal to  
8 such fair market value, and

9 “(C) the basis of such property in the  
10 hands of such partner shall be such fair market  
11 value.

12 Subsection (b) of section 734 shall be applied with-  
13 out regard to the preceding sentence.

14 “(5) APPLICATION OF SECTION 751.—In apply-  
15 ing section 751(a), an investment services partner-  
16 ship interest shall be treated as an inventory item.

17 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-  
18 EST.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘investment serv-  
20 ices partnership interest’ means any interest in a  
21 partnership which is held by any person if such per-  
22 son provides (directly or indirectly) a substantial  
23 quantity of any of the following services with respect  
24 to the assets of the partnership in the conduct of the  
25 trade or business of providing such services:

1           “(A) Advising as to the advisability of in-  
2           vesting in, purchasing, or selling any specified  
3           asset.

4           “(B) Managing, acquiring, or disposing of  
5           any specified asset.

6           “(C) Arranging financing with respect to  
7           acquiring specified assets.

8           “(D) Any activity in support of any service  
9           described in subparagraphs (A) through (C).

10          For purposes of this paragraph, the term ‘specified  
11          asset’ means securities (as defined in section  
12          475(c)(2) without regard to the last sentence there-  
13          of), real estate, commodities (as defined in section  
14          475(e)(2))), or options or derivative contracts with  
15          respect to securities (as so defined), real estate, or  
16          commodities (as so defined).

17          “(2) EXCEPTION FOR CERTAIN CAPITAL INTER-  
18          ESTS.—

19                 “(A) IN GENERAL.—If—

20                         “(i) a portion of an investment serv-  
21                         ices partnership interest is acquired on ac-  
22                         count of a contribution of invested capital,  
23                         and

24                         “(ii) the partnership makes a reason-  
25                         able allocation of partnership items be-

1           tween the portion of the distributive share  
2           that is with respect to invested capital and  
3           the portion of such distributive share that  
4           is not with respect to invested capital,  
5           then subsection (a) shall not apply to the por-  
6           tion of the distributive share that is with re-  
7           spect to invested capital. An allocation will not  
8           be treated as reasonable for purposes of this  
9           subparagraph if such allocation would result in  
10          the partnership allocating a greater portion of  
11          income to invested capital than any other part-  
12          ner not providing services would have been allo-  
13          cated with respect to the same amount of in-  
14          vested capital.

15           “(B) SPECIAL RULE FOR DISPOSITIONS.—  
16          In any case to which subparagraph (A) applies,  
17          subsection (b) shall not apply to any gain or  
18          loss allocable to invested capital. The portion of  
19          any gain or loss attributable to invested capital  
20          is the proportion of such gain or loss which is  
21          based on the distributive share of gain or loss  
22          that would have been allocable to invested cap-  
23          ital under subparagraph (A) if the partnership  
24          sold all of its assets immediately before the dis-  
25          position.

1           “(C) INVESTED CAPITAL.—For purposes  
2 of this paragraph, the term ‘invested capital’  
3 means, the fair market value at the time of con-  
4 tribution of any money or other property con-  
5 tributed to the partnership.

6           “(D) TREATMENT OF CERTAIN LOANS.—

7           “(i) PROCEEDS OF PARTNERSHIP  
8 LOANS NOT TREATED AS INVESTED CAP-  
9 ITAL OF SERVICE PROVIDING PARTNERS.—

10 For purposes of this paragraph, an invest-  
11 ment services partnership interest shall not  
12 be treated as acquired on account of a con-  
13 tribution of invested capital to the extent  
14 that such capital is attributable to the pro-  
15 ceeds of any loan or other advance made or  
16 guaranteed, directly or indirectly, by any  
17 partner or the partnership.

18           “(ii) LOANS FROM NONSERVICE PRO-  
19 VIDING PARTNERS TO THE PARTNERSHIP  
20 TREATED AS INVESTED CAPITAL.—For

21 purposes of this paragraph, any loan or  
22 other advance to the partnership made or  
23 guaranteed, directly or indirectly, by a  
24 partner not providing services to the part-  
25 nership shall be treated as invested capital

1 of such partner and amounts of income  
2 and loss treated as allocable to invested  
3 capital shall be adjusted accordingly.

4 “(d) OTHER INCOME AND GAIN IN CONNECTION  
5 WITH INVESTMENT MANAGEMENT SERVICES.—

6 “(1) IN GENERAL.—If—

7 “(A) a person performs (directly or indi-  
8 rectly) investment management services for any  
9 entity,

10 “(B) such person holds a disqualified in-  
11 terest with respect to such entity, and

12 “(C) the value of such interest (or pay-  
13 ments thereunder) is substantially related to  
14 the amount of income or gain (whether or not  
15 realized) from the assets with respect to which  
16 the investment management services are per-  
17 formed,

18 any income or gain with respect to such interest  
19 shall be treated as ordinary income for the perform-  
20 ance of services. Rules similar to the rules of sub-  
21 section (c)(2) shall apply where such interest was ac-  
22 quired on account of invested capital in such entity.

23 “(2) DEFINITIONS.—For purposes of this sub-  
24 section—

1           “(A) DISQUALIFIED INTEREST.—The term  
2 ‘disqualified interest’ means, with respect to  
3 any entity—

4           “(i) any interest in such entity other  
5 than indebtedness,

6           “(ii) convertible or contingent debt of  
7 such entity,

8           “(iii) any option or other right to ac-  
9 quire property described in clause (i) or  
10 (ii), and

11           “(iv) any derivative instrument en-  
12 tered into (directly or indirectly) with such  
13 entity or any investor in such entity.

14 Such term shall not include a partnership inter-  
15 est and shall not include stock in a taxable cor-  
16 poration.

17           “(B) TAXABLE CORPORATION.—The term  
18 ‘taxable corporation’ means—

19           “(i) a domestic C corporation, or

20           “(ii) a foreign corporation subject to a  
21 comprehensive foreign income tax.

22           “(C) INVESTMENT MANAGEMENT SERV-  
23 ICES.—The term ‘investment management serv-  
24 ices’ means a substantial quantity of any of the  
25 services described in subsection (c)(1) which are

1 provided in the conduct of the trade or business  
2 of providing such services.

3 “(D) COMPREHENSIVE FOREIGN INCOME  
4 TAX.—The term ‘comprehensive foreign income  
5 tax’ means, with respect to any foreign corpora-  
6 tion, the income tax of a foreign country if—

7 “(i) such corporation is eligible for the  
8 benefits of a comprehensive income tax  
9 treaty between such foreign country and  
10 the United States, or

11 “(ii) such corporation demonstrates to  
12 the satisfaction of the Secretary that such  
13 foreign country has a comprehensive in-  
14 come tax.

15 “(e) REGULATIONS.—The Secretary shall prescribe  
16 such regulations as are necessary or appropriate to carry  
17 out the purposes of this section, including regulations to—

18 “(1) prevent the avoidance of the purposes of  
19 this section, and

20 “(2) coordinate this section with the other pro-  
21 visions of this subchapter.

22 “(f) CROSS REFERENCE.—For 40 percent no fault  
23 penalty on certain underpayments due to the avoidance  
24 of this section, see section 6662.”.



1 (b) APPLICATION TO REAL ESTATE INVESTMENT  
2 TRUSTS.—

3 (1) IN GENERAL.—Subsection (c) of section  
4 856 is amended by adding at the end the following  
5 new paragraph:

6 “(9) EXCEPTION FROM RECHARACTERIZATION  
7 OF INCOME FROM INVESTMENT SERVICES PARTNER-  
8 SHIP INTERESTS.—

9 “(A) IN GENERAL.—Paragraphs (2), (3),  
10 and (4) shall be applied without regard to sec-  
11 tion 710 (relating to special rules for partners  
12 providing investment management services to  
13 partnership).

14 “(B) SPECIAL RULE FOR PARTNERSHIPS  
15 OWNED BY REITS.—Section 7704 shall be ap-  
16 plied without regard to section 710 in the case  
17 of a partnership which meets each of the fol-  
18 lowing requirements:

19 “(i) Such partnership is treated as  
20 publicly traded under section 7704 solely  
21 by reason of interests in such partnership  
22 being convertible into interests in a real es-  
23 tate investment trust which is publicly  
24 traded.

1           “(ii) 50 percent or more of the capital  
2           and profits interests of such partnership  
3           are owned, directly or indirectly, at all  
4           times during the taxable year by such real  
5           estate investment trust (determined with  
6           the application of section 267(c)).

7           “(iii) Such partnership meets the re-  
8           quirements of paragraphs (2), (3), and (4)  
9           (applied without regard to section 710).”.

10           (2) CONFORMING AMENDMENT.—Paragraph (4)  
11           of section 7704(d) is amended by inserting “(deter-  
12           mined without regard to section 856(e)(8))” after  
13           “856(e)(2)”.

14           (c) IMPOSITION OF PENALTY ON UNDERPAY-  
15           MENTS.—

16           (1) IN GENERAL.—Subsection (b) of section  
17           6662 is amended by inserting after paragraph (5)  
18           the following new paragraph:

19           “(6) The application of subsection (d) of section  
20           710 or the regulations prescribed under section  
21           710(e) to prevent the avoidance of the purposes of  
22           section 710.”.

23           (2) AMOUNT OF PENALTY.—

1 (A) IN GENERAL.—Section 6662 is amend-  
2 ed by adding at the end the following new sub-  
3 section:

4 “(i) INCREASE IN PENALTY IN CASE OF PROPERTY  
5 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-  
6 ICES.—In the case of any portion of an underpayment to  
7 which this section applies by reason of subsection (b)(6),  
8 subsection (a) shall be applied with respect to such portion  
9 by substituting ‘40 percent’ for ‘20 percent’.”.

10 (B) CONFORMING AMENDMENTS.—Sub-  
11 paragraph (B) of section 6662A(e)(2) is  
12 amended—

13 (i) by striking “section 6662(h)” and  
14 inserting “subsection (h) or (i) of section  
15 6662”, and

16 (ii) by striking “GROSS VALUATION  
17 MISSTATEMENT PENALTY” in the heading  
18 and inserting “CERTAIN INCREASED UN-  
19 DERPAYMENT PENALTIES”.

