WASHINGTON, MONDAY, MARCH 22, 2004

Vol. 150  No. 36

THE JOURNAL

House of Representatives

The House met at noon and was called to order by the Speaker pro tempore (Mr. PETRI).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:


I hereby appoint the Honorable THOMAS E. PETRI to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

The heavens proclaim Your glory, O God, and the firmament reveals Your handiwork. Day pours out the word today, and night after night tells the story.

No speech, no word, no sound is needed. Yet throughout all Earth Your voice is heard to the ends of the world this message.

At the beginning of each day the sun comes forth like a bridegroom from his bridal chamber, like a champion ready to run its course.

So fill the Nation this day with blessings, Lord. May Your presence permeate all that is living and justice flourish among Your people, now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day’s proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The Chair will lead the House in the Pledge of Allegiance.

Speaker of the House of Representatives.

APPOINTMENT OF MEMBERS TO POLICY COMMITTEE OF WHITE HOUSE CONFERENCE ON AGING

The SPEAKER pro tempore. Pursuant to section 211 of the Older Americans Act Amendments of 2000 (42 U.S.C. 3001 Note), and the order of the House of December 8, 2003, the Chair announces the Speaker’s appointment of the following Members on the part of the House to the Policy Committee of the White House Conference on Aging: Mr. E. Clay Shaw, Jr., Fort Lauderdale, Florida; and Mr. Howard P. (Buck) McKeon, Santa Clarita, California.

ADJOURNMENT

The SPEAKER pro tempore. Without objection, the House stands adjourned until 12:30 p.m. tomorrow for morning hour debates.

There was no objection. Accordingly (at 12 o’clock and 3 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, March 23, 2004, at 12:30 p.m., for morning hour debates.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker’s table and referred as follows:


7201. A letter from the Under Secretary, Department of Defense, transmitting a report required pursuant to section 12302 of title 1, United States Code, section 12302, relating to those units of the Ready Reserve of the Armed Forces that remained on active duty under the provisions of section 12302 as of January 1, 2004; to the Committee on Armed Services.

7202. A letter from the Secretary, Department of Health and Human Services, transmitting the twenty-fourth annual report on the implementation of the Age Discrimination Act of 1975 by departments and agencies which administer programs of Federal financial assistance, pursuant to 42 U.S.C. 6306(a)(b); to the Committee on Education and the Workforce.


H1326

CONGRESSIONAL RECORD — HOUSE

March 22, 2004


7210. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Community-Based Urban and Per-Urban Drinking Water Capacity-Building in Africa — received March 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

7209. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of Implementation Plans; Indiana [IN158-1a; FRL-7626-7] received March 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

7208. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of Implementation Plans; Maine; Approval of State Implementation Plan Revision to PM10 PSD Increments [R01-OAR-2004-ME-0001; A-1-FRL-7625-3] received March 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

7211. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of Air Quality Implementation Plans; Kentucky Update to Materials Incorporated by Reference; Technical Correction [KY-200404(c); FRL-7636-9] received March 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

7212. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Approval and Promulgation of Air Quality Implementation Plans; South Coast Air Quality Management District [CA-287-0428a; FRL-7628-3] received March 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

7214. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department’s report entitled “Country Reports on Human Rights Practices for 2003,” pursuant to 22 U.S.C. 7215(d); to the Committee on International Relations.

7215. A letter from the Director, Office of Personnel Management, transmitting OPM’s Fiscal Year 2003 Annual Report to Congress on the Federal Equal Opportunity Recruitment Program (FEDRP), pursuant to 5 U.S.C. 7201(e); to the Committee on Government Reform.

7216. A letter from the Assistant Attorney General for Administration, Department of Justice, transmitting the ninth annual report on the Communications Assistance for Law Enforcement Act (CALEA) of 1994, as amended, pursuant to Public Law 103-414; to the Committee on the Judiciary.

7217. A letter from the Secretary, Department of Health and Human Services, transmitting the Department’s Annual Report On Child Welfare Outcomes 2003, pursuant to Public Law 105-89, section 203(a) (111 Stat. 1217); to the Committee on Ways and Means.

7218. A letter from the Acting Director, Defense Security Cooperation Agency, Department of Defense, transmitting notification of the Department of State’s intent to initiate the FY 2004 International Military Education and Training funds for Algeria, pursuant to Public Law 108-199, jointly to the Committees on International Relations and Appropriations.

7219. A letter from the Secretary, Department of Health and Human Services, transmitting the Department’s report entitled, “National Coverage Determinations for Fiscal Year 2002,” pursuant to Public Law 106-554 section523(a), jointly to the Committees on Ways and Means and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

The following reports were filed on March 19, 2004:

Mr. NUSSELE: Committee on the Budget.

House Concurrent Resolution 393. Resolution establishing the congressional budget for the United States Government for fiscal year 2005 and setting forth appropriate budgetary levels for fiscal years 2004 and 2006 through 2009 (Rept. 108-441). Referred to the Committee on the Whole House on the State of the Union.

Mr. NUSSELE: Committee on the Budget.

H.R. 3973 A bill to amend part C of the Balanced Budget and Emergency Deficit Control Act of 1985 to extend the discretionary spending limits and pay-as-you-go through fiscal year 2009; with an amendment (Rept. 106-442). Referred to the Committee of the Whole House on the State of the Union.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 489: Mr. MCCOTTER and Mr. MILLER of Florida.

H.R. 1872: Mr. CASE.

H.R. 2402: Mr. MCHUGH.

H.R. 3023: Ms. CORRINE BROWN of Florida, Mr. FOLEY, and Ms. DEGETTE.

H.R. 3062: Mr. TOWNS, Ms. LEE, Mr. BOUCHER, Mr. LUCAS of Kentucky, Mr. CRAMER, Ms. MCCARTHY of Missouri, Mr. SESSIONS, and Mr. PASTOR.

H.R. 3966: Mr. FOLEY, Mr. MCKEON, Mrs. MILLER of Michigan, Mr. MEEK of Florida, Mr. FRANKS of Arizona, and Mr. BACHUS.

H.R. 3974: Mr. MILLER of Florida and Mr. GARRETT of New Jersey.

H. Res. 60: Mr. GARRETT of New Jersey, Ms. HARRIS, and Mr. UPTON.

H. Res. 532: Ms. BALDWIN.
The Senate met at 12 noon and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray. O God, our Creator and Preserver, who displays Your glory in the beauty of the seasons, thank You for the light of day and for blessings beyond our deserving. Thank You for the gift of redemption and for the opportunity to be Your salvation instruments in a world of pain. Forgive us when we miss opportunities to reveal Your character to a sometimes cynical world.

Bless Your Senators today. Give them grace to fill every hour with efforts that will truly make a difference. Endow them with insight to solve the riddles that challenge our world. Use each of us, Lord, to advance Your kingdom of good will upon Earth.

We pray this in Your holy Name, Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. McCONNELL. Mr. President, today the Senate will conduct a period of morning business until 2 p.m. and then resume consideration of the JOBS bill, also known as FSC/ETI.

As announced by the majority leader before the recess, there will be no roll-call votes today. Chairman GRASSLEY will be here to work through consideration of pending amendments. We want to encourage Members to come to the floor for debate through the day.

The next vote will occur sometime tomorrow, Tuesday. We will notify all Members when we can lock in a time certain for any rollcall votes.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

THIS WEEK’S SCHEDULE

Mr. DASCHLE. Mr. President, I urge Senators to come to the floor. I was just discussing with the distinguished acting majority leader the schedule for the week. There are a number of amendments that could be offered with time agreements that we might be able to work through reaching an agreement on the overall list of amendments to be offered. Many would like to complete work on the bill. We could at the end of the day have a pretty good vote on the legislation that is pending. There are a number of critical amendments that our colleagues want to have considered, but I think we can work through those on a timely basis.

I look forward to more discussions with our Republican friends with regard to the schedule and the list of amendments to be offered.

GOVERNMENT WORKING FOR THE PEOPLE

Mr. DASCHLE. Mr. President, we spend a lot of time here in the Capitol talking about the abstract effects of policy. But when we go home, we see firsthand the challenges and pain so many of our constituents are facing.

I spent the last week in South Dakota. We have a higher percentage of our National Guard and Reserve units activated than almost any other State. South Dakotans are united in our support for all the men and women who are risking their lives to defend our freedom. We are proud that America looks out for the men and women of our military.

But we need to look out for people here at home, too. We need leadership that fights for American workers and families, not against them. That is what I heard, over and over again, from people in South Dakota.

Last Tuesday, I held a town hall meeting in Spearfish, in the Black Hills. Among the people who came were a couple I have known for years.

Donna Smith is a newspaper reporter for the Black Hills Pioneer. She is one of the best journalists in my State; I have tremendous respect for her skill and fairness.

Over the years, I have seen Donna at many meetings. But this time was different. This time she was there not as a reporter but as an American who needs help.

Donna and Larry Smith have been married for 29 years. They have six children.

Larry Smith is tall and athletic. He takes good care of his health. Unfortunately, he inherited some bad genes; his arteries clog. He had his first heart bypass surgery when he was 47 years old and his second one a year later.

Everything was fine for almost 11 years. Then, about a year ago, Larry started feeling constant, debilitating pain in his legs and hips.

Larry works at a casino in the Black Hills. He was a machinist all his working life, but he switched to cashier because he couldn't take the walking involved in his old job; it hurt too much.

Last February, he had a stent placed in his heart. His doctors determined that the pain was being caused by a build-up of plaque in Larry's arteries. They said the only place he could find a vascular surgeon skilled enough to clear the blockages was at the Mayo Clinic in Rochester, MN.
Larry had that surgery. He was at the Mayo Clinic nearly a month. Donna was with him the whole time. Their insurance company paid most of the hospital bills.

But there were lots of out-of-pocket costs insurance didn’t cover:
The lost income from the time both Larry and Donna had to take off from their jobs; the cost of getting to and from the Mayo Clinic; the cost of Donna’s insulin; the $2,000 annual deductible the Smiths had to pay before their insurance coverage kicked in; the $200 they spend every month on the prescription drugs Larry takes to control his blood pressure and other health conditions.

In addition, Donna is a diabetic and a cancer survivor. They spend another $150 a month on her prescriptions.

Then there are the health insurance premiums: $270 a month for Larry and $150 a month for Donna.

Add it all up and, suddenly, a couple who had worked hard all their lives and put six children through college is drowning in a sea of medical debt—$18,000 in debt.

Larry and Donna Smith have done everything they can to honor their debts. They sold their home. They now live in a smaller, rented house. They have borrowed money from friends.

They have borrowed money from their children. Talking about that is one of the few times Donna cries. “How demeaning,” she says, “to have to ask your children for money. We’re at a time in our lives when we ought to be showering our grandchildren with gifts, but we can’t. We can’t even pay our bills.”

Creditors started threatening lawsuits. Bill collectors called at home and work. They garnished Donna’s wages.

In January—less than a year after Larry’s surgery at Mayo—the pain in his legs came back. It’s worse than ever now. It hurts him to lift the bags of coins at the casino. It hurts him just to walk.

But he still works five nights a week; he can’t afford to take time off.

Two weeks ago, Donna decided there was nothing else they could do, no one else they could borrow money from. So they filed for bankruptcy.

On April 6, Larry Smith is scheduled to go back to the Mayo Clinic to see if there is anything else that can be done. Donna says they have no choice. Without medical help, Larry is at increased risk of a heart attack or stroke or amputation.

The people at Mayo have generously offered to “work with” the Smiths to meet the $2,000 deductible.

Donna was $2,000 a month where she’ll stay this time. She says maybe she’ll sleep in the car.

There’s something else Donna Smith doesn’t know. As she puts it, “I don’t know how to give up. This is my husband. This is the man I’ve spent my whole life with, the man who fathered my children, and who worked hard all his life to support us.

She said, “We know that there are hundreds of thousands of other people going through this, too. You pay for health insurance and you always believe that everything will be covered, but it is not. The safety net is not there, and sometimes you have nothing.

“If people are just supposed to give up, how do you do that?” Donna asks. “How do you just give up on the life of someone you love?”

Larry Smith and I talked for quite a while last week. I found out later that he spent 48 hours thinking about exactly what he would say so that I would understand how fragile economic security has become for so many middle-class families. All over this country, people who have done everything right—people who have worked for decades, bought their own homes, put their children through college, saved for their retirements—are finding they are just one medical emergency, one pink slip, one fink’inlay away from serious economic trouble. The social and economic safety net that used to protect families is being shredded. Health care costs that used to be manageable are bankrupting families and businesses.

Last Thursday, I had another town hall meeting in Aberdeen, my hometown. That afternoon I got a fax from a general manager of a farmers’ cooperative grain elevator in the nearby town of Florentine. His name is Steve Schlenner. He said 3 years ago the health care premiums for the co-op’s employees went up 38 percent. The next year they went up another 28 percent. Last year they increased another 24 percent. This year they had to lay off one of their workers so they could afford health insurance for the other workers.

He asks: How are we ever going to get people back to work if the companies are taking more and more of our profits every year? At this rate, only the rich will be able to afford insurance in the future. . . . The average middle-class family in America needs to be put on the endangered species list if we sit back and do not address these insurance issues and high unemployment rates.

He ends his fax by saying:

Thank you for taking my comments seriously. They represent the thoughts and feelings of quite a few people in this area.

All of us, Democrats and Republicans, need to comments from people like Donna and Larry Smith and Steve Schlenner seriously. Donna and Larry are luckier than many Americans. They have insurance. More than 43 million Americans have no health insurance. We must work together to make health insurance affordable again and health care accessible to all Americans.

We need to fix what is wrong with the new Medicare prescription drug program. At a minimum, we need to end the government program that prevents the Government from negotiating better prices for seniors. We need to allow the safe reimportation of drugs from Canada and other countries where they are less expensive. We need new policies that create good jobs in America.

There are 8.2 million Americans out of work. Two million have been out of work for the last 6 months or longer. It is not their fault they cannot find jobs. Last month, the economy created only 21,000 new jobs—all of them Government jobs, none in the private sector. Mr. President, 21,000 jobs; that is one new job for every 389 unemployed workers.

The administration and some of our Republican colleagues say the economy is getting stronger. I guess I would ask, whose economy? Not the 8.2 million Americans who want to work but cannot find jobs; not the 43 million Americans without health insurance; not the millions of Americans who are working harder than ever and taking on more debt than ever before; not the 8.2 million Americans who have no jobs and no health insurance and no hope for the future. We need trade and tax policies that reward companies for creating jobs in America—not for shipping American jobs overseas. We need to help workers who are hurt by outsourcing, and make sure they get access to health care and job training while they get back on their feet.

Unless we act to prevent it, 9 days from today, on March 31, the Government will stop paying unemployment insurance benefits to workers who have already exhausted their State benefits. We must let the people who need to extend Federal unemployment insurance benefits now.

Also, at the end of this month, the Federal Government and the Department of Labor will issue new regulations effectively ending overtime pay for 6 million American workers. The Senate voted 51-48, on a bipartisan basis to reject that change when the White House proposed it, but the House rejected it. Somehow, behind closed doors, someone slipped it into a conference report that had to pass or most of the Federal Government would have been shut down.

That is wrong. The Senate should reject this bad idea and the underhanded way it was handled. We should vote to protect the 40-hour workweek and overtime pay. Working families cannot afford a cut in pay.

A week ago today, Lead-Deadwood High School held its annual Government Day. Students at the school spent the day shadowing local government officials, observing firsthand how democracy in America works. In a story about the program, on the front page of the Black Hills Pioneer, the students talked about how interesting it was to see Government work for people. That story was written by Donna Smith. Despite all of their struggles, she and her husband still believe Government can be a good government. They and millions of other Americans, are looking to us for help. As we begin this next work period, let’s vow not to disappoint them.

I yield the floor.
MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MARRIAGE

Mr. CORNYN. Mr. President, I want to say a few words about a hearing we are going to have tomorrow in the Senate Judiciary Committee on the subject of marriage. I know the last thing I thought I would be doing, coming from Texas to Washington, DC, would be talking about traditional marriage, but such are the times we live in.

Earlier this month I chaired a hearing in the Judiciary Committee's Subcommittee on the Constitution regarding the U.S. Supreme Court's decision last summer in Lawrence v. Texas, as well as the Goodridge decision from the Massachusetts Supreme Court that resulted from it, and the subsequent explosion of the marriage controversy across America. I thought we had a very thought-provoking discussion, a bipartisan discussion, and one that will continue at our hearing tomorrow where proposed constitutional language is the subject.

At the hearing earlier this month I was moved by the sentiments of Pastor Daniel de Leon of the Templo Calvario Church in California and Rev. Richard Richardson of the African Methodist Episcopal Church in Boston, who we were honored to have in attendance.

Both testified they would rather be at home than having to defend traditional marriage here in Washington. But it is because of the work they do in their own communities, because they see the results of the decline of marriage in their communities every day, that they believe traditional marriage is so important and worth defending.

This is a discussion we will continue to have in the coming months. I believe it is vital that we have a national discussion on the importance of this institution, and a discussion based upon the facts.

In recent months, a lot of people have spent time talking about the benefits of marriage for adults. They have talked about hospital visiting rights and inheritance problems, even though many of these issues can be solved simply and quickly by statute or arrangements that can be achieved by simply signing a few simple documents.

This discussion, in terms of the benefits to adults, has included discussion of Government benefits, even though with the burdens, and the actual financial ramifications of these benefits are a matter for future debate.

Today it is time to turn the debate to what I believe is an even more important issue—children, the benefits of marriage to children.

It is easy for some people to step back and say: The same-sex marriage controversy doesn't affect me. But the facts, demonstrated by experiments in other countries, show otherwise. The facts show us this issue affects everyone, but especially children. None of us can pretend to ignore this issue, and none of us can afford to be neutral on this subject.

Scandinavia has treated same-sex households as marriage for more than a decade. This practice was instituted in Denmark in 1989, in Norway in 1993, and in Sweden in 1994. The direct reaction was relatively small. Very few people were characterized as being part of this new arrangement, and to this day the number of participating individuals and households remains low.

The greatest effect was not on those who had sought the new institution but, in fact, on society at large. Sad to say, there has been an enormous rise in family dissolution and out-of-wedlock childbirths in these countries since they embraced the institution of same-sex marriage.

