

113TH CONGRESS
1ST SESSION

S. 277

To replace the Budget Control Act sequester by eliminating tax loopholes,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2013

Mr. WHITEHOUSE (for himself, Mr. HARKIN, Mr. SANDERS, and Mr. LEVIN)
introduced the following bill; which was read twice and referred to the
Committee on Finance

A BILL

To replace the Budget Control Act sequester by eliminating
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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Job Preservation and Economic Certainty Act of 2013”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ELIMINATION OF SEQUESTRATION

Sec. 101. Discretionary spending limits.

TITLE II—ELIMINATION OF TAX LOOPHOLES FOR HIGH-INCOME TAXPAYERS

- Sec. 201. Minimum tax for high-income earners.
- Sec. 202. Requiring high-income professionals to pay their payroll taxes.
- Sec. 203. Elimination of private jet giveaway.
- Sec. 204. Limitation on itemized deductions to 28-percent rate bracket.

TITLE III—ELIMINATION OF TAX LOOPHOLES FOR OFFSHORING MANUFACTURERS

- Sec. 301. Ending tax breaks for offshoring manufacturers.

TITLE IV—ELIMINATION OF TAX LOOPHOLES FOR OIL AND GAS COMPANIES

- Sec. 401. Modifications of foreign tax credit rules applicable to major integrated oil companies which are dual capacity taxpayers.
- Sec. 402. Limitation on section 199 deduction attributable to oil, natural gas, or primary products thereof.
- Sec. 403. Limitation on deduction for intangible drilling and development costs.
- Sec. 404. Limitation on percentage depletion allowance for oil and gas wells.
- Sec. 405. Limitation on deduction for tertiary injectants.
- Sec. 406. Repeal of outer Continental Shelf deep water and deep gas royalty relief.

TITLE V—ENDING INTERNATIONAL TAX ABUSES

- Sec. 501. Allocation of expenses and taxes on basis of repatriation of foreign income.
- Sec. 502. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.
- Sec. 503. Limitations on income shifting through intangible property transfers.
- Sec. 504. Limitation on earnings stripping by expatriated entities.
- Sec. 505. Modifications of foreign tax credit rules applicable to dual capacity taxpayers.
- Sec. 506. Separate basket treatment taxes paid on foreign oil and gas income.

TITLE VI—FINANCIAL CRISIS RESPONSIBILITY FEE

- Sec. 601. Definitions and special rules.
- Sec. 602. Financial crisis responsibility fee.
- Sec. 603. Other provisions.

TITLE VII—TAX ON TRADING TRANSACTIONS

- Sec. 701. Transaction tax.

TITLE VIII—MODIFICATION OF ACCOUNTING RULES

- Sec. 801. Repeal of last-in, first-out method of inventory.
- Sec. 802. Repeal of lower of cost or market method of inventory.

TITLE IX—FAIR TREATMENT OF OPTIONS

- Sec. 901. Consistent treatment of stock options by corporations.
- Sec. 902. Application of executive pay deduction limit.

TITLE I—ELIMINATION OF SEQUESTRATION

SEC. 101. DISCRETIONARY SPENDING LIMITS.

(a) IN GENERAL.—Part C of title II of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.) is amended—

(1) by striking section 251(c) (2 U.S.C. 901(c)) and inserting the following:

“(c) DISCRETIONARY SPENDING LIMIT.—As used in this part, the term ‘discretionary spending limit’ means—

“(1) with respect to fiscal year 2012—

“(A) for the security category, \$684,000,000,000 in new budget authority; and

“(B) for the nonsecurity category, \$359,000,000,000 in new budget authority;

“(2) with respect to fiscal year 2013—

“(A) for the security category, \$686,000,000,000 in new budget authority; and

“(B) for the nonsecurity category, \$361,000,000,000 in new budget authority;

“(3) with respect to fiscal year 2014, for the discretionary category, \$1,066,000,000,000 in new budget authority;

1 “(4) with respect to fiscal year 2015, for the
2 discretionary category, \$1,086,000,000,000 in new
3 budget authority;

4 “(5) with respect to fiscal year 2016, for the
5 discretionary category, \$1,107,000,000,000 in new
6 budget authority;

7 “(6) with respect to fiscal year 2017, for the
8 discretionary category, \$1,131,000,000,000 in new
9 budget authority;

10 “(7) with respect to fiscal year 2018, for the
11 discretionary category, \$1,156,000,000,000 in new
12 budget authority;

13 “(8) with respect to fiscal year 2019, for the
14 discretionary category, \$1,182,000,000,000 in new
15 budget authority;

16 “(9) with respect to fiscal year 2020, for the
17 discretionary category, \$1,208,000,000,000 in new
18 budget authority; and

19 “(10) with respect to fiscal year 2021, for the
20 discretionary category, \$1,234,000,000,000 in new
21 budget authority;

22 as adjusted in strict conformance with subsection (b).”;

23 (2) by striking section 251A (2 U.S.C. 901a);

24 and

1 (3) in the table of contents set forth in section
 2 250(a), by striking the item relating to section
 3 251A.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 5 Section 901(e) of the American Taxpayer Relief Act of
 6 2012 (Public Law 112–240) is repealed.

7 **TITLE II—ELIMINATION OF TAX**
 8 **LOOPHOLES FOR HIGH-IN-**
 9 **COME TAXPAYERS**

10 **SEC. 201. MINIMUM TAX FOR HIGH-INCOME EARNERS.**

11 (a) IN GENERAL.—Subchapter A of chapter 1 is
 12 amended by adding at the end the following new part:

13 **“PART VIII—FAIR SHARE TAX ON HIGH-INCOME**
 14 **TAXPAYERS**

“Sec. 59B. Fair share tax.

15 **“SEC. 59B. FAIR SHARE TAX.**

16 “(a) GENERAL RULE.—

17 “(1) PHASE-IN OF TAX.—In the case of any
 18 high-income taxpayer, there is hereby imposed for a
 19 taxable year (in addition to any other tax imposed
 20 by this subtitle) a tax equal to the product of—

21 “(A) the amount determined under para-
 22 graph (2), and

23 “(B) a fraction (not to exceed 1)—

1 “(i) the numerator of which is the ex-
2 cess of—

3 “(I) the taxpayer’s adjusted
4 gross income, over

5 “(II) the dollar amount in effect
6 under subsection (c)(1), and

7 “(ii) the denominator of which is the
8 dollar amount in effect under subsection
9 (c)(1).

10 “(2) AMOUNT OF TAX.—The amount of tax de-
11 termined under this paragraph is an amount equal
12 to the excess (if any) of—

13 “(A) the tentative fair share tax for the
14 taxable year, over

15 “(B) the excess of—

16 “(i) the sum of—

17 “(I) the regular tax liability (as
18 defined in section 26(b)) for the tax-
19 able year, determined without regard
20 to any tax liability determined under
21 this section,

22 “(II) the tax imposed by section
23 55 for the taxable year, plus

24 “(III) the payroll tax for the tax-
25 able year, over

1 “(ii) the credits allowable under part
 2 IV of subchapter A (other than sections
 3 27(a), 31, and 34).

4 “(b) TENTATIVE FAIR SHARE TAX.—For purposes
 5 of this section—

6 “(1) IN GENERAL.—The tentative fair share tax
 7 for the taxable year is 30 percent of the excess of—

8 “(A) the adjusted gross income of the tax-
 9 payer, over

10 “(B) the modified charitable contribution
 11 deduction for the taxable year.

12 “(2) MODIFIED CHARITABLE CONTRIBUTION
 13 DEDUCTION.—For purposes of paragraph (1)—

14 “(A) IN GENERAL.—The modified chari-
 15 table contribution deduction for any taxable
 16 year is an amount equal to the amount which
 17 bears the same ratio to the deduction allowable
 18 under section 170 (section 642(c) in the case of
 19 a trust or estate) for such taxable year as—

20 “(i) the amount of itemized deduc-
 21 tions allowable under the regular tax (as
 22 defined in section 55) for such taxable
 23 year, determined after the application of
 24 section 68, bears to

1 “(ii) such amount, determined before
2 the application of section 68.

3 “(B) TAXPAYER MUST ITEMIZE.—In the
4 case of any individual who does not elect to
5 itemize deductions for the taxable year, the
6 modified charitable contribution deduction shall
7 be zero.

8 “(c) HIGH-INCOME TAXPAYER.—For purposes of this
9 section—

10 “(1) IN GENERAL.—The term ‘high-income tax-
11 payer’ means, with respect to any taxable year, any
12 taxpayer (other than a corporation) with an adjusted
13 gross income for such taxable year in excess of
14 \$1,000,000 (50 percent of such amount in the case
15 of a married individual who files a separate return).

16 “(2) INFLATION ADJUSTMENT.—

17 “(A) IN GENERAL.—In the case of a tax-
18 able year beginning after 2013, the \$1,000,000
19 amount under paragraph (1) shall be increased
20 by an amount equal to—

21 “(i) such dollar amount, multiplied by

22 “(ii) the cost-of-living adjustment de-
23 termined under section 1(f)(3) for the cal-
24 endar year in which the taxable year be-
25 gins, determined by substituting ‘calendar

1 year 2012’ for ‘calendar year 1992’ in sub-
2 paragraph (B) thereof.

3 “(B) ROUNDING.—If any amount as ad-
4 justed under subparagraph (A) is not a multiple
5 of \$10,000, such amount shall be rounded to
6 the next lowest multiple of \$10,000.

7 “(d) PAYROLL TAX.—For purposes of this section,
8 the payroll tax for any taxable year is an amount equal
9 to the excess of—

10 “(1) the taxes imposed on the taxpayer under
11 sections 1401, 1411, 3101, 3201, and 3211(a) (to
12 the extent such tax is attributable to the rate of tax
13 in effect under section 3101) with respect to such
14 taxable year or wages or compensation received dur-
15 ing such taxable year, over

16 “(2) the deduction allowable under section
17 164(f) for such taxable year.

18 “(e) SPECIAL RULE FOR ESTATES AND TRUSTS.—
19 For purposes of this section, in the case of an estate or
20 trust, adjusted gross income shall be computed in the
21 manner described in section 67(e).

22 “(f) NOT TREATED AS TAX IMPOSED BY THIS CHAP-
23 TER FOR CERTAIN PURPOSES.—The tax imposed under
24 this section shall not be treated as tax imposed by this
25 chapter for purposes of determining the amount of any

1 credit under this chapter (other than the credit allowed
2 under section 27(a)) or for purposes of section 55.”.

3 (b) CLERICAL AMENDMENT.—The table of parts for
4 subchapter A of chapter 1 is amended by adding at the
5 end the following new item:

“PART VIII—FAIR SHARE TAX ON HIGH-INCOME TAXPAYERS”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to taxable years beginning after
8 December 31, 2012.

9 **SEC. 202. REQUIRING HIGH-INCOME PROFESSIONALS TO**
10 **PAY THEIR PAYROLL TAXES.**

11 (a) IN GENERAL.—Section 1402 of the Internal Rev-
12 enue Code of 1986 is amended by adding at the end the
13 following new subsection:

14 “(m) SPECIAL RULES FOR PROFESSIONAL SERVICE
15 BUSINESSES.—

16 “(1) SHAREHOLDERS PROVIDING SERVICES TO
17 SPECIFIED S CORPORATIONS.—

18 “(A) IN GENERAL.—In the case of an ap-
19 plicable shareholder who provides substantial
20 services with respect to a professional service
21 business referred to in subparagraph (C) of a
22 specified S corporation—

23 “(i) such shareholder shall be treated
24 as engaged in the trade or business of such
25 professional service business with respect

1 to items of income or loss described in sec-
 2 tion 1366 which are attributable to such
 3 business, and

4 “(ii) such shareholder’s net earnings
 5 from self-employment shall include such
 6 shareholder’s pro rata share of such items
 7 of income or loss, except that in computing
 8 such pro rata share of such items the ex-
 9 ceptions provided in subsection (a) shall
 10 apply.