20 (3) REASONABLE CAUSE EXCEPTION NOT AP-  
21 PPLICABLE.—Subsection (c) of section 6664 is  
22 amended—

23 (A) by redesignating paragraphs (2) and  
24 (3) as paragraphs (3) and (4), respectively,

1 (B) by striking “paragraph (2)” in para-  
2 graph (4), as so redesignated, and inserting  
3 “paragraph (3)”, and

4 (C) by inserting after paragraph (1) the  
5 following new paragraph:

6 “(2) EXCEPTION.—Paragraph (1) shall not  
7 apply to any portion of an underpayment to which  
8 this section applies by reason of subsection (b)(6).”.

9 (d) CONFORMING AMENDMENTS.—

10 (1) Subsection (d) of section 731 is amended by  
11 inserting “section 710(b)(4) (relating to distribu-  
12 tions of partnership property),” before “section  
13 736”.

14 (2) Section 741 is amended by inserting “or  
15 section 710 (relating to special rules for partners  
16 providing investment management services to part-  
17 nership)” before the period at the end.

18 (3) Paragraph (13) of section 1402(a) is  
19 amended—

20 (A) by striking “other than guaranteed”  
21 and inserting “other than—

22 “(A) guaranteed”,

23 (B) by striking the semicolon at the end  
24 and inserting “, and”, and

1 (C) by adding at the end the following new  
2 subparagraph:

3 “(B) any income treated as ordinary in-  
4 come under section 710 received by an indi-  
5 vidual who provides investment management  
6 services (as defined in section 710(d)(2));”.

7 (4) Paragraph (12) of section 211(a) of the So-  
8 cial Security Act is amended—

9 (A) by striking “other than guaranteed”  
10 and inserting “other than—

11 “(A) guaranteed”,

12 (B) by striking the semicolon at the end  
13 and inserting “, and”, and

14 (C) by adding at the end the following new  
15 subparagraph:

16 “(B) any income treated as ordinary in-  
17 come under section 710 of the Internal Revenue  
18 Code of 1986 received by an individual who  
19 provides investment management services (as  
20 defined in section 710(d)(2) of such Code);”.

21 (5) The table of sections for part I of sub-  
22 chapter K of chapter 1 is amended by adding at the  
23 end the following new item:

“Sec. 710. Special rules for partners providing investment management services  
to partnership.”.

24 (e) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as otherwise pro-  
2           vided in this subsection, the amendments made by  
3           this section shall apply to taxable years ending after  
4           June 18, 2008.

5           (2) PARTNERSHIP TAXABLE YEARS WHICH IN-  
6           CLUDE EFFECTIVE DATE.—In applying section  
7           710(a) of the Internal Revenue Code of 1986 (as  
8           added by this section) in the case of any partnership  
9           taxable year which includes June 18, 2008, the  
10          amount of the net income referred to in such section  
11          shall be treated as being the lesser of the net income  
12          for the entire partnership taxable year or the net in-  
13          come determined by only taking into account items  
14          attributable to the portion of the partnership taxable  
15          year which is after such date.

16          (3) DISPOSITIONS OF PARTNERSHIP INTER-  
17          ESTS.—Section 710(b) of the Internal Revenue Code  
18          of 1986 (as added by this section) shall apply to dis-  
19          positions and distributions after June 18, 2008.

20          (4) OTHER INCOME AND GAIN IN CONNECTION  
21          WITH INVESTMENT MANAGEMENT SERVICES.—Sec-  
22          tion 710(d) of such Code (as added by this section)  
23          shall take effect on June 18, 2008.

24          (5) PUBLICLY TRADED PARTNERSHIPS.—For  
25          purposes of applying section 7704, the amendments

1 made by this section shall apply to taxable years be-  
2 ginning after December 31, 2010.

3 **SEC. 202. LIMITATION OF DEDUCTION FOR INCOME AT-**  
4 **TRIBUTABLE TO DOMESTIC PRODUCTION OF**  
5 **OIL, GAS, OR PRIMARY PRODUCTS THEREOF.**

6 (a) DENIAL OF DEDUCTION FOR MAJOR INTE-  
7 GRATED OIL COMPANIES FOR INCOME ATTRIBUTABLE TO  
8 DOMESTIC PRODUCTION OF OIL, GAS, OR PRIMARY  
9 PRODUCTS THEREOF.—

10 (1) IN GENERAL.—Subparagraph (B) of section  
11 199(c)(4) (relating to exceptions) is amended by  
12 striking “or” at the end of clause (ii), by striking  
13 the period at the end of clause (iii) and inserting “,  
14 or”, and by inserting after clause (iii) the following  
15 new clause:

16 “(iv) in the case of any major inte-  
17 grated oil company (as defined in section  
18 167(h)(5)(B)), the production, refining,  
19 processing, transportation, or distribution  
20 of oil, gas, or any primary product thereof  
21 during any taxable year described in sec-  
22 tion 167(h)(5)(B).”.

23 (2) PRIMARY PRODUCT.—Section 199(c)(4)(B)  
24 is amended by adding at the end the following flush  
25 sentence:

1           “For purposes of clause (iv), the term ‘primary  
2           product’ has the same meaning as when used in  
3           section 927(a)(2)(C), as in effect before its re-  
4           peal.”.

5           (b) LIMITATION ON OIL RELATED QUALIFIED PRO-  
6           DUCTION ACTIVITIES INCOME FOR TAXPAYERS OTHER  
7           THAN MAJOR INTEGRATED OIL COMPANIES.—

8           (1) IN GENERAL.—Section 199(d) is amended  
9           by redesignating paragraph (9) as paragraph (10)  
10          and by inserting after paragraph (8) the following  
11          new paragraph:

12          “(9) SPECIAL RULE FOR TAXPAYERS WITH OIL  
13          RELATED QUALIFIED PRODUCTION ACTIVITIES IN-  
14          COME.—

15          “(A) IN GENERAL.—If a taxpayer (other  
16          than a major integrated oil company (as defined  
17          in section 167(h)(5)(B))) has oil related quali-  
18          fied production activities income for any taxable  
19          year beginning after 2009, the amount of the  
20          deduction under subsection (a) shall be reduced  
21          by 3 percent of the least of—

22          “(i) the oil related qualified produc-  
23          tion activities income of the taxpayer for  
24          the taxable year,



1                   “(ii) the qualified production activities  
2                   income of the taxpayer for the taxable  
3                   year, or

4                   “(iii) taxable income (determined  
5                   without regard to this section).

6                   “(B) OIL RELATED QUALIFIED PRODUC-  
7                   TION ACTIVITIES INCOME.—The term ‘oil re-  
8                   lated qualified production activities income’  
9                   means for any taxable year the qualified pro-  
10                  duction activities income which is attributable  
11                  to the production, refining, processing, trans-  
12                  portation, or distribution of oil, gas, or any pri-  
13                  mary product thereof during such taxable  
14                  year.”.

15                  (2) CONFORMING AMENDMENT.—Section  
16                  199(d)(2) (relating to application to individuals) is  
17                  amended by striking “subsection (a)(1)(B)” and in-  
18                  serting “subsections (a)(1)(B) and (d)(9)(A)(iii)”.

19                  (c) EFFECTIVE DATE.—The amendments made by  
20                  this section shall apply to taxable years beginning after  
21                  December 31, 2008.

1 **SEC. 203. LIMITATION ON TREATY BENEFITS FOR CERTAIN**  
2 **DEDUCTIBLE PAYMENTS.**

3 (a) IN GENERAL.—Section 894 (relating to income  
4 affected by treaty) is amended by adding at the end the  
5 following new subsection:

6 “(d) LIMITATION ON TREATY BENEFITS FOR CER-  
7 TAIN DEDUCTIBLE PAYMENTS.—

8 “(1) IN GENERAL.—In the case of any deduct-  
9 ible related-party payment, any withholding tax im-  
10 posed under chapter 3 (and any tax imposed under  
11 subpart A or B of this part) with respect to such  
12 payment may not be reduced under any treaty of the  
13 United States unless any such withholding tax would  
14 be reduced under a treaty of the United States if  
15 such payment were made directly to the foreign par-  
16 ent corporation.

17 “(2) DEDUCTIBLE RELATED-PARTY PAY-  
18 MENT.—For purposes of this subsection, the term  
19 ‘deductible related-party payment’ means any pay-  
20 ment made, directly or indirectly, by any person to  
21 any other person if the payment is allowable as a de-  
22 duction under this chapter and both persons are  
23 members of the same foreign controlled group of en-  
24 tities.

25 “(3) FOREIGN CONTROLLED GROUP OF ENTI-  
26 TIES.—For purposes of this subsection—

1           “(A) IN GENERAL.—The term ‘foreign  
2 controlled group of entities’ means a controlled  
3 group of entities the common parent of which  
4 is a foreign corporation.

5           “(B) CONTROLLED GROUP OF ENTITIES.—  
6 The term ‘controlled group of entities’ means a  
7 controlled group of corporations as defined in  
8 section 1563(a)(1), except that—

9                   “(i) ‘more than 50 percent’ shall be  
10 substituted for ‘at least 80 percent’ each  
11 place it appears therein, and

12                   “(ii) the determination shall be made  
13 without regard to subsections (a)(4) and  
14 (b)(2) of section 1563.

15 A partnership or any other entity (other than a  
16 corporation) shall be treated as a member of a  
17 controlled group of entities if such entity is con-  
18 trolled (within the meaning of section  
19 954(d)(3)) by members of such group (includ-  
20 ing any entity treated as a member of such  
21 group by reason of this sentence).

22           “(4) FOREIGN PARENT CORPORATION.—For  
23 purposes of this subsection, the term ‘foreign parent  
24 corporation’ means, with respect to any deductible  
25 related-party payment, the common parent of the

1 foreign controlled group of entities referred to in  
2 paragraph (3)(A).