Today, about 15 years after Denmark created this new institution, a majority of children in Scandinavia are born out of wedlock, including more than 50 percent of children in Norway and 55 percent of children in Sweden. In Denmark, a full 60 percent of first-born children have unmarried parents. In Scandinavia as a whole, traditional marriage is passed on to children, to the extent that we have a wealth of social science research from hundreds of sources over the course of decades which consistently reflects both the positive ramifications for children of a stable traditional marriage, and the negative effects of family breakup.

Marriage provides the basis for the family, which remains the strongest and most important social unit. Countless statistics and research attest to this fact. It is not ideal to raise children outside of marriage. While everyone is free to choose his or her own path, no one considers it the best arrangement for raising children—with good reason. Indeed, we have a wealth of social science research from hundreds of sources over the course of decades which consistently reflects both the positive ramifications for children of a stable traditional marriage, and the negative effects of family breakup.

Marriage provides the basis for the family, which remains the strongest and most important social unit. Countless statistics and research attest to this fact. It is not ideal to raise children outside of marriage. While everyone is free to choose his or her own path, no one wishes divorce on children but, rather, a happy and stable home.

In America, we have made the decision that we ought to particularly encourage and support those who marry and have children. This is a partisan issue. As one of the most distinguished Democratic Members of this body, Senator Moynihan, observed more than a decade ago, we must stop "the breakup of family inevitably" as best we can:

"[T]he principal social objective of the American national government at every period should be to see that children are born into intact families and that they remain so."
We don’t raise our neighbor’s children as our own, but we do help all the children in our community every time we affirm and reinforce marriage—through our speech, through our action, through our culture, and through our wallets. It is a position reinforced throughout the land, and our experienced, and I believe it is a good one. Government cannot be neutral, should not be neutral, nor should it pretend it is possible to be neutral when it comes to children and families.

Most advocates take for granted that traditional marriage as we know it today will always exist. But that is sadly proving to be a mistake. We see in Scandinavia why that assumption is a mistake.

Across this country today, renegade judges and some local officials are attempting to radically redefine this traditional institution. Lawsuits seeking to dismantle traditional marriage have already been filed in Federal court and State courts in Massachusetts. New York, Nebraska, Utah, Florida, Indiana, Iowa, Georgia, West Virginia, Arizona, Alaska, Hawaii, New Jersey, Connecticut, Oregon, Washington, California, and Vermont, as well as my home State of Texas. According to The New York Times, we can expect lawsuits in 46 States by residents who have traveled to San Francisco in recent weeks to receive a marriage license, then return and claim the validity of that marriage under the laws of their home State.

Louis Brandeis famously described the States as “laboratories for democracy.” But he was, of course, referring to representative government in the States and not to the courts. Given how this litigation has spread, it appears that judicial activists bent on experimenting with the institution of marriage will have every possible opportunity to do so.

The American people are not persuaded that this radical redefinition of marriage is needed or that it is a good thing. When given the opportunity in the voting booth, they have always supported traditional marriage clearly and forthrightly.

While The New York Times recently described the law on this subject in California as “murky,” the California family code clearly defines traditional marriage in an initiative enacted by voters 4 years ago by 61 percent majority.

Rather than believing this discussion is altogether a bad thing, I believe there is a lot of good to be had out of a national discussion on the issue and importance of traditional marriage, supporting family life as providing the best hope for raising children. Those of us on the side of traditional marriage, though, must not flinch in the face of opposition and our experiences, and I believe it is a good one. Government cannot be neutral, should not be neutral, nor should it pretend it is possible to be neutral when it comes to children and families.

Some activists believe traditional marriage itself is about discrimination, that all traditional marriage laws are unconstitutional and must, therefore, be abolished by the courts. Indeed, that is what the court in Massachusetts said. These activists found friends in four justices in Massachusetts who were legislating from the bench and who contended that traditional marriage is “rooted in persistent prejudices” and represents “invidious discrimination.” Those are not my words. Those are the words of the four justices who struck down traditional marriage laws in Massachusetts.

Indeed, these justices even claim that traditional marriage is not in the best interest of children. They accuse others of using the marginal fault of the constitutional amendment itself to make the Constitution into a moral code. Yet they are the ones writing the American people out of our constitutional democracy.

In the face of similar arguments, Hawaiians and Alaskans a number of years ago took preemptive action when they were faced with State constitutional challenges to their traditional marriage laws. Citizens of Nebraska, Nevada, and other States have also taken preemptive action under their State constitutions before suits were even filed.

Interestingly, in the hearing we had just a couple weeks ago, we heard from Nebraska Attorney General Jon Bruning, who said that while his state had a constitutional Defense of Marriage Amendment, even that amendment has now been challenged in Federal Court by the American Civil Liberties Union, who claim that this state constitutional provision itself violates the Federal Constitution.

The threat to traditional marriage is now a Federal threat, and a Federal constitutional amendment is the only way to preserve traditional marriage laws nationwide before it is too late.

We affirm and reinforce marriage—through our culture, and through our wallets. It is a position reinforced throughout the land, and our experienced, and I believe it is a good one. Government cannot be neutral, should not be neutral, nor should it pretend it is possible to be neutral when it comes to children and families.

More than 50 million people have traveled to San Francisco in recent weeks to receive a marriage license, then return and claim the validity of that marriage under the laws of their home State.

The American people are not persuaded otherwise, we have a duty to see their representatives, to defend the laws they passed and to not let those who would take the law into their own hands reshape society according to their whim.

We can be confident in the fact a constitutional amendment is the only way to preserve traditional marriage laws in America—requiring, as it does, two thirds of the Congress to pass a constitutional resolution and three quar-
why I believe it is likely to get even worse.

One major oil company, Shell, has announced it is deliberately shutting a 70,000-barrel-per-day refinery in Bakersfield, CA. This refinery is critical to the West Coast market. The fact is, when Shell permanently constricts gasoline supplies and drives up prices along the West Coast, our area, which already has staggeringly high unemployment, is going to be hit very hard.

Earlier this month, at a Senate Energy Committee hearing, I asked the Administrator of the Energy Information Administration whether the closing of Shell’s Bakersfield refinery could boost West Coast prices even higher. That day he agreed that could be the result of that refinery shutting down. Yet, in the face of these kinds of problems, the response of the Federal Government is simply to sit on the sidelines.

Shell’s announcement of its decision to close the Bakersfield refinery claimed in a statement that there is simply not enough crude supply to ensure the viability of the refinery in the long term. Recent news articles have reported that Powerine, the company document revealed if the refinery in question, Powerine, was re-started, the additional gasoline supply on the market could bring down gas prices and refinery prices by 2 cents to 3 cents per gallon. If oil companies in the mid-1990s could raise prices by 2 cents to 3 cents per gallon, you can’t tell me the shutdown of a refinery with 3½ times the capacity will not have an even larger impact on prices at the pump. What makes Shell’s decision to close its Bakersfield refinery especially curious is it seems the company has done virtually nothing proactively to find a buyer. But, to date, in spite of my requests and the requests of others, the Federal Trade Commission has made no effort to stop or even slow plans for Shell’s refinery closure. The Federal Trade Commission has been arguing they can only prosecute if they find out-and-out blatant collusion, setting out a standard that is virtually impossible to prove against these very savvy oil interests. But in this case the Federal Trade Commission has the authority to act because the Agency allowed two megamergers to go through that directly affect the refinery Shell now plans to shut down. The Federal Trade Commission had a chance to act when it allowed Shell to acquire full ownership of the Bakersfield refinery in 2001 from a Shell-Texaco partnership.

The Energy Department had another chance to act when it allowed Shell to acquire Pennzoil-Quaker State in 2002. Then last November, when Shell announced it was closing the Bakersfield refinery, the Federal Trade Commission had a third chance to act, using its continuing authority to re-examine these earlier mergers.

I say it is time to get the Federal Trade Commission off the sidelines and onto the side of the consumer who is getting shellacked at gasoline pumps all across America. Today I am calling on the Federal Trade Commission to exercise its continuing authority over these past mergers and to either block the shutdown of Shell’s Bakersfield refinery or to otherwise keep refineries in that area viable. That set of decisions will affect the entire west coast gasoline market. At a time when our economy is being hit so hard, it is absolutely critical to prevent the problem from getting worse.

The Energy Department ought to be doing more to address the problem of high gasoline prices, but at a minimum the Energy Department should not be making the problem worse. When Secretary Abraham was recently asked about the problem of rising gasoline prices, he told reporters he was extremely concerned but did not specify the Department would do anything. One thing that could be done by the Department that would help address the problem is the Energy Department could stop making the current supply situation worse by taking oil from the tight U.S. market to fill the Strategic Petroleum Reserve without any protections for the consumers.

On February 12, as crude and gasoline prices were spiking up, the Bush administration awarded five new long-term contracts to fill the Strategic Petroleum Reserve. These new contracts will run from April through the summer and will be very timely, especially in an area where prices typically shoot upward. If the Bush administration were concerned about high gasoline prices, the Energy Department could have either delayed awarding these long-term contracts or at the very least of a call to the Strategic Petroleum Reserve, as was done last winter, to minimize the impact on the market and on the consumer. But now the administration is taking oil off the market and moving it into the Strategic Petroleum Reserve with no concrete plan to protect consumers from the higher prices this action will cause.

Earlier this month, Guy Caruso of the Energy Information Agency told me OPEC would be making up the difference in supply for oil that is being moved into America’s Strategic Petroleum Reserve. So you have a situation where the administration, through the Energy Information Agency, is telling people to not really sweat these OPEC decisions. But now OPEC is telling us they are going to cut production by 1 million barrels a day. This morning we heard they might hold off until June instead of making cuts in April. But even then, OPEC production cuts would come at the beginning of the summer travel season. So certainly OPEC is engaged in some doubletalk. For some time they have not kept their promise to hold oil prices within their own target price range. In fact, several members of OPEC just want the price range increased.

Some in OPEC say they are concerned prices are too high. Yet this cartel is taking oil off the market. Others are saying they see a glut of oil on the market, justifying the production cut. These are mixed signals, but the message for our consumers is clear: OPEC is certainly going to do what is
best for OPEC, not what is best for the American consumer.

My bottom line is the Federal Government certainly is challenged, in terms of stopping OPEC from cutting production. But certainly the Federal Government needs to take steps immediately to make sure there is competition in our gasoline markets so consumers are not getting ripped off at the pump.

Today I am calling for Congress to take action on a specific, concrete package of procompetition initiatives to help consumers at the Nation’s gas pumps. First, Congress needs to direct the Government regulators to act to eliminate anticompetitive practices that currently siphon competition out of gasoline markets. Scores of communities, including those in my home State, have few if any choices for the consumer. Nationwide, the gasoline markets in Oregon and in at least 27 other States are now considered to be tight, with 4 companies controlling more than 60 percent of the gas supply. In California, where Shell’s Bakersfield refinery is located, 4 oil companies control 70 percent of the market. In these tightly concentrated markets, numerous studies have found oil company practices have driven independent wholesalers and dealers out of the market. One practice they employ, called redlining, limits where independent distributors can sell gas. As a result, independent stations have to buy their gas directly from the oil company, usually at a higher price than the company’s own brand-name stations are paying. With these higher costs the independent stations can’t compete.

Last year I sponsored legislation, S. 1732, that would give the Federal Trade Commission additional tools to promote competition in these areas that are essentially small monopolies. Under these very concentrated markets you would have consumer watch zones. In these zones there would be greater monitoring of anticompetitive practices by the Federal Trade Commission. The Federal Trade Commission would also be empowered to issue cease-and-desist orders to prevent the companies from gouging the consumer, and Congress would stipulate certain anticompetitive practices like redlining and zone pricing are, per se, anticompetitive and oil companies violating in these anticompetitive practices that manipulate supply or limit competition would have the burden of proof to show these anticompetitive practices are not harming consumers.

There it is, a vehicle right now. Right today there is a vehicle, S. 1737, Congress could use to address the problem of skyrocketing gasoline prices, because the companies admit the market is not going to solve the problem on its own.

Last August, a report by the RAND Corporation revealed even oil industry officials are predicting more price volatility in the future. This means consumers can expect more frequent and larger price spikes in the next few years.

Last November, the Energy Information Agency also issued a report on the causes of last summer’s record high gas prices. The Energy Information Agency found, “There is continuing vulnerability to future gasoline price hikes.” The industry and the Bush administration both agree gasoline price spikes aren’t going away and is a significant problem. But neither, as of today, is willing to step in and work with the Congress on a bipartisan basis to do anything about the problem. I am here to say the Congress needs to act now. This is legislation to act now before gasoline shoots up to $3 per gallon, as some oil industry analysts are predicting.

The reasons Congress ought to act are twofold. Aside from the obvious cost to the consumer at the pump, there are hidden costs to the price manipulation. There is a huge economic impact that will only worsen as prices rise. When gasoline costs more, the costs for our businesses in the transportation area go up. Our businesses that are already vulnerable to higher transportation prices, in any one of two things — either the prices of the goods they sell to consumers have to go up or the number of people they employ is going to plummet. Higher gasoline prices either means bigger increases for the goods they sell to other businesses and ultimately higher prices in our economy. And certainly in our home State, we cannot afford to see that. This isn’t high economic theory. This is basic math.

Just this month, the New York Times quoted a truck driver from Wisconsin saying eventually the added cost of transporting household goods and snacks and other items will once again come back and clobber the consumer. You have a double whammy. Consumers get socked at the pump, and then get hit again with higher prices for the goods they buy. That is not acceptable to me, and I don’t believe it is acceptable to the American people.

The challenge now is for the Congress to stand up to the status quo in the oil industry. I understand — and certainly nobody would minimize this — this will be a hard row to hoe in terms of taking on these very powerful interests.

When I sit down with Administration legislation that now can be used to protect the consumer from gasoline prices going up to $3 per gallon, various oil interests and Bush administration officials voiced great consternation and argued vociferously that the legislation I believed would protect competition and jobs was unacceptable to the oil industry and the administration.

I still believe the proposals which I have put forward in legislation and on which the Congress could move now before the end of the Congress and free markets. My legislation doesn’t involve big expenditures from Government. It doesn’t involve setting up new agencies. It involves bringing some competition and free market forces back to this country and to the gasoline business — particularly in those States where we have these quasi-monopolies.

I ask those who disagree with my legislation, S. 1737, which I believe would protect the consumer who is getting clobbered at the gasoline pumps, I issue a challenge. If they think they have a better approach than my legislation for bringing competition and free market forces back to the gasoline market, they have an obligation to come forward at a time when our consumers are being hit so hard at the pump. Unless people who are opposing my legislation are prepared to say the record high gasoline prices aren’t a problem, they have an obligation to come forward with their proposals to promote competition. Put an alternative on the table and stand up for the consumer.

I think Congress needs to address the growing gap between consumer demand for gas and what the oil companies can produce. When supplies are tight and there is no spare gasoline in inventories, consumers are especially vulnerable to the price manipulations and price spikes. That frequently causes severe price spikes when refineries shut down unexpectedly or a pipeline breaks, as happened last summer. Congress should ensure consumers are not left stalled by the side of the road or being pounded at the pump by taking steps to keep supplies available in an emergency. One option would be to require major oil companies to maintain minimum inventory levels to address unexpected supply crunches.

Alternatively, the Federal Government can create a strategic gasoline reserve to provide supplies during refinery or pipeline shutdowns. This proposal would build on the strategic reserve that already exists to store petroleum and heating oil supplies.

It seems to me what it all comes down to is the American people deserve better, and they deserve better than the Federal Government being AWOL when our consumers are facing skyrocketing gasoline prices across the country. With a new energy bill expected to come before the Senate in the next several weeks, this is an opportunity to put the Government on the table and stand up for the American consumer when they are filling their tanks at the pumps across the land.

I conclude by again commenting on the role of the Federal Trade Commission. This is the agency that is charged by Congress with promoting competition and free markets. Again and again in the energy field they have either sat on the sidelines or simply looked the other way in the face of increasing concentration in this critical sector of our economy. With gasoline prices already very high and the situation particularly time, it seems to me it is absolutely critical for the Federal Trade Commission to reverse its present.
course, get on the side of the consumer, and promote marketplace forces and competition in the gasoline business.

I intend to use my seat on the Senate Commerce Committee at every possible opportunity to force the Federal Trade Commission to do its job. It has been charged by the Congress to do. It ought to start with looking seriously into the shutdown in Bakersfield, which is going to, in my view, have calamitous consequences for the entire west coast gasoline market. But it also should include the issue of the current concentration of control in the gasoline business.

I am hopeful that ultimately the Federal Trade Commission will support my legislation, S. 1707, which would promote more competition in the gasoline business. And if they disagree with it, the head of that agency, Mr. Timothy Muris, ought to propose his own alternative.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, before I make comments on a different subject matter, I commend my friend and colleague for addressing the issue of energy production and energy costs—while he is still on the floor. We have probably close to 200,000 American troops in the gulf area to protect and preserve the countries in those regions. It seems to me it would not be asking too much of our President to jawbone the leaders of those countries to increase production. We can see what an increase of production of 1 million barrels per day and 2 million barrels a day would mean. It would have a dramatic impact and effect on consumers in this country. It is difficult for me to understand why we should not expect that kind of leadership from the President of the United States when every day we learn young Americans are losing their lives in that region. We have been watching American forces have been serving over in that region for years in order to protect the security of those nations.

Now we come to an issue of enormous need in our country—an important part of that because of our responsibilities in meeting the defense needs and security needs for our forces overseas. We have silence by the administration when they are asked why they aren’t jawboning these countries in the Middle East.

I don’t know whether the Senator could make some comments on that, just briefly. I listened with great interest to his other comments. I hope the Senate as a whole will take him to heart.

Mr. WYDEN. Mr. President, I very much appreciate the distinguished Senator from Massachusetts coming to the floor because he has done so much to help the consumer in this area. My concern—and I would be interested in the Senator’s reaction—is I think the consumer is about to get hit by a perfect storm with the combination of failure to push OPEC, as the Senator has said, to try to help on the production issue, plus the refinery cutbacks that apparently areprimarily to boost profits, plus filling the strategic petroleum reserve. With these factors coming together, it seems to me a perfect storm is going to push the consumers’ gasoline price at the pump to $3 a gallon.

I would be interested in the Senator’s reaction, and I am anxious to work with him in this effort to push the administration to take action against OPEC.

Mr. KENNEDY. The Senator is sounding the alarm. I think his predictions are self-evident. Thankfuly, he is providing the leadership before the full impact of these different events, the confluence of these different events taking place. Clearly, they will take place over the course of late spring or early summer.