11 “(B) TREATMENT OF FAMILY MEMBERS.—

12 Except as otherwise provided by the Secretary,
 13 the applicable shareholder’s pro rata share of
 14 items referred to in subparagraph (A) shall be
 15 increased by the pro rata share of such items
 16 of each member of such applicable shareholder’s
 17 family (within the meaning of section
 18 318(a)(1)) who does not provide substantial
 19 services with respect to such professional serv-
 20 ice business.

21 “(C) SPECIFIED S CORPORATION.—For
 22 purposes of this subsection, the term ‘specified
 23 S corporation’ means—

24 “(i) any S corporation which is a
 25 partner in a partnership which is engaged

1 in a professional service business if sub-
 2 stantially all of the activities of such S cor-
 3 poration are performed in connection with
 4 such partnership, and

5 “(ii) any other S corporation which is
 6 engaged in a professional service business
 7 if 75 percent or more of the gross income
 8 of such business is attributable to service
 9 of 3 or fewer shareholders of such corpora-
 10 tion.

11 “(D) APPLICABLE SHAREHOLDER.—For
 12 purposes of this paragraph, the term ‘applicable
 13 shareholder’ means any shareholder whose
 14 modified adjusted gross income for the taxable
 15 year exceeds—

16 “(i) in the case of a shareholder mak-
 17 ing a joint return under section 6013 or a
 18 surviving spouse (as defined in section
 19 2(a)), \$250,000,

20 “(ii) in the case of a married share-
 21 holder (as defined in section 7703) filing a
 22 separate return, half of the dollar amount
 23 determined under clause (i), and

24 “(iii) in any other case, \$200,000.

25 “(2) PARTNERS.—

1 “(A) IN GENERAL.—In the case of any
 2 partnership which is engaged in a professional
 3 service business, subsection (a)(13) shall not
 4 apply to any applicable partner who provides
 5 substantial services with respect to such profes-
 6 sional service business.

7 “(B) APPLICABLE PARTNER.—For pur-
 8 poses of this paragraph, the term ‘applicable
 9 partner’ means any partner whose modified ad-
 10 justed gross income for the taxable year ex-
 11 ceeds—

12 “(i) in the case of a partner making
 13 a joint return under section 6013 or a sur-
 14 viving spouse (as defined in section 2(a)),
 15 \$250,000,

16 “(ii) in the case of a married partner
 17 (as defined in section 7703) filing a sepa-
 18 rate return, half of the dollar amount de-
 19 termined under clause (i), and

20 “(iii) in any other case, \$200,000.

21 “(3) PROFESSIONAL SERVICE BUSINESS.—For
 22 purposes of this subsection, the term ‘professional
 23 service business’ means any trade or business (or
 24 portion thereof) providing services in the fields of
 25 health, law, lobbying, engineering, architecture, ac-

1 counting, actuarial science, performing arts, con-
 2 sulting, athletics, investment advice or management,
 3 or brokerage services.

4 “(4) MODIFIED ADJUSTED GROSS INCOME.—
 5 For purposes of this subsection, the term ‘modified
 6 adjusted gross income’ means adjusted gross in-
 7 come—

8 “(A) determined without regard to any de-
 9 duction allowed under section 164(f), and

10 “(B) increased by the amount excluded
 11 from gross income under section 911(a)(1).

12 “(5) REGULATIONS.—The Secretary shall pre-
 13 scribe such regulations as may be necessary or ap-
 14 propriate to carry out the purposes of this sub-
 15 section, including regulations which prevent the
 16 avoidance of the purposes of this subsection through
 17 tiered entities or otherwise.

18 “(6) CROSS REFERENCE.—For employment tax
 19 treatment of wages paid to shareholders of S cor-
 20 porations, see subtitle C.”.

21 (b) CONFORMING AMENDMENT.—Section 211 of the
 22 Social Security Act is amended by adding at the end the
 23 following new subsection:

24 “(1) SPECIAL RULES FOR PROFESSIONAL SERVICE
 25 BUSINESSES.—

1 “(1) SHAREHOLDERS PROVIDING SERVICES TO
2 SPECIFIED S CORPORATIONS.—

3 “(A) IN GENERAL.—In the case of an ap-
4 plicable shareholder who provides substantial
5 services with respect to a professional service
6 business referred to in subparagraph (C) of a
7 specified S corporation—

8 “(i) such shareholder shall be treated
9 as engaged in the trade or business of such
10 professional service business with respect
11 to items of income or loss described in sec-
12 tion 1366 of the Internal Revenue Code of
13 1986 which are attributable to such busi-
14 ness, and

15 “(ii) such shareholder’s net earnings
16 from self-employment shall include such
17 shareholder’s pro rata share of such items
18 of income or loss, except that in computing
19 such pro rata share of such items the ex-
20 ceptions provided in subsection (a) shall
21 apply.

22 “(B) TREATMENT OF FAMILY MEMBERS.—
23 Except as otherwise provided by the Secretary
24 of the Treasury, the applicable shareholder’s
25 pro rata share of items referred to in subpara-

1 graph (A) shall be increased by the pro rata
2 share of such items of each member of such ap-
3 plicable shareholder's family (within the mean-
4 ing of section 318(a)(1) of the Internal Revenue
5 Code of 1986) who does not provide substantial
6 services with respect to such professional serv-
7 ice business.

8 “(C) SPECIFIED S CORPORATION.—For
9 purposes of this subsection, the term ‘specified
10 S corporation’ means—

11 “(i) any S corporation (as defined in
12 section 1361(a) of the Internal Revenue
13 Code of 1986) which is a partner in a
14 partnership which is engaged in a profes-
15 sional service business if substantially all
16 of the activities of such S corporation are
17 performed in connection with such partner-
18 ship, and

19 “(ii) any other S corporation (as so
20 defined) which is engaged in a professional
21 service business if 75 percent or more of
22 the gross income of such business is attrib-
23 utable to service of 3 or fewer shareholders
24 of such corporation.

“(D) APPLICABLE SHAREHOLDER.—For purposes of this paragraph, the term ‘applicable shareholder’ means any shareholder whose modified adjusted gross income for the taxable year exceeds—

“(i) in the case of a shareholder making a joint return under section 6013 of the Internal Revenue Code of 1986 or a surviving spouse (as defined in section 2(a) of such Code), \$250,000,

“(ii) in the case of a married shareholder (as defined in section 7703 of such Code) filing a separate return, half of the dollar amount determined under clause (i), and

“(iii) in any other case, \$200,000.

“(2) PARTNERS.—

“(A) IN GENERAL.—In the case of any partnership which is engaged in a professional service business, subsection (a)(12) shall not apply to any applicable partner who provides substantial services with respect to such professional service business.

“(B) APPLICABLE PARTNER.—For purposes of this paragraph, the term ‘applicable

partner’ means any partner whose modified adjusted gross income for the taxable year exceeds—

“(i) in the case of a partner making a joint return under section 6013 of the Internal Revenue Code of 1986 or a surviving spouse (as defined in section 2(a) of such Code), \$250,000,

“(ii) in the case of a married partner (as defined in section 7703 of such Code) filing a separate return, half of the dollar amount determined under clause (i), and

“(iii) in any other case, \$200,000.

“(3) PROFESSIONAL SERVICE BUSINESS.—For purposes of this subsection, the term ‘professional service business’ means any trade or business (or portion thereof) providing services in the fields of health, law, lobbying, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, investment advice or management, or brokerage services.

“(4) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term ‘modified adjusted gross income’ means adjusted gross income

1 as determined under section 62 of the Internal Rev-
 2 enue Code of 1986—

3 “(A) determined without regard to any de-
 4 duction allowed under section 164(f) of such
 5 Code, and

6 “(B) increased by the amount excluded
 7 from gross income under section 911(a)(1) of
 8 such Code.”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to taxable years beginning after
 11 December 31, 2012.

12 **SEC. 203. ELIMINATION OF PRIVATE JET GIVEAWAY.**

13 (a) IN GENERAL.—Subparagraph (C) of section
 14 168(e)(3) of the Internal Revenue Code of 1986 is amend-
 15 ed by striking “and” at the end of clause (iv), by redesign-
 16 nating clause (v) as clause (vi), and by inserting after
 17 clause (iv) the following new clause:

18 “(v) any general aviation aircraft,
 19 and”.

20 (b) CLASS LIFE.—Paragraph (3) of section 168(g)
 21 of the Internal Revenue Code of 1986 is amended by in-
 22 serting after subparagraph (E) the following new subpara-
 23 graph:

24 “(F) GENERAL AVIATION AIRCRAFT.—In
 25 the case of any general aviation aircraft, the re-

1 covery period used for purposes of paragraph
2 (2) shall be 12 years.”.

3 (c) GENERAL AVIATION AIRCRAFT.—Subsection (i)
4 of section 168 of the Internal Revenue Code of 1986 is
5 amended by inserting after paragraph (19) the following
6 new paragraph:

7 “(20) GENERAL AVIATION AIRCRAFT.—The
8 term ‘general aviation aircraft’ means any airplane
9 or helicopter (including airframes and engines) not
10 used in commercial or contract carrying of pas-
11 sengers or freight, but which primarily engages in
12 the carrying of passengers.”.

13 (d) EFFECTIVE DATE.—This section shall be effec-
14 tive for property placed in service after December 31,
15 2012.

16 **SEC. 204. LIMITATION ON ITEMIZED DEDUCTIONS TO 28-**
17 **PERCENT RATE BRACKET.**

18 (a) IN GENERAL.—The Internal Revenue Code of
19 1986 is amended by inserting after section 68 the fol-
20 lowing new section:

21 **“SEC. 68A. BENEFIT OF ITEMIZED DEDUCTIONS LIMITED**
22 **TO 28-PERCENT RATE BRACKET.**

23 “(a) IN GENERAL.—In the case of an individual
24 whose adjusted gross income exceeds \$200,000 (\$250,000
25 in the case of a joint return), the amount of the itemized

1 deductions otherwise allowable for the taxable year shall
 2 be reduced by an amount necessary to increase the amount
 3 of regular tax liability of the taxpayer to an amount that
 4 would be imposed if such deductions reduced the regular
 5 tax liability by not more than the amount such deductions
 6 would reduce the tax imposed by section 1 on taxable in-
 7 come within the 28-percent bracket amount.

8 “(b) REGULAR TAX LIABILITY.—For purposes of
 9 this section, the term ‘regular tax liability’ has the mean-
 10 ing given such term by section 26(b).

11 “(c) COORDINATION WITH SECTION 68.—This sec-
 12 tion shall apply after the application of section 68.”.

13 (b) ALTERNATIVE MINIMUM TAX.—

14 (1) IN GENERAL.—Subsection (b) of section 55
 15 is amended by adding at the end the following new
 16 paragraph:

17 “(5) COORDINATION WITH SECTION 68A.—In
 18 the case of an individual, for purposes of paragraph
 19 (2), alternative minimum taxable income shall be de-
 20 termined by reducing the amount of any itemized
 21 deductions otherwise allowed in determining alter-
 22 native minimum taxable income by an amount which
 23 bears the same ratio to the amount by which the
 24 itemized deductions of the taxpayer were reduced for
 25 the taxable year under section 68A as—

1 “(A) the amount of itemized deductions
 2 otherwise allowed in determining the alternative
 3 minimum taxable income for the taxable year,
 4 bears to

5 “(B) the aggregate amount of itemized de-
 6 ductions of the taxpayer for the taxable year
 7 (determined without regard to section 68A).”.