3 “(5) REGULATIONS.—The Secretary may pre-  
4 scribe such regulations or other guidance as are nec-  
5 essary or appropriate to carry out the purposes of  
6 this subsection, including regulations or other guid-  
7 ance which provide for—

8 “(A) the treatment of two or more persons  
9 as members of a foreign controlled group of en-  
10 tities if such persons would be the common par-  
11 ent of such group if treated as one corporation,  
12 and

13 “(B) the treatment of any member of a  
14 foreign controlled group of entities as the com-  
15 mon parent of such group if such treatment is  
16 appropriate taking into account the economic  
17 relationships among such entities.”.

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

1 **SEC. 204. RETURNS RELATING TO PAYMENTS MADE IN SET-**  
2 **TLEMENT OF PAYMENT CARD AND THIRD**  
3 **PARTY NETWORK TRANSACTIONS.**

4 (a) IN GENERAL.—Subpart B of part III of sub-  
5 chapter A of chapter 61 is amended by adding at the end  
6 the following new section:

7 **“SEC. 6050W. RETURNS RELATING TO PAYMENTS MADE IN**  
8 **SETTLEMENT OF PAYMENT CARD AND THIRD**  
9 **PARTY NETWORK TRANSACTIONS.**

10 “(a) IN GENERAL.—Each payment settlement entity  
11 shall make a return for each calendar year setting forth—

12 “(1) the name, address, and TIN of each par-  
13 ticipating payee to whom one or more payments in  
14 settlement of reportable payment transactions are  
15 made, and

16 “(2) the gross amount of the reportable pay-  
17 ment transactions with respect to each such partici-  
18 pating payee.

19 Such return shall be made at such time and in such form  
20 and manner as the Secretary may require by regulations.

21 “(b) PAYMENT SETTLEMENT ENTITY.—For pur-  
22 poses of this section—

23 “(1) IN GENERAL.—The term ‘payment settle-  
24 ment entity’ means—

25 “(A) in the case of a payment card trans-  
26 action, the merchant acquiring entity, and

1           “(B) in the case of a third party network  
2           transaction, the third party settlement organi-  
3           zation.

4           “(2) MERCHANT ACQUIRING ENTITY.—The  
5           term ‘merchant acquiring entity’ means the bank or  
6           other organization which has the contractual obliga-  
7           tion to make payment to participating payees in set-  
8           tlement of payment card transactions.

9           “(3) THIRD PARTY SETTLEMENT ORGANIZA-  
10          TION.—The term ‘third party settlement organiza-  
11          tion’ means the central organization which has the  
12          contractual obligation to make payment to partici-  
13          pating payees of third party network transactions.

14          “(4) SPECIAL RULES RELATED TO INTER-  
15          MEDIARIES.—For purposes of this section—

16                 “(A) AGGREGATED PAYEES.—In any case  
17                 where reportable payment transactions of more  
18                 than one participating payee are settled  
19                 through an intermediary—

20                         “(i) such intermediary shall be treated  
21                         as the participating payee for purposes of  
22                         determining the reporting obligations of  
23                         the payment settlement entity with respect  
24                         to such transactions, and

1           “(ii) such intermediary shall be treat-  
2           ed as the payment settlement entity with  
3           respect to the settlement of such trans-  
4           actions with the participating payees.

5           “(B)           ELECTRONIC           PAYMENT  
6           FACILITATORS.—In any case where an elec-  
7           tronic payment facilitator or other third party  
8           makes payments in settlement of reportable  
9           payment transactions on behalf of the payment  
10          settlement entity, the return under subsection  
11          (a) shall be made by such electronic payment  
12          facilitator or other third party in lieu of the  
13          payment settlement entity.

14          “(c) REPORTABLE PAYMENT TRANSACTION.—For  
15          purposes of this section—

16               “(1) IN GENERAL.—The term ‘reportable pay-  
17               ment transaction’ means any payment card trans-  
18               action and any third party network transaction.

19               “(2) PAYMENT CARD TRANSACTION.—The term  
20               ‘payment card transaction’ means any transaction in  
21               which a payment card is accepted as payment.

22               “(3) THIRD PARTY NETWORK TRANSACTION.—  
23               The term ‘third party network transaction’ means  
24               any transaction which is settled through a third  
25               party payment network.

1       “(d) OTHER DEFINITIONS.—For purposes of this  
2 section—

3               “(1) PARTICIPATING PAYEE.—

4                       “(A) IN GENERAL.—The term ‘partici-  
5 pating payee’ means—

6                               “(i) in the case of a payment card  
7 transaction, any person who accepts a pay-  
8 ment card as payment, and

9                               “(ii) in the case of a third party net-  
10 work transaction, any person who accepts  
11 payment from a third party settlement or-  
12 ganization in settlement of such trans-  
13 action.

14                       “(B) EXCLUSION OF FOREIGN PERSONS.—  
15 Except as provided by the Secretary in regula-  
16 tions or other guidance, such term shall not in-  
17 clude any person with a foreign address.

18                       “(C) INCLUSION OF GOVERNMENTAL  
19 UNITS.—The term ‘person’ includes any govern-  
20 mental unit (and any agency or instrumentality  
21 thereof).

22               “(2) PAYMENT CARD.—The term ‘payment  
23 card’ means any card which is issued pursuant to an  
24 agreement or arrangement which provides for—

25                       “(A) one or more issuers of such cards,



1           “(B) a network of persons unrelated to  
2 each other, and to the issuer, who agree to ac-  
3 cept such cards as payment, and

4           “(C) standards and mechanisms for set-  
5 tling the transactions between the merchant ac-  
6 quiring entities and the persons who agree to  
7 accept such cards as payment.

8           The acceptance as payment of any account number  
9 or other indicia associated with a payment card shall  
10 be treated for purposes of this section in the same  
11 manner as accepting such payment card as payment.

12           “(3) THIRD PARTY PAYMENT NETWORK.—The  
13 term ‘third party payment network’ means any  
14 agreement or arrangement—

15           “(A) which involves the establishment of  
16 accounts with a central organization by a sub-  
17 stantial number of persons who—

18           “(i) are unrelated to such organiza-  
19 tion,

20           “(ii) provide goods or services, and

21           “(iii) have agreed to settle trans-  
22 actions for the provision of such goods or  
23 services pursuant to such agreement or ar-  
24 rangement,

1           “(B) which provides for standards and  
2 mechanisms for settling such transactions, and

3           “(C) which guarantees persons providing  
4 goods or services pursuant to such agreement  
5 or arrangement that such persons will be paid  
6 for providing such goods or services.

7       Such term shall not include any agreement or ar-  
8 rangement which provides for the issuance of pay-  
9 ment cards.

10       “(e) EXCEPTION FOR DE MINIMIS PAYMENTS BY  
11 THIRD PARTY SETTLEMENT ORGANIZATIONS.—A third  
12 party settlement organization shall be required to report  
13 any information under subsection (a) with respect to third  
14 party network transactions of any participating payee only  
15 if—

16           “(1) the amount which would otherwise be re-  
17 ported under subsection (a)(2) with respect to such  
18 transactions exceeds \$20,000, and

19           “(2) the aggregate number of such transactions  
20 exceeds 200.

21       “(f) STATEMENTS TO BE FURNISHED TO PERSONS  
22 WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—  
23 Every person required to make a return under subsection  
24 (a) shall furnish to each person with respect to whom such  
25 a return is required a written statement showing—

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

4           “(2) the gross amount of the reportable pay-  
5           ment transactions with respect to the person re-  
6           quired to be shown on the return.

7           The written statement required under the preceding sen-  
8           tence shall be furnished to the person on or before Janu-  
9           ary 31 of the year following the calendar year for which  
10          the return under subsection (a) was required to be made.  
11          Such statement may be furnished electronically, and if so,  
12          the email address of the person required to make such  
13          return may be shown in lieu of the phone number.

14          “(g) REGULATIONS.—The Secretary may prescribe  
15          such regulations or other guidance as may be necessary  
16          or appropriate to carry out this section, including rules  
17          to prevent the reporting of the same transaction more  
18          than once.”.

19          (b) PENALTY FOR FAILURE TO FILE.—

20                  (1) RETURN.—Subparagraph (B) of section  
21          6724(d)(1) is amended—

22                          (A) by striking “or” at the end of clause  
23                          (xx),

24                          (B) by redesignating the clause (xix) that  
25                          follows clause (xx) as clause (xxi),

1 (C) by striking “and” at the end of clause  
2 (xxi), as redesignated by subparagraph (B) and  
3 inserting “or”, and

4 (D) by adding at the end the following:

5 “(xxii) section 6050W (relating to re-  
6 turns to payments made in settlement of  
7 payment card transactions), and”.

8 (2) STATEMENT.—Paragraph (2) of section  
9 6724(d) is amended by striking “or” at the end of  
10 subparagraph (BB), by striking the period at the  
11 end of the subparagraph (CC) and inserting “, or”,  
12 and by inserting after subparagraph (CC) the fol-  
13 lowing:

14 “(DD) section 6050W(e) (relating to re-  
15 turns relating to payments made in settlement  
16 of payment card transactions).”.

17 (c) APPLICATION OF BACKUP WITHHOLDING.—  
18 Paragraph (3) of section 3406(b) is amended by striking  
19 “or” at the end of subparagraph (D), by striking the pe-  
20 riod at the end of subparagraph (E) and inserting “, or”,  
21 and by adding at the end the following new subparagraph:

22 “(F) section 6050W (relating to returns  
23 relating to payments made in settlement of pay-  
24 ment card transactions).”.

1 (d) CLERICAL AMENDMENT.—The table of sections  
2 for subpart B of part III of subchapter A of chapter 61  
3 is amended by inserting after the item relating to section  
4 6050V the following:

“Sec. 6050W. Returns relating to payments made in settlement of payment  
card and third party network transactions.”.

5 (e) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as otherwise pro-  
7 vided in this subsection, the amendments made by  
8 this section shall apply to returns for calendar years  
9 beginning after December 31, 2010.

10 (2) APPLICATION OF BACKUP WITHHOLDING.—

11 (A) IN GENERAL.—The amendment made  
12 by subsection (c) shall apply to amounts paid  
13 after December 31, 2011.