I commend the Senator for bringing this issue to the Senate briefly this afternoon on the underlying legislation. We are in morning business now, and we will lay down the bill shortly. I am informed my friend and colleague from Oregon has outlined a very critical problem and made splendid recommendations. I look forward to working with the Senator to achieve these recommendations.

JOBS ACT

Mr. KENNEDY. Mr. President, I welcome the chance to address the Senate briefly this afternoon on the underlying legislation. We are in morning business now, and we will lay down the bill shortly. I am informed my friend and colleague from Iowa intends to offer an amendment to address the proposal being developed, that has been developed, and continues to be developed by the administration to restrict overtime pay for some 8 million Americans.

I ask unanimous consent to be able to proceed beyond the 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, before the Senate is the legislation called Jumpstart Our Business Strength Act, or the JOBS Act. The proposal of the Senator from Iowa is entirely appropriate to address this issue. He will be addressing key aspects of employment and homeland security—adequate pay for those working long hours in this country, and the proposal of the administration to cut back on their pay by eliminating the overtime for some 8 million workers.

For those who have been traveling not only in their own States but around the country—as I and other Members have—we know we are facing a serious challenge in creating good jobs with good benefits in the United States. This is affecting the quality of life of millions of American families.

The fact is, the Senate has refused to increase the minimum wage for a period of 7 years. We have 7 million Americans, our fellow citizens, hard-working Americans, men and women who take a sense of pride even in working at minimum-wage jobs. They are the men and women who clean the buildings where American commerce takes place. They are the nursing homes to take care of our elderly people. They work as teachers’ aides in many of our schools. These are men and women of dignity. They have worked long and hard over the period of the last 7 years, and we have failed to provide an increase in the minimum wage because our Republican leadership and this administration refuse to support an increase in the minimum wage. That is fact No. 1.

Fact No. 2. Even though we have seen the total loss of some 3 million private sector jobs and now an overall loss of about 2.2 million jobs, this administration refuses to extend the unemployment compensation. The unemployment compensation expired last July 2nd.

It was paid by people who have worked hard for this very eventuality that we are now facing—this heavy, prolonged unemployment. Those who have extended unemployment who have worked hard, should be entitled to unemployment compensation. It is in surplus.

The proposal of the Senator from Washington, Ms. Cantwell, will cost $5.6 billion to extend unemployment compensation for 8 weeks. There are 90,000 Americans a week losing their unemployment compensation. How do these families pay for their mortgage, put food on the table? How do they feed their children? How do they look forward to the future with any kind of sense of hope?

Where are we in responding to them in their crisis of need? Our Republican colleagues, the Republican administration, refuses to extend unemployment compensation.

If that is not bad enough, what is the administration proposing to do now? They are proposing to eliminate overtime pay for some 8 million of our fellow Americans who otherwise are receiving overtime.

Who is receiving overtime? Police officers, nurses, firefighters. Do those three categories have a ring to Members in the Senate and across this country? Who is in those categories? Whom do they represent? They represent homeland security.

On the one hand, we hear a good many statements in the Senate about trying to deal with the problems of homeland security. On the other hand, the administration is out to take away overtime for those individuals who are the backbone of homeland security.

These are the categories: Police officers, nurses, firefighters. The list also includes primarily women workers in our society. The overtime pay affects all workers but it particularly affects women.

What has been the state of our economy now in terms of new workers?
Some say: Senator, you do not understand. Workers are doing well in the country at this time. I don’t believe it. Those who say this do not understand it. They may be reading the clippings of Wall Street, but they do not understand Main Street. If they have not been reading the clippings of Main Street over the past week or so, they see there has not been great news.

The new jobs being created in the United States do not pay as much as jobs lost. This chart indicates the average wage in 2001 was $44,570 a year. Jobs gained do not pay as much as jobs lost. The average wage today from the jobs gained, according to the Bureau of Labor Statistics, is $35,410. That is a 21-percent reduction for the new jobs being created; a 21-percent reduction in pay over the jobs they have replaced.

At the same time, this administration is trying to eliminate overtime even for this group. What in the world is the reason for this? Against this backdrop, we look at the chart demonstrating that Americans work more hours than workers in other industrialized nations of the world. This red bar represents the United States. The other countries on this chart include Denmark, France, Ireland, Netherlands, UK, Italy, and Germany. In the United States, far more than any other country, workers are working harder, working longer, trying to make ends meet. What do we do? We in the Senate refuse to increase the minimum wage. If these workers lose their jobs, there is no federal unemployment compensation. Even though they are working longer and harder, we will take away their overtime.

This administration is attempting to take away overtime protection. This chart demonstrates what happens to workers with overtime protection and those without overtime protection. Those whose protections are twice as likely to be required by their bosses to work overtime hours as those with overtime protection. We know what this is all about—requiring workers to work longer, harder, for less pay over a period of time. Overtime has been in the law since the 1930s. Now we have this administration trying to take away from the workers? For those who do not have overtime protection, they are twice as likely to work more than 40 hours a week. And those without overtime protections are twice as likely to work more than 50 hours a week. Take away the overtime protections and we are going to see the exploitation of working families in the middle class in this country greater than ever. That is basically greed. It is wrong.

The amendment of the Senator from Iowa is focused on making sure we continue to pay the overtime. I make no final point. First of all, in the proposal, the administration to eliminate overtime, they are looking not only at the categories I just illustrated, but they are also saying if you have served in the Armed Forces and have received that training, that when you get out of the Armed Forces you are not going to be eligible for overtime. For the first time in the history of this country, they are saying, military training—training that you received in the military, in order to protect members of your particular unit, and then you come back and are out there in the civilian market, you are told by your boss: You got training in the military. You are not eligible for overtime. I see my friend in the Chamber. I will take a few more minutes because I know he wants to address the Senate. This is a letter to Secretary Chao from Thomas Corey, the National President of the Vietnam Veterans of America.

[We] would like to make you aware that the proposed changes would give employers the ability to prohibit veterans from receiving overtime pay based on the training they received in the military. This eliminates the already extensive problems of “vetism” or discrimination against veterans.

There you are. What in the world is this administration thinking? I will read then I will conclude. I think it illustrates very powerfully what the debate is about and the strong reasons we all ought to be behind the Harkin amendment:

My name is Randy Fleming. I live in Haysville, Kansas—outside Wichita—and I work as an Engineering Technician in Boeing’s Metrology Lab. I’m also proud to say that I’m a military veteran. I served in the U.S. Air Force from August 1973 until February 1979.

I’ve worked for Boeing for 23 years. During that time I’ve been able to build a good, solid life for my family. Today, my wife and I have a 21-year-old daughter and a 17-year-old son who now has a good career and children of his own. There are two things that helped make that possible.

First, the training I received in the Air Force made me qualified for a good civilian job. That was one of the main attractions when I enlisted as a young man back in Iowa. I think it’s still one of the main reasons young people today decide to enlist. Military training opens up better job opportunities—and a better life, and I believe me, just look at the recruiting ads on TV.

The second thing is overtime pay. That’s how I was able to give my son the college education that I wanted for him. Some years, when the company was busy and I had those college bills to pay, overtime pay was probably 10% or more of my income. My daughter, Danielle, is only 8, but we’ll be counting on my overtime to help her get her college degree, too, when that time comes. For my family, overtime pay has made all the difference.

That’s where I’m coming from. Why did I come to Washington? I came to talk about an issue that is very important back home and to me personally as a working man, a father, a veteran, a family man, and a veteran. That issue is overtime rights.

The changes that this administration is trying to make with the overtime regulations would close down opportunities that working and their families thought they could count on. When I signed up back in 1973, the Air Force and I made a deal that I thought was fair. They got a chunk of my time and I got training to help me build the rest of my life. There was no part of that deal that said I would have to give up my right to overtime pay. You’ve heard the marriage penalty? I think that what these new rules do is to create a military penalty. If you got your training in the military, no matter what your white collar profession is, your employer can make you work as many hours as they want to work. Ever hear of the marriage penalty?

If that’s not a bait and switch, I don’t know what is. And I don’t have any doubt that employers will take advantage of this new opportunity to cut their overtime pay. They’ll tell us they have to in order to compete. They’ll say if they can’t take our overtime pay, they’ll have to eliminate our jobs.

It won’t be just the bad employers, either—because these rules will make it very hard for companies to do the right thing. If they can make as many as overtime hours as they want for free instead of paying us time and a half, they’ll say they owe it to the stockholders and the workers and other working people will be stuck with less time, less money, and a broken deal.

I’m luckier than some other veterans because I have a union contract that will protect my rights for a while anyway. But we know the pressure will be on, because my employer is one that pushed for these new rules and they’ve been trying hard to get rid of our union.

And for all those who want to let those military penalty rules go through, I have a deal I’d like to propose. If you think it’s okay for the government to renege on its deals, I think it should be your job to tell our military men and women in Iraq that when they come home, their service to their country will be used as a way to cut their overtime pay.

That is from Randy Fleming. It could not be said any clearer. That is the issue. TOM HARKIN and I will offer the amendment. I hope the Senate will at least permit us a chance to vote on that amendment in the next day or two.

I thank the Senator for his patience and for his indulgence.

THE PRESIDING OFFICER. The Senator from Nebraska.

ECONOMIC POLICY

Mr. HAGEL. Mr. President, for those estimated 2.3 million Americans who have lost their jobs over the past 3 years, and for those worried about keeping their jobs, economic policy is not about abstract theoretical debates. It is about finding and keeping steady work at a decent wage. It is about affordable health care, buying a home, and sending their children to college. We live in a time of dramatic historical change, a transformational period. The byproducts of such change are uncertainty, complications, instability, and danger, as well as vast opportunities.

America today, as at the end of World War II, is in a position to lead and shape the direction of this 21st century change.
America’s economic security and prosperity cannot be separated from our leadership of the global economy. During periods of uncertainty and change, some Americans seek refuge in an insular political tradition that, in the past, has contributed to isolationism at home and instability abroad.

After World War I, America pursued an isolationist foreign and trade policy that resulted in a weakened international order that led to World War II.

In contrast, after World War II, America’s leaders laid the foundation for the World Trade Organization and a new global political and economic order. As a result, America and much of the world have enjoyed historic peace and prosperity for more than 50 years.

The recent job losses in the United States must be analyzed and understood in the context of historic increases in worker productivity, a global decline in manufacturing employment, and the changes occurring in the global economy.

Michael Porter, in his classic work, “The Comparative Advantage of Nations,” wrote that “a nation’s standard of living in the long term depends on its ability to attain a high and rising level of productivity in the industries in which its firms compete. Between 1997 and 2002, U.S. manufacturing productivity grew by 10 percent. While increases in productivity have cost jobs in the manufacturing sector, advances in technology lead to increases in productivity which requires fewer workers.

Former Secretary of Labor Robert Reich recently wrote that despite these trends in the manufacturing sector “this doesn’t mean that we are left with fewer jobs.” As a matter of fact, the trend, over time, is just the opposite. Advances in technology and gains in productivity mean more jobs in high-growth, high-tech, high-paying sectors.

Robert Samuelson makes the case well when he said:

Manufacturing employment peaked in mid-1997 at 19.5 million; now it’s 14.5 million. But over that period, total U.S. employment grew about 40 million, and manufacturing output rose more than 80%. American companies became more productive and shifted to more valuable products.

The decline in employment in the manufacturing sector is a global phenomenon. The same technologies that have enhanced productivity in America’s manufacturing sector are employed in the manufacturing sectors of other countries. For example, while the United States lost 22 million factory jobs between 1995 and 2003—an 11 percent decline—Japan lost 16 percent; Brazil, 20 percent; and China, 15 percent.

The trend we see in manufacturing is the same trend we had seen over the past century in agriculture. One hundred years ago, 35 percent of Americans worked on a farm or in the agricultural industry. Today, because of dramatic increases in productivity due to improving agricultural technologies, science, and research, that number is 3 percent.

The globalization of technology and productivity has contributed to another related issue. Many politicians and the media have recently focused on the impact on U.S. employment of U.S. companies outsourcing manufacturing and service jobs overseas. Since March 2001, it is estimated that 1 million jobs in the manufacturing and service sectors have been outsourced. The U.S. economy currently has 139 million jobs and showed an increase of 97,000 jobs in January and 21,000 jobs last month.

But outsourcing is not a zero sum loss for America. There are benefits for the United States. Outsourcing of some manufacturing operations has resulted in lower cost goods for U.S. businesses and families and a reduction in the information technology sector has resulted in a reduction of 10 to 30 percent in the price of computers and IT-related products. These reduced costs have contributed to increases of 2.5 to 2.8 percent in productivity growth in the United States and added at least $230 billion to the U.S. gross domestic product.

Outsourcing cannot be understood as simply the number of jobs shipped overseas. It is more complicated. As American companies outsource jobs, there are also potential benefits to American businesses and workers. Companies can save in profit through the reduced costs gained by outsourcing some jobs. With expansion and additional revenues, more U.S. goods, services, and equipment are purchased to support those outsourced industries. This also contributes to innovation, growth, and, over time, better and more jobs for America’s most competitive industries.

Economic growth from outsourcing is not a zero sum gain or loss. Both sides gain. Economic growth in other nations creates markets, markets capable of purchasing more and more American goods and services.

For example, Tom Friedman in a recent New York Times op-ed wrote about his visit to the 247 customer call center in Bangalore, India. There he observed that the computers were from America, the software was from America, the air-conditioning, Carrier; and the drinking water distributor, Coca-Cola. And 90 percent of the company’s shares were owned by U.S. investors.

As attention has focused on the negative implications of outsourcing to India, often overlooked are the advantages to America’s economy. American exports to India have grown from $2.5 billion in 1990 to $4.1 billion in 2002. The larger picture is instructive because it shows the key choices. Meeting the demands of a global economy requires maintaining America’s leadership in free trade, expanding programs to retrain those workers who lose their jobs, and educating the next generation of Americans about what it will take to compete in a more competitive global economy.

As Federal Reserve Board Chairman Alan Greenspan recently noted to the Greater Omaha Chamber of Commerce:

The loss of jobs over the past three years is attributable largely to rapid declines in the demand for industrial goods and to outsized gains in productivity that have caused effective supply to outstrip demand. Protectionism will do little to create jobs; and if consumers retaliate, more will lose their jobs. We need instead to discover the means to enhance the skills of our workforce to further open markets here and abroad to allow workers to compete effectively in the global marketplace.

The expansion of free and fair trade will continue to be the most assured path for prosperity and job creation. Trade does not cost American jobs. Free trade has been an engine of economic growth, innovation, wealth, and job creation for the United States since World War II.

The value of American exports grew substantially between 1990 and 2003, from $703 billion to more than $1 trillion. More than 18 million new jobs were added to the economy because of trade. U.S. exports during the 1990s accounted for 25 percent of the growth in America’s economy and today support more than 12 million directly related jobs that pay as much as 18 percent more than the average national wage.

In 2003, U.S. exports of advanced technology totaled $180 billion. Meanwhile, in America’s high tech electronics sector, exports exceeded $100 billion annually between 1997 and 2003, showing that America continues to maintain its leadership in cutting edge technologies, a technology that pays higher, better paying jobs for Americans in the United States.

American consumers and businesses also gain from trade through lower priced imports. Lower import prices mean increased income for consumers. As U.S. Trade Representative Robert Zoellick noted last year in testimony before the Senate Committee on Finance:

By lowering prices through imports and increasing incomes through trade, America’s newest trade agreements will build on the success of the North American Free Trade Agreement and the Uruguay Round, which together already provide the average American family of four with benefits amounting to $1,300 to $2,000 each and every year.

If consumers have more money, American businesses benefit from greater consumer demand, consumer demand for their businesses, their products, and their services. Businesses and entrepreneurs, therefore, have more resources to invest and spend and expand on plants, creating more jobs in the United States. Expanding free trade and fair trade empowers American firms to invest and set up operations in the United States. Foreign-owned firms currently provide 6.4
million jobs throughout the United States.

The North American Free Trade Agreement is testimony to the impact of expanded free trade for American jobs, growth, and prosperity. Since NAFTA’s implementation, total trade among the United States, Mexico, and Canada has more than doubled from $306 billion in 1993 to $621 billion last year. That is $1.7 billion in trade every day between our trading partners to the north and south.

U.S. exports to Canada and Mexico have grown from $142 billion to $263 billion over these 10 years. U.S. exports to Mexico of cars and trucks totaled about $3.3 billion in 2003. That is an increase from exports of approximately $165 million in 1993.

My State of Nebraska has directly benefited from increased trade and specifically from NAFTA. Nebraska’s worldwide exports in 2003 were in excess of $2.7 billion. Mexico and Canada are Nebraska’s fastest export markets. Nebraska’s exports to Mexico and Canada in 2003 were valued at over $1.2 billion. From 1999 to 2003, Nebraska’s trade with Mexico increased by 87 percent and trade with Canada by 28 percent.

Americans know that changes in the global economy lead to dislocations in domestic workforces. Dislocations are painful. They are difficult. No one wants to lose a job. Americans need retraining programs and education programs to help adjust these global economic adjustments.

Former Secretary of Treasury Robert Rubin has written in his recent book “In An Uncertain World”... trade must be accompanied by effective programs to help dislocated workers find new places in our economy. This is not only fair, but will contribute both to productivity and to political acceptance of trade liberalization.

Many Americans who lose their jobs, especially workers in the manufacturing sector, require assistance and retraining to find new work. In 2002, Congress spent $12 billion on 44 Federal programs, which helped 30 million Americans with job search assistance, employment counseling, and vocational training.

These Federal programs include those authorized through the Trade Adjustment Assistance Act, the Workforce Investment Act, National Emergency Grants, and State-run worker training programs.

These programs have helped and are helping displaced workers all over the country. In fiscal year 2004, approximately $1.5 billion will be spent on these benefits and programs of the TAA program alone.

TAA programs have provided job training, as much as 130 weeks of unemployment compensation, monetary allowances for job searches and job relocation, insurance for health insurance, and wage insurance.

The greater longer view challenge for America is to ensure our students have prepared for the competitive global economy of the 21st century. America’s universities are the best in the world.

The global demand for what Secretary Reich has called the “symbolic analytic” sector professionals—research and development, design engineers, and lawyers—is growing. And jobs in other fields—should and must remain high. It is in America’s interest to maintain our leadership in these areas.

As Secretary Reich puts it: America’s long-term problem isn’t too few jobs. It’s too many. Jobs for personal-service workers and symbolic analysts.

The long-term solution is to help spur upward mobility for all workers by getting more Americans a good education, including access to college.