8 (2) CONFORMING AMENDMENT.—Paragraph (1)
 9 of section 56(b) is amended by adding at the end the
 10 following new subparagraph:

11 “(G) SECTION 68A NOT APPLICABLE.—Sec-
 12 tion 68A shall not apply.”.

13 (c) CLERICAL AMENDMENT.—The table of sections
 14 for part I of subchapter B of chapter 1 is amended by
 15 adding at the end the following new item:

“Sec. 68A. Benefit of itemized deductions limited to 28-percent rate bracket.”.

16 (d) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to taxable years beginning after
 18 December 31, 2012.

19 **TITLE III—ELIMINATION OF TAX** 20 **LOOPHOLES FOR OFFSHOR-** 21 **ING MANUFACTURERS**

22 **SEC. 301. ENDING TAX BREAKS FOR OFFSHORING MANU-** 23 **FACTURERS.**

24 (a) GENERAL RULE.—Subsection (a) of section 954
 25 of the Internal Revenue Code of 1986 is amended by strik-

1 ing the period at the end of paragraph (5) and inserting
 2 “, and”, by redesignating paragraph (5) as paragraph (4),
 3 and by adding at the end the following new paragraph:

4 “(5) imported property income for the taxable
 5 year (determined under subsection (j) and reduced
 6 as provided in subsection (b)(5)).”.

7 (b) DEFINITION OF IMPORTED PROPERTY IN-
 8 COME.—Section 954 of the Internal Revenue Code of 1986
 9 is amended by adding at the end the following new sub-
 10 section:

11 “(j) IMPORTED PROPERTY INCOME.—

12 “(1) IN GENERAL.—For purposes of subsection
 13 (a)(5), the term ‘imported property income’ means
 14 income (whether in the form of profits, commissions,
 15 fees, or otherwise) derived in connection with—

16 “(A) manufacturing, producing, growing,
 17 or extracting imported property;

18 “(B) the sale, exchange, or other disposi-
 19 tion of imported property; or

20 “(C) the lease, rental, or licensing of im-
 21 ported property.

22 Such term shall not include any foreign oil and gas
 23 extraction income (within the meaning of section
 24 907(c)) or any foreign oil related income (within the
 25 meaning of section 907(c)).

1 “(2) IMPORTED PROPERTY.—For purposes of
2 this subsection—

3 “(A) IN GENERAL.—Except as otherwise
4 provided in this paragraph, the term ‘imported
5 property’ means property which is imported
6 into the United States by the controlled foreign
7 corporation or a related person.

8 “(B) IMPORTED PROPERTY INCLUDES CER-
9 TAIN PROPERTY IMPORTED BY UNRELATED
10 PERSONS.—The term ‘imported property’ in-
11 cludes any property imported into the United
12 States by an unrelated person if, when such
13 property was sold to the unrelated person by
14 the controlled foreign corporation (or a related
15 person), it was reasonable to expect that—

16 “(i) such property would be imported
17 into the United States; or

18 “(ii) such property would be used as
19 a component in other property which would
20 be imported into the United States.

21 “(C) EXCEPTION FOR PROPERTY SUBSE-
22 QUENTLY EXPORTED.—The term ‘imported
23 property’ does not include any property which is
24 imported into the United States and which—

1 “(i) before substantial use in the
 2 United States, is sold, leased, or rented by
 3 the controlled foreign corporation or a re-
 4 lated person for direct use, consumption,
 5 or disposition outside the United States; or

6 “(ii) is used by the controlled foreign
 7 corporation or a related person as a com-
 8 ponent in other property which is so sold,
 9 leased, or rented.

10 “(D) EXCEPTION FOR CERTAIN AGRICUL-
 11 TURAL COMMODITIES.—The term ‘imported
 12 property’ does not include any agricultural com-
 13 modity which is not grown in the United States
 14 in commercially marketable quantities.

15 “(3) DEFINITIONS AND SPECIAL RULES.—

16 “(A) IMPORT.—For purposes of this sub-
 17 section, the term ‘import’ means entering, or
 18 withdrawal from warehouse, for consumption or
 19 use. Such term includes any grant of the right
 20 to use intangible property (as defined in section
 21 936(h)(3)(B)) in the United States.

22 “(B) UNITED STATES.—For purposes of
 23 this subsection, the term ‘United States’ in-
 24 cludes the Commonwealth of Puerto Rico, the
 25 Virgin Islands of the United States, Guam,

1 American Samoa, and the Commonwealth of
2 the Northern Mariana Islands.

3 “(C) UNRELATED PERSON.—For purposes
4 of this subsection, the term ‘unrelated person’
5 means any person who is not a related person
6 with respect to the controlled foreign corpora-
7 tion.

8 “(D) COORDINATION WITH FOREIGN BASE
9 COMPANY SALES INCOME.—For purposes of this
10 section, the term ‘foreign base company sales
11 income’ shall not include any imported property
12 income.”.

13 (c) SEPARATE APPLICATION OF LIMITATIONS ON
14 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-
15 COME.—

16 (1) IN GENERAL.—Paragraph (1) of section
17 904(d) of the Internal Revenue Code of 1986 is
18 amended by striking “and” at the end of subpara-
19 graph (A), by redesignating subparagraph (B) as
20 subparagraph (C), and by inserting after subpara-
21 graph (A) the following new subparagraph:

22 “(B) imported property income, and”.

23 (2) IMPORTED PROPERTY INCOME DEFINED.—
24 Paragraph (2) of section 904(d) of such Code is
25 amended by redesignating subparagraphs (I), (J),

and (K) as subparagraphs (J), (K), and (L), respectively, and by inserting after subparagraph (H) the following new subparagraph:

“(I) IMPORTED PROPERTY INCOME.—The term ‘imported property income’ means any income received or accrued by any person which is of a kind which would be imported property income (as defined in section 954(j)).”.

(3) CONFORMING AMENDMENT.—Clause (ii) of section 904(d)(2)(A) of such Code is amended by inserting “or imported property income” after “passive category income”.

(d) TECHNICAL AMENDMENTS.—

(1) Clause (iii) of section 952(c)(1)(B) of the Internal Revenue Code of 1986 is amended—

(A) by redesignating subclauses (II), (III), (IV), and (V) as subclauses (III), (IV), (V), and (VI), and

(B) by inserting after subclause (I) the following new subclause:

“(II) imported property income,”.

(2) The last sentence of paragraph (4) of section 954(b) of such Code is amended by striking

1 “subsection (a)(5)” and inserting “subsection
2 (a)(4)”.

3 (3) Paragraph (5) of section 954(b) of such
4 Code is amended by striking “and the foreign base
5 company oil related income” and inserting “the for-
6 eign base company oil related income, and the im-
7 ported property income”.

8 (e) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years of foreign corpora-
10 tions beginning after the date of the enactment of this
11 Act, and to taxable years of United States shareholders
12 within which or with which such taxable years of such for-
13 eign corporations end.

14 **TITLE IV—ELIMINATION OF TAX**
15 **LOOPHOLES FOR OIL AND**
16 **GAS COMPANIES**

17 **SEC. 401. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**
18 **APPLICABLE TO MAJOR INTEGRATED OIL**
19 **COMPANIES WHICH ARE DUAL CAPACITY**
20 **TAXPAYERS.**

21 (a) IN GENERAL.—Section 901 of the Internal Rev-
22 enue Code of 1986 is amended by redesignating subsection
23 (n) as subsection (o) and by inserting after subsection (m)
24 the following new subsection:

1 “(n) SPECIAL RULES RELATING TO MAJOR INTE-
 2 GRATED OIL COMPANIES WHICH ARE DUAL CAPACITY
 3 TAXPAYERS.—

4 “(1) GENERAL RULE.—Notwithstanding any
 5 other provision of this chapter, any amount paid or
 6 accrued by a dual capacity taxpayer which is a
 7 major integrated oil company (as defined in section
 8 167(h)(5)(B)) to a foreign country or possession of
 9 the United States for any period shall not be consid-
 10 ered a tax—

11 “(A) if, for such period, the foreign coun-
 12 try or possession does not impose a generally
 13 applicable income tax, or

14 “(B) to the extent such amount exceeds
 15 the amount (determined in accordance with reg-
 16 ulations) which—

17 “(i) is paid by such dual capacity tax-
 18 payer pursuant to the generally applicable
 19 income tax imposed by the country or pos-
 20 session, or

21 “(ii) would be paid if the generally ap-
 22 plicable income tax imposed by the country
 23 or possession were applicable to such dual
 24 capacity taxpayer.

1 Nothing in this paragraph shall be construed to
 2 imply the proper treatment of any such amount not
 3 in excess of the amount determined under subpara-
 4 graph (B).

5 “(2) DUAL CAPACITY TAXPAYER.—For pur-
 6 poses of this subsection, the term ‘dual capacity tax-
 7 payer’ means, with respect to any foreign country or
 8 possession of the United States, a person who—

9 “(A) is subject to a levy of such country or
 10 possession, and

11 “(B) receives (or will receive) directly or
 12 indirectly a specific economic benefit (as deter-
 13 mined in accordance with regulations) from
 14 such country or possession.

15 “(3) GENERALLY APPLICABLE INCOME TAX.—
 16 For purposes of this subsection—

17 “(A) IN GENERAL.—The term ‘generally
 18 applicable income tax’ means an income tax (or
 19 a series of income taxes) which is generally im-
 20 posed under the laws of a foreign country or
 21 possession on income derived from the conduct
 22 of a trade or business within such country or
 23 possession.

1 “(B) EXCEPTIONS.—Such term shall not
2 include a tax unless it has substantial applica-
3 tion, by its terms and in practice, to—

4 “(i) persons who are not dual capacity
5 taxpayers, and

6 “(ii) persons who are citizens or resi-
7 dents of the foreign country or posses-
8 sion.”.

9 (b) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to taxes paid or accrued in
12 taxable years beginning after the date of the enact-
13 ment of this Act.

14 (2) CONTRARY TREATY OBLIGATIONS
15 UPHELD.—The amendments made by this section
16 shall not apply to the extent contrary to any treaty
17 obligation of the United States.

18 **SEC. 402. LIMITATION ON SECTION 199 DEDUCTION ATTRIB-**
19 **UTABLE TO OIL, NATURAL GAS, OR PRIMARY**
20 **PRODUCTS THEREOF.**

21 (a) DENIAL OF DEDUCTION.—Paragraph (4) of sec-
22 tion 199(c) of the Internal Revenue Code of 1986 is
23 amended by adding at the end the following new subpara-
24 graph:

1 “(E) SPECIAL RULE FOR CERTAIN OIL
 2 AND GAS INCOME.—In the case of any taxpayer
 3 who is a major integrated oil company (as de-
 4 fined in section 167(h)(5)(B)) for the taxable
 5 year, the term ‘domestic production gross re-
 6 ceipts’ shall not include gross receipts from the
 7 production, transportation, or distribution of
 8 oil, natural gas, or any primary product (within
 9 the meaning of subsection (d)(9)) thereof.”.

10 (b) EFFECTIVE DATE.—The amendment made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2012.

13 **SEC. 403. LIMITATION ON DEDUCTION FOR INTANGIBLE**
 14 **DRILLING AND DEVELOPMENT COSTS.**

15 (a) IN GENERAL.—Section 263(c) of the Internal
 16 Revenue Code of 1986 is amended by adding at the end
 17 the following new sentence: “This subsection shall not
 18 apply to amounts paid or incurred by a taxpayer in any
 19 taxable year in which such taxpayer is a major integrated
 20 oil company (as defined in section 167(h)(5)(B)).”.