14 (B) ELIGIBILITY FOR TIN MATCHING PRO-  
15 GRAM.—Solely for purposes of carrying out any  
16 TIN matching program established by the Sec-  
17 retary under section 3406(i) of the Internal  
18 Revenue Code of 1986—

19 (i) the amendments made this section  
20 shall be treated as taking effect on the  
21 date of the enactment of this Act, and

22 (ii) each person responsible for setting  
23 the standards and mechanisms referred to  
24 in section 6050W(d)(2)(C) of such Code,

1 as added by this section, for settling trans-  
 2 actions involving payment cards shall be  
 3 treated in the same manner as a payment  
 4 settlement entity.

5 **SEC. 205. HIGH INCOME INDIVIDUALS SUBJECT TO OVER-**  
 6 **ALL LIMITATION ON ITEMIZED DEDUCTIONS**  
 7 **AND PHASEOUT OF DEDUCTIONS FOR PER-**  
 8 **SONAL EXEMPTIONS.**

9 (a) OVERALL LIMITATION ON ITEMIZED DEDUC-  
 10 TIONS.—Section 68 (relating to overall limitation on  
 11 itemized deductions) is amended by striking subsections  
 12 (f) and (g) and inserting the following new subsection:

13 “(f) PHASEOUT OF LIMITATION.—

14 “(1) IN GENERAL.—In the case of a taxpayer  
 15 whose adjusted gross income is not more than  
 16 \$250,000 (\$500,000 in the case of a joint return or  
 17 a surviving spouse (as defined in section 2(a)))—

18 “(A) in the case of any taxable year begin-  
 19 ning in 2008 or 2009, the reduction under sub-  
 20 section (a) shall be equal to  $\frac{1}{3}$  of the amount  
 21 which would (but for this subsection) be the  
 22 amount of such reduction, and

23 “(B) in the case of any taxable year begin-  
 24 ning after 2009, subsection (a) shall not apply.

25 “(2) PHASEOUT BASED ON INCOME.—

1           “(A) IN GENERAL.—In the case of a tax-  
2           payer whose adjusted gross income is more  
3           than \$250,000 (\$500,000 in the case of a joint  
4           return or a surviving spouse (as defined in sec-  
5           tion 2(a))), the reduction under subsection (a)  
6           shall be equal to the applicable fraction of the  
7           amount which would (but for this subsection)  
8           be the amount of such reduction.

9           “(B) APPLICABLE FRACTION.—For pur-  
10          poses of subparagraph (A), the term ‘applicable  
11          fraction’ means—

12                   “(i) in the case of any taxable year  
13                   beginning in 2008 or 2009, a fraction (not  
14                   in excess of 1) equal to the sum of—

15                           “(I)  $\frac{1}{3}$ , plus

16                           “(II)  $\frac{1}{30}$  for each \$1,000 (or  
17                           fraction thereof) by which the tax-  
18                           payer’s adjusted gross income exceeds  
19                           \$250,000 (\$500,000 in the case of a  
20                           joint return or a surviving spouse (as  
21                           defined in section 2(a))), and

22                   “(ii) in the case of any taxable year  
23                   beginning in 2010, a fraction (not in ex-  
24                   cess of 1) equal to  $\frac{1}{20}$  for each \$1,000 (or  
25                   fraction thereof) by which the taxpayer’s

1 adjusted gross income exceeds \$250,000  
2 (\$500,000 in the case of a joint return or  
3 a surviving spouse (as defined in section  
4 2(a))).”.

5 (b) PHASEOUT OF DEDUCTIONS FOR PERSONAL EX-  
6 EMPTIONS.—Paragraph (3) of section 151(d) is amended  
7 by striking subparagraphs (E) and (F) and inserting the  
8 following new subparagraphs:

9 “(E) REDUCTION OF PHASEOUT.—In the  
10 case of a taxpayer whose adjusted gross income  
11 is not more than \$250,000 (\$500,000 in the  
12 case of a joint return or a surviving spouse (as  
13 defined in section 2(a))—

14 “(i) in the case of any taxable year  
15 beginning in 2008 or 2009, the reduction  
16 under subparagraph (A) shall be equal to  
17  $\frac{1}{3}$  of the amount which would (but for this  
18 subparagraph) be the amount of such re-  
19 duction, and

20 “(ii) in the case of any taxable year  
21 beginning after 2009, subparagraph (A)  
22 shall not apply.

23 “(F) PHASEOUT BASED ON INCOME.—In  
24 the case of a taxpayer whose adjusted gross in-  
25 come is more than \$250,000 (\$500,000 in the



1 case of a joint return or a surviving spouse (as  
2 defined in section 2(a)), the reduction under  
3 subparagraph (A) shall be equal to the applica-  
4 ble fraction of the amount which would (but for  
5 this subparagraph) be the amount of such re-  
6 duction.

7 “(G) APPLICABLE FRACTION.—For pur-  
8 poses of subparagraph (F), the term ‘applicable  
9 fraction’ means—

10 “(i) in the case of any taxable year  
11 beginning in 2008 or 2009, the fraction  
12 (not in excess of 1) equal to the sum of—

13 “(I)  $\frac{1}{3}$ , plus

14 “(II)  $\frac{1}{30}$  for each \$1,000 (or  
15 fraction thereof) by which the tax-  
16 payer’s adjusted gross income exceeds  
17 \$250,000 (\$500,000 in the case of a  
18 joint return or a surviving spouse (as  
19 defined in section 2(a))), and

20 “(ii) in the case of any taxable year  
21 beginning in 2010, the fraction (not in ex-  
22 cess of 1) equal to  $\frac{1}{20}$  for each \$1,000 (or  
23 fraction thereof) by which the taxpayer’s  
24 adjusted gross income exceeds \$250,000  
25 (\$500,000 in the case of a joint return or

1 a surviving spouse (as defined in section  
2 2(a)).”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2007.

6 **SEC. 206. NONQUALIFIED DEFERRED COMPENSATION**  
7 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

8 (a) IN GENERAL.—Subpart B of part II of sub-  
9 chapter E of chapter 1 is amended by inserting after sec-  
10 tion 457 the following new section:

11 **“SEC. 457A. NONQUALIFIED DEFERRED COMPENSATION**  
12 **FROM CERTAIN TAX INDIFFERENT PARTIES.**

13 “(a) IN GENERAL.—Any compensation which is de-  
14 ferred under a nonqualified deferred compensation plan of  
15 a nonqualified entity shall be includible in gross income  
16 when there is no substantial risk of forfeiture of the rights  
17 to such compensation.

18 “(b) NONQUALIFIED ENTITY.—For purposes of this  
19 section, the term ‘nonqualified entity’ means—

20 “(1) any foreign corporation unless substan-  
21 tially all of its income is—

22 “(A) effectively connected with the conduct  
23 of a trade or business in the United States, or

24 “(B) subject to a comprehensive foreign in-  
25 come tax, and

1           “(2) any partnership unless substantially all of  
2 its income is allocated to persons other than—

3           “(A) foreign persons with respect to whom  
4 such income is not subject to a comprehensive  
5 foreign income tax, and

6           “(B) organizations which are exempt from  
7 tax under this title.

8           “(c) DETERMINABILITY OF AMOUNTS OF COMPENSA-  
9 TION.—

10           “(1) IN GENERAL.—If the amount of any com-  
11 pensation is not determinable at the time that such  
12 compensation is otherwise includible in gross income  
13 under subsection (a)—

14           “(A) such amount shall be so includible in  
15 gross income when determinable, and

16           “(B) the tax imposed under this chapter  
17 for the taxable year in which such compensation  
18 is includible in gross income shall be increased  
19 by the sum of—

20           “(i) the amount of interest determined  
21 under paragraph (2), and

22           “(ii) an amount equal to 20 percent of  
23 the amount of such compensation.

24           “(2) INTEREST.—For purposes of paragraph  
25 (1)(B)(i), the interest determined under this para-

1 graph for any taxable year is the amount of interest  
2 at the underpayment rate under section 6621 plus  
3 1 percentage point on the underpayments that would  
4 have occurred had the deferred compensation been  
5 includible in gross income for the taxable year in  
6 which first deferred or, if later, the first taxable year  
7 in which such deferred compensation is not subject  
8 to a substantial risk of forfeiture.

9 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—

10 For purposes of this section—

11 “(1) SUBSTANTIAL RISK OF FORFEITURE.—

12 “(A) IN GENERAL.—The rights of a person  
13 to compensation shall be treated as subject to  
14 a substantial risk of forfeiture only if such per-  
15 son’s rights to such compensation are condi-  
16 tioned upon the future performance of substan-  
17 tial services by any individual.

18 “(B) EXCEPTION FOR COMPENSATION  
19 BASED ON GAIN RECOGNIZED ON AN INVEST-  
20 MENT ASSET.—

21 “(i) IN GENERAL.—To the extent pro-  
22 vided in regulations prescribed by the Sec-  
23 retary, if compensation is determined solely  
24 by reference to the amount of gain recog-  
25 nized on the disposition of an investment

1           asset, such compensation shall be treated  
2           as subject to a substantial risk of for-  
3           feiture until the date of such disposition.

4           “(ii) INVESTMENT ASSET.—For pur-  
5           poses of clause (i), the term ‘investment  
6           asset’ means any single asset (other than  
7           an investment fund or similar entity)—

8                   “(I) acquired directly by an in-  
9                   vestment fund or similar entity,

10                   “(II) with respect to which such  
11                   entity does not (nor does any person  
12                   related to such entity) participate in  
13                   the active management of such asset  
14                   (or if such asset is an interest in an  
15                   entity, in the active management of  
16                   the activities of such entity), and

17                   “(III) substantially all of any  
18                   gain on the disposition of which (other  
19                   than such deferred compensation) is  
20                   allocated to investors in such entity.

21           “(iii) COORDINATION WITH SPECIAL  
22           RULE.—Paragraph (3)(B) shall not apply  
23           to any compensation to which clause (i)  
24           applies.

1           “(2) COMPREHENSIVE FOREIGN INCOME TAX.—

2           The term ‘comprehensive foreign income tax’ means,  
3           with respect to any foreign person, the income tax  
4           of a foreign country if—

5                   “(A) such person is eligible for the benefits  
6                   of a comprehensive income tax treaty between  
7                   such foreign country and the United States, or

8                   “(B) such person demonstrates to the sat-  
9                   isfaction of the Secretary that such foreign  
10                  country has a comprehensive income tax.