The trends in this area should be monitored carefully. For example, in 2002, 58 percent of all degrees awarded in China were in engineering and physical sciences. In the United States, only 17 percent of degrees awarded were in these fields. America’s security and vitality depend on policies that are based on the strengths of America, not its insecurities. Adjusting to the global economy requires immigration policies that could continue to live and work in the United States as assets and not burdens on our national economy.

Daniel Henninger recently wrote in the Wall Street Journal: The global migration of human labor, on which there is little or no data, is perhaps the most powerful force on the globe today.

Many politicians and commentators have portrayed immigration as a threat to American workers. But immigration is a vital part of America’s strength. Throughout our history, immigration has played an important role in our economy. Free trade also directly affects American interests in promoting stability, security, and democracy around the world. By pursuing free and fair trade, and by encouraging business and investment practices that contribute to open societies at home and abroad, we are establishing partnerships with developed and developing nations that help make a more peaceful and prosperous world. That is in the interest of all nations, of all people, and certainly of America.

Countries that trade with each other are less likely to go to war with each other. We are all shareholders in this enterprise and have a stake in its success. American leadership in free trade will over time reduce America’s security commitments abroad, allowing a reduction in American peacekeeping, nation building, and force protection thus saving American lives and dollars.

The tough economic choices ahead will require leadership, vision, and courage. American leadership in the global economy will depend on confidence at home and abroad. investor confidence is key for job creation. Excessive Federal deficits and a looming crisis in American entitlement programs can and surely will undermine our fiscal credibility and our economic leadership.

The Federal deficit for fiscal year 2004 is now projected to be a half trillion dollars. In 2035, 75 million Americans will be over 65 and entitled to Social Security and Medicare. That is an unprecedented number of Americans eligible today. Where will the money come from? It will come from economic growth, which will be driven by world affairs and trade, and American international leadership. To lead in the 21st century, America must embrace globally responsible policies with a commitment to trade. Our economic policies will influence and affect the shape of America’s domestic policies and programs, as well as political reform and change throughout the world.

Now is not the time to retreat from our commitment to free trade, market economies, and democratic reforms. Since World War II, America has been the primary architect and leader of a global economic order that has provided the structured environment for unprecedented growth and opportunity both at home and abroad. Our economic policies, like our domestic and foreign policies, are about the limitless potential of all human beings. Trade is not a guarantee; it is an opportunity—an opportunity to compete and make a better world for all people.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER: The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

JUMPSTART OUR BUSINESS STRENGTH (JOBS) ACT—Resumed

The PRESIDING OFFICER. The clerk will report the pending business. The assistant journal clerk read as follows:

A bill (S. 1637) to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and productive activities in the United States, to reform and simplify the international tax rules of the United States, and for other purposes.

Pending:

Bunning amendment No. 2686, to accelerate the phase-in of the deduction relating to income attributable to domestic production activities.

Grassley (for Bayh) amendment No. 2687 (to amendment No. 2686), to provide for the extension of certain expiring provisions.

The PRESIDING OFFICER. The Senator from Montana.
Mr. BAUCUS. Mr. President, this afternoon we resume consideration of the JOBS bill. The chairman of the committee, Senator GRASSLEY, is on his way over. I thought I would proceed to make sure we do not have any dead time.

While the Senate went off this bill and considered the budget just a week ago, the Bureau of Labor Statistics released new job figures for February. Those data show 8.2 million people are still unemployed. That is more than 2 million people below the beginning of the recession in March 2001. Job growth remains too slow.

As this chart shows, we have lost more than 3 million private sector jobs since December 2000, and job creation has not turned around. This next chart shows jobs lost—2.2 million jobs lost; overall total employment, 3 million jobs lost from January 2001 to February 2004; 3 million lost in the private sector during that same period. Let me repeat that. There were no new private sector jobs created last month. Yet there were 20,000 new jobs overall, and all those jobs were Government jobs. That is not something I think we want to do. This next chart shows manufacturing jobs. It is very interesting to see that in the years 1950, 1960, 1970, all the way up to the year 2000, this dotted line shows that today, 2004, we have the fewest jobs in America in half a century. That is the fewest jobs in half a century. Stated another way, the number of jobs we have now is as low as it was a half century ago.

Manufacturing jobs declined for the 43rd straight month. Mr. President, 3.9 million manufacturing jobs disappeared in February. Manufacturing employment is at its lowest point in more than a half century, since March of 1950. Again, that is what this chart shows. The job level now is as low as it was a half century ago.

Part of the story is that the American manufacturing worker has become more productive. The average manufacturing worker has turned out more product than before. But it goes deeper than that. Manufacturing production—that is, the output of manufacturing jobs—remains below the levels of the beginning of 2001.

There is reason for continued concern about the future. A week ago, Goldman Sachs reviewed the latest manufacturing data and concluded: [We] interpret Monday’s decline in the New York Fed’s Empire Survey for March as one more piece of evidence that the manufacturing sector is transitioning to somewhat slower growth.

This next chart shows the share of population with jobs. That is, we reached our peak in about the year 2000 of the percentage of American population that had jobs, and we can tell by the chart that whereas it has been steadily rising in percentage of Americans who have jobs from 1994, steadily rising up to the beginning of the recession in March 2001, we have declined precipitously since that date. In sum, the future remains sluggish. Even the normally taciturn Federal Reserve noted the weak job market in saying in a recent statement last Tuesday that “hiring has lagged.” The employment numbers show total unemployment fell in February to 13.3 million. The share of the population age 16 and older with jobs declined to 62.2 percent. This employment population ratio is lower than it was at any time between March 1994 and June 2005. Again, that is in the chart as I just indicated. The slow job market spans the Nation. As of January 2004, nearly 3 years after the recession began, almost every region of the country continues to have higher unemployment rates than the pre-recession levels.

In terms of unemployment, my State of Montana has fared better than some, but unemployment remains markedly higher than pre-recession levels throughout much of the country. Colorado unemployment is up 2.8 percent. Again, if we look at the chart, every State has higher unemployment, as indicated by red, but the percentage difference is higher than pre-recession levels.

Again, as I said, Colorado is up 2.8 percent; Ohio is up 2.6 percent; Massachusetts up 2.6 percent; Oregon up 2.4 percent; New York up 2.3 percent; Texas is up 2.1 percent; and New Jersey is also up 2.1 percent.

In terms of the absolute number of jobs, 36 States have failed to get back to the pre-recession employment levels. In 49 States, job creation has not kept up with natural growth in the number of potential workers. Only in Alaska has job growth exceeded the growth of working age population.

The news of the Nation’s slow job growth has cycled back to lessened consumer demand, and thus economic growth. This consumer confidence. As we can see beginning in 1994, consumer confidence in America remained at about the 95 percent level. This is the consumer confidence index, based in the hundreds, so it was a little lower in 1994 to 1996. It steadily rose from 1997 to 1998. Then is the boom years. It reached its peak roughly at the beginning of the recession in March of 2001, and then just plummeted to its low levels.

The Department of Labor has been asked: Why did we get this important? It is important because as I have mentioned, the Nation’s slow job growth has cycled back. It has cycled back to lessened consumer demand. When consumer demand is down, economic growth also falls off as well.

In the latest consumer confidence survey, confidence fell for the second straight month in part because of consumer concern over the weak job market. Nearly 3 years after the start of the recession, consumer confidence remains below its January 2001 levels.

These numbers of people without jobs are not just statistics; they are real lives. These are real lives we are talking about. This weak job picture causes real pain. It causes disruption in many families.

For example, there is a fellow named John in East Helena, MT, who has worked 22 years at the ASARCO smelting plant that has recently closed. John suffers permanent health problems from working with chemicals at the plant. He has been unable to get full-time employment so he works part time. John cannot get health insurance because he has preexisting health conditions.

Then there is Bruce. Bruce is 50 years old. He worked 28 years at that same East Helena smelter. He did what they say to do; that is, use retraining benefits and train as a technician. Unable to get work in that field, he works now full time in a grocery store.

Often when a person loses a job, a family loses a job. Evelyn from western Montana wrote: I am concerned about the economy of Western Montana. . . . I see that industry is [waning]. What do we have to offer our children and grandchildren in the way of employment within Montana?

What do you propose . . . [to give us] a hope of being able to support our families?

Kim wrote about her husband’s job: The second paper mill my spouse has worked at in three years is threatened with closure in the next six to twelve months. In a letter to the employees . . . in Missoula, Montana[,] the company president blamed the closure of their mill on the endless drain of manufacturing America to overseas as the cause for possible shutdown. [The company] makes liner-board, the cardboard boxes products are shipped in. [If] people are not made, those boxes are not needed. [They need] the liner-board market is a direct reflection of the state of the economy[,] because the more liner-board boxes sold[,] the more products being manufactured within the United States . . . Real people like John, Bruce, Evelyn, and Kim are the reason we need to move this bill. We need to fight to create and keep good manufacturing jobs in America.

The bill before us provides a 9-percent deduction for manufacturing, effectively reducing the tax rate for domestic manufacturers by 3 percentage points. The JOBS Act will thus help all manufacturers, large and small, produce goods in the United States. Cutting taxes for domestic manufacturers will help prevent layoffs and will help preserve jobs. It is the right thing to do.
and the Senate unanimously extended the R&D tax credit. We expanded that credit for universities and labs.

We also conducted a good and spirited debate on an amendment by Senator Dodd. That amendment addressed the performance of Government contracts by American workers. After working collaboratively on modifications proposed by Senator McConnell and Senator McCain, the Senate agreed to that amendment by a vote of 70 to 26.

The Senate then began debate on an amendment proposed by Senators Bunning and Stabenow to accelerate the phase-in of the manufacturing tax cuts. The Senate also began considering an amendment by Senator Bayh providing for an extension of expiring tax provisions. These last two important amendments are now pending.

Under a previous order, the next first-degree amendment in order will be that offered by the minority leader or his designee. We understand the amendment will be proposed by Senator Harkin regarding the Department of Labor's overtime regulations. I know you are strongly feeling on this amendment, but Senators are all now aware that we must address that issue in order to move this bill along. I hope we can come up to a vote on that amendment in a reasonably short period of time and move to other amendments.

In the end—and I will keep returning to this theme—this bill is about jobs, good jobs, about jobs in America. We are trying to help preserve American manufacturing. The task ahead of us is large, the challenge great, but Americans do not shrink from that challenge.

Renee, the bookkeeping manager for a small manufacturer in Bozeman, MT, said it well when she wrote:

The United States is a nation built on steady determination in the face of overwhelming odds. We must act now to reverse the loss of our high-skilled, high-wage manufacturing jobs.

That is our job, and we need to do that. We need to get this bill done for John, Bruce, Kim, and Evelyn and all the hardworking Americans who depend on a strong manufacturing sector in America. We cannot let them down. Let's move on to the bill, let us move on to amendments and let's address them. Let's move this bill and let us do what we can to strengthen American manufacturing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to reiterate the words of my distinguished ranking member, the Senator from Nebraska, on the importance of getting this bill passed. This bill is about jobs because it is about keeping American manufacturing competitive, particularly manufacturing that is exported. Export-related jobs in America are very good jobs because they pay 15 percent above the national average.

This bill, that we call by the acronym FSC/ETI, foreign sales corporations extraterritorial income, reduces the income tax on goods manufactured in the United States and sold overseas. Whether it is done by American manufacturers or foreign companies that have come to America to establish a manufacturing plant and hire Americans, it does not apply to American companies that manufacture overseas.

The World Trade Organization is the reason we are debating this bill, because it is not only a threat to the competitiveness of American manufacturing, but also to the performance of Government contracts by American workers. This bill has been on the books for more than a couple of decades, is a threat to our manufacturing and has cost American workers billions of dollars.

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This bill, that we call by the acronym FSC/ETI, foreign sales corpora-
it will be a $50 billion tax increase on manufacturing. You know one of the simple rules of economics 101—you tax something more, you get less of it.

The Congressional Budget Office then says we have lost 3 million manufacturing jobs since manufacturing鲵ess Generally, since the Clinton administration—in other words, since the middle of July. A $50 billion tax increase now on that manufacturing obviously is not going to stimulate manufacturing jobs.

The Finance Committee uses all the money that is raised from the FSC/ETI repeal to put back into manufacturing, giving manufacturing corporations and self-proprietors and other business entities a 3-percentage point tax rate reduction on all income derived from manufacturing in the United States.

This is not meant to help—and will not help—because our bill is not written this way to help manufacturing done offshore. We start phasing in these changes in 2005. That cuts tax deeply to different business entities, sole proprietors, partnerships, farmers, individuals, family businesses, multinational corporations, or foreign corporations that set up manufacturing plants in the United States, and to give the benefit to American-based companies or foreign corporations based in America that are creating jobs here.

Our bill also includes the Homeland Reinvestment Act, which has broad support in the House and Senate. The finance bill is also revenue neutral. That is very important because it seems to be an unwritten rule in the Senate—maybe not one that I entirely agree with. We are doing nothing in this bill to export jobs overseas; just the opposite. What we are doing is meant to create jobs and preserve jobs. That is what is going to do anything in a bipartisan way when it deals with tax reform; it has to be revenue neutral.

This bill, as amended, provides over $130 billion in business tax relief, but it is paid for by extending customs user fees and, most importantly, by shutting down corporate tax shelters and abusive loopholes.

It is an unwritten rule in the Senate, as I said, for revenue neutrality. So we have a $50 billion tax increase on $1 trillion of tax changes but offsetting it totally with money raised from FSC/ETI, from customs user fees, and, most importantly, by shutting down corporate tax shelters and abusive loopholes.

As all bills, there is never complete agreement on an approach. Our bill contains a temporary haircut on rate reduction that some of us would like to remove and others of us would like to retain. Some Members prefer a reduction in the top corporate rate in place of international reforms and a rate reduction applying just to manufacturing. These Members would say you ought to treat all corporations the same. If all corporations were being impacted with a WTO ruling in the same way, whether manufacturing or not, I would agree. We are talking about basically manufacturing and at least to be effective, it has to be calculated in. We say we want to keep our manufacturing competitive. We are going to pour most of the benefits of this legislation back into the manufacturing sector.

Those on the other side say it ought to be across the board, affecting all corporations. There is a desire on the other side for a simpler approach by just cutting taxes across the board, but a top level rate cut would only go to the biggest corporations of America. Local family held S corporations or partnerships which presently get some ETI benefits would get nothing from that approach. If we redirect the FSC/ETI money to an across-the-board corporate cut, then the manufacturing sector will be the revenue offset for the services sector tax cut.

The international tax reforms largely fix problems our domestic companies face with the complexities of the foreign tax code, but only if they set up their manufacturing plants in the United States. We are not doing anything in this bill to export jobs overseas; just the opposite. What we are doing is meant to create jobs and preserve jobs. That is what is going to do anything in a bipartisan way when it deals with tax reform; it has to be revenue neutral.

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Mr. GRASSLEY. Mr. President, I will speak as in morning business and I will yield the floor for anyone who wants to speak on the legislation.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, I will deal with the issue of the energy bill in the context of where we left off last November, two votes short of stopping a filibuster against the legislation. Like the JOBS bill itself, these provisions will help make important contributions to American business and to American people.

I yield the floor.

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The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I will speak as in morning business and I will yield the floor for anyone who wants to speak on the legislation.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

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the bill that is before us, and during morning business by Members, particularly of the other party, about the problems we are having creating jobs, the problems we are having with the Nation's economy.

There will be a difference of opinion whether the economy is doing well, but there are a lot of statistics that show it is doing well with the 8.2 percent growth for the third quarter of 2003, and the 4.1 percent growth for the fourth quarter of 2003, and unemployment at 5.6 percent. But we are still hearing the outrage that jobs are not being created. And who can argue that if you are unemployed and want a job you ought not have a job? You would expect to have a job with an economy growing where it is now and with the fabulously low rate of unemployment of 5.6 percent, because seldom have we had that low a rate of unemployment in the last 40 years. A national energy policy would surely help us with the creation of jobs.

So you can ask, where are the jobs, particularly manufacturing jobs? One factor affecting the manufacturing industry and, in turn, the economy in general, have not been mentioned during the debate is the rising cost of energy. The fact is, the rising energy costs continue to be a drag on our economy.

In January, consumer prices jumped one-half of 1 percent, and that was only because, as small as that is, of higher energy costs. In fact, energy costs rose 4.7 percent, accounting for more than three-quarters of the overall increase in consumer prices.

Crude oil for April delivery is over $36 a barrel on the New York Mercantile Exchange. Gas prices at the pump around the Nation are at record highs. Nationally, a gallon of regular gasoline averages $1.74. That is 2 cents higher this time last year. Why are energy prices so high? Well, global demand for crude oil is increasing because of greater demand not only in the United States but because of a higher percentage of demand in Japan and China.

OPEC, which supplies 40 percent of the world's oil, recently announced they intend to cut production by 1 million barrels a day starting April 1. That is obviously going to push prices higher yet again. This is why OPEC's stabilization has repeatedly stated their goal is to keep prices somewhere between $22 and $28 a barrel, not now satisfied with $36 a barrel. Because we are so dependent upon foreign countries for over 60 percent of our crude oil, I think they have got us—owing OPEC has gotten the United States—over a barrel.

We have also seen a sustained increase in the demand and cost of natural gas. Because natural gas is now the top choice for new electricity generation, the demand for natural gas is no longer seasonal. While our existing policies in Washington have created the increased demand for natural gas, we have done very little to ensure a domestic supply to meet that demand.

In fact, the increased exploration is not bringing in enough new natural gas on line to meet increased needs we have in this country. Hence, you understand economics 101, when supply is down, price is up; hence, higher natural gas prices.

The fact is, high fuel prices remain a concern for American firms. High energy prices hurt steel mills, manufacturers, farmers, and eventually end up hurting all consumers. High energy prices cost American jobs. Unless we increase supply, we are going to see record high prices again this year, and we are going to see a continued drag on the American economy.

We need to help the manufacturing and agricultural industries save existing jobs and go beyond that to create new jobs. We need to lower our Nation's energy prices. What are the alternatives? We could and should apply pressure to members of OPEC to increase supplies. Some have suggested releasing crude oil from the Strategic Petroleum Reserve to increase supplies—some estimated 800,000—of jobs all across our country.

The bill also includes incentives for energy-efficient improvements to existing homes and for the purchase of alternative fuels. These initiatives will lead to an increased domestic supply of energy, a more stable economy, and thousands of jobs for America's workers. Make no mistake about it, this energy bill is a jobs bill.