21 (b) EFFECTIVE DATE.—The amendment made by
 22 this section shall apply to amounts paid or incurred in tax-
 23 able years beginning after December 31, 2012.

1 **SEC. 404. LIMITATION ON PERCENTAGE DEPLETION AL-**
 2 **LOWANCE FOR OIL AND GAS WELLS.**

3 (a) IN GENERAL.—Section 613A of the Internal Rev-
 4 enue Code of 1986 is amended by adding at the end the
 5 following new subsection:

6 “(f) APPLICATION WITH RESPECT TO MAJOR INTE-
 7 GRATED OIL COMPANIES.—In the case of any taxable year
 8 in which the taxpayer is a major integrated oil company
 9 (as defined in section 167(h)(5)(B)), the allowance for
 10 percentage depletion shall be zero.”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 this section shall apply to taxable years beginning after
 13 December 31, 2012.

14 **SEC. 405. LIMITATION ON DEDUCTION FOR TERTIARY**
 15 **INJECTANTS.**

16 (a) IN GENERAL.—Section 193 of the Internal Rev-
 17 enue Code of 1986 is amended by adding at the end the
 18 following new subsection:

19 “(d) APPLICATION WITH RESPECT TO MAJOR INTE-
 20 GRATED OIL COMPANIES.—This section shall not apply to
 21 amounts paid or incurred by a taxpayer in any taxable
 22 year in which such taxpayer is a major integrated oil com-
 23 pany (as defined in section 167(h)(5)(B)).”.

24 (b) EFFECTIVE DATE.—The amendment made by
 25 this section shall apply to amounts paid or incurred in tax-
 26 able years beginning after December 31, 2012.

1 **SEC. 406. REPEAL OF OUTER CONTINENTAL SHELF DEEP**
 2 **WATER AND DEEP GAS ROYALTY RELIEF.**

3 (a) IN GENERAL.—Sections 344 and 345 of the En-
 4 ergy Policy Act of 2005 (42 U.S.C. 15904, 15905) are
 5 repealed.

6 (b) ADMINISTRATION.—The Secretary of the Interior
 7 shall not be required to provide for royalty relief in the
 8 lease sale terms beginning with the first lease sale held
 9 on or after the date of enactment of this Act for which
 10 a final notice of sale has not been published.

11 **TITLE V—ENDING**
 12 **INTERNATIONAL TAX ABUSES**

13 **SEC. 501. ALLOCATION OF EXPENSES AND TAXES ON BASIS**
 14 **OF REPATRIATION OF FOREIGN INCOME.**

15 (a) IN GENERAL.—Part III of subchapter N of chap-
 16 ter 1 of the Internal Revenue Code of 1986 is amended
 17 by inserting after subpart G the following new subpart:
 18 **“Subpart H—Special Rules for Allocation of Foreign-**
 19 **Related Deductions and Foreign Tax Credits**

“Sec. 975. Deductions allocated to deferred foreign income may not offset
 United States source income.

“Sec. 976. Amount of foreign taxes computed on overall basis.

“Sec. 977. Application of subpart.

1 **“SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOR-**
 2 **EIGN INCOME MAY NOT OFFSET UNITED**
 3 **STATES SOURCE INCOME.**

4 “(a) CURRENT YEAR DEDUCTIONS.—For purposes
 5 of this chapter, foreign-related deductions for any taxable
 6 year—

7 “(1) shall be taken into account for such tax-
 8 able year only to the extent that such deductions are
 9 allocable to currently-taxed foreign income, and

10 “(2) to the extent not so allowed, shall be taken
 11 into account in subsequent taxable years as provided
 12 in subsection (b).

13 Foreign-related deductions shall be allocated to currently
 14 taxed foreign income in the same proportion which cur-
 15 rently taxed foreign income bears to the sum of currently
 16 taxed foreign income and deferred foreign income.

17 “(b) DEDUCTIONS RELATED TO REPATRIATED DE-
 18 FERRED FOREIGN INCOME.—

19 “(1) IN GENERAL.—If there is repatriated for-
 20 eign income for a taxable year, the portion of the
 21 previously deferred deductions allocated to the repa-
 22 triated foreign income shall be taken into account
 23 for the taxable year as a deduction allocated to in-
 24 come from sources outside the United States. Any
 25 such amount shall not be included in foreign-related

1 deductions for purposes of applying subsection (a) to
2 such taxable year.

3 “(2) PORTION OF PREVIOUSLY DEFERRED DE-
4 DUCTIONS.—For purposes of paragraph (1), the por-
5 tion of the previously deferred deductions allocated
6 to repatriated foreign income is—

7 “(A) the amount which bears the same
8 proportion to such deductions, as

9 “(B) the repatriated income bears to the
10 previously deferred foreign income.

11 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
12 poses of this section—

13 “(1) FOREIGN-RELATED DEDUCTIONS.—The
14 term ‘foreign-related deductions’ means the total
15 amount of deductions and expenses which would be
16 allocated or apportioned to gross income from
17 sources without the United States for the taxable
18 year if both the currently-taxed foreign income and
19 deferred foreign income were taken into account.

20 “(2) CURRENTLY-TAXED FOREIGN INCOME.—
21 The term ‘currently-taxed foreign income’ means the
22 amount of gross income from sources without the
23 United States for the taxable year (determined with-
24 out regard to repatriated foreign income for such
25 year).

1 “(3) DEFERRED FOREIGN INCOME.—The term
2 ‘deferred foreign income’ means the excess of—

3 “(A) the amount that would be includible
4 in gross income under subpart F of this part
5 for the taxable year if—

6 “(i) all controlled foreign corporations
7 were treated as one controlled foreign cor-
8 poration, and

9 “(ii) all earnings and profits of all
10 controlled foreign corporations were sub-
11 part F income (as defined in section 952),
12 over

13 “(B) the sum of—

14 “(i) all dividends received during the
15 taxable year from controlled foreign cor-
16 porations, plus

17 “(ii) amounts includible in gross in-
18 come under section 951(a).

19 “(4) PREVIOUSLY DEFERRED FOREIGN IN-
20 COME.—The term ‘previously deferred foreign in-
21 come’ means the aggregate amount of deferred for-
22 eign income for all prior taxable years to which this
23 part applies, determined as of the beginning of the
24 taxable year, reduced by the repatriated foreign in-
25 come for all such prior taxable years.

1 “(5) REPATRIATED FOREIGN INCOME.—The
 2 term ‘repatriated foreign income’ means the amount
 3 included in gross income on account of distributions
 4 out of previously deferred foreign income.

5 “(6) PREVIOUSLY DEFERRED DEDUCTIONS.—
 6 The term ‘previously deferred deductions’ means the
 7 aggregate amount of foreign-related deductions not
 8 taken into account under subsection (a) for all prior
 9 taxable years (determined as of the beginning of the
 10 taxable year), reduced by any amounts taken into
 11 account under subsection (b) for such prior taxable
 12 years.

13 “(7) TREATMENT OF CERTAIN FOREIGN
 14 TAXES.—

15 “(A) PAID BY CONTROLLED FOREIGN COR-
 16 PORATION.—Section 78 shall not apply for pur-
 17 poses of determining currently-taxed foreign in-
 18 come and deferred foreign income.

19 “(B) PAID BY TAXPAYER.—For purposes
 20 of determining currently-taxed foreign income,
 21 gross income from sources without the United
 22 States shall be reduced by the aggregate
 23 amount of taxes described in the applicable
 24 paragraph of section 901(b) which are paid by

1 the taxpayer (without regard to sections 902
2 and 960) during the taxable year.

3 “(8) COORDINATION WITH SECTION 976.—In
4 determining currently-taxed foreign income and de-
5 ferred foreign income, the amount of deemed foreign
6 tax credits shall be determined with regard to sec-
7 tion 976.

8 **“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON**
9 **OVERALL BASIS.**

10 “(a) CURRENT YEAR ALLOWANCE.—For purposes of
11 this chapter, the amount taken into account as foreign in-
12 come taxes for any taxable year shall be an amount which
13 bears the same ratio to the total foreign income taxes for
14 that taxable year as—

15 “(1) the currently-taxed foreign income for such
16 taxable year, bears to

17 “(2) the sum of the currently-taxed foreign in-
18 come and deferred foreign income for such year.

19 The portion of the total foreign income taxes for any tax-
20 able year not taken into account under the preceding sen-
21 tence for a taxable year shall only be taken into account
22 as provided in subsection (b) (and shall not be taken into
23 account for purposes of applying sections 902 and 960).

24 “(b) ALLOWANCE RELATED TO REPATRIATED DE-
25 FERRED FOREIGN INCOME.—

1 “(1) IN GENERAL.—If there is repatriated for-
 2 eign income for any taxable year, the portion of the
 3 previously deferred foreign income taxes paid or ac-
 4 crued during such taxable year shall be taken into
 5 account for the taxable year as foreign taxes paid or
 6 accrued. Any such taxes so taken into account shall
 7 not be included in foreign income taxes for purposes
 8 of applying subsection (a) to such taxable year.

9 “(2) PORTION OF PREVIOUSLY DEFERRED FOR-
 10 EIGN INCOME TAXES.—For purposes of paragraph
 11 (1), the portion of the previously deferred foreign in-
 12 come taxes allocated to repatriated deferred foreign
 13 income is—

14 “(A) the amount which bears the same
 15 proportion to such taxes, as

16 “(B) the repatriated deferred income bears
 17 to the previously deferred foreign income.

18 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
 19 poses of this section—

20 “(1) PREVIOUSLY DEFERRED FOREIGN INCOME
 21 TAXES.—The term ‘previously deferred foreign in-
 22 come taxes’ means the aggregate amount of total
 23 foreign income taxes not taken into account under
 24 subsection (a) for all prior taxable years (determined
 25 as of the beginning of the taxable year), reduced by

1 any amounts taken into account under subsection
 2 (b) for such prior taxable years.

3 “(2) TOTAL FOREIGN INCOME TAXES.—The
 4 term ‘total foreign income taxes’ means the sum of
 5 foreign income taxes paid or accrued during the tax-
 6 able year (determined without regard to section
 7 904(c)) plus the increase in foreign income taxes
 8 that would be paid or accrued during the taxable
 9 year under sections 902 and 960 if—

10 “(A) all controlled foreign corporations
 11 were treated as one controlled foreign corpora-
 12 tion, and

13 “(B) all earnings and profits of all con-
 14 trolled foreign corporations were subpart F in-
 15 come (as defined in section 952).

16 “(3) FOREIGN INCOME TAXES.—The term ‘for-
 17 eign income taxes’ means any income, war profits, or
 18 excess profits taxes paid by the taxpayer to any for-
 19 eign country or possession of the United States.

20 “(4) CURRENTLY-TAXED FOREIGN INCOME AND
 21 DEFERRED FOREIGN INCOME.—The terms ‘cur-
 22 rently-taxed foreign income’ and ‘deferred foreign in-
 23 come’ have the meanings given such terms by sec-
 24 tion 975(c).

1 **“SEC. 977. APPLICATION OF SUBPART.**

2 “This subpart—

3 “(1) shall be applied before subpart A, and

4 “(2) shall be applied separately with respect to
5 the categories of income specified in section
6 904(d)(1).”.

7 (b) CLERICAL AMENDMENT.—The table of subparts
8 for part III of subpart N of chapter 1 of such Code is
9 amended by inserting after the item relating to subpart
10 G the following new item:

“SUBPART H. SPECIAL RULES FOR ALLOCATION OF FOREIGN-RELATED
DEDUCTIONS AND FOREIGN TAX CREDITS.”.