11           “(3) NONQUALIFIED DEFERRED COMPENSA-  
12           TION PLAN.—

13                   “(A) IN GENERAL.—The term ‘non-  
14                   qualified deferred compensation plan’ has the  
15                   meaning given such term under section  
16                   409A(d), except that such term shall include  
17                   any plan that provides a right to compensation  
18                   based on the appreciation in value of a specified  
19                   number of equity units of the service recipient.

20                   “(B) EXCEPTION.—Compensation shall  
21                   not be treated as deferred for purposes of this  
22                   section if the service provider receives payment  
23                   of such compensation not later than 12 months  
24                   after the end of the taxable year of the service  
25                   recipient during which the right to the payment

1           of such compensation is no longer subject to a  
2           substantial risk of forfeiture.

3           “(4) EXCEPTION FOR CERTAIN COMPENSATION  
4           WITH RESPECT TO EFFECTIVELY CONNECTED IN-  
5           COME.—In the case a foreign corporation with in-  
6           come which is taxable under section 882, this section  
7           shall not apply to compensation which, had such  
8           compensation had been paid in cash on the date that  
9           such compensation ceased to be subject to a sub-  
10          stantial risk of forfeiture, would have been deduct-  
11          ible by such foreign corporation against such income.

12          “(5) APPLICATION OF RULES.—Rules similar to  
13          the rules of paragraphs (5) and (6) of section  
14          409A(d) shall apply.

15          “(e) REGULATIONS.—The Secretary shall prescribe  
16          such regulations as may be necessary or appropriate to  
17          carry out the purposes of this section, including regula-  
18          tions disregarding a substantial risk of forfeiture in cases  
19          where necessary to carry out the purposes of this sec-  
20          tion.”.

21          (b) CONFORMING AMENDMENT.—Section 26(b)(2) is  
22          amended by striking “and” at the end of subparagraph  
23          (U), by striking the period at the end of subparagraph  
24          (V) and inserting “, and”, and by adding at the end the  
25          following new subparagraph:

1                   “(W) section 457A(c)(1)(B) (relating to  
2                   determinability of amounts of compensation).”.

3           (c) CLERICAL AMENDMENT.—The table of sections  
4 of subpart B of part II of subchapter E of chapter 1 is  
5 amended by inserting after the item relating to section  
6 457 the following new item:

          “Sec. 457A. Nonqualified deferred compensation from certain tax indifferent  
          parties.”.

7           (d) EFFECTIVE DATE.—

8               (1) IN GENERAL.—Except as otherwise pro-  
9               vided in this subsection, the amendments made by  
10              this section shall apply to amounts deferred which  
11              are attributable to services performed after Decem-  
12              ber 31, 2008.

13              (2) APPLICATION TO EXISTING DEFERRALS.—  
14              In the case of any amount deferred to which the  
15              amendments made by this section do not apply solely  
16              by reason of the fact that the amount is attributable  
17              to services performed before January 1, 2009, to the  
18              extent such amount is not includible in gross income  
19              in a taxable year beginning before 2018, such  
20              amounts shall be includible in gross income in the  
21              later of—

22                      (A) the last taxable year beginning before  
23                      2018, or



1           (B) the taxable year in which there is no  
2           substantial risk of forfeiture of the rights to  
3           such compensation (determined in the same  
4           manner as determined for purposes of section  
5           457A of the Internal Revenue Code of 1986, as  
6           added by this section).

7           (3) CHARITABLE CONTRIBUTIONS OF EXISTING  
8           DEFERRALS PERMITTED.—

9           (A) IN GENERAL.—Subsection (b) of sec-  
10          tion 170 of the Internal Revenue Code of 1986  
11          shall not apply to (and subsections (b) and (d)  
12          of such section shall be applied without regard  
13          to) so much of the taxpayer’s qualified con-  
14          tributions made during the taxpayer’s last tax-  
15          able year beginning before 2018 as does not ex-  
16          ceed the taxpayer’s qualified inclusion amount.  
17          For purposes of subsection (b) of section 170 of  
18          such Code, the taxpayer’s contribution base for  
19          such last taxable year shall be reduced by the  
20          amount of the taxpayer’s qualified contributions  
21          to which such subsection does not apply by rea-  
22          son the preceding sentence.

23          (B) QUALIFIED CONTRIBUTIONS.—For  
24          purposes of this paragraph, the term “qualified  
25          contributions” means the aggregate charitable

1 contributions (as defined in section 170(c) of  
2 such Code) paid in cash by the taxpayer to or-  
3 ganizations described in section 170(b)(1)(A) of  
4 such Code (other than any organization de-  
5 scribed in section 509(a)(3) of such Code or  
6 any fund or account described in section  
7 4966(d)(2) of such Code).

8 (C) QUALIFIED INCLUSION AMOUNT.—For  
9 purposes of this paragraph, the term “qualified  
10 inclusion amount” means the amount includible  
11 in the taxpayer’s gross income for the last tax-  
12 able year beginning before 2018 by reason of  
13 paragraph (2).

14 (4) ACCELERATED PAYMENTS.—No later than  
15 120 days after the date of the enactment of this Act,  
16 the Secretary shall issue guidance providing a lim-  
17 ited period of time during which a nonqualified de-  
18 ferred compensation arrangement attributable to  
19 services performed on or before December 31, 2008,  
20 may, without violating the requirements of section  
21 409A(a) of the Internal Revenue Code of 1986, be  
22 amended to conform the date of distribution to the  
23 date the amounts are required to be included in in-  
24 come.



1       “(g) ADDITIONAL INFORMATION REQUIRED IN THE  
2 CASE OF SECURITIES TRANSACTIONS, ETC.—

3           “(1) IN GENERAL.—If a broker is otherwise re-  
4 quired to make a return under subsection (a) with  
5 respect to the gross proceeds of the sale of a covered  
6 security, the broker shall include in such return the  
7 information described in paragraph (2).

8           “(2) ADDITIONAL INFORMATION REQUIRED.—

9           “(A) IN GENERAL.—The information re-  
10 quired under paragraph (1) to be shown on a  
11 return with respect to a covered security of a  
12 customer shall include the customer’s adjusted  
13 basis in such security and whether any gain or  
14 loss with respect to such security is long-term  
15 or short-term (within the meaning of section  
16 1222).

17           “(B) DETERMINATION OF ADJUSTED  
18 BASIS.—For purposes of subparagraph (A)—

19           “(i) IN GENERAL.—The customer’s  
20 adjusted basis shall be determined—

21           “(I) in the case of any security  
22 (other than any stock for which an av-  
23 erage basis method is permissible  
24 under section 1012), in accordance  
25 with the first-in first-out method un-

1 less the customer notifies the broker  
2 by means of making an adequate  
3 identification of the stock sold or  
4 transferred, and

5 “(II) in the case of any stock for  
6 which an average basis method is per-  
7 missible under section 1012, in ac-  
8 cordance with the broker’s default  
9 method unless the customer notifies  
10 the broker that he elects another ac-  
11 ceptable method under section 1012  
12 with respect to the account in which  
13 such stock is held.

14 “(ii) EXCEPTION FOR WASH SALES.—  
15 Except as otherwise provided by the Sec-  
16 retary, the customer’s adjusted basis shall  
17 be determined without regard to section  
18 1091 (relating to loss from wash sales of  
19 stock or securities) unless the transactions  
20 occur in the same account with respect to  
21 identical securities.

22 “(3) COVERED SECURITY.—For purposes of  
23 this subsection—

1           “(A) IN GENERAL.—The term ‘covered se-  
2           curity’ means any specified security acquired on  
3           or after the applicable date if such security—

4                   “(i) was acquired through a trans-  
5                   action in the account in which such secu-  
6                   rity is held, or

7                   “(ii) was transferred to such account  
8                   from an account in which such security  
9                   was a covered security, but only if the  
10                  broker received a statement under section  
11                  6045A with respect to the transfer.

12           “(B) SPECIFIED SECURITY.—The term  
13           ‘specified security’ means—

14                   “(i) any share of stock in a corpora-  
15                   tion,

16                   “(ii) any note, bond, debenture, or  
17                   other evidence of indebtedness,

18                   “(iii) any commodity, or contract or  
19                   derivative with respect to such commodity,  
20                   if the Secretary determines that adjusted  
21                   basis reporting is appropriate for purposes  
22                   of this subsection, and

23                   “(iv) any other financial instrument  
24                   with respect to which the Secretary deter-

1           mines that adjusted basis reporting is ap-  
2           propriate for purposes of this subsection.

3           “(C) APPLICABLE DATE.—The term ‘appli-  
4           cable date’ means—

5                   “(i) January 1, 2010, in the case of  
6                   any specified security which is stock in a  
7                   corporation (other than any stock de-  
8                   scribed in clause (ii)),

9                   “(ii) January 1, 2011, in the case of  
10                   any stock for which an average basis meth-  
11                   od is permissible under section 1012, and

12                   “(iii) January 1, 2012, or such later  
13                   date determined by the Secretary in the  
14                   case of any other specified security.

15           “(4) TREATMENT OF S CORPORATIONS.—In the  
16           case of the sale of a covered security acquired by an  
17           S corporation (other than a financial institution)  
18           after December 31, 2011, such S corporation shall  
19           be treated in the same manner as a partnership for  
20           purposes of this section.

21           “(5) SPECIAL RULES FOR SHORT SALES.—In  
22           the case of a short sale, reporting under this section  
23           shall be made for the year in which such sale is  
24           closed.”.

1           (2) BROKER INFORMATION REQUIRED WITH RE-  
2           SPECT TO OPTIONS.—Section 6045, as amended by  
3           subsection (a), is amended by adding at the end the  
4           following new subsection:

5           “(h) APPLICATION TO OPTIONS ON SECURITIES.—

6           “(1) EXERCISE OF OPTION.—For purposes of  
7           this section, if a covered security is acquired or dis-  
8           posed of pursuant to the exercise of an option that  
9           was granted or acquired in the same account as the  
10          covered security, the amount received with respect to  
11          the grant or paid with respect to the acquisition of  
12          such option shall be treated as an adjustment to  
13          gross proceeds or as an adjustment to basis, as the  
14          case may be.