As I indicated, these provisions are in a new bill that Senator DOMENICI is trying to move along. But the ideal way to handle this would be to get two more votes to bring to an end the filibuster of the bill that was before the Senate last November, because all of these provisions are included in that bill. There is no reason to start all over again, particularly when now, compared to last November, we have the highest price for gasoline in the history of our country, and we still have outrageously high prices for natural gas.

It is time this country has a national energy policy. There is no reason two Senators who are in the minority and in the way this legislation along, legislation that passed the House and Senate overwhelmingly last year, came out of conference after about 2 months of work on putting together a compromise that could get an overwhelming vote in the House of Representatives and get a vast majority vote in the Senate, but two votes short of the 60, the extraordinary supermajority it takes to stop a filibuster. I don't understand why we have Democrats from corn States, with the extraordinary production of ethanol that would help the farmers of their States, and also help the energy needs of our Nation, how
any Senator who is from a big corn-producing State could dare vote not to end this filibuster.

There are votes out there from members of the other party, from corn-producing States, who ought to explain to their constituents that they shouldn't vote in this effort with other farm State Senators to bring massively on line the production of ethanol that can help us be more energy independent from OPEC nations, particularly in a time when we're short of oil and we don't have the ability to bring it to the Gulf of Mexico in the Middle East to guarantee oil coming to our country. Obviously, the blood I am talking about is shed because of the war we are in, the war to defeat terrorism and terrorists against western culture, but also the sort of democracy we can have in the Middle East brings stability that we don't have there now. And it is important to have that stability for the economic needs of our country.

I don't know why we can't get some votes from some farm State Democrats. We only need two of about half a dozen, whom we could easily identify, who would be willing to vote with us to bring finality to this issue.

I believe these bills on energy, because we have this pending bill before the Senate and we have the conference report that is through the House and two votes short of getting to finality in the Senate last November—whichever one you are talking about—I believe these bills represent a comprehensive energy policy consisting of conservation efforts, the development of renewable energy sources, and domestic production of traditional sources of energy. This bill goes a long way to develop an energy policy that will drive down the cost of energy and create jobs at home so that we don't have to rely on our enemies that we have on the Senate floor, primarily from members of the other party, over 3 out of the last 5 years when energy prices have been so high. Why don't we do something about it? We have an opportunity. We don't seem to grasp it now when it is here.

This bill is too important to our economy to let it die. Therefore, I strongly encourage Members on both sides of the aisle to help our leadership bring either the conference committee up for a vote on the issue of stopping the debate or the new bill that Senator DOMENICI has placed before the Senate, to bring it to the floor and consider it in a timely manner, and timely is already probably 3 months late as we have seen the energy prices go up to the highest level, hurting our economy. We can and should come to an agreement so we can consider and pass this Jobs Act, if possible.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Madam President, I know we are a little stalled on the floor right now. There is an underlying amendment to the bill, and then there is a second amendment that is now trying to be worked out having to do with tax extenders. I understand there may even be yet another second degree into this package.

I know the leadership has said there will be no votes that we won't understand that. But I ask the Presiding Officer, is there now pending a unanimous consent agreement that after the disposition of the pending amendment, and any amendments thereto, that Senator DASCHLE or his designee would then be recognized to offer an amendment?

The PRESIDING OFFICER. The agreement does authorize the leader or his designee to offer the next first-degree amendment.

Mr. HARKIN. Thank the Presiding Officer because that was my understanding: that upon the disposition of the pending amendment, and any amendments thereto—any second degrees—then Senator DASCHLE would be recognized, or his designee, in which case he is designating me to offer the overtime amendment.

Now, I was here the other day, and I was going to offer the overtime amendment as a second degree to the underlying amendment, but then Senator Grassley said he is the right as the chairman of the committee, to offer a second degree, and that now is what is pending before the Senate.

I take the floor this afternoon to once again state how urgently necessary it is that we proceed to consideration of my amendment regarding the administration's proposed changes of the rules on overtime.

To recap what has transpired, about a year ago the Department of Labor issued proposed regulations that would fundamentally change how employers pay overtime to people who work over 40 hours a week. These proposed regulations came forth without having one public hearing, perhaps the most substantial change in our overtime laws since 1938 when they were adopted under the Fair Labor Standards Act.

You would think if any administration wanted to really change how overtime is paid, they would have gone around the country and had public hearings. This is normally what you do. No. These were issued without one public hearing.

Now that the proposed regulations have been out there, the Department of Labor has heard from America. I understand tens of thousands, maybe as high as 70 or 80,000, comments have come in on these proposed regulations. Still the administration has not seen one public hearing about it. I think they thought they could do it quietly. This is a fundamental alteration, the biggest alteration since 1938 when the Fair Labor Standards Act was passed.

Last year I offered an amendment to an appropriations bill that would have denied the right of the administration to issue the proposed regulations and would have forced the administration to work with Congress, to have hearings and come up with a reasonable approach to changing overtime rules. That amendment was adopted by the Senate in a bipartisan agreement. A House of Representatives soon after had a vote on what they call instructing their conferees, which is basically a vote to say we agree with the Senate and this is what we want in the final bill. That passed the House of Representatives.

So they went into conference between the House and the Senate with my amendment intact. Somehow it got rewritten and the administration came into the conference and said it had to be taken out. It was thrown out. And, of course, the Omnibus appropriations bill we vote on, as you know, cannot be amended. So, in that case, we were up-or-down vote on the bill without this amendment. We had to vote to keep the Government operating, to pay our troops in Iraq, and everything else.

I said at the time this is too important a matter just to forget about and move on. So when the Senate came back into session in January of this year, I immediately took to the floor and said: At the first opportunity, I will offer this amendment again. The American people now have heard about it, and they know about it. They are beginning to understand what it means to them and their jobs to have these changes go into effect. I believe the voters are right. Once again: I call to the administration: No, don't take away the right of people to get time-and-a-half pay when they work over 40 hours a week.

By some estimates, up to 8 million American workers would have their right to overtime pay taken away. So I have said I would offer this amendment on this bill. They call this a jobs bill. Well, this amendment is about jobs. It is about not only protecting jobs and overtime pay, but it is about creating jobs.

I believe it is necessary to proceed to consideration of this amendment so that the administration, once again, will understand that every time final regulations being issued, they need to go back to the drawing board, hear from the public, work with Congress, as other Congresses have done. Since 1938, we have amended the Fair Labor Standards Act maybe a dozen times, but it has always taken years. In conjunction with Congress, Congress and the administration working together to come up with reasonable amendments to the Fair Labor Standards Act. There is nothing wrong with that. Times change and conditions change. This should be done periodically.

But this administration did not do that. They just drafted these under the
cover of darkness, issued them and said: We are going to take away the right of about 8 million Americans to overtime pay.

So it is appropriate that we debate and vote on my amendment on the FSC JOBS BILLS. My amendment is about one thing—jobs. These new overtime rules will eliminate time-and-a-half overtime pay for up to 8 million American workers. But, again, it is not just about eliminating overtime pay. These proposed new rules will retard the creation of new jobs. This is just basic logic. If employers can more easily deny overtime pay, they will push their current employees to work longer hours without compensation. With 9 million Americans currently out of work, why would you give an employer yet another disincentive to hire new workers. Yet that is exactly why the administration is pushing these new overtime rules. This is why these proposed new rules have the support of some of the business groups in America but not all.

I always like to point out that I represent a lot of businesses in my State of Iowa—good, healthy, productive businesses. Not all businesses in my State of Iowa has come to me saying we need to change the overtime rules, not one. I am wondering, where is this coming from?

The National Association of Manufacturers, they will reduce labor costs. It will reduce the need to hire new workers. It will have a direct and strong impact on jobs in the United States.

So let's be clear. My amendment on overtime is about creating jobs, overcoming the stagnant job market. And, yes, it is about making sure we protect the time-honored right to overtime pay when you work over 40 hours a week.

There was an article that appeared in the Wall Street Journal today, which my staff has come to me saying, we need to change the overtime rules, not one. I am wondering, where is this coming from?

In plain English, the Employer Policy Foundation, an employer supported think tank in Washington, estimates that workers would get an additional $19 billion a year if the rules were observed. That estimate was considered conservative by many researchers.

In plain English, the Employer Policy Foundation, an employer supported think tank in Washington, is basically saying American workers are being cheated out of $19 billion a year because they are working overtime and are not getting paid for it right now.

Well, guess what happened, Madam President. A couple of these companies got caught. They got taken to court. They appealed and the appeals court found for the employees. One famous case on the west coast is where employees were clocking out of work after working an 8-hour day, and they were being forced to come right back in the door and work longer hours. Well, they got caught. More and more employers were getting caught.

So what many employers want to do is change the rules. They want to work you longer. They want to work you more than 40 hours a week, but they don't want to pay you overtime. That is what the Wall Street Journal said.

So let's confront with the fact that they might be taken to court, they change the rules. Now there won't be any court case. That is what the administration's proposal on overtime is all about. It is about taking away the rights of people.

You know, I had a quote that I will bring up in further debate on this amendment. One worker—a woman, if I am not mistaken—said something I thought was very poignant. She said:

My time with my kids and my family is premium time to me. If I am being asked to give up my premium time with my kids and my family, then I think I ought to get premium pay. That is what overtime is about.

They are saying give up your premium time with your family, your children, to work overtime. You ought to get premium pay, which is what time and a half is all about. Again, the Bush administration thought they could put these new rules into effect quietly, without anybody knowing what was going on. They were wrong. They got caught. The fact is, public outrage over the proposed new overtime rules has gotten stronger and stronger as Americans learn more about the details. They want these proposed rules to be stopped.

I understand if the other side, the Republican side, can drag this out and prevent a vote, well, then maybe in the next month or so they can issue these final rules for overtime pay, and then it will be very hard to undo that later on. They know that. That is why they don't want a vote on this amendment. That is why the other side is doing everything they can to keep me from getting a vote.

Madam President, we are not going to be quiet about it. This is the editorial from the New York Times: ‘The Quiet Shift In Overtime.’

It says:

The Bush administration is engineering bread and butter changes in the Federal regulation of overtime pay.

The proposed Labor Department regulations have stirred justifiable concerns. They are being presented by the Labor Department as overdue improvements.

But as they are doing it, as they said, they are doing it quietly, behind the scenes.

More problematic is the possibility that more workers—millions, according to labor analysts—could be forced into unpaid overtime under the regulations, which do not affect blue-collar hourly workers. Military estimates, veterans, police detectives, or senior nurses might lose overtime compensation that now accounts for as much as 25 percent of their salaries.

They thought they could do it quietly, but the more we learned about it, we found that the American people were not going to sit by and let preventions to the rules be taken away, being forced to work longer hours for regular pay.

With so many people unemployed, you would think you would want to create jobs. These proposed rules on overtime will be a disincentive to creating any new jobs.

Madam President, I hope we can get to my amendment. I will have more to say about it. I have more data and details I wish to bring out. For example, one thing I brought out before, since 1938, there has been a classification of learned professions, such as lawyers, doctors, architects, things like that; the learned professions, which were exempt, but who attained such knowledge through a combination of work experience, training in the Armed Forces, attending a technical school, attending a community college, or other intellectual instruction.

What is different? ‘Training in the Armed Forces’ has never been in the regulations before—never. Why were those in there? Here it is right on this chart. These are the changes, the new part of the regulations that had never been there before:

However, the word customarily means that the exemption is also available to employees in such professions and substantially the same knowledge level as the degree employed—lawyers, doctors, architects, things like that. The learned professions, which were exempt, but who attained such knowledge through a combination of work experience, training in the Armed Forces, attending a technical school, attending a community college, or other intellectual instruction.

What is different? ‘Training in the Armed Forces’ has never been in the rules before. So when we see all these ads saying ‘Join the Army and be all you can be,’ they talk about all the nice technical training you can get while you are in the military. What they are not telling you now is, if you do that, after you get out of the military, you will be exempt from overtime pay because of what you learned while you were in the military. So we could have a situation where we have two individuals: one goes to the military and gets training and the other doesn’t. They come out and they could have substantially the same kind of jobs. One could have had on-the-job training and one learned in the military. Both are basically equal. The person who served in the military gets cheated out of overtime, but the person who wasn’t in the military would be able to get overtime. What kind of sense does that make? But it is in there.

‘Training in the Armed Forces’ has never been in the rules since 1938. We
fought World War II, the Korean war, the cold war, Vietnam war, and every other war and we have never said to the men and women in uniform when they learn something in the military, we are going to take away their right to overtime. Why are we doing that now? Why are we doing that?

Again, these are some of the hidden little things in this proposed regulation that need to be brought out, with scrutiny in the sunshine. Let people know about it. Again, I hope we can get to my amendment. It has the overwhelming support of the American public. As more and more of them know about this, they don’t want their right to be taken away. I have talked with workers who received no overtime last year, no overtime pay. They were expressing to me how much they were opposed to this proposed change in the rules.

I said: If you are not working overtime, why are you opposed?

They said: It is a right we have. We may not have gotten overtime, but if I do work it, I want my right protected. That just about sums it up. It is a right that should not be taken away.

Again, it is urgent that we proceed to the amendment. Let’s go to my amendment. Let’s have a good debate. I am willing to have a time agreement, if the other side would like to have a time agreement. Let’s have the debate. I want to hear from the other side why we should let these proposed regulations go into effect. Let’s have the debate so the American people can understand what is at stake, and let’s have an up-or-down vote on my amendment. Let’s have an up-or-down vote on whether the Senate would agree with the administration that these proposed rules, these changes in the Fair Labor Standards Act, should go into effect or whether the administration should go back to the drawing board, work with Congress, do it in an open, aboveboard manner.

There are some changes that do need to be made in the Fair Labor Standards Act. There is one part of the proposed rules of which I am supportive, and that is raising the base from about $8,000 a year to $22,000 a year. That should have been done a long time ago.

My amendment does not affect that. My amendment leaves that in place. But in giving with one hand—that is, raising the base to $22,000 a year—the administration is taking away the right to overtime pay from about 8 million Americans with the other hand. That is a bad deal.

I hope we can get to my amendment. I hope we can have a good debate and an up-or-down vote on it. I am prepared to do so whenever the leadership dispenses with these pending amendments.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NICKLES. Madam President, I ask unanimous consent to speak as in morning business for not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

In the Senate

Mr. NICKLES. Madam President, last night I observed, as I am sure many Americans did, Richard Clarke’s statement on the program “60 Minutes” where he made some very strong allegations concerning the National Intelligence Community and his lack of effort on the war on terrorism. I was struck by his tone, by his statements, and also by the lack of questions concerning what he had done the previous years.

I don’t propose to go over all the things Mr. Clarke was appointed in May of 1998 by President Clinton as the first National Coordinator for Security Infrastructure Protection and Counterterrorism at the National Security Council. That is a very long title, but many people—Mr. Clarke—the czar.” He was the person to combat terrorism. That is a very prestigious position, a very important position.

Looking at the events that occurred in 1998 and also in 2000, I wonder what we were doing. I kept waiting for the questioner to ask him: Why didn’t we do more?

On August 7, 1998, terrorists bombed the American embassies in Nairobi, Dar es Salaam, Tanzania. Madam President, 224 people were killed on August 7, 1998, and over 4,000 people were injured in Nairobi. Eleven people were killed and 72 people were wounded in Tanzania. It was a very deadly day.

Two U.S. embassies—that happens to be U.S. soil—a lot of people are not aware of that but our embassies are U.S. soil. Those are U.S. buildings, those were employees, some U.S. citizens—almost all U.S. employees, Africans were killed.

What was our response? The Clinton administration, with Mr. Clarke as the head of counterterrorism, lobbed a few cruise missiles, supposedly to get Mr. bin Laden. We missed, but I compliment them for trying.

What else did we do? Did we try again? The answer is no. Did we send special forces over there? The answer is no. We had 11 people in Nairobi, 11 people in Tanzania, over 4,000 people injured, some of them critically, very seriously injured, and what did we do? We lobbed a few cruise missiles and hit the desert. This was in August of 1998.

I kept killing 22 people in Nairobi saying we didn’t do more in 1998? I heard him say: We were on a wartime footing; we had a lot of meetings; I had a lot of face time with President Clinton; I talked with him about it; we urged him to do more. Why didn’t we do more?

I have only served with a few Presidents but I could not help but think Ronald Reagan would have done more. We had American soldiers who were killed as a result of a terrorist bombing in Germany, and Ronald Reagan sent planes to Libya and sent a heck of a signal to Mr. Qadhafi and, frankly, I think he changed his terrorist ways to some extent.

I can’t help but think President Bush 1 would have done more, and I know President Bush 2, the current President, would have done a lot more.

President Clinton was President for 8 years, and Mr. Clarke was head of his counterterrorism division for about 3 of those years. He oversaw his administration in another capacity as well. But we didn’t do hardly anything after the 1998 bombings, which was a direct assault on the United States and our citizens, our people, our property, and two poor countries in Africa, and we did not do anything.

Later, the USS Cole was attacked on October 12, 2000, and 17 people were killed, 39 were wounded, and it was pretty close to being a lot more serious than that. We could have had hundreds killed. Again, that was a direct attack on our United States citizens. I was still head of counterterrorism, and what did we do then? The answer is nothing. They might have had some meetings, but they did not do anything. They did not do anything visible, anything we could see. They did not do concentrated efforts.

Last week, I was watching on TV a picture of bin Laden walking in Afghanistan where we had satellites viewing him, and we still did not do anything. We did not have assets in the region. Why? We had plenty of time to put assets in the region to make a change and maybe prevent 9/11/2001 from even happening, but maybe the administration and maybe Mr. Clarke were preoccupied or they did not have it high on their priorities.

Those questions were not asked in this program. Maybe, for whatever reason, he has a vendetta against the current President. I don’t know.

I also learned today from Condoleezza Rice, the President’s National Security Adviser, that Mr. Clarke wanted a job in the new Department of Homeland Security. I don’t know what caused his change. I don’t know what his motivation is. I am not sure if he wants to sell books or is looking for a job or what his efforts are. But I am amazed at the neglect or the lack of interest in the previous administration after we had our embassies attacked, after we had the USS Cole attacked, and we had Americans killed and hundreds of American employees killed.

We had thousands of people injured, and we did not do anything. For him to have the gall or the nerve to start saying he did not do enough in fighting the war on terrorism when Mr. Clarke was actually in a position to really do...
something for 2 or 3 years during the Clinton administration, I find unbelievable. I cannot believe the press would not ask, why did he not do more, why did President Clinton not do more? Why did we not respond? If we would have responded in 1996, 1999, or 2000, maybe 9/11 would have never happened. It is unbelievable that kind of attack would be made. Maybe it is for political reasons. I do not know. It is very sobering and startling.