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

14 **SEC. 502. EXCESS INCOME FROM TRANSFERS OF INTANGI-**
15 **BLES TO LOW-TAXED AFFILIATES TREATED**
16 **AS SUBPART F INCOME.**

17 (a) IN GENERAL.—Subsection (a) of section 954 of
18 the Internal Revenue Code of 1986 is amended by insert-
19 ing after paragraph (3) the following new paragraph:

20 “(4) the foreign base company excess intangible
21 income for the taxable year (determined under sub-
22 section (f) and reduced as provided in subsection
23 (b)(5)), and”.

1 (b) FOREIGN BASE COMPANY EXCESS INTANGIBLE
 2 INCOME.—Section 954 of such Code is amended by insert-
 3 ing after subsection (e) the following new subsection:

4 “(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE
 5 INCOME.—For purposes of subsection (a)(4) and this sub-
 6 section:

7 “(1) FOREIGN BASE COMPANY EXCESS INTAN-
 8 GIBLE INCOME DEFINED.—

9 “(A) IN GENERAL.—The term ‘foreign
 10 base company excess intangible income’ means,
 11 with respect to any covered intangible, the ex-
 12 cess of—

13 “(i) the sum of—

14 “(I) gross income from the sale,
 15 lease, license, or other disposition of
 16 property in which such covered intan-
 17 gible is used directly or indirectly, and

18 “(II) gross income from the pro-
 19 vision of services related to such cov-
 20 ered intangible or in connection with
 21 property in which such covered intan-
 22 gible is used directly or indirectly,
 23 over

24 “(ii) 150 percent of the costs properly
 25 allocated and apportioned to the gross in-

1 come taken into account under clause (i)
 2 other than expenses for interest and taxes
 3 and any expenses which are not directly al-
 4 locable to such gross income.

5 “(B) SAME COUNTRY INCOME NOT TAKEN
 6 INTO ACCOUNT.—If—

7 “(i) the sale, lease, license, or other
 8 disposition of the property referred to in
 9 subparagraph (A)(i)(I) is for use, con-
 10 sumption, or disposition in the country
 11 under the laws of which the controlled for-
 12 eign corporation is created or organized, or

13 “(ii) the services referred to in sub-
 14 paragraph (A)(i)(II) are performed in such
 15 country,

16 the gross income from such sale, lease, license,
 17 or other disposition, or provision of services,
 18 shall not be taken into account under subpara-
 19 graph (A)(i).

20 “(2) EXCEPTION BASED ON EFFECTIVE FOR-
 21 EIGN INCOME TAX RATE.—

22 “(A) IN GENERAL.—Foreign base company
 23 excess intangible income shall not include the
 24 applicable percentage of any item of income re-
 25 ceived by a controlled foreign corporation if the

1 taxpayer establishes to the satisfaction of the
 2 Secretary that such income was subject to an
 3 effective rate of income tax imposed by a for-
 4 eign country in excess of 5 percent.

5 “(B) APPLICABLE PERCENTAGE.—For
 6 purposes of subparagraph (A), the term ‘appli-
 7 cable percentage’ means the ratio (expressed as
 8 a percentage), not greater than 100 percent,
 9 of—

10 “(i) the number of percentage points
 11 by which the effective rate of income tax
 12 referred to in subparagraph (A) exceeds 5
 13 percentage points, over

14 “(ii) 10 percentage points.

15 “(C) TREATMENT OF LOSSES IN DETER-
 16 MINING EFFECTIVE RATE OF FOREIGN INCOME
 17 TAX.—For purposes of determining the effective
 18 rate of income tax imposed by any foreign
 19 country—

20 “(i) such effective rate shall be deter-
 21 mined without regard to any losses carried
 22 to the relevant taxable year, and

23 “(ii) to the extent the income with re-
 24 spect to such intangible reduces losses in
 25 the relevant taxable year, such effective

1 rate shall be treated as being the effective
 2 rate which would have been imposed on
 3 such income without regard to such losses.

4 “(3) COVERED INTANGIBLE.—The term ‘cov-
 5 ered intangible’ means, with respect to any con-
 6 trolled foreign corporation, any intangible property
 7 (as defined in section 936(h)(3)(B))—

8 “(A) which is sold, leased, licensed, or oth-
 9 erwise transferred (directly or indirectly) to
 10 such controlled foreign corporation from a re-
 11 lated person, or

12 “(B) with respect to which such controlled
 13 foreign corporation and one or more related
 14 persons has (directly or indirectly) entered into
 15 any shared risk or development agreement (in-
 16 cluding any cost sharing agreement).

17 “(4) RELATED PERSON.—The term ‘related
 18 person’ has the meaning given such term in sub-
 19 section (d)(3).”.

20 (c) SEPARATE BASKET FOR FOREIGN TAX CRED-
 21 IT.—Subsection (d) of section 904 of such Code is amend-
 22 ed by redesignating paragraph (7) as paragraph (8) and
 23 by inserting after paragraph (6) the following new para-
 24 graph:

1 “(6) SEPARATE APPLICATION TO FOREIGN
2 BASE COMPANY EXCESS INTANGIBLE INCOME.—

3 “(A) IN GENERAL.—Subsections (a), (b),
4 and (c) of this section and sections 902, 907,
5 and 960 shall be applied separately with respect
6 to each item of income which is taken into ac-
7 count under section 954(a)(4) as foreign base
8 company excess intangible income.

9 “(B) REGULATIONS.—The Secretary may
10 issue such regulations or other guidance as is
11 necessary or appropriate to carry out the pur-
12 poses of this subsection, including regulations
13 or other guidance which provides that related
14 items of income may be aggregated for pur-
15 poses of this paragraph.”.

16 (d) CONFORMING AMENDMENTS.—

17 (1) Paragraph (4) of section 954(b) of such
18 Code is amended by inserting “foreign base company
19 excess intangible income described in subsection
20 (a)(4) or” before “foreign base company oil-related
21 income” in the last sentence thereof.

22 (2) Subsection (b) of section 954 of such Code
23 is amended by adding at the end the following new
24 paragraph:

1 “(7) FOREIGN BASE COMPANY EXCESS INTAN-
 2 GIBLE INCOME NOT TREATED AS ANOTHER KIND OF
 3 BASE COMPANY INCOME.—Income of a corporation
 4 which is foreign base company excess intangible in-
 5 come shall not be considered foreign base company
 6 income of such corporation under paragraph (2),
 7 (3), or (5) of subsection (a).”.

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

11 **SEC. 503. LIMITATIONS ON INCOME SHIFTING THROUGH IN-**
 12 **TANGIBLE PROPERTY TRANSFERS.**

13 (a) CLARIFICATION OF DEFINITION OF INTANGIBLE
 14 ASSET.—Clause (vi) of section 936(h)(3)(B) of the Inter-
 15 nal Revenue Code of 1986 is amended by inserting “(in-
 16 cluding any section 197 intangible described in subpara-
 17 graph (A), (B), or (C)(i) of subsection (d)(1) of such sec-
 18 tion)” after “item”.

19 (b) CLARIFICATION OF ALLOWABLE VALUATION
 20 METHODS.—

21 (1) FOREIGN CORPORATIONS.—Paragraph (2)
 22 of section 367(d) of the Internal Revenue Code of
 23 1986 is amended by adding at the end the following
 24 new subparagraph:

1 “(D) REGULATORY AUTHORITY.—For pur-
 2 poses of the last sentence of subparagraph (A),
 3 the Secretary may require—

4 “(i) the valuation of transfers of in-
 5 tangible property on an aggregate basis, or

6 “(ii) the valuation of such a transfer
 7 on the basis of the realistic alternatives to
 8 such a transfer,

9 in any case in which the Secretary determines
 10 that such basis is the most reliable means of
 11 valuation of such transfers.”.

12 (2) ALLOCATION AMONG TAXPAYERS.—Section
 13 482 of such Code is amended by adding at the end
 14 the following: “For purposes of the preceding sen-
 15 tence, the Secretary may require the valuation of
 16 transfers of intangible property on an aggregate
 17 basis or the valuation of such a transfer on the basis
 18 of the realistic alternatives to such a transfer, in any
 19 case in which the Secretary determines that such
 20 basis is the most reliable means of valuation of such
 21 transfers.”.

22 (c) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by
 24 this section shall apply to transfers in taxable years

1 beginning after the date of the enactment of this
2 Act.

3 (2) NO INFERENCE.—Nothing in the amend-
4 ment made by subsection (a) shall be construed to
5 create any inference with respect to the application
6 of section 936(h)(3) of the Internal Revenue Code of
7 1986, or the authority of the Secretary of the Treas-
8 ury to provide regulations for such application, on or
9 before the date of the enactment of such amend-
10 ment.

11 **SEC. 504. LIMITATION ON EARNINGS STRIPPING BY EXPA-**
12 **TRIATED ENTITIES.**

13 (a) IN GENERAL.—Subsection (j) of section 163 of
14 the Internal Revenue Code of 1986 is amended—

15 (1) by redesignating paragraph (9) as para-
16 graph (10), and

17 (2) by inserting after paragraph (8) the fol-
18 lowing new paragraph:

19 “(9) SPECIAL RULES FOR EXPATRIATED ENTI-
20 TIES.—

21 “(A) IN GENERAL.—In the case of a cor-
22 poration to which this subsection applies which
23 is an expatriated entity, this subsection shall
24 apply to such corporation with the following
25 modifications:

1 “(i) Paragraph (2)(A) shall be applied
2 without regard to clause (ii) thereof.

3 “(ii) Paragraph (1)(B) shall be ap-
4 plied—

5 “(I) without regard to the par-
6 enthetical, and

7 “(II) by substituting ‘in the 1st
8 succeeding taxable year and in the
9 2nd through 10th succeeding taxable
10 years to the extent not previously
11 taken into account under this sub-
12 paragraph’ for ‘in the succeeding tax-
13 able year’.

14 “(iii) Paragraph (2)(B) shall be ap-
15 plied—

16 “(I) without regard to clauses (ii)
17 and (iii), and

18 “(II) by substituting ‘25 percent
19 of the adjusted taxable income of the
20 corporation for such taxable year’ for
21 the matter of clause (i)(II) thereof.

22 “(B) EXPATRIATED ENTITY.—For pur-
23 poses of this paragraph—

24 “(i) IN GENERAL.—With respect to a
25 corporation and a taxable year, the term

‘expatriated entity’ has the meaning given such term by section 7874(a)(2), determined as if such section and the regulations under such section as in effect on the first day of such taxable year applied to all taxable years of the corporation beginning after July 10, 1989.

“(ii) EXCEPTION FOR SURROGATES TREATED AS A DOMESTIC CORPORATION.—

The term ‘expatriated entity’ does not include a surrogate foreign corporation which is treated as a domestic corporation by reason of section 7874(b).”.

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

SEC. 505. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 of the Internal Revenue Code of 1986 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) SPECIAL RULES RELATING TO DUAL CAPACITY TAXPAYERS.—

1 “(1) GENERAL RULE.—Notwithstanding any
 2 other provision of this chapter, any amount paid or
 3 accrued by a dual capacity taxpayer or any member
 4 of the worldwide affiliated group of which such dual
 5 capacity taxpayer is also a member to any foreign
 6 country or to any possession of the United States
 7 for any period shall not be considered a tax to the
 8 extent such amount exceeds the amount (determined
 9 in accordance with regulations) which would have
 10 been required to be paid if the taxpayer were not a
 11 dual capacity taxpayer.