15          “(2) LAPSE OR CLOSING TRANSACTION.—In the  
16          case of the lapse (or closing transaction (as defined  
17          in section 1234(b)(2)(A))) of an option on a speci-  
18          fied security or the exercise of a cash-settled option  
19          on a specified security, reporting under subsections  
20          (a) and (g) with respect to such option shall be  
21          made for the calendar year which includes the date  
22          of such lapse, closing transaction, or exercise.

23          “(3) PROSPECTIVE APPLICATION.—Paragraphs  
24          (1) and (2) shall not apply to any option which is  
25          granted or acquired before January 1, 2012.



1           “(4) DEFINITIONS.—For purposes of this sub-  
2 section, the terms ‘covered security’ and ‘specified  
3 security’ shall have the meanings given such terms  
4 in subsection (g)(3).”.

5           (3) EXTENSION OF PERIOD FOR STATEMENTS  
6 SENT TO CUSTOMERS.—

7           (A) IN GENERAL.—Subsection (b) of sec-  
8 tion 6045 is amended by striking “January 31”  
9 and inserting “February 15”.

10           (B) STATEMENTS RELATED TO SUB-  
11 STITUTE PAYMENTS.—Subsection (d) of section  
12 6045 is amended—

13           (i) by striking “at such time and”,  
14 and

15           (ii) by inserting after “other item.”  
16 the following new sentence: “The written  
17 statement required under the preceding  
18 sentence shall be furnished on or before  
19 February 15 of the year following the cal-  
20 endar year in which the payment was  
21 made.”.

22           (C) OTHER STATEMENTS.—Subsection (b)  
23 of section 6045 is amended by adding at the  
24 end the following: “In the case of a consolidated  
25 reporting statement (as defined in regulations)

1 with respect to any account, any statement  
2 which would otherwise be required to be fur-  
3 nished on or before January 31 of a calendar  
4 year with respect to any item reportable to the  
5 taxpayer shall instead be required to be fur-  
6 nished on or before February 15 of such cal-  
7 endar year if furnished with such consolidated  
8 reporting statement.”.

9 (b) DETERMINATION OF BASIS OF CERTAIN SECURI-  
10 TIES ON ACCOUNT BY ACCOUNT OR AVERAGE BASIS  
11 METHOD.—Section 1012 (relating to basis of property-  
12 cost) is amended—

13 (1) by striking “The basis of property” and in-  
14 serting the following:

15 “(a) IN GENERAL.—The basis of property”,

16 (2) by striking “The cost of real property” and  
17 inserting the following:

18 “(b) SPECIAL RULE FOR APPORTIONED REAL ES-  
19 TATE TAXES.—The cost of real property”, and

20 (3) by adding at the end the following new sub-  
21 sections:

22 “(c) DETERMINATIONS BY ACCOUNT.—

23 “(1) IN GENERAL.—In the case of the sale, ex-  
24 change, or other disposition of a specified security  
25 on or after the applicable date, the conventions pre-

1 scribed by regulations under this section shall be ap-  
2 plied on an account by account basis.

3 “(2) APPLICATION TO OPEN-END FUNDS.—

4 “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), any stock in an open-end  
6 fund acquired before January 1, 2011, shall be  
7 treated as a separate account from any such  
8 stock acquired on or after such date.

9 “(B) ELECTION BY OPEN-END FUND FOR  
10 TREATMENT AS SINGLE ACCOUNT.—If an open-  
11 end fund elects to have this subparagraph apply  
12 with respect to one or more of its stock-  
13 holders—

14 “(i) subparagraph (A) shall not apply  
15 with respect to any stock in such fund held  
16 by such stockholders, and

17 “(ii) all stock in such fund which is  
18 held by such stockholders shall be treated  
19 as covered securities described in section  
20 6045(g)(3) without regard to the date of  
21 the acquisition of such stock.

22 A rule similar to the rule of the preceding sen-  
23 tence shall apply with respect to a broker hold-  
24 ing stock in an open-end fund as a nominee.

1           “(3) DEFINITIONS.—For purposes of this sec-  
2           tion—

3                   “(A) OPEN-END FUND.—The term ‘open-  
4                   end fund’ means a regulated investment com-  
5                   pany (as defined in section 851) which is offer-  
6                   ing for sale or has outstanding any redeemable  
7                   security of which it is the issuer. Any stock  
8                   which is traded on an established securities ex-  
9                   change shall not be treated as stock in an open-  
10                  end fund.

11                  “(B) SPECIFIED SECURITY; APPLICABLE  
12                  DATE.—The terms ‘specified security’ and ‘ap-  
13                  plicable date’ shall have the meaning given such  
14                  terms in section 6045(g).

15                  “(d) AVERAGE BASIS FOR STOCK ACQUIRED PURSU-  
16                  ANT TO A DIVIDEND REINVESTMENT PLAN.—

17                   “(1) IN GENERAL.—In the case of any stock ac-  
18                   quired after December 31, 2010, in connection with  
19                   a dividend reinvestment plan, the basis of such stock  
20                   while held as part of such plan shall be determined  
21                   using one of the methods which may be used for de-  
22                   termining the basis of stock in an open-end fund.

23                   “(2) TREATMENT AFTER TRANSFER.—In the  
24                   case of the transfer to another account of stock to  
25                   which paragraph (1) applies, such stock shall have

1 a cost basis in such other account equal to its basis  
2 in the dividend reinvestment plan immediately before  
3 such transfer (properly adjusted for any fees or  
4 other charges taken into account in connection with  
5 such transfer).

6 “(3) SEPARATE ACCOUNTS; ELECTION FOR  
7 TREATMENT AS SINGLE ACCOUNT.—Rules similar to  
8 the rules of subsection (c)(2) shall apply for pur-  
9 poses of this subsection.

10 “(4) DIVIDEND REINVESTMENT PLAN.—For  
11 purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘dividend re-  
13 investment plan’ means any arrangement under  
14 which dividends on any stock are reinvested in  
15 stock identical to the stock with respect to  
16 which the dividends are paid.

17 “(B) INITIAL STOCK ACQUISITION TREAT-  
18 ED AS ACQUIRED IN CONNECTION WITH  
19 PLAN.—Stock shall be treated as acquired in  
20 connection with a dividend reinvestment plan if  
21 such stock is acquired pursuant to such plan or  
22 if the dividends paid on such stock are subject  
23 to such plan.”.

24 (c) INFORMATION BY TRANSFERORS TO AID BRO-  
25 KERS.—

1           (1) IN GENERAL.—Subpart B of part III of  
2           subchapter A of chapter 61 is amended by inserting  
3           after section 6045 the following new section:

4   **“SEC. 6045A. INFORMATION REQUIRED IN CONNECTION**  
5                           **WITH TRANSFERS OF COVERED SECURITIES**  
6                           **TO BROKERS.**

7           “(a) FURNISHING OF INFORMATION.—Every applica-  
8           ble person which transfers to a broker (as defined in sec-  
9           tion 6045(c)(1)) a security which is a covered security (as  
10          defined in section 6045(g)(3)) in the hands of such appli-  
11          cable person shall furnish to such broker a written state-  
12          ment in such manner and setting forth such information  
13          as the Secretary may by regulations prescribe for purposes  
14          of enabling such broker to meet the requirements of sec-  
15          tion 6045(g).

16          “(b) APPLICABLE PERSON.—For purposes of sub-  
17          section (a), the term ‘applicable person’ means—

18                  “(1) any broker (as defined in section  
19                  6045(c)(1)), and

20                  “(2) any other person as provided by the Sec-  
21                  retary in regulations.

22          “(c) TIME FOR FURNISHING STATEMENT.—Except  
23          as otherwise provided by the Secretary, any statement re-  
24          quired by subsection (a) shall be furnished not later than

1 15 days after the date of the transfer described in such  
2 subsection.”.

3 (2) ASSESSABLE PENALTIES.—Paragraph (2)  
4 of section 6724(d) (defining payee statement) is  
5 amended by redesignating subparagraphs (I)  
6 through (DD) as subparagraphs (J) through (EE),  
7 respectively, and by inserting after subparagraph  
8 (H) the following new subparagraph:

9 “(I) section 6045A (relating to information  
10 required in connection with transfers of covered  
11 securities to brokers),”.

12 (3) CLERICAL AMENDMENT.—The table of sec-  
13 tions for subpart B of part III of subchapter A of  
14 chapter 61 is amended by inserting after the item  
15 relating to section 6045 the following new item:

“Sec. 6045A. Information required in connection with transfers of covered se-  
curities to brokers.”.

16 (d) ADDITIONAL ISSUER INFORMATION TO AID BRO-  
17 KERS.—

18 (1) IN GENERAL.—Subpart B of part III of  
19 subchapter A of chapter 61, as amended by sub-  
20 section (b), is amended by inserting after section  
21 6045A the following new section:

1 **“SEC. 6045B. RETURNS RELATING TO ACTIONS AFFECTING**  
2 **BASIS OF SPECIFIED SECURITIES.**

3 “(a) IN GENERAL.—According to the forms or regu-  
4 lations prescribed by the Secretary, any issuer of a speci-  
5 fied security shall make a return setting forth—

6 “(1) a description of any organizational action  
7 which affects the basis of such specified security of  
8 such issuer,

9 “(2) the quantitative effect on the basis of such  
10 specified security resulting from such action, and

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

13 “(b) TIME FOR FILING RETURN.—Any return re-  
14 quired by subsection (a) shall be filed not later than the  
15 earlier of—

16 “(1) 45 days after the date of the action de-  
17 scribed in subsection (a), or

18 “(2) January 15 of the year following the cal-  
19 endar year during which such action occurred.

20 “(c) STATEMENTS TO BE FURNISHED TO HOLDERS  
21 OF SPECIFIED SECURITIES OR THEIR NOMINEES.—Ac-  
22 cording to the forms or regulations prescribed by the Sec-  
23 retary, every person required to make a return under sub-  
24 section (a) with respect to a specified security shall furnish  
25 to the nominee with respect to the specified security (or



1 certificate holder if there is no nominee) a written state-  
2 ment showing—

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

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

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

10 The written statement required under the preceding sen-  
11 tence shall be furnished to the holder on or before January  
12 15 of the year following the calendar year during which  
13 the action described in subsection (a) occurred.