I hope when he is in front of the camera he is before a committee in Congress people ask him why did he not do more when he was in a position to do so.

It is also interesting to note on October 19, 2001, the Bush White House issued a press release saying Mr. Clarke was recently named special adviser to the President for cyber space security. It is not the same. The President has an excellent team in foreign policy.

I am very disappointed in Mr. Clarke. I do not think he should be held accountable and questions need to be asked of him. I yield the remainder of my time, and I suggest the absence of a quorum.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the pending Grassey amendment No. 2687 be agreed to; provided further that I then be immediately recognized to offer a further second degree related to net operating loss. I further ask consent that the amendment then be agreed to, and the underlying amendment No. 2686 be agreed to, as amended, with the motions to reconsider laid upon the table. I further ask consent that Senator Harkin then be recognized in order to offer an amendment relating to overtime; further, that no second degree be in order to that amendment prior to a vote to adopt that amendment.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Reserving the right to object, Mr. President, I think this is tremendous progress. I commend the two managers of the bill. They do work well together, as everyone knows. But I have heard—and I certainly do not know if this is valid or not—there is going to be an effort made later tonight to try to invoke cloture on this bill. I want everyone within the sound of this area to know we have been working time here this afternoon with our manager, and we have indicated that we believe we could whittle down significantly the number of amendments that are pending on this very important piece of legislation.

The amendment Senator HARKIN is going to offer is his amendment. We have worked with the majority on other occasions to have him not offer this amendment in an effort to get important legislation passed. We can no longer do that. It is long overdue that the Senate speaks on this issue. I can say, as I have indicated, to anyone listening, if there is an attempt to invoke cloture on this legislation without an up-or-down vote on the overtime amendment offered by the Senator from Iowa, there are no guarantees, but I think it is going to be extremely difficult to have cloture invoked on this bill.

We want an up-or-down vote on this overtime amendment. If there are efforts made later tonight to file a motion to invoke cloture, I think the majority leader should know that I think it is extremely doubtful that he would get cloture on this bill.

Senator Harkin has been talking about offering this amendment on several occasions, and we are going to go forward. As I said, I want the majority leader to know that I think it would be extremely doubtful, without an up-or-down vote on overtime, that he would be able to get cloture on this bill. I could be wrong, but I really kind of doubt it.

I also want everyone to understand that the reason for taking this bill down is the inability of the minority to get a vote on this overtime amendment. It seems somewhat foolish to pull down this very important bill for this amendment. I cannot imagine why the other side won't let us vote. It has passed before. It will pass again. The overtime amendment will pass.

So having said that, I withdraw my reservation.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the pending Grassley amendment No. 2687 be agreed to; provided further that I then be immediately recognized to offer a further second degree related to net operating loss. I further ask consent that the amendment then be agreed to, and the underlying amendment No. 2686 be agreed to, as amended, with the motions to reconsider laid upon the table. I further ask consent that Senator Harkin then be recognized in order to offer an amendment relating to overtime; further, that no second degree be in order to that amendment prior to a vote to adopt that amendment.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Reserving the right to object, Mr. President, I think this is tremendous progress. I commend the two managers of the bill. They do work well together, as everyone knows. But I have heard—and I certainly do not know if this is valid or not—there is going to be an effort made later tonight to try to invoke cloture on this bill. I want everyone within the sound of this area to know we have been working time here this afternoon with our manager, and we have indicated that we believe we could whittle down significantly the number of amendments that are pending on this very important piece of legislation.

The amendment Senator HARKIN is going to offer is his amendment. We have worked with the majority on other occasions to have him not offer this amendment in an effort to get important legislation passed. We can no longer do that. It is long overdue that the Senate speaks on this issue. I can say, as I have indicated, to anyone listening, if there is an attempt to invoke cloture on this legislation without an up-or-down vote on the overtime amendment offered by the Senator from Iowa, there are no guarantees, but I think it is going to be extremely difficult to have cloture invoked on this bill.

We want an up-or-down vote on this overtime amendment. If there are efforts made later tonight to file a motion to invoke cloture, I think the majority leader should know that I think it is extremely doubtful that he would get cloture on this bill.

Senator Harkin has been talking about offering this amendment on several occasions, and we are going to go forward. As I said, I want the majority leader to know that I think it would be extremely doubtful, without an up-or-down vote on overtime, that he would be able to get cloture on this bill. I could be wrong, but I really kind of doubt it.

I also want everyone to understand that the reason for taking this bill down is the inability of the minority to get a vote on this overtime amendment. It seems somewhat foolish to pull down this very important bill for this amendment. I cannot imagine why the other side won't let us vote. It has passed before. It will pass again. The overtime amendment will pass.

So having said that, I withdraw my reservation.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 2687) was agreed to.

Mr. GRASSLEY. Mr. President, then, according to the unanimous consent agreement, I send an amendment to the Senate for SENATORS BUNNING, LINCOLN, SANTORUM, CONRAD, and BAUCUS.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa (Mr. GRASSLEY), for Mr. BUNNING, for himself, Mrs. LINCOLN, Mr. SANTORUM, Mr. CONRAD, and Mr. BAUCUS, proposes an amendment numbered 2682 to amendment No. 2687.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for the extension of the special net operating loss carryover provision.)

At the end of the matter proposed to be inserted at the end of the bill, add the following:

SEC. 7. FIVE-YEAR CARRYBACK OF NET OPERATING LOSSES.

(a) In General.—Subparagraph (H) of section 172(b)(1) is amended—

(1) by inserting "5-YEAR CARRYBACK OF CERTAIN LOSSES—" after "(H)", and

(2) by striking "or 2002" and inserting "2002, or 2003", and

(b) Rules Relating to Certain Extended Net Operating Losses.—Section 172(b) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) Rules Relating to Certain Extended Net Operating Losses.—For purposes of this section, in the case of a taxpayer who has a net operating loss for any taxable year ending during 2003 and does not make an election under subsection (j), such taxpayer shall be deemed to have made an election under paragraphs (4)(E) and (2)(C)(ii) of section 168(k) with respect to all classes of property for such taxable year.

Temporary Suspension of the 90 Percent Limit on Certain NOL Carryovers.—Section 56(d)(1a)(ii)(I) relating to general rule defining alternative tax net operating loss provision is amended—

(1) by striking "or 2002" and inserting "2002, or 2003", and

(2) by striking "and 2002" and inserting "2002, or 2003".

(d) Technical Corrections.—

(1) Subparagraph (H) of section 172(b)(1) is amended by striking "a taxpayer which hath".

(2) Section 102(c)(2) of the Job Creation and Worker Assistance Act of 2002 (Public Law 107–147) is amended by striking "before January 1, 2003" and inserting "after December 31, 1999".

(3) A Subclause (I) of section 56(d)(1)(A)(i) is amended by striking "attachieble to carryovers".

(4) Subclause (I) of section 56(d)(1)(A)(ii) is amended—

(i) by striking "for taxable years" and inserting "from taxable years", and

(ii) by striking "carryforwards" and inserting "carryovers".

(e) Effective Dates.—

(1) In General.—Except as provided in paragraph (2), the amendments made by this section shall apply to net operating losses for taxable years ending after December 31, 2002.

(2) Technical Corrections.—The amendments made by subsection (d) shall take effect as if included in the amendments made by section 162 of the Job Creation and Worker Assistance Act of 2002.

(3) Election.—In the case of a net operating loss for a taxable year ending during 2003—

(A) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before April 15, 2004, and

(B) any election made under section 172(j) of such Code shall (notwithstanding such section) be treated as timely made if made before April 15, 2004.

(4) Special Rule for Taxpayers with Taxable Years Ending During January.—Any taxpayer which has a taxable year ending during January may elect under this paragraph to apply section 172(b)(1)(H) of the Internal Revenue Code of 1986 (as amended by this section) to its taxable year ending in 2001 rather than its taxable year ending in 2003. If such election is made, then section
Mr. BAUCUS. Mr. President, a fundamental feature of any income tax system is the ability to use losses to reduce taxable gains. If a company has gross income of $100,000 and losses of $50,000, we don't force the company to pay tax on $100,000—only they pay tax on net income of $50,000.

But just as a company can have gross income and losses within the same year, a company can also have income in one year and losses in the next.

Let's suppose their losses to prior years smooth things out and helps companies deal with the hardships of the business cycle.

And it is important to be able to carry losses back. Carrying losses forward doesn't give taxpayers a boost when they need it.

Carrying losses forward only gives them a boost after things have already turned around.

Many businesses have been in hard times for the last 3 or 4 years. Giving them a 1- or 2-year NOL carryback doesn't help them—because they don't have any profits in the last few years. For many of these companies, the last year they were profitable was in 1998 or even earlier. Those companies will be able to use a 5-year NOL carryback to help them turn things around.

I urge you to support this amendment, to help get our economy going again.

For example, the timber industry in Montana and many parts of the Northwest was profitable in the late 1990s. But many of these timber companies—both large and small—have fallen on hard times in the last few years. The terrorist attacks of 9/11, the economic downturn, and the wildfires of last summer have taken their toll on these timber companies.

These companies paid large tax bills when things were going well. But how are they supposed to get any of those taxes back?

If they had a smoother, more consistent pattern of earnings, they would have paid less tax over the course of the last 5 years. Instead, the boom-bust cycle that has actually played out is giving them higher tax bills overall.

This NOL provision will ensure that these timber companies—and many other companies in cyclical industries—pay an appropriate amount of tax when times are good. It will give them a smoother ride in those unprofitable years when they need it most.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are laid upon the table.

The Senator from Iowa.

AMENDMENT NO. 281

Mr. HARKIN. Mr. President, I call up amendment No. 281 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. KENNEDY, Mr. SARBANES, Mr. KERRY, and Ms. MIKULSKI, proposes an amendment numbered 281

Mr. HARKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.].)

At the appropriate place, insert the following:

SEC. 2. PROTECTION OF OVERTIME PAY.

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

"(k)(1) The Secretary shall not promulgate any rule under subsection (a)(1) that exempts from the overtime pay provisions of section 7 any employee who would not be exempt under regulations in effect on March 31, 2003.

(2) Any portion of a rule promulgated under subsection (a)(1) after March 31, 2003, that exempts from the overtime pay provisions of section 7 any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003, remained in effect, shall have no force or effect.".

Mr. HARKIN. Mr. President, I appreciate my colleague from Iowa, the Senator from Montana, and also Senator REID, our assistant leader on this side, for working out this agreement. As I have said all along, all we want is debate and a vote on the overtime issue.

This is an important issue that has come to a head right now because the administration shortly will be issuing final regulations on this issue without referring duly consulted with Congress. These regulations could take away the right to overtime pay for over 8 million American workers.

I hope we can have a good debate on this, probably tomorrow—not tonight but tomorrow. Certainly I have had a good debate with this. If we want it to be decided with the Congress. These regulations could take away the right to overtime pay for over 8 million American workers.

I have heard some talk around that the other side, the Republican side, will now file a cloture motion. Obviously, if that cloture motion wins, then my amendment fails because it is "nongermaine."

Now, we just saw—and I did not object to the amendments just being adopted which have to do with some exceptions. There were some other things added. Those are not nongermaine to the bill. So the other side cannot make the argument that they are not going to allow nongermaine
amendments to this bill. We just adopt-
ed a whole bunch of nongermane amend-
ments to this bill. So that is fine. We do that all the time around here.
I hope we can have a good debate on
this overtime issue and have an up-or-
down vote. I can assure the other side
that if their goal is to cut off this amend-
ment by filing a cloture motion, we will do all we can on this side to
deny cloture on this bill until we have a vote on this amendment.

With that, Mr. President, I yield the
floor and look forward to the debate to-
morrow on overtime.

The PRESIDING OFFICER. The Sen-
ator from Iowa.

Mr. GRASSLEY. Mr. President, I
would like to comment on the remarks
of the Senator from Nevada. He men-
tioned the possibility of a cloture mo-
tion. My colleague from Iowa also men-
tioned that if cloture were agreed to, we
would have to delay this bill another
day. I think that it is important to me
and try to reach agreement on getting
a possibility. But I hope that will not
poison the waters as we still try to
reach agreement on this amendment and
try to reach agreement on getting to
a vote on this bill.

I, along with Senator BAUCUS, have urged
that we not have a cloture mo-
tion. That, of course, is a leadership de-
cision. I would urge my colleagues to
think in terms of the fact that it takes
48 hours for that motion to mature so it
can be voted upon. That will be time
for us to see if we can work out agree-
ments not only on the pending amend-
ment but also on any other amend-
ments that may be adopted, and then,
if so, the cloture motion could be viti-
ated.

I hope Members will look down the
road at the goal of this legislation.

That goal is to create jobs that are
going to be very difficult to create if
we are stuck with nongermane amend-
ments that may be adopted, and then,
if so, the cloture motion could be viti-
ated.

Mr. President, I would like to call on
my colleague from Iowa.

Mr. GRASSLEY. Mr. President, I
would like to comment on the remarks
of the Senator from Nevada. He men-
tioned the possibility of a cloture mo-
tion. My colleague from Iowa also men-
tioned that if cloture were agreed to, we
would have to delay this bill another
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road at the goal of this legislation.

That goal is to create jobs that are
going to be very difficult to create if
we are stuck with nongermane amend-
ments that may be adopted, and then,
if so, the cloture motion could be viti-
ated.

We all have amendments we want
to get adopted. We want the Senate to
consider amendments, whether ger-
mane or nongermane. There is plenty
of opportunity between now and the
end of this Congress to consider these
amendments. In the meantime, if we
don’t pass this legislation this week, we are going to have a 6-percent penalty in April, a 7-percent penalty in May, and a 12-percent penalty in June, and then we can get this legislation passed very soon so we can get rid of
all those sanctions against our prod-
ucts.

In the meantime we have reduced the
corporate tax for manufacturing in
America by 3 percentage points, and
that is going to make it possible for
the cost of capital in America to be
less expensive and make American
manufacturing much more competitive
and, in the process, preserve jobs and
create jobs.

I yield the floor and suggest the ab-
sence of a quorum.

The PRESIDING OFFICER. The clerk
will call the roll.

The assistant journal clerk proceeded
to call the roll.

Mr. MCCONNELL. Mr. President, I
ask unanimous consent the order for
the quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I
ask unanimous consent that amend-
ment No. 2886, by Mr. MCCONNELL,
by unanimous consent, be agreed to
without objection; further, I ask
unanimous consent that amendment
No. 2887, which was also previously
agreed to, be considered as having been
agreed to as a first-degree amendment,
amended by amendment No. 2882.

The PRESIDING OFFICER. Without
objection, it is so ordered.

MOTION TO RECOMMEND WITH AMENDMENT NO. 2886

Mr. MCCONNELL. Mr. President, on
behalf of the majority leader, I now
move to recommit the pending bill to
the Committee on Finance with in-
structions to report back forthwith,
with the amendment that is at the
desk.

The PRESIDING OFFICER. The clerk
will report the motion.

The assistant legislative clerk read as
follows:

Mr. MCCONNELL. Mr. President, I
have sent the cloture motion on the
motion to recommit to the desk. I ask
the mandatory quorum under rule XXII
be waived.

The PRESIDING OFFICER. The clo-
ture motion having been presented
as follows:
The Senator from Kentucky [Mr. McCon-
nell], for Mr. FRIST, moves to recom-
mit the bill, S. 1537, to the Committee on Finance with
instructions to report back forthwith
with an amendment No. 2886, by Mr. McCon-
nell, for Mr. FRIST.

Mr. REID. I ask unanimous consent
the reading of the amendment be dis-
pensed with.

The PRESIDING OFFICER. Without
objection, it is so ordered.

(The amendment is printed in today’s
RECORD under “Text Of Amendments.”)

The global war on terrorism.

Since September 24, 2001, I have reported,
consistent with Public Law 107-243 and the
War Powers Resolution, on the combat oper-
ations in Afghanistan against al-Qaeda ter-
erors and their Taliban supporters, which
began on October 7, 2001, and the deployment
of various combat-equipped and combat-sup-
port forces to a number of locations in the
Central, Pacific, and Southern Command
areas of operation in support of those oper-
ations and of other operations in our global
war on terrorism.

United States efforts in the campaign in
Afghanistan continue to meet with success,
but as I have stated in my previous reports,
the U.S. war on terror will be lengthy.

The PRESIDING OFFICER. Without
objection, the mandatory quorum call
under rule XXII is waived.

MORNING BUSINESS

Mr. MCCONNELL. I ask unanimous
consent that the Senate now proceed to
a period of morning business, with Sen-
ators permitted to speak for up to 5
minutes each.

The PRESIDING OFFICER. Without
objection, it is so ordered.

STATEMENT FROM THE PRESIDENT PURSUANT TO WAR POWERS RESOLUTION

Mr. STEVENS. Mr. President, I ask
unanimous consent that the attached
statement from the President of the
United States be printed in the CONGRESSIONAL RECORD today pursuant to the War
Powers Resolution and P.L. 107-243 and
P.L. 102-1, as amended.

There being no objection, the mate-
rial was ordered to be printed in the
RECORD, as follows:

WASHINGTON, D.C.


Mr. President:

To Congress:

I have decided to consolidate supple-
cmental reports I provide the Congress
concerning our efforts to continue to
provide, consistent with the War
Powers Resolution, information regard-
ing the deployment of U.S. combat-
equipped forces in a number of loca-
tions around the world. This consoli-
dated report is part of my efforts to keep
the Congress informed about such deploy-
ments and of other operations in our global
war on terrorism (including in Afghan-
istan), Kosovo, Bosnia and Herzegovina,
and Haiti. Operations in Iraq are a critical part
of the war on terrorism.

The Congress has informed me that it
is my intention to continue to provide,
consistent with the War Powers Resolu-
tion, information regarding the deploy-
ment of U.S. forces in Iraq in the reports
of the Congress under Public Law 107-243
and Public Law 102-1, as amended.

The global war on terrorism.

Since September 24, 2001, I have reported,
consistent with Public Law 107-243 and the
War Powers Resolution, on the combat oper-
ations in Afghanistan against al-Qaeda ter-
erors and their Taliban supporters, which
began on October 7, 2001, and the deployment
of various combat-equipped and combat-sup-
port forces to a number of locations in the
Central, Pacific, and Southern Command
areas of operation in support of those oper-
ations and of other operations in our global
war on terrorism.