12 “(2) DUAL CAPACITY TAXPAYER.—For pur-
 13 poses of this subsection, the term ‘dual capacity tax-
 14 payer’ means, with respect to any foreign country or
 15 possession of the United States, a person who—

16 “(A) is subject to a levy of such country or
 17 possession, and

18 “(B) receives (or will receive) directly or
 19 indirectly a specific economic benefit (as deter-
 20 mined in accordance with regulations) from
 21 such country or possession.

22 “(3) REGULATIONS.—The Secretary may issue
 23 such regulations or other guidance as is necessary or
 24 appropriate to carry out the purposes of this sub-
 25 section.”.

1 (b) CONTRARY TREATY OBLIGATIONS UPHELD.—

2 The amendments made by this section shall not apply to
3 the extent contrary to any treaty obligation of the United
4 States.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to amounts that, if such amounts
7 were an amount of tax paid or accrued, would be consid-
8 ered paid or accrued in taxable years beginning after De-
9 cember 31, 2012.

10 **SEC. 506. SEPARATE BASKET TREATMENT TAXES PAID ON**
11 **FOREIGN OIL AND GAS INCOME.**

12 (a) SEPARATE BASKET FOR FOREIGN TAX CRED-
13 IT.—Paragraph (1) of section 904(d) of the Internal Rev-
14 enue Code of 1986 is amended by striking “and” at the
15 end of subparagraph (A), by striking the period at the
16 end of subparagraph (B) and inserting “, and”, and by
17 adding at the end the following:

18 “(C) combined foreign oil and gas income
19 (as defined in section 907(b)(1)).”.

20 (b) COORDINATION.—Section 904(d)(2) of such Code
21 is amended by redesignating subparagraphs (J) and (K)
22 as subparagraphs (K) and (L) and by inserting after sub-
23 paragraph (I) the following:

24 “(J) COORDINATION WITH COMBINED FOR-
25 EIGN OIL AND GAS INCOME.—For purposes of

1 this section, passive category income and gen-
 2 eral category income shall not include combined
 3 foreign oil and gas income (as defined in section
 4 907(b)(1)).”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Section 907(a) of such Code is hereby re-
 7 pealed.

8 (2) Section 907(c)(4) of such Code is hereby re-
 9 pealed.

10 (3) Section 907(f) of such Code is hereby re-
 11 pealed.

12 (d) EFFECTIVE DATES.—

13 (1) IN GENERAL.—The amendments made by
 14 this section shall apply to taxable years beginning
 15 after December 31, 2012.

16 (2) TRANSITIONAL RULES.—

17 (A) CARRYOVERS.—Any unused foreign oil
 18 and gas taxes which under section 907(f) of
 19 such Code (as in effect before the amendment
 20 made by subsection (c)(3)) would have been al-
 21 lowable as a carryover to the taxpayer’s first
 22 taxable year beginning after December 31,
 23 2012 (without regard to the limitation of para-
 24 graph (2) of such section 907(f) for first tax-
 25 able year) shall be allowed as carryovers under

1 section 904(c) of such Code in the same man-
 2 ner as if such taxes were unused taxes under
 3 such section 904(c) with respect to foreign oil
 4 and gas extraction income.

5 (B) LOSSES.—The amendment made by
 6 subsection (c)(2) shall not apply to foreign oil
 7 and gas extraction losses arising in taxable
 8 years beginning on or before the date of the en-
 9 actment of this Act.

10 **TITLE VI—FINANCIAL CRISIS** 11 **RESPONSIBILITY FEE**

12 **SEC. 601. DEFINITIONS AND SPECIAL RULES.**

13 (a) DEFINITIONS.—In this title, the following defini-
 14 tions shall apply:

15 (1) APPROPRIATE FEDERAL AGENCY.—The
 16 term “appropriate Federal agency” means—

17 (A) for a covered firm that is a bank hold-
 18 ing company, a savings and loan holding com-
 19 pany, any company controlled by a bank hold-
 20 ing company or savings and loan institution
 21 (other than a depository institution), a state
 22 member bank, a branch or agency of a foreign
 23 bank, a foreign bank that does not operate an
 24 insured branch, an agency or commercial lend-
 25 ing company other than a Federal agency or

1 any company that controls a registered broker
 2 or dealer but does not also control an insured
 3 depository institution, the Board of Governors
 4 of the Federal Reserve System;

5 (B) for a covered firm that is a national
 6 banking association, a Federal branch or agen-
 7 cy of a foreign bank, or a federal savings asso-
 8 ciation, the Office of the Comptroller of the
 9 Currency;

10 (C) for a covered firm that is a state non-
 11 member insured bank, a foreign bank that has
 12 an insured branch, a state savings association,
 13 or a company that controls an insured deposi-
 14 tory institution and is not regulated as a bank
 15 holding company or a savings and loan associa-
 16 tion holding company, the Federal Deposit In-
 17 surance Corporation; and

18 (D) for a covered firm that is a covered
 19 broker or dealer, the Securities and Exchange
 20 Commission.

21 (2) BANK HOLDING COMPANY.—The term
 22 “bank holding company” has the same meaning as
 23 in section 3(w)(2) of the Federal Deposit Insurance
 24 Act (12 U.S.C. 1813(w)(2)).

1 (3) COVERED BROKER OR DEALER.—The term
 2 “covered broker or dealer” means a broker or dealer
 3 designated by the Board of Governors of the Federal
 4 Reserve System or the Federal Reserve Bank of
 5 New York as a primary dealer in government debt
 6 instruments.

7 (4) COVERED FIRM.—The term “covered firm”
 8 means any corporation or other entity that is orga-
 9 nized under the laws of the United States or any
 10 state or territory thereof if—

11 (A) as of January 14, 2012, such corpora-
 12 tion or other entity was, or is at any time dur-
 13 ing a the beginning of the fiscal year for which
 14 this section is applicable, an insured depository
 15 institution, a bank holding company, a savings
 16 and loan holding company, a company that di-
 17 rectly or indirectly controls an insured deposi-
 18 tory institution, a covered broker or dealer, or
 19 a company that directly or indirectly controls a
 20 covered broker or dealer; and

21 (B) has \$50,000,000,000 or more in total
 22 consolidated balance sheet assets that are asso-
 23 ciated with activities that are permissible for a
 24 bank holding company or a financial holding
 25 company under sections 3 and 4 of the Bank

1 Holding Company Act of 1956 (12 U.S.C. 1842
2 and 1843) at the beginning of the fiscal year.

3 (5) FEE.—The term “fee” means the Financial
4 Crisis Responsibility Fee authorized under section
5 502.

6 (6) FINANCIAL HOLDING COMPANY.—The term
7 “financial holding company” has the same meaning
8 as in section 2(p) of the Bank Holding Company Act
9 of 1956, (12 U.S.C. 1841(2)(q)).

10 (7) FISCAL YEAR.—The term “fiscal year”
11 means the Government’s fiscal year beginning on
12 October 1.

13 (8) FOREIGN BANKING ORGANIZATION.—The
14 term “foreign banking organization” means—

15 (A) a foreign bank, as defined in section
16 1(b)(7) of the International Banking Act of
17 1978 (12 U.S.C. 3101(7)), that—

18 (i) operates a branch, agency, or com-
19 mercial lending company subsidiary in the
20 United States;

21 (ii) controls a bank in the United
22 States; or

23 (iii) controls an Edge corporation ac-
24 quired after March 5, 1987; and

1 (B) any company that directly or indirectly
2 controls the foreign bank.

3 (9) SECRETARY.—The term “Secretary” means
4 the Secretary of the Treasury.

5 (10) TOP-TIER COVERED FIRM.—The term
6 “top-tier covered firm” means a covered firm that
7 controls one or more other covered firms but is not
8 itself directly or indirectly controlled by another cov-
9 ered firm.

10 (11) ADDITIONAL DEFINITIONS.—For purposes
11 of this chapter, the terms “insured depository insti-
12 tution” and “savings and loan holding company”
13 shall have the same meanings as in section 3 of the
14 Federal Deposit Insurance Act (12 U.S.C. 1813).

15 (b) SPECIAL RULES.—

16 (1) DETERMINATION OF CONTROL.—For pur-
17 poses of this Act, a person shall be considered to
18 control another person if the first such person di-
19 rectly or indirectly owns (or otherwise has the power
20 to vote) 25 percent or more of any class of voting
21 securities of the second such person.

22 (2) TREATMENT OF CERTAIN AFFILIATED COM-
23 PANIES.—For purposes of determining the applica-
24 bility of this Act and the amount of the Fee payable
25 under section 502, the total consolidated balance

1 sheet assets of any two or more corporations or
2 other entities that are organized under the laws of
3 the United States or any state or territory thereof
4 that each meet any of the criteria described in sub-
5 section (a)(4)(A) and that are under common con-
6 trol, directly or indirectly, by the same person but
7 that are not under common control, directly or indi-
8 rectly, by any top-tier covered firm shall be consoli-
9 dated together. If, following such consolidation, the
10 amount and other characteristics of the combined
11 balance sheet assets of such firms satisfy the criteria
12 specified in subsection (a)(4)(B), each such firm
13 shall be deemed a covered firm and the resulting
14 amount of fee shall be appropriately apportioned by
15 the Secretary.

16 **SEC. 602. FINANCIAL CRISIS RESPONSIBILITY FEE.**

17 (a) AMOUNT TO BE COLLECTED.—In order to re-
18 cover the costs to the Federal Government of assistance
19 provided through the Troubled Asset Relief Program and
20 other Federal programs and activities, the Secretary, dur-
21 ing the 10-year period beginning in fiscal year 2014 and
22 continuing through the end of fiscal year 2023, shall as-
23 sess a risk-based Financial Crisis Responsibility Fee that
24 shall collect a total of \$30,000,000,000, net of any esti-

1 mated corporate income tax deductions attributable to the
 2 Fee, during that period.

3 (b) ASSESSMENT AND SCHEDULE.—

4 (1) IN GENERAL.—To collect the fee authorized
 5 by this section, the Secretary shall establish, by reg-
 6 ulation, an assessment schedule by fiscal year, in-
 7 cluding assessment base and rates, that—

8 (A) is designed, in the Secretary’s judg-
 9 ment, to result in the collection of a total of
 10 \$30,000,000,000, net of the estimated cor-
 11 porate income tax deduction, by the end of fis-
 12 cal year 2023; and

13 (B) shall apply to—

14 (i) a top-tiered covered firm, with re-
 15 spect to the group consisting of such top-
 16 tier covered firm and each other covered
 17 firm controlled by such top-tier covered
 18 firm; and

19 (ii) a covered firm, if such covered
 20 firm is not controlled by a top-tier covered
 21 firm.

22 (2) PHASE IN.—To promote the full recovery of
 23 the economy and financial sector, the Secretary shall
 24 phase-in the assessment rate over the 10-year pe-
 25 riod, in a manner determined by the Secretary.

1 (c) ANNUAL ADJUSTMENT.—For each fiscal year,
2 starting with fiscal year 2015, the Secretary—

3 (1) shall apply the fee to—

4 (A) a top-tiered covered firm, with respect
5 to the group consisting of such top-tier covered
6 firm and each other covered firm controlled by
7 such top-tier covered firm; and

8 (B) a covered firm, if such covered firm is
9 not controlled by a top-tier covered firm; and

10 (2) shall adjust the rates under this subsection
11 in a manner that is designed, in the judgment of the
12 Secretary, to result in the collection of a total of
13 \$30,000,000,000, net of the estimated corporate in-
14 come tax deduction, by the end of fiscal year 2023.