14           “(d) SPECIFIED SECURITY.—For purposes of this  
15 section, the term ‘specified security’ has the meaning given  
16 such term by section 6045(g)(3)(B). No return shall be  
17 required under this section with respect to actions de-  
18 scribed in subsection (a) with respect to a specified secu-  
19 rity which occur before the applicable date (as defined in  
20 section 6045(g)(3)(C)) with respect to such security.

21           “(e) PUBLIC REPORTING IN LIEU OF RETURN.—The  
22 Secretary may waive the requirements under subsections  
23 (a) and (c) with respect to a specified security, if the per-  
24 son required to make the return under subsection (a)  
25 makes publicly available, in such form and manner as the

1 Secretary determines necessary to carry out the purposes  
2 of this section—

3 “(1) the name, address, phone number, and  
4 email address of the information contact of such  
5 person, and

6 “(2) the information described in paragraphs  
7 (1), (2), and (3) of subsection (a).”.

8 (2) ASSESSABLE PENALTIES.—

9 (A) Subparagraph (B) of section  
10 6724(d)(1) (defining information return) is  
11 amended by redesignating clause (iv) and each  
12 of the clauses which follow as clauses (v)  
13 through (xxiii), respectively, and by inserting  
14 after clause (iii) the following new clause:

15 “(iv) section 6045B(a) (relating to re-  
16 turns relating to actions affecting basis of  
17 specified securities),”.

18 (B) Paragraph (2) of section 6724(d) (de-  
19 fining payee statement), as amended by sub-  
20 section (c)(2), is amended by redesignating sub-  
21 paragraphs (J) through (EE) as subparagraphs  
22 (K) through (FF), respectively, and by insert-  
23 ing after subparagraph (I) the following new  
24 subparagraph:

1           “(J) subsections (c) and (e) of section  
2           6045B (relating to returns relating to actions  
3           affecting basis of specified securities),”.

4           (3) CLERICAL AMENDMENT.—The table of sec-  
5           tions for subpart B of part III of subchapter A of  
6           chapter 61, as amended by subsection (b)(3), is  
7           amended by inserting after the item relating to sec-  
8           tion 6045A the following new item:

          “Sec. 6045B. Returns relating to actions affecting basis of specified securi-  
          ties.”.

9           (e) EFFECTIVE DATE.—

10           (1) IN GENERAL.—Except as otherwise pro-  
11           vided in this subsection, the amendments made by  
12           this section shall take effect on January 1, 2010.

13           (2) EXTENSION OF PERIOD FOR STATEMENTS  
14           SENT TO CUSTOMERS.—The amendments made by  
15           subsection (a)(3) shall apply to statements required  
16           to be furnished after December 31, 2008.

17 **SEC. 208. REPEAL OF WORLDWIDE ALLOCATION OF INTER-**  
18 **EST.**

19           (a) IN GENERAL.—Section 864 is amended by strik-  
20           ing subsection (f) and by redesignating subsection (g) as  
21           subsection (f).

22           (b) EFFECTIVE DATE.—The amendments made by  
23           this section shall apply to taxable years beginning after  
24           December 31, 2008.

1 **SEC. 209. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**  
2 **TRINE.**

3 (a) IN GENERAL.—Section 7701 is amended by re-  
4 designating subsection (p) as subsection (q) and by insert-  
5 ing after subsection (o) the following new subsection:

6 “(p) CLARIFICATION OF ECONOMIC SUBSTANCE  
7 DOCTRINE; ETC.—

8 “(1) GENERAL RULES.—

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

16 “(B) DEFINITION OF ECONOMIC SUB-  
17 STANCE.—For purposes of subparagraph (A)—

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

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

24 “(II) subject to clause (iii), the  
25 taxpayer has a substantial purpose

1 (other than a Federal tax purpose) for  
2 entering into such transaction.

3 “(ii) SPECIAL RULE WHERE TAX-  
4 PAYER RELIES ON PROFIT POTENTIAL.—A  
5 transaction shall not be treated as having  
6 economic substance solely by reason of  
7 having a potential for profit unless the  
8 present value of the reasonably expected  
9 pre-Federal tax profit from the transaction  
10 is substantial in relation to the present  
11 value of the expected net Federal tax bene-  
12 fits that would be allowed if the trans-  
13 action were respected. In determining pre-  
14 Federal tax profit, there shall be taken  
15 into account fees and other transaction ex-  
16 penses and to the extent provided by the  
17 Secretary, foreign taxes.

18 “(iii) SPECIAL RULES FOR DETER-  
19 MINING WHETHER NON-FEDERAL TAX  
20 PURPOSE.—For purposes of clause  
21 (i)(II)—

22 “(I) a purpose of achieving a fi-  
23 nancial accounting benefit shall not be  
24 taken into account in determining  
25 whether a transaction has a substan-

1           tial purpose (other than a Federal tax  
2           purpose) if the origin of such financial  
3           accounting benefit is a reduction of  
4           Federal tax, and

5           “(II) the taxpayer shall not be  
6           treated as having a substantial pur-  
7           pose (other than a Federal tax pur-  
8           pose) with respect to a transaction if  
9           the only such purpose is the reduction  
10          of non-Federal taxes and the trans-  
11          action will result in a reduction of  
12          Federal taxes substantially equal to,  
13          or greater than, the reduction in non-  
14          Federal taxes because of similarities  
15          between the laws imposing the taxes.

16           “(2) DEFINITIONS AND SPECIAL RULES.—For  
17          purposes of this subsection—

18           “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
19          The term ‘economic substance doctrine’ means  
20          the common law doctrine under which tax bene-  
21          fits under subtitle A with respect to a trans-  
22          action are not allowable if the transaction does  
23          not have economic substance or lacks a business  
24          purpose.

1           “(B) EXCEPTION FOR PERSONAL TRANS-  
2           ACTIONS OF INDIVIDUALS.—In the case of an  
3           individual, this subsection shall apply only to  
4           transactions entered into in connection with a  
5           trade or business or an activity engaged in for  
6           the production of income.

7           “(3) OTHER PROVISIONS NOT AFFECTED.—Ex-  
8           cept as specifically provided in this subsection, the  
9           provisions of this subsection shall not be construed  
10          as altering or supplanting any other rule of law or  
11          provision of this title, and the requirements of this  
12          subsection shall be construed as being in addition to  
13          any such other rule of law or provision of this title.

14          “(4) REGULATIONS.—The Secretary shall pre-  
15          scribe such regulations as may be necessary or ap-  
16          propriate to carry out the purposes of this sub-  
17          section. Such regulations may include exemptions  
18          from the application of this subsection.”.

19          (b) PENALTY FOR UNDERSTATEMENTS ATTRIB-  
20          UTABLE TO TRANSACTIONS LACKING ECONOMIC SUB-  
21          STANCE, ETC.—

22                 (1) IN GENERAL.—Subchapter A of chapter 68  
23                 is amended by inserting after section 6662A the fol-  
24                 lowing new section:

1 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
2 **UTABLE TO TRANSACTIONS LACKING ECO-**  
3 **NOMIC SUBSTANCE, ETC.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an  
5 noneconomic substance transaction understatement for  
6 any taxable year, there shall be added to the tax an  
7 amount equal to 30 percent of the amount of such under-  
8 statement.

9 “(b) REDUCTION OF PENALTY FOR DISCLOSED  
10 TRANSACTIONS.—Subsection (a) shall be applied by sub-  
11 stituting ‘20 percent’ for ‘30 percent’ with respect to the  
12 portion of any noneconomic substance transaction under-  
13 statement with respect to which the relevant facts affect-  
14 ing the tax treatment of the item are adequately disclosed  
15 in the return or a statement attached to the return.

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

18 “(1) IN GENERAL.—The term ‘noneconomic  
19 substance transaction understatement’ means any  
20 amount which would be an understatement under  
21 section 6662A(b)(1) if section 6662A were applied  
22 by taking into account items attributable to non-  
23 economic substance transactions rather than items  
24 to which section 6662A would apply without regard  
25 to this paragraph.



1           “(2) NONECONOMIC SUBSTANCE TRANS-  
2 ACTION.—The term ‘noneconomic substance trans-  
3 action’ means any transaction if there is a lack of  
4 economic substance (within the meaning of section  
5 7701(p)(1)(B)) for the transaction giving rise to the  
6 claimed benefit.

7           “(d) RULES APPLICABLE TO ASSERTION, COM-  
8 PROMISE, AND COLLECTION OF PENALTY.—

9           “(1) IN GENERAL.—Only the Chief Counsel for  
10 the Internal Revenue Service may assert a penalty  
11 imposed under this section or may compromise all or  
12 any portion of such penalty. The Chief Counsel may  
13 delegate the authority under this paragraph only to  
14 an individual holding the position of chief of a  
15 branch within the Office of the Chief Counsel for the  
16 Internal Revenue Service.

17           “(2) SPECIFIC REQUIREMENTS.—

18           “(A) ASSERTION OF PENALTY.—The Chief  
19 Counsel for the Internal Revenue Service (or  
20 the Chief Counsel’s delegate under paragraph  
21 (1)) shall not assert a penalty imposed under  
22 this section unless, before the assertion of the  
23 penalty, the taxpayer is provided—

24                   “(i) a notice of intent to assert the  
25 penalty, and

1           “(ii) an opportunity to provide to the  
2           Commissioner (or the Chief Counsel’s dele-  
3           gate under paragraph (1)) a written re-  
4           sponse to the proposed penalty within a  
5           reasonable period of time after such notice.

6           “(B) COMPROMISE OF PENALTY.—A com-  
7           promise shall not result in a reduction in the  
8           penalty imposed by this section in an amount  
9           greater than the amount which bears the same  
10          ratio to the amount of the penalty determined  
11          without regard to the compromise as—

12           “(i) the reduction under the com-  
13          promise in the noneconomic substance  
14          transaction understatement to which the  
15          penalty relates, bears to

16           “(ii) the amount of the noneconomic  
17          substance transaction understatement de-  
18          termined without regard to the com-  
19          promise.