United States efforts in the campaign in
Afghanistan continue to meet with success,
but as I have stated in my previous reports,
the U.S. war on terror will be lengthy.
terrorists who viciously attacked our Nation on September 11, 2001. These operations have been successful in seriously degrading al-Qaeda’s training capability and virtually eliminating the Taliban’s ability to brutish the Afghan people and to harbor and support terrorists. Pockets of Al-Qaeda and Taliban forces, however, remain a threat to U.S. and Coalition forces and to the Afghan government and Afghan people. United States, Coalition, and Afghan forces are actively pursuing and engaging remnant Taliban and al-Qaeda fighters.

The United States continues to deploy several hundred al-Qaeda and Taliban fighters who are believed to pose a continuing threat to the United States, and its interests, and to employ combat-equipped and combat-support forces deployed to Naval Base, Guantanamo Bay, Cuba, in the U.S. Southern Command area of operations since January 2002. The United States must conduct such operations for the approximately 610 enemy combatants at Guantanamo Bay.

In furtherance of the U.S. worldwide efforts against terrorists who pose a continuing and imminent threat to the United States, its friends and allies, and our forces abroad, the United States continues to deploy combat-equipped and combat-support forces to Afghanistan, and to protect U.S. citizens and interests. The United States Armed Forces necessary to counter the continuing and imminent threat to the United States and its interests. The U.S. Command and Control forces deployed to Afghanistan. The U.S. forces have been assigned to a sector principally centered around Gnjilane in the eastern region of Kosovo. For U.S. KFOR forces, as for KFOR generally, maintaining a safe and secure environment remains the primary military task. The KFOR operates under NATO command and control and is not engaged in a conflict. The KFOR coordinates with and supports UNMIK at most levels, provides a security presence in towns, villages, and the countryside, and organizes checkpoints and patrols in key areas to provide a visible presence, deter disputes, and help instill in the community a feeling of confidence. By the end of 2003, UNMIK had transferred all non-reserved police competencies under the Constitutional Framework document to the Kosovar Provisional Institutions of Self-Government (PISG). The PISG includes the President, Prime Minister, and Kosovo Assembly, and has been in place since March 2002.

NATO continues to conduct maritime interception operations on the high seas in the U.S. Central, European, and Pacific Command areas of responsibility. These maritime operations have recently expanded into the U.S. Southern and Northern Command areas of responsibility to stop unauthorized transshipment, and financing of international terrorists.

It is not possible to know at this time either the duration of combat operations or the scope of political and other international terrorist in the Horn of Africa region, including Yemen. These forces also assist in enhancing counterterrorism capabilities in Ethiopia, Yemen, Eritrea, and Djibouti. The United States is engaged in a continuous process of assessing options for working with other nations to assist them in this respect.

Additionally, the United States continues to conduct maritime interception operations on the high seas in the U.S. Central, European, and Pacific Command areas of responsibility. These maritime operations have recently expanded into the U.S. Southern and Northern Command areas of responsibility to stop unauthorized transshipment, and financing of international terrorists. The United States continues to conduct maritime interception operations on the high seas in the U.S. Central, European, and Pacific Command areas of responsibility. These maritime operations have recently expanded into the U.S. Southern and Northern Command areas of responsibility to stop unauthorized transshipment, and financing of international terrorists.

NATO-led Kosovo Force (KFOR)

As noted in previous reports regarding U.S. contributions in support of peacekeeping efforts in the former Yugoslavia, most recently on January 22, 2004, the U.N. Security Council authorized member states to establish KFOR in U.N. Security Council Resolution 1244 of June 10, 1999. Additionally, KFOR is positioned to provide international security presence in order to deter renewed hostilities; verify, and, if necessary, enforce the terms of the Military Technical Agreement between NATO and the Federal Republic of Yugoslavia (which is now Serbia and Montenegro); enforce the terms of the Undertaking on Demilitarization of Kosovo; and to conduct the operation of the Kosovo Liberation Army; provide day-to-day operational direction to the Kosovo Protection Corps; and maintain a safe and secure environment to facilitate the work of the U.N. Interim Administration Mission in Kosovo (UNMIK).

Currently, there are 18 NATO nations contributing to KFOR in addition to the 18 non-NATO nations that provide forces. The U.S. contribution to KFOR in Kosovo is about 1,900 personnel, or approximately 17,500 personnel. Additionally, U.S. military personnel occasionally operate from Macedonia, Albania, and Greece in support of KFOR. NATO contributing countries also participate with NATO forces in providing military personnel and other support personnel to KFOR.

The U.S. forces deployed to Kosovo are also located in Djibouti. The U.S. forces headquarters element in Djibouti provides command and control support as necessary for military operations against al-Qaeda and other international terrorists in the Horn of Africa region, including Yemen. These forces also assist in enhancing counterterrorism capabilities in Ethiopia, Yemen, Eritrea, and Djibouti. The United States is engaged in a continuous process of assessing options for working with other nations to assist them in this respect.

NATO-led Stabilization Force in Bosnia and Herzegovina (SFOR)

As noted in previous reports regarding U.S. contributions in support of peacekeeping efforts in the former Yugoslavia, most recently on January 22, 2004, the U.N. Security Council authorized member states to continue SFOR for a period of 12 months in U.N. Security Council Resolution 1244 of July 11, 2003. The mission of SFOR is to provide a focused military presence in order to deter hostilities, stabilize and consolidate the peace in Bosnia and Herzegovina, contribute to a secure environment, and perform key supporting tasks including support to the international civil presence in Bosnia and Herzegovina.

The U.S. force contribution to SFOR in Bosnia and Herzegovina is about 1,100 personnel. United States personnel comprise approximately 7 percent of the 12,000 person strong SFOR. NATO has agreed to reduce the size of the force to 7,000 personnel by June 2004. United States participation in SFOR is proportionate. Currently, 16 NATO nations and 11 others provide military personnel or other support to SFOR. Most U.S. forces in Bosnia and Herzegovina are assigned to Multi-National Brigade, North, headquartered near the city of Tuzla. The U.S. forces continue to support SFOR efforts to apprehend persons indicted for war crimes and to conduct counterterrorism operations.

MULTINATIONAL INTERIM FORCE IN HAITI

As I reported on February 23 and March 2, 2004, the United States deployed combat-equipped and combat-support personnel to Haiti in order to secure key facilities, facilitate United States assistance to Haitian migrants, help create conditions in the nation that will allow for the anticipated arrival of the Multinational Interim Force authorized by U.N. Security Council Resolution 1529. Additional U.S. forces have been deployed to Haiti, bringing the total of U.S. forces in and around Haiti to approximately 1,800. It is possible that additional U.S. forces will be deployed to Haiti in the future; however, it is anticipated that U.S. forces will redploy when the Multinational Interim Force has transitioned to a follow-on United Nations Stabilization Force.

I have directed the participation of U.S. Armed Forces in all of these operations pursuant to my constitutional authority to conduct foreign relations and foreign policy, and as Commander in Chief and Chief Executive. Officials of my Administration and I communicate regularly with the leadership and members of Congress to advise them of these deployments, and we will continue to do so.

Sincerely,

GEORGE W. BUSH

GOVERNOR JOHN CARL WEST

Mr. HOLLINGS. Mr. President, yesterday South Carolina lost a valuable public servant and I lost a very dear friend. Some 66 years ago John Carl West and I came to the Citadel as freshmen. The attention of the freshmen in those days was resounding to the howling orders of the upperclassmen. But it wasn’t long before John came to my attention. We both had COL Carl Coleman in political science and Colonel Coleman loved those Time magazine articles on public events. He would spring them on the class with a test. I would barly know half of the answers, but John Carl would get 100 every time. I felt I ought to pay closer attention to the smartest in a class of 525. In those days, at different heights, we were in different companies and different barracks, but we got thrown together on the Roundtable in the International Relations Club, I learned quickly that John was not only the academician but long on common sense.

Along with the other members of our class, John and I both left for the war shortly after graduation. I ended up in the same class at the University of South Carolina Law School after the war. I got home the day after Thanksgiving in 1945 and Dean Friersen allowed that I could audit the classes and take the exams in January and if I passed them then I could be considered a law school student. Many in the class furnished me their notes, most notably John West. By January the 17th I was through the first semester and by May of ’46 the academic year. John and I and others marched on the legislature so that we veterans could continue in the summer and by August the
following year I was through a 3-year course in less than 2 years. But I couldn’t keep up with John. He was in a bigger rush, passing the bar exam before graduation, teaching at the university and forming a law partnership.

I used to kid him that I was catching up when in one election he was running for the State Senate and I was running for Lieutenant Governor. I carried Kershaw County by 1,200 votes and he became the Kershaw County Senator by the same more or less lawyer when I was Governor. As a young Governor I needed help. My strong suit was that I knew the general assembly intimately, having been the presiding officer in both houses, so I had a three-man committee in the house with Floyd Spence, Rex Carter and Bob McNair, and a three-man committee on the senate side with Billy Goldberg, Marshall Parker and John West. West was astute and could immediately point out the conflicts in a different way to get things done. This house-senate group would, off the record, vet all of my initiatives. Working together, most all of them got done and not a single veto was overridden in that 4-year period.

When West ran for Governor, South Carolina faced its toughest and most heated political choice. The school discrimination decision had hit with full force and so had racial politics. The school buses were being overturned. I had already been elected twice to the U.S. Senate and so I could give my schoolhood friend some help. South Carolina was lucky that John West became the Governor. He didn’t mind using his political capital to get things done. John moved immediately to set a course for racial harmony in South Carolina with the appointment of James Clyburn as the head of the Human Relations Committee. The Clyburn decisions on the most sensitive situation and full force support of Governor West. A new day and a new direction for the State was set. The same was true with labor. A flood of industry had commenced by 1971 and the Arab blood in him. The same was true with labor. A flood of industry had commenced by 1971 and he readily gave of his time and leadership. He had instituted a Chair in International Studies at the Citadel, continued to instruct political science at the University of South Carolina and on national problems was always conversant and wise. Many at home didn’t realize the events of Washington, but John was my best read friend as well as my best friend. The truth is, he is the best friend that South Carolina ever had.

HONORING OUR ARMED FORCES

CLINT D. FERRIN, U.S. ARMY

Mr. HATCH. Mr. President, some ask what is the hardest duty that a Senator faces. This is that task. Today, I rise with heavy heart to pay tribute to another son of Utah who has made the ultimate sacrifice so that others may be free. This patriot’s name was SSG Clint D. Ferrin, he was a member of the elite, the 82nd Airborne Division. To all that knew him he exceeded, in every way, his division’s motto: He was truly an “All American.”

We, the citizens of the State of Utah, had the privilege of knowing Sergeant Ferrin as he grew up in Garland and Ogden. His commitment to service started at a young age when he became an Eagle Scout. The commitment to service, to helping others and truly making a difference was reflected in his choice to become a soldier. But he was not just a soldier, he was a paratrooper, knowing well that when a challenge faced our Nation he would be on the front line. This was reflected in where he served: Afghanistan, Kosovo, Bosnia, Africa, and finally Iraq.

These will be trying times for his wife, his son, age 7, and his daughter, age 3. But they should know this: though we can do little to alleviate your loss, we will always honor Sergeant Ferrin, he was a true “All-American” and a hero when his Nation needed them most.

And so, another name has been added to Utah’s List of Honor: SSG Clint D. Ferrin of the Army’s 82nd Airborne Division. His name and the service he performed is something that I shall never forget. I shall always honor him and his family.

RICHARD BRIAN WILSON
Mr. LOTT. Mr. President, I rise today to pay tribute to a departing staff member who has worked with me in my Washington office for the last 5 years. Richard Brian Wilson, who has served as my legislative assistant, is departing my staff this week to return home to Mississippi. I wanted to take this opportunity to thank him for his dedicated service and wish him the very best as he pursues new career opportunities.

Those who know Brian know of his keen interest in State and local politics. A native of Macon, MS, he has been involved in politics since high school. In fact, fellow members have jokingly referred to him as a “walking encyclopedia of Mississippi politics.” I have no doubt this expertise will serve him well as he returns home to Mississippi.

Brian graduated from the University of Mississippi in 1998 with a Bachelor of Arts degree in Political Science and History. Throughout his tenure at Ole Miss he was involved in numerous extracurricular activities where his leadership abilities became apparent. For instance, he served as Vice President of Pi Kappa Alpha fraternity, Student Body Vice President, and Student Body Senator. In recognition of his contributions to the university, I understand Brian was once named Student Body Senator of the Year. He also spent a great deal of time during his college years volunteering on political campaigns throughout the State.

During the fall of 1998, Brian served as an intern in the district office of Congressman Chip Pickering. Immediately following his internship, in January 1999, Brian came to work for me in my Washington office. Throughout his service on my staff, Brian has grown in his ability to help me service my constituents and address a wide variety of needs and issues for Mississippi. He has handled anything from appropriations to homeland defense, as well as environment and public works, agriculture, natural resources and interior, small business, rural development, and Indian affairs. Through the work on appropriations bills, such as Energy and Water Development, Agriculture, Interior, and VA-HUD, Brian has helped me steer millions of dollars in Federal funding to large and small communities all across Mississippi. He has handled issues from improving infrastructure, created hope and opportunity in communities where none existed before, and provided a better quality of life for Mississippians throughout the State.

For example, Brian has helped me secure Federal funds to improve water and wastewater systems in areas of Mississippi, such as DeSoto County, Jackson County, Fayette County, the city of Gulfport, Hancock County, and Madison County. He has worked to improve the infrastructure at our State’s ports, including the Port of Pascagoula and the State port at Gulfport. He was instrumental in helping me secure the initial funding for an environmental
infrastructure pilot program in Mississippi which has since helped fund numerous environmental infrastructure projects around the State. Brian also worked to help me secure the final funding necessary to complete construction of a state-of-the-art Federal courthouse in Gulfport. Of course, one of the things of which I know he is most proud is our work to help his hometown, the city of Macon. Through expansion of their water and sewer systems and a new multi-purpose facility to be constructed, we have begun to bring hope to this poverty-stricken area of our State.

Brian is truly one of those unique individuals who has a thirst for knowledge about the issue areas he is assigned. He has spent countless hours over the past 5 years reading news articles, books, papers, academic journals, and industry publications to keep himself apprised of the latest events, issues, and concerns relative to his assigned issues. In fact, I would venture to guess that he knows as much as just about anyone with regard to the many historic properties and places in Mississippi that he has worked hard to help protect and provide resources for. Properties such as the Battle of Corinth Interpretive Center in northeast Mississippi, L.Q.C. Lamar’s home in Oxford, and General Pemberton’s headquarters at Vicksburg are just as few of those.

Although Brian is leaving Washington, I have no doubt the knowledge he has gained through his work here will serve him well in his new capacity as Special Assistant to the Executive Director of the Mississippi Department of Marine Resources. In this position, Brian will serve as liaison for the Department with the Federal and State legislatures, as well as local governments throughout Mississippi and particularly along our Gulf Coast.

While we all certainly will miss Brian, I am looking forward to returning to our home State and particularly to the warm climate of the Mississippi Gulf Coast. And although fresh seafood, the warm gulf climate, and unlimited fishing opportunities certainly justify Brian’s move home, I know this move was compelled by his desire to be closer to family and friends, particularly his younger sister in whom he has expressed enormous pride throughout his stay in Washington.

I wish to thank Brian for 5 years of dedicated service to me and to the people of Mississippi. I wish him the absolute best in this transition and in all of his future endeavors.

ADDITIONAL STATEMENTS

LOCAL LAW ENFORCEMENT ACT OF 2003

- Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On April, 2003, in a 19-year-old sentenced to 3 years of probation for carving antigay epithets into a student’s back the preceding year.

I believe that Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

DR. NORMAN BORLAUG

- Mr. BOND. Mr. President, it is my distinct privilege to rise today to pay special tribute to the one of the world’s foremost physiologists, Dr. Norman Borlaug. Dr. Borlaug is widely credited as the father of the 1960s Green Revolution, a movement that has continued to cure millions people around the globe from starvation. It is very likely that Dr. Borlaug is directly responsible for saving more lives than anyone else in the twentieth century.

Born in Cresco, IA on March 25, 1914, Dr. Borlaug was raised on livestock farm before attending the University of Minnesota as a biology student and a member of the University’s wrestling team. After graduation, in addition to being inducted to the University’s Hall of Fame for his wrestling record, Dr. Borlaug carefully balanced teaching while successfully working on the development of several new strains of disease-resistant wheat. The new strain of wheat went on to be widely utilized in Mexico, Pakistan, and India and led to dramatic increases in food production, in turn earning Dr. Borlaug the Nobel Peace Prize in 1970. The Dallas Morning News attests his lifelong dedication to physiology to growing up among the food shortages of the Great Depression: “The sight of farm failures, sheriff’s sales and hungry children would stay with him and influence his choices for the rest of his life.”

Dr. Borlaug added in his own words, “I saw all that unfold. And I think that had something to do with how things turned out.”

Dr. Borlaug has certainly earned the right to slow down after his many years of hard work, but he continues, even at age 90, to be a leader in the development and implementation of new technologies, in effect, ensuring the world’s most needy adequate food supplies. He often travels to Asia and Africa, Europe and Latin America to help the public understand the value and potential of new biotechnology, and in protecting the environment. In addition to his efforts globally, Dr. Borlaug is helping farmers make a living by leading the fight

against wealthy and well-fed anti-technology protectionists in Europe.

Some would rest after a Nobel Peace Prize and many others would certainly take the opportunity to reward themselves and their family—deservingly—by pursuing lucrative offers from the private sector. In a world where 800 million children are hungry and even more live on less than one dollar a day, Dr. Borlaug has never stopped fighting, teaching, inventing, or caring. It is clear that Dr. Borlaug is inspired by the world’s need for leaders to help others.

Missouri’s renowned plant scientist, George Washington Carver words are appropriate when used to describe Dr. Borlaug: “No individual has any right to come into the world and go out of it without leaving behind him distinct and legitimate reasons for having passed through it.” So very few of a talented world, billions strong, have met this test to the extent that Dr. Borlaug has. He has selflessly and tirelessly developed himself on behalf of millions and billions of desperate people he does not know, and who will never know whom to thank.

I also thank Mrs. Borlaug and the rest of the Borlaug family, on the behalf of the people of Missouri, America, and throughout the world, for sharing Norman’s attention for all these years.

Dr. Borlaug will soon gain status as the world’s youngest 90 year old. I speak for all in thanking him for his lifelong dedication to agriculture and I sincerely wish him a happy birthday. The world owes Dr. Borlaug endless amounts of gratitude and we will look forward to celebrating his achievements again on his 100th birthday.