15 (d) EXTENSION OF THE FINANCIAL CRISIS RESPON-
16 SIBILITY FEE.—

17 (1) IN GENERAL.—If the estimated cost of the
18 Troubled Asset Relief Program, as projected in the
19 Fiscal Year 2024 Budget of the U.S. Government,
20 exceeds the total fee collections received as of the
21 end of Fiscal Year 2023, the Secretary shall extend
22 the operation of the Fee beyond the end of fiscal
23 year 2023 in order to collect such excess amount.

24 (2) ASSESSMENT SCHEDULE UNDER EXTEN-
25 SION.—In order to collect, by the end of fiscal year

2028, the excess amount determined under paragraph (d), the Secretary shall establish, by regulation, an assessment schedule, including assessment base and rates, that—

(A) is designed, in the judgment of the Secretary, to result in the collection of such excess amount by the end of fiscal year 2028; and

(B) shall apply to—

(i) a top-tiered covered firm, with respect to the group consisting of such top-tier covered firm and each other covered firm controlled by such top-tier covered firm; and

(ii) a covered firm, if such covered firm is not controlled by a top-tier covered firm.

(3) ANNUAL ADJUSTMENT.—For each fiscal year, starting with fiscal year 2024, the Secretary—

(A) shall apply the fee required by this section to—

(i) a top-tiered covered firm, with respect to the group consisting of such top-tier covered firm and each other covered firm controlled by such top-tier covered firm; and

1 (ii) a covered firm, if such covered
2 firm is not controlled by a top-tier covered
3 firm; and

4 (B) shall adjust the rates under this sub-
5 section in a manner that is designed, in the
6 judgment of the Secretary, to result in the col-
7 lection of such excess amount as may be deter-
8 mined under this section by the end of fiscal
9 year 2028.

10 (e) DEPOSIT OF COLLECTIONS.—All amounts col-
11 lected pursuant to the fee, during fiscal year 2014 and
12 each fiscal year thereafter (including during the extension
13 period, if applicable)—

14 (1) shall be deposited and credited as general
15 revenue of the Treasury for the purposes of deficit
16 reduction; and

17 (2) shall not be available for obligation.

18 **SEC. 603. OTHER PROVISIONS.**

19 (a) ASSISTANCE WITH ASSESSMENT AND COLLEC-
20 TION.—The appropriate Federal agencies shall respond
21 promptly to any request for information or assistance from
22 the Secretary with regard to the determination or collec-
23 tion of any Fee to be determined or imposed under this
24 Act.

1 (b) SEVERABILITY; RULE OF CONSTRUCTION.—It is
 2 the intent of Congress that the provisions of this Act be
 3 severable, and be construed to avoid the constitutional in-
 4 validity of any provision of the Act or any application of
 5 any provision of the Act to any person or circumstance.
 6 If a provision of this Act is held invalid, all valid provisions
 7 shall remain in effect. If a provision of this Act is held
 8 invalid in one or more of its applications to any person
 9 or circumstance, the Act shall remain in effect in all its
 10 valid applications. In any challenge to the constitutionality
 11 of any provision of this Act, a reviewing court shall con-
 12 strue such provision as necessary to avoid any constitu-
 13 tional invalidity.

14 **TITLE VII—TAX ON TRADING** 15 **TRANSACTIONS**

16 **SEC. 701. TRANSACTION TAX.**

17 (a) IN GENERAL.—Chapter 36 of the Internal Rev-
 18 enue Code of 1986 is amended by inserting after sub-
 19 chapter B the following new subchapter:

20 **“Subchapter C—Tax on Trading Transactions**

“Sec. 4475. Tax on trading transactions.

21 **“SEC. 4475. TAX ON TRADING TRANSACTIONS.**

22 “(a) IMPOSITION OF TAX.—There is hereby imposed
 23 a tax on each covered transaction with respect to any secu-
 24 rity.

1 “(b) RATE OF TAX.—The tax imposed under sub-
 2 section (a) with respect to any covered transaction shall
 3 be 0.03 percent of the specified base amount with respect
 4 to such covered transaction.

5 “(c) SPECIFIED BASE AMOUNT.—For purposes of
 6 this section, the term ‘specified base amount’ means—

7 “(1) except as provided in paragraph (2), the
 8 fair market value of the security (determined as of
 9 the time of the covered transaction), and

10 “(2) in the case of any payment described in
 11 subsection (h), the amount of such payment.

12 “(d) COVERED TRANSACTION.—For purposes of this
 13 section, the term ‘covered transaction’ means—

14 “(1) except as provided in paragraph (2), any
 15 purchase if—

16 “(A) such purchase occurs or is cleared on
 17 a facility located in the United States, or

18 “(B) the purchaser or seller is a United
 19 States person, and

20 “(2) any transaction with respect to a security
 21 described in subparagraph (D), (E), or (F) of sub-
 22 section (e)(1), if—

23 “(A) such security is traded or cleared on
 24 a facility located in the United States, or

1 “(B) any party with rights under such se-
2 curity is a United States person.

3 “(e) SECURITY AND OTHER DEFINITIONS.—For pur-
4 poses of this section—

5 “(1) IN GENERAL.—The term ‘security’
6 means—

7 “(A) any share of stock in a corporation,

8 “(B) any partnership or beneficial owner-
9 ship interest in a partnership or trust,

10 “(C) any note, bond, debenture, or other
11 evidence of indebtedness,

12 “(D) any evidence of an interest in, or a
13 derivative financial instrument with respect to,
14 any security or securities described in subpara-
15 graph (A), (B), or (C),

16 “(E) any derivative financial instrument
17 with respect to any currency or commodity, and

18 “(F) any notional principal contract.

19 “(2) DERIVATIVE FINANCIAL INSTRUMENT.—
20 The term ‘derivative financial instrument’ includes
21 any option, forward contract, futures contract, or
22 any similar financial instrument.

23 “(3) NOTIONAL PRINCIPAL CONTRACT.—Except
24 as otherwise provided by the Secretary, the term ‘no-
25 tional principal contract’ means any financial instru-

1 ment which requires two or more payments at speci-
 2 fied intervals calculated by reference to a specified
 3 index upon one or more notional principal amounts.
 4 An amount shall not fail to be treated as a payment
 5 described in the preceding sentence merely because
 6 such amount is fixed on one date and paid or other-
 7 wise taken into account on a different date.

8 “(4) SPECIFIED INDEX.—The term ‘specified
 9 index’ means any 1 or more of any combination of—

10 “(A) a fixed rate, price, or amount, or

11 “(B) a variable rate, price, or amount,

12 “(C) any index based on any objectively
 13 determinable information (including the occur-
 14 rence or nonoccurrence of any event) which is
 15 not within the control of any of the parties to
 16 the instrument and is not unique to any of the
 17 parties’ circumstances, and

18 “(D) any other index as the Secretary may
 19 prescribe.

20 “(5) TREATMENT OF EXCHANGES.—

21 “(A) IN GENERAL.—An exchange shall be
 22 treated as the sale of the property transferred
 23 and a purchase of the property received by each
 24 party to the exchange.

1 “(B) CERTAIN DEEMED EXCHANGES.—In
 2 the case of a distribution treated as an ex-
 3 change for stock under section 302 or 331, the
 4 corporation making such distribution shall be
 5 treated as having purchased such stock for pur-
 6 poses of this section.

7 “(f) EXCEPTIONS.—

8 “(1) EXCEPTION FOR INITIAL ISSUES.—No tax
 9 shall be imposed under subsection (a) on any cov-
 10 ered transaction with respect to the initial issuance
 11 of any security described in subparagraph (A), (B),
 12 or (C) of subsection (e)(1).

13 “(2) EXCEPTION FOR CERTAIN TRADED SHORT-
 14 TERM INDEBTEDNESS.—A note, bond, debenture, or
 15 other evidence of indebtedness which—

16 “(A) is traded on a trading facility located
 17 in the United States, and

18 “(B) has a fixed maturity of not more
 19 than 100 days,
 20 shall not be treated as described in subsection
 21 (e)(1)(C).

22 “(3) EXCEPTION FOR SECURITIES LENDING AR-
 23 RANGEMENTS.—No tax shall be imposed under sub-
 24 section (a) on any covered transaction with respect

1 to which gain or loss is not recognized by reason of
 2 section 1058.

3 “(g) BY WHOM PAID.—

4 “(1) IN GENERAL.—The tax imposed by this
 5 section shall be paid by—

6 “(A) in the case of a transaction which oc-
 7 curs or is cleared on a facility located in the
 8 United States, such facility, and

9 “(B) in the case of a purchase not de-
 10 scribed in subparagraph (A) which is executed
 11 by a broker (as defined in section 6045(c)(1))
 12 which is a United States person, such broker.

13 “(2) SPECIAL RULES FOR DIRECT, ETC.,
 14 TRANSACTIONS.—In the case of any transaction to
 15 which paragraph (1) does not apply, the tax imposed
 16 by this section shall be paid by—

17 “(A) in the case of a transaction described
 18 in subsection (d)(1)—

19 “(i) the purchaser if the purchaser is
 20 a United States person, and

21 “(ii) the seller if the purchaser is not
 22 a United States person, and

23 “(B) in the case of a transaction described
 24 in subsection (d)(2)—

1 “(i) the payor if the payor is a United
2 States person, and

3 “(ii) the payee if the payor is not a
4 United States person.

5 “(h) CERTAIN PAYMENTS TREATED AS SEPARATE
6 TRANSACTIONS.—Except as otherwise provided by the
7 Secretary, any payment with respect to a security de-
8 scribed in subparagraph (D), (E), or (F) of subsection
9 (e)(1) shall be treated as a separate transaction for pur-
10 poses of this section, including—

11 “(1) any net initial payment, net final or termi-
12 nating payment, or net periodical payment with re-
13 spect to a notional principal contract (or similar fi-
14 nancial instrument),

15 “(2) any payment with respect to any forward
16 contract (or similar financial instrument), and

17 “(3) any premium paid with respect to any op-
18 tion (or similar financial instrument).

19 “(i) APPLICATION TO TRANSACTIONS BY CON-
20 TROLLED FOREIGN CORPORATIONS.—

21 “(1) IN GENERAL.—For purposes of this sec-
22 tion, a controlled foreign corporation shall be treated
23 as a United States person.

24 “(2) SPECIAL RULES FOR PAYMENT OF TAX ON
25 DIRECT, ETC., TRANSACTIONS.—In the case of any

1 transaction which is a covered transaction solely by
2 reason of paragraph (1) and which is not described
3 in subsection (g)(1)—

4 “(A) PAYMENT BY UNITED STATES SHARE-
5 HOLDERS.—Any tax which would (but for this
6 paragraph) be payable under subsection (g)(2)
7 by the controlled foreign corporation shall, in
8 lieu thereof, be paid by the United States
9 shareholders of such controlled foreign corpora-
10 tion as provided in subparagraph (B).

11 “(B) PRO RATA SHARES.—Each such
12 United States shareholder shall pay the same
13 proportion of such tax as—

14 “(i) the stock which such United
15 States shareholder owns (within the mean-
16 ing of section 958(a)) in such controlled
17 foreign corporation, bears to

18 “(ii) the stock so owned by all United
19 States shareholders in such controlled for-
20 eign corporation.

21 “(C) DEFINITIONS.—For purposes of this
22 subsection, the terms ‘United States share-
23 holder’ and ‘controlled foreign corporation’ have
24 the meanings given such terms in sections
25 951(b) and 957(a), respectively.

1 “(j) ADMINISTRATION.—The Secretary shall carry
 2 out this section in consultation with the Securities and Ex-
 3 change Commission and the Commodity Futures Trading
 4 Commission.