20          “(3) RULES RELATING TO RELEVANCY RE-  
21          QUIREMENT.—

22           “(A) DETERMINATION OF RELEVANCE BY  
23          CHIEF COUNSEL.—The Chief Counsel for the  
24          Internal Revenue Service (or the Chief Coun-  
25          sel’s delegate under paragraph (1)) may assert,

1           compromise, or collect a penalty imposed by  
2           this section with respect to a noneconomic sub-  
3           stance transaction even if there has not been a  
4           court determination that the economic sub-  
5           stance doctrine was relevant for purposes of  
6           this title to the transaction if the Chief Counsel  
7           (or delegate) determines that either was so rel-  
8           evant.

9           “(B) FINAL ORDER OF COURT.—If there is  
10          a final order of a court that determines that the  
11          economic substance doctrine was not relevant  
12          for purposes of this title to a transaction (or se-  
13          ries of transactions), any penalty imposed under  
14          this section with respect to the transaction (or  
15          series of transactions) shall be rescinded.

16          “(4) APPLICABLE RULES.—The rules of para-  
17          graphs (2) and (3) of section 6707A(d) shall apply  
18          to a compromise under paragraph (1).

19          “(e) COORDINATION WITH OTHER PENALTIES.—Ex-  
20          cept as otherwise provided in this part, the penalty im-  
21          posed by this section shall be in addition to any other pen-  
22          alty imposed by this title.

23          “(f) CROSS REFERENCES.—

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

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

1           (2) COORDINATION WITH OTHER UNDERSTATE-  
2           MENTS AND PENALTIES.—

3           (A) The second sentence of section  
4           6662(d)(2)(A) is amended by inserting “and  
5           without regard to items with respect to which  
6           a penalty is imposed by section 6662B” before  
7           the period at the end.

8           (B) Subsection (e) of section 6662A is  
9           amended—

10           (i) in paragraph (1), by inserting  
11           “and noneconomic substance transaction  
12           understatements” after “reportable trans-  
13           action understatements” both places it ap-  
14           pears,

15           (ii) in paragraph (2)(A)—

16                   (I) by inserting “6662B or” be-  
17                   fore “6663” in the text, and

18                   (II) by striking “PENALTY” in  
19                   the heading and inserting “AND ECO-  
20                   NOMIC SUBSTANCE PENALTIES”,

21           (iii) in paragraph (2)(B)—

1 (I) by inserting “and section  
2 6662B” after “This section”, and

3 (II) by striking “PENALTY” in  
4 the heading and inserting “AND ECO-  
5 NOMIC SUBSTANCE PENALTIES”,

6 (iv) in paragraph (3), by inserting “or  
7 noneconomic substance transaction under-  
8 statement” after “reportable transaction  
9 understatement”, and

10 (v) by adding at the end the following  
11 new paragraph:

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

17 (C) Subsection (e) of section 6707A is  
18 amended—

19 (i) by striking “or” at the end of sub-  
20 paragraph (B), and

21 (ii) by striking subparagraph (C) and  
22 inserting the following new subparagraphs:

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

1           “(D) is required to pay a penalty under  
 2           section 6662(h) with respect to any transaction  
 3           and would (but for section 6662A(e)(2)(B))  
 4           have been subject to penalty under section  
 5           6662A at a rate prescribed under section  
 6           6662A(c) or to penalty under section 6662B.”.

7           (3) CLERICAL AMENDMENT.—The table of sec-  
 8           tions for part II of subchapter A of chapter 68 is  
 9           amended by inserting after the item relating to sec-  
 10          tion 6662A the following new item:

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

11          (c) DENIAL OF DEDUCTION FOR INTEREST ON UN-  
 12          DERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUB-  
 13          STANCE TRANSACTIONS.—Section 163(m) (relating to in-  
 14          terest on unpaid taxes attributable to nondisclosed report-  
 15          able transactions) is amended—

16                 (1) by striking “attributable” and all that fol-  
 17                 lows and inserting the following: “attributable to—

18                         “(1) the portion of any reportable transaction  
 19                         understatement (as defined in section 6662A(b))  
 20                         with respect to which the requirement of section  
 21                         6664(d)(2)(A) is not met, or

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

24                 and

1           (2) by inserting “AND NONECONOMIC SUB-  
2           STANCE TRANSACTIONS” in the heading thereof  
3           after “TRANSACTIONS”.

4           (d) PENALTIES FOR UNDERPAYMENTS.—

5           (1) PENALTY FOR UNDERPAYMENTS ATTRIB-  
6           UTABLE TO TRANSACTIONS LACKING ECONOMIC SUB-  
7           STANCE.—

8           (A) IN GENERAL.—Subsection (b) of sec-  
9           tion 6662, as amended by this Act, is amended  
10          by inserting after paragraph (6) the following  
11          new paragraph:

12          “(7) Any disallowance of claimed tax benefits  
13          by reason of a transaction lacking economic sub-  
14          stance (within the meaning of section 7701(p)) or  
15          failing to meet the requirements of any similar rule  
16          of law.”.

17          (B) INCREASED PENALTY FOR NONDIS-  
18          CLOSED TRANSACTIONS.—Section 6662, as  
19          amended by this Act, is amended by adding at  
20          the end the following new subsection:

21          “(j) INCREASE IN PENALTY IN CASE OF NONDIS-  
22          CLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

23          “(1) IN GENERAL.—To the extent that a por-  
24          tion of the underpayment to which this section ap-  
25          plies is attributable to one or more nondisclosed non-

1 economic substance transactions, subsection (a) shall  
2 be applied with respect to such portion by sub-  
3 stituting ‘40 percent’ for ‘20 percent’.

4 “(2) NONDISCLOSED NONECONOMIC SUB-  
5 STANCE TRANSACTIONS.—For purposes of this sub-  
6 section, the term ‘nondisclosed noneconomic sub-  
7 stance transaction’ means any portion of a trans-  
8 action described in subsection (b)(7) with respect to  
9 which the relevant facts affecting the tax treatment  
10 are not adequately disclosed in the return nor in a  
11 statement attached to the return.

12 “(3) SPECIAL RULE FOR AMENDED RE-  
13 TURNS.—Except as provided in regulations, in no  
14 event shall any amendment or supplement to a re-  
15 turn of tax be taken into account for purposes of  
16 this subsection if the amendment or supplement is  
17 filed after the earlier of the date the taxpayer is first  
18 contacted by the Secretary regarding the examina-  
19 tion of the return or such other date as is specified  
20 by the Secretary.”.

21 (C) CONFORMING AMENDMENT.—Subpara-  
22 graph (B) of section 6662A(e)(2), as amended  
23 by this Act, is amended by striking “subsection  
24 (h) or (i)” and inserting “subsections (h), (i),  
25 or (j)”.



1           (2) REASONABLE CAUSE EXCEPTION NOT AP-  
2           PLICABLE TO NONECONOMIC SUBSTANCE TRANS-  
3           ACTIONS, TAX SHELTERS, AND CERTAIN LARGE COR-  
4           PORATIONS.—Paragraph (2) of section 6664(e), as  
5           amended by this Act, is amended—

6                   (A) by striking “shall not apply to any  
7                   portion” and inserting “shall not apply—

8                           “(A) to any portion”,

9                   (B) by striking the period at the end and  
10                   inserting a comma, and

11                   (C) by adding at the end the following new  
12                   subparagraphs:

13                           “(B) to any portion of an underpayment  
14                   which is attributable to one or more tax shelters  
15                   (as defined in section 6662(d)(2)(C)) or trans-  
16                   actions described in section 6662(b)(7), and

17                           “(C) to any taxpayer if such taxpayer is a  
18                   specified large corporation (as defined in section  
19                   6662(d)(2)(D)(ii)).”.

20           (3) SPECIAL UNDERSTATEMENT REDUCTION  
21           RULE FOR CERTAIN LARGE CORPORATIONS.—

22                   (A) IN GENERAL.—Paragraph (2) of sec-  
23                   tion 6662(d) is amended by adding at the end  
24                   the following new subparagraph:

1                   “(D) SPECIAL REDUCTION RULE FOR CER-  
2 TAIN LARGE CORPORATIONS.—

3                   “(i) IN GENERAL.—In the case of any  
4 specified large corporation—

5                   “(I) subparagraph (B) shall not  
6 apply, and

7                   “(II) the amount of the under-  
8 statement under subparagraph (A)  
9 shall be reduced by that portion of the  
10 understatement which is attributable  
11 to any item with respect to which the  
12 taxpayer has a reasonable belief that  
13 the tax treatment of such item by the  
14 taxpayer is more likely than not the  
15 proper tax treatment of such item.

16                   “(ii) SPECIFIED LARGE CORPORA-  
17 TION.—

18                   “(I) IN GENERAL.—For purposes  
19 of this subparagraph, the term ‘speci-  
20 fied large corporation’ means any cor-  
21 poration with gross receipts in excess  
22 of \$100,000,000 for the taxable year  
23 involved.

24                   “(II) AGGREGATION RULE.—All  
25 persons treated as a single employer

1 under section 52(a) shall be treated as  
2 one person for purposes of subclause  
3 (I).”.

4 (B) CONFORMING AMENDMENT.—Subpara-  
5 graph (C) of section 6662(d)(2) is amended by  
6 striking “Subparagraph (B)” and inserting  
7 “Subparagraphs (B) and (D)(i)(II)”.

8 (e) EFFECTIVE DATES.—

9 (1) Except as provided in paragraphs (2) and  
10 (3), the amendments made by this section shall  
11 apply to transactions entered into after the date of  
12 the enactment of this Act.

13 (2) The amendments made by this subsection  
14 (e) shall apply to transactions after the date of the  
15 enactment of this Act in taxable years ending after  
16 such date.

17 (3) The amendments made by subsection (d)  
18 shall apply to taxable years beginning after the date  
19 of the enactment of this Act.

## 20 **TITLE III—DEFICIT REDUCTION**

### 21 **SEC. 301. DEFICIT REDUCTION.**

22 The net increase in receipts to the Treasury by rea-  
23 son of this Act shall be used for deficit reduction purposes.

○