5 “(k) GUIDANCE; REGULATIONS.—The Secretary
 6 shall—

7 “(1) provide guidance regarding such informa-
 8 tion reporting concerning covered transactions as the
 9 Secretary deems appropriate, and

10 “(2) prescribe such regulations as are necessary
 11 or appropriate to prevent avoidance of the purposes
 12 of this section, including the use of non-United
 13 States persons in such transactions.”.

14 (b) CREDIT WITH RESPECT TO CERTAIN TAX-FA-
 15 VORED ACCOUNTS TO OFFSET TRANSACTION TAX.—

16 (1) IN GENERAL.—Subpart C of part IV of sub-
 17 chapter A of chapter 1 of such Code is amended by
 18 inserting after section 36B the following new sec-
 19 tion:

20 **“SEC. 36C. OFFSET FOR TRANSACTION TAX WITH RESPECT**
 21 **TO CERTAIN TAX-FAVORED ACCOUNTS.**

22 “(a) IN GENERAL.—There shall be allowed as a cred-
 23 it against the tax imposed by this subtitle for the taxable
 24 year an amount equal to 0.03 percent of the qualified tax-

1 favored account contributions of the taxpayer for the tax-
 2 able year.

3 “(b) QUALIFIED TAX-FAVORED ACCOUNT CON-
 4 TRIBUTIONS.—For purposes of this section, the term
 5 ‘qualified tax-favored account contributions’ means, with
 6 respect to any taxable year, the sum of—

7 “(1) with respect to qualified retirement plans
 8 (as defined in section 4974(c)) of the taxpayer, the
 9 amount contributed to such plans for such taxable
 10 year to the extent that such contributions are allow-
 11 able as a deduction or are excludable from gross in-
 12 come (or, in the case of a Roth IRA (as defined in
 13 section 408A(b)), the amount contributed),

14 “(2) with respect to Archer MSAs of the tax-
 15 payer, the amount allowed as a deduction under sec-
 16 tion 220 for such taxable year,

17 “(3) with respect to health savings accounts of
 18 the taxpayer, the amount allowed as a deduction
 19 under section 223 for such taxable year, plus

20 “(4) with respect to qualified tuition programs
 21 (as defined in section 529) and Coverdell education
 22 savings accounts (as defined in section 530) with re-
 23 spect to which the taxpayer is the designated bene-
 24 ficiary (or, in the case of a designated beneficiary
 25 with respect to whom another taxpayer is allowed a

1 deduction under section 151, such other taxpayer in
 2 lieu of such designated beneficiary), the amount con-
 3 tributed for such taxable year.”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 1324(b)(2) of title 31, United
 6 States Code, is amended by inserting “, 36C”
 7 after “36B”.

8 (B) The table of sections for subpart C of
 9 part IV of subchapter A of chapter 1 of the In-
 10 ternal Revenue Code of 1986 is amended by in-
 11 serting before the item relating to section 37
 12 the following new item:

“Sec. 36C. Offset for transaction tax on contributions to certain tax-favored ac-
 counts.”.

13 (c) INFORMATION REPORTING WITH RESPECT TO
 14 CONTROLLED FOREIGN CORPORATIONS.—Subparagraph
 15 (B) of section 6038(a)(1) is amended by inserting “and
 16 transactions which are covered transactions for purposes
 17 of section 4475 by reason of the application of section
 18 4475(i)(1) to such corporation” before the semicolon at
 19 the end.

20 (d) CLERICAL AMENDMENT.—The table of sub-
 21 chapters for chapter 36 of the Internal Revenue Code of
 22 1986 is amended by inserting after the item relating to
 23 subchapter B the following new item:

“Subchapter C. Tax on trading transactions.”.

1 (e) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to transactions after December 31,
 3 2013.

4 **TITLE VIII—MODIFICATION OF** 5 **ACCOUNTING RULES**

6 **SEC. 801. REPEAL OF LAST-IN, FIRST-OUT METHOD OF IN-** 7 **VENTORY.**

8 (a) IN GENERAL.—Subpart D of part II of sub-
 9 chapter E of chapter 1 is amended by striking sections
 10 472 (relating to last-in, first-out inventories), 473 (relat-
 11 ing to qualified liquidations of LIFO inventories), and 474
 12 (relating to simplified dollar-value LIFO method for cer-
 13 tain small businesses).

14 (b) CONFORMING AMENDMENTS.—

15 (1)(A) Section 312(n) is amended by striking
 16 paragraph (4) and by redesignating paragraphs (5)
 17 through (8) as paragraphs (4) through (7), respec-
 18 tively.

19 (B) Section 312(n)(7), as redesignated by sub-
 20 paragraph (A), is amended—

21 (i) by striking “paragraphs (4) and (6)” in
 22 subparagraph (A) and inserting “paragraph
 23 (5)”, and

24 (ii) by striking “paragraph (5)” in sub-
 25 paragraph (B) and inserting “paragraph (4)”.

1 (C) Section 56(g)(4)(D) is amended by striking
 2 clause (iii) and by redesignating clause (iv) as clause
 3 (iii).

4 (2) Section 1363 is amended by striking sub-
 5 section (d).

6 (c) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendments made by
 8 this section shall apply to taxable years beginning
 9 after the date of the enactment of this Act.

10 (2) CHANGE IN METHOD OF ACCOUNTING.—In
 11 the case of any taxpayer required by the amend-
 12 ments made by this section to change its method of
 13 accounting for its first taxable year beginning after
 14 the date of the enactment of this Act—

15 (A) such change shall be treated as initi-
 16 ated by the taxpayer,

17 (B) such change shall be treated as made
 18 with the consent of the Secretary of the Treas-
 19 ury, and

20 (C) if the net amount of the adjustments
 21 required to be taken into account by the tax-
 22 payer under section 481 of the Internal Rev-
 23 enue Code of 1986 is positive, such amount
 24 shall be taken into account over a period of 8
 25 years beginning with such first taxable year.

1 **SEC. 802. REPEAL OF LOWER OF COST OR MARKET METH-**
2 **OD OF INVENTORY.**

3 (a) IN GENERAL.—Section 471 is amended by redес-
4 ignating subsection (c) as subsection (d) and by inserting
5 after subsection (b) the following new subsection:

6 “(c) INVENTORIES TAKEN INTO ACCOUNT AT
7 COST.—A method of determining inventories shall not be
8 treated as clearly reflecting income unless such method
9 provides that inventories shall be taken into account at
10 cost.”.

11 (b) EFFECTIVE DATE.—

12 (1) IN GENERAL.—The amendments made by
13 this section shall apply to taxable years beginning
14 after the date of the enactment of this Act.

15 (2) CHANGE IN METHOD OF ACCOUNTING.—In
16 the case of any taxpayer required by the amend-
17 ments made by this section to change its method of
18 accounting for its first taxable year beginning after
19 the date of the enactment of this Act—

20 (A) such change shall be treated as initi-
21 ated by the taxpayer,

22 (B) such change shall be treated as made
23 with the consent of the Secretary of the Treas-
24 ury, and

25 (C) if the net amount of the adjustments
26 required to be taken into account by the tax-

1 payer under section 481 of the Internal Rev-
 2 enue Code of 1986 is positive, such amount
 3 shall be taken into account over a period of 8
 4 years beginning with such first taxable year.

5 **TITLE IX—FAIR TREATMENT OF** 6 **OPTIONS**

7 **SEC. 901. CONSISTENT TREATMENT OF STOCK OPTIONS BY** 8 **CORPORATIONS.**

9 (a) CONSISTENT TREATMENT FOR WAGE DEDUC-
 10 TION.—

11 (1) IN GENERAL.—Section 83(h) is amended—

12 (A) by striking “In the case of” and in-
 13 serting:

14 “(1) IN GENERAL.—In the case of”, and

15 (B) by adding at the end the following new
 16 paragraph:

17 “(2) STOCK OPTIONS.—In the case of property
 18 transferred to a person in connection with a stock
 19 option, any deduction related to such stock option
 20 shall be allowed only under section 162(q) and para-
 21 graph (1) shall not apply.”.

22 (2) TREATMENT OF COMPENSATION PAID WITH
 23 STOCK OPTIONS.—Section 162 is amended by redes-
 24 ignating subsection (q) as subsection (r) and by in-

1 serting after subsection (p) the following new sub-
 2 section:

3 “(q) TREATMENT OF COMPENSATION PAID WITH
 4 STOCK OPTIONS.—

5 “(1) IN GENERAL.—In the case of compensa-
 6 tion for personal services that is paid with stock op-
 7 tions, the deduction under subsection (a)(1) shall
 8 not exceed the amount the taxpayer has treated as
 9 compensation cost with respect to such stock options
 10 for the purpose of ascertaining income, profit, or
 11 loss in a report or statement to shareholders, part-
 12 ners, or other proprietors (or to beneficiaries), and
 13 shall be taken into account in the same period that
 14 such compensation cost is recognized for such pur-
 15 pose.

16 “(2) SPECIAL RULES FOR CONTROLLED
 17 GROUPS.—The Secretary may prescribe rules for the
 18 application of paragraph (1) in cases where the
 19 stock option is granted by—

20 “(A) a parent or subsidiary corporation
 21 (within the meaning of section 424) of the tax-
 22 payer, or

23 “(B) another corporation.”.

1 (b) CONSISTENT TREATMENT FOR RESEARCH TAX
 2 CREDIT.—Section 41(b)(2)(D) is amended by inserting at
 3 the end the following new clause:

4 “(iv) SPECIAL RULE FOR STOCK OP-
 5 TIONS.—The amount which may be treated
 6 as wages for any taxable year in connec-
 7 tion with the issuance of a stock option
 8 shall not exceed the amount allowed for
 9 such taxable year as a compensation de-
 10 duction under section 162(q) with respect
 11 to such stock option.”.

12 (c) APPLICATION OF AMENDMENTS.—The amend-
 13 ments made by this section shall apply to stock options
 14 exercised after the date of the enactment of this Act, ex-
 15 cept that—

16 (1) such amendments shall not apply to stock
 17 options that were granted before such date and that
 18 vested in taxable periods beginning on or before
 19 June 15, 2005,

20 (2) for stock options that were granted before
 21 such date of enactment and vested during taxable
 22 periods beginning after June 15, 2005, and ending
 23 before such date of enactment, a deduction under
 24 section 162(q) of the Internal Revenue Code of 1986
 25 (as added by subsection (a)(2)) shall be allowed in

1 the first taxable period of the taxpayer that ends
 2 after such date of enactment,

3 (3) for public entities reporting as small busi-
 4 ness issuers and for non-public entities required to
 5 file public reports of financial condition, paragraphs
 6 (1) and (2) shall be applied by substituting “Decem-
 7 ber 15, 2005” for “June 15, 2005”, and

8 (4) no deduction shall be allowed under section
 9 83(h) or section 162(q) of such Code with respect to
 10 any stock option the vesting date of which is
 11 changed to accelerate the time at which the option
 12 may be exercised in order to avoid the applicability
 13 of such amendments.

14 **SEC. 902. APPLICATION OF EXECUTIVE PAY DEDUCTION**
 15 **LIMIT.**

16 (a) IN GENERAL.—Subparagraph (D) of section
 17 162(m)(4) is amended to read as follows:

18 “(D) STOCK OPTION COMPENSATION.—
 19 The term ‘applicable employee remuneration’
 20 shall include any compensation deducted under
 21 subsection (q), and such compensation shall not
 22 qualify as performance-based compensation
 23 under subparagraph (C).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to stock options exercised or grant-
3 ed after the date of the enactment of this Act.

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