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NATIONAL AGRICULTURE WEEK

- Mr. JOHNSON. Mr. President, in my home State of South Dakota and throughout America, hardworking men and women tirelessly contribute to the production of our Nation’s food supply. These men and women consistently preserve the safety and wholesomeness of the commodities they produce, ensuring America’s food security and contributing substantially to our overall well-being. During National Agriculture Week, I would like to take this opportunity to thank and celebrate our Nation’s farmers for producing plentiful and healthful food, and in the face of so many challenges.

While agriculture can be a very rewarding endeavor, a farmer experiences myriad challenges outside of their control which affect their bottom line. Regardless of commodity or region, today’s family farmer is affected by weather conditions, market concentration, fluctuating prices, uncertain foreign markets, and an ever-changing landscape in the agricultural industry. Family farms in my home State of South Dakota, and throughout America, not only labor to produce our Nation’s food supply, but also to preserve our rural heritage. Agriculture is an economic
engine that runs our rural communities, and it is an essential component of a stable and productive America.

Despite these challenges, I am hopeful for our Nation’s producers and believe that several factors, including our farmers’ own perseverance and determination, will contribute to their future successes in the industry. While we continue to struggle with budgetary constraints, I do believe that we will be successful in ensuring that money is allocated for small and medium-sized producers. We must make certain that our Nation’s family farms, which comprise the majority of producers, have sufficient access to agriculture funds.

The adoption of an amendment to this year’s Budget Resolution, which I supported, would alter payment limitations and cap excessive compensation to large farms. This money would instead be channeled toward worthwhile and essential conservation and development programs, which are beneficial to producers in South Dakota and across the Nation.

I also believe that fair trade is necessary to ensure our farmers get a fair deal and a fair price for their product. Too often the price a producer receives for his or her product doesn’t reflect the financial and personal investment that a producer makes during the growing season and throughout the year. I am confident that new opportunities in an increasingly competitive trade with China involving quality South Dakota wheat, will open new doors and foster additional opportunities.

I also believe that increasing awareness of the negative impacts of some trade agreements, including the Free Trade Agreements with Australia, some trade agreements, including the Free Trade Agreement with Australia, and the ability to inspire our Nation’s family farmers, which help us in developing a firm base to ensure our farmers get a fair price.

Lastly, I am confident that Country of Origin Labeling, COOL, will greatly benefit our agriculture economy, in addition to increasing consumer confidence and choice. While opponents of the COOL labeling provision were unsuccessful in delaying implementation of the law for 2 years, American consumers and producers remain incredulous about the benefits COOL offers consumers and producers.

Every consumer public opinion survey confirms that consumers would pay a modestly higher price for beef if they were certain it was American beef. I contacted the United States Department of Agriculture, USDA, in December, requesting clarification of the department’s interpretation of the language delaying implementation of COOL. While I strongly oppose this delay, I also believe the department needs to clarify the rulemaking process. The USDA’s response to my inquiries was vague and unclear, which I find unsatisfactory. I intend to seek clarification of the rule pertaining to the delay while also actively working on opposing this provision.

I intend to seek clarification of the rule pertaining to the delay while also actively working on opposing this provision. Along with my colleague Senator Tom Daschle, I am pleased to have worked so extensively on this initiative, and I am confident in the future of this quality provision.

America’s farmers produce quality products, which are recognized the world-over. It is essential that we func- tion as a united team to promote these products in today’s ever-changing agricultural environment, and ensure that family farmers in South Dakota and across the nation are recognized and adequately compensated for their substantial contributions.

RECOGNIZING EMILY NEUMEIER AND CHRISTINE BANKS

Mr. NELSON of Florida. Mr. President, I would like to take a moment to congratulate two exceptional high school students from my home State of Florida. Just this March, Emily Neumeier of Tampa and Christine Banks of St. Petersburg were selected from a competitive pool of 800 participants to compete in the Science Bowl. If President Obama were to win the competition, I would congratulate two young scholars were among 50 award-winners who each received a $1,000 scholarship from the contest.

Mr. JOHNSON. Mr. President, I rise today to publicly honor and recognize Donna Peterson and Sally Stoll for receiving the 2003 Presidential Award for excellence in Mathematics and Science teaching, the Nation’s highest commendation for work in the classroom. Donna Peterson won the math award for sharing her innovative teaching approaches with the students at Belle Fourche High School. Sally Stoll won the science award for her knowledge and passion on the subject and the ability to inspire her students at Vermillion High School.

The National Science Foundation, NSF, administers the awards program for the White House. NSF is an independent Federal agency that supports research and education across all fields of science. Since 1983, the White House and NSF have sought nominations of exemplary math and science teachers from every State. In addition to honoring their achievement, the goal of the awards is to expand the definition of excellent science and mathematics teaching exemplified by Donna Peterson and Sally Stoll.

These two teachers have provided us with excellent examples of quality teaching. They have a passion for their subjects and dedication to their students. They know how to bring out the very best in every student, in every kind of school. The national award-winning teachers overwhelmingly agree that students frequently respond to their lessons that relate to recognizable phenomena from their own lives, or that allow for hands-on learning. They have observed that an engaging teaching style prompts students to pose their own questions, test their own theories, and come up with their own solutions, with the teacher serving as a facilitator and guide.

Research indicates that nothing is so important in raising student achievement as a good teacher.噩 top-notch education, not Internet access, is the key. These things are helpful, we know, but it’s the teachers themselves that are the “make or break” link between students and educational success.

United States student performance in mathematics and science has been lagging, and many schools are experiencing shortages of math and science teachers. Donna and Sally are constantly searching for effective ways to spark the learning process. In doing so, they will have continued to inspire their students in such a way that it will have enriched them for the rest of their lives. If you are lucky, you’ll have a chance to experience at least one such teacher in your lifetime.

I congratulate Donna Peterson and Sally Stoll on this tremendous honor. Their dedication to the teaching field in South Dakota serves as a model for all educators to emulate. It is with great honor that I share their impressive accomplishments with my colleagues.

HONORING DONNA PETERSON AND SALLY STOLL

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25TH ANNIVERSARY OF CENTER FOR FIRESAFETY STUDIES

Mr. KENNEDY. Mr. President, I welcome this opportunity to pay tribute to the Center for Fire Safety Studies at Worcester Polytechnic Institute in Massachusetts as it celebrates its 25th Anniversary.

Worcester Polytechnic Institute was founded in 1865 to support the new industrial economy that was developing in Central Massachusetts and as it celebrates its 19th century. Its founders believed in merging theory and practice as part of the ongoing effort to deal with changing needs of our society. Over the years, the university has earned international respect for its innovations in engineering education and its responsiveness to a changing world.

In the 1960s, fire safety in America was a priority in Congress. The Fire Research and Safety Act in 1968 called for a national study of the issue, which resulted in the landmark report known as America Burning. Among its findings, America Burning emphasized that “Appalling is the richest and most technologically advanced nation in the world leads all the major industrialized countries in per capita deaths and property loss from fire.”
In response to this wake-up call, Congress passed the Fire Prevention and Control Act of 1974, which created the United States Fire Administration and its National Fire Academy. David A. Lucht of Ohio was appointed by President Ford to lead the new agency in 1975.

True to its tradition, Worcester Polytechnic Institute took the issue on, with Professor Robert W. Fitzgerald as the guiding intellect and catalyst. In 1979, WPI created the Center for Firesafety Studies as the first graduate degree program in fire protection engineering in the Nation. In the past quarter century with Professor Lucht as Director, the WPI fire safety program has become an international leader in fire protection engineering education, with graduates from 30 countries. Through its outstanding faculty, students and alumni, WPI has had an important role in making the world safer from fire.

I commend WPI on this impressive 25th anniversary that passed on Friday, March 19, 2004, the 25th anniversary of the Cable-Satellite Public Affairs Network, C-SPAN.

Founded in 1979, C-SPAN has rapidly grown from humble beginnings televising the proceedings on the floor of the House of Representatives to a series of networks reaching millions of viewers daily. This service, which functions without any financial support of the Federal Government, provides our constituents an invaluable access to the day-to-day proceedings of both bodies of Congress, as well as other important mechanisms of our government. As a direct result, it is now easier than ever for our constituents to keep abreast of our deliberations and contribute well to the debates at hand.

I am also pleased to point out that these tremendous networks were founded by a fellow Hoosier, Brian Lamb. Through his work experiences on Capitol Hill, Brian realized the importance of bringing the business of the Federal Government into the homes of Americans nationwide and his indefatigable enthusiasm made this possible. In addition, he has shown great commitment to our home State of Indiana. Brian has also maintained strong ties with his alma mater, Purdue University, in West Lafayette, IN, where he established the C-SPAN archives. Over 80,000 hours of C-SPAN programming are immediately accessible through this database.

I am pleased to bring this important anniversary to the attention of my colleagues. I am thankful to C-SPAN for their efforts to spread the availability of our government, and I look forward to the continuing relationship, now in its 25th year, between C-SPAN and the U.S. Congress.

CONGRATULATING PATRICIA SIMMONS

Ms. MIKULSKI. Mr. President, I rise to honor Mrs. Patricia Simmons for her 34 years of dedicated service as head librarian at the National Naval Medical Center, and to congratulate her for earning the Meritorious Civilian Service Award. Mrs. Simmons is a lifelong civil servant. She has touched the lives of many in the military service with her love of literature and her commitment to service.

I ask that an article from the Journal, a publication of the Medical Center, be printed in the RECORD.

The article follows.


(By Ellen Maurer)

Patricia Simmons, head librarian at the National Naval Medical Center (NNMC), stamped her last book this month. Retiring after 34 years of service at the hospital’s general library, Simmons was honored in a ceremony Oct. 15 for not only her long-term commitment to the command, its staff and patients, but also for her love of literature.

“She loves that library and every book that makes it up,” says Cat DeBinder, an NNMC staff member who has known Simmons for more than 25 years.

RADM Donald Arthur, MC, Commander, NNMC, presented Simmons with the Meritorious Civilian Service Award during her retirement ceremony. The award citation detailed Simmons’ significant contributions, which included an improved web cataloging data-base system and an internet cafe. Ironically, though, those who knew Simmons best said she wasn’t really dependent on new technology.

“Pat never needed a computer . . . her unflappable data base was between her ears and her hand,” says DeBinder. “She carried out her responsibilities with great love and true passion. She could tell you exactly where any book was; lead you correctly, without an assistant, subject and was a wizard with those little three-by-five index cards.”

DeBinder admits, however, that Simmons’ familiarity with the books she “guarded” for more than three decades did have its disadvantages—if only to those library patrons, like DeBinder herself, who occasionally missed their “due back” date.

“Once, I had to fess up to the unspeakable. I lost a book. It was an old paperback, printed in the late 1940s or early 1950s. I think the original price was 40 cents. The pages were yellowish-orange with age. The title was “No Bad Dogs.” Pat had a very difficult time accepting the fact that I lost one of her books. I begged for mercy, forgiveness and I offered money. She said, “Just keep trying to find the book.””

Whimsically, DeBinder adds, “Pat . . . I’m still looking.”

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the President signed yesterday before messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE DURING ADJOURNMENT

ENROLLED BILLS SIGNED

Under authority of the order of the Senate of January 7, 2003, the Secretary of the Senate, on March 17, 2004, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

S. 1881. An act to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments by the Medical Device User Fee and Modernization Act of 2002, and for other purposes. H.R. 3724. An act to amend section 220 of the National Housing Act to authorize technical correction to restore allowable increases in the maximum mortgage limits for FHA-insured mortgages for multifamily housing projects to cover increased costs of installing a solar energy system or residential energy conservation measures.

Under the authority of the order of January 7, 2003, the enrolled bills were signed by the President pro tempore (Mr. STEVENS) on today, March 22, 2004.

MESSAGE FROM THE HOUSE

At 12:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1375. An act to provide regulatory relief and improve productivity for insured depository institutions, and for other purposes. H.R. 3735. An act to designate the facility of the United States Postal Service located at 410 Huston Street in Altamont, Kansas, as the “Myron V. George Post Office.”

H.R. 3782. An act to amend the State Department Basic Authorities Act of 1956 to increase the maximum amount of an award available under the Department of State re-wards program, to expand the eligibility criteria to receive an award, to authorize non-monetary awards, to publicize the existence of the rewards program, and for other purposes.

H.J. Res. 87. Joint resolution honoring the life and legacy of President Franklin Delano Roosevelt, and resolutions on the anniversary of the date of his birth.

The message also announced that the House has agreed to the following concurrent resolutions, without amendment:

S. Con. Res. 93. Concurrent resolution authorizing the use of the rotunda of the Capitol by the Joint Congressional Committee on Inaugural Ceremonies.
EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted on March 18, 2004, under the authority of an order of the Senate of March 12, 2004:

By Mr. LUGAR, from the Committee on Foreign Relations:


Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention between the Government of the United States of America and the Government of the Democratic Socialist Republic of Sri Lanka for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes and Income, signed at Colombo on March 14, 1985 (Treaty Doc. 99–19), and the Protocol amending the Convention, together with an Exchange of Notes, signed at Washington on September 20, 2002 (Treaty Doc. 108–9), subject to the understanding that the authorities to which information may be disclosed under Article 27 include appropriate congressional committees and the General Accounting Office.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times, and referred as indicated:

By Mr. DOMENICI:

S. 2218. A bill to direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States for the purpose of providing a clean, safe, and affordable water supply to rural residents and for other purposes, to authorize the Secretary to conduct appraisal and feasibility studies for rural water projects, and to establish the guidelines for any projects authorized under this program; to the Committee on Energy and Natural Resources.

By Mrs. FEINSTEIN:

S. 2219. A bill entitled “Motherhood Protection Act”; to the Committee on the Judiciary.

By Mrs. HUTCHISON:

S. 2220. A bill to amend the Internal Revenue Code of 1986 to expand the authority for a community-based banking system; to the Committee on Finance.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 2221. A bill to authorize the Secretary of Agriculture to sell or exchange certain National Forest System land in the State of Oregon, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BAUCUS (for himself and Mr. RANKIN):

S. 2222. A bill to amend titles XIX and XXI of the Social Security Act to clarify and ensure that the authority granted to the Secretary of Health and Human Services under section 1115 of that Act is used solely to promote the objectives of the Medicaid and State children’s health insurance programs, and for other purposes; to the Committee on Finance.

By Mr. ALLARD (for himself, Mr. BROWNBACK, Mr. ENZI, Mr. INHOFE, Mr. MILLER, Mr. SANTORUM, Mr. SESSIONS, and Mr. SHELBY):

S. J. Res. 30. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage; to the Committee on the Judiciary.
The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HAGEL:
S. Res. 322. A resolution designating August 16, 2004, as "National Airborne Day" to the Committee on the Judiciary.

ADDITIONAL COSPONSORS
S. 499
At the request of Ms. SNOWE, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 419, a bill to amend title XVIII of the Social Security Act to expand coverage of bone mass measurements under part B of the medicare program to all individuals at clinical risk of osteoporosis.

S. 503
At the request of Mr. DEWEINE, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 489, a bill to expand certain preferential trade treatment for Haiti.

S. 525
At the request of Mr. KERRY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 503, a bill to amend the Internal Revenue Code of 1986 to allow increase the minimum tax credit where stock acquired pursuant to an incentive stock option is sold or exchanged at a loss.

S. 756
At the request of Mr. LEVIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 525, a bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to reauthorize and improve that Act.

S. 976
At the request of Mr. THOMAS, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 756, a bill to amend the Internal Revenue Code of 1986 to modify the qualified small issue bond provisions.

S. 979
At the request of Mr. WARNER, the name of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 976, a bill to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement.

S. 1010
At the request of Mr. HARKIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1010, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities.

S. 1190
At the request of Mr. SANTORUM, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 1190, a bill to amend the Internal Revenue Code of 1986 to modify the work opportunity credit and the welfare-to-work credit.

S. 1396
At the request of Mr. DEWINE, the name of the Senator from Minnesota (Mr. DICKEY) was added as a cosponsor of S. 1396, a bill to provide for the environmental restoration of the Great Lakes.

S. 1422
At the request of Mr. CORZINE, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1422, a bill to provide assistance to train teachers of children with autism spectrum disorders, and for other purposes.

S. 1524
At the request of Mr. SANTORUM, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1524, a bill to amend the Internal Revenue Code of 1986 to allow a 7-year applicable recovery period for depreciation of motorsports entertainment complexes.

S. 1646
At the request of Mr. HATCH, the name of the Senator from Arizona (Mr. FYROH) was added as a cosponsor of S. 1646, a bill to amend title II of the Higher Education Act of 1965 to increase teacher familiarity with the educational needs of gifted and talented students, and for other purposes.

S. 1709
At the request of Mr. Bunning, his name was withdrawn as a cosponsor of S. 1647, a bill to amend title XVIII of the Social Security Act to provide for direct access to audiologists for medicare beneficiaries, and for other purposes.

S. 1709
At the request of Mr. CRAIG, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1709, a bill to amend the USA PATRIOT ACT to place reasonable limitations on the use of surveillance and the issuance of search warrants, and for other purposes.

S. 1765
At the request of Mr. CONRAD, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 1765, a bill to amend the Internal Revenue Code of 1986 to provide additional health benefits of retired miners and to restore stability and equity to the financing of the United Mine Workers of America Combined Benefit Fund by providing additional sources of revenue to the Fund, and for other purposes.

S. 1833
At the request of Mr. DASCHELLE, the name of the Senator from Maryland (Mr. SARBAVES) was added as a cosponsor of S. 1833, a bill to improve the health of minority individuals.

S. 1894
At the request of Mr. SANTORUM, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1894, a bill to waive time limits in order to allow the Medal of Honor to be awarded to Gary Lee McKiddy, of Miamisburg, Ohio, for acts of valor while a helicopter crew chief and door gunner with the 1st Cavalry Division during the Vietnam War.

S. 2020
At the request of Mr. LIEHLY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2020, a bill to reauthorize and amend the National Film Preservation Act of 1996.

S. 2076
At the request of Ms. LANDRIEU, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2076, a bill to establish an Office of Intercountry Adoptions within the Department of State, and to reform United States laws governing intercountry adoptions.

S. 2079
At the request of Mr. BOXER, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2079, a bill to prohibit, consistent with Roe v. Wade, the interference by the government with a woman’s right to choose to bear a child or terminate a pregnancy, and for other purposes.

S. 2095
At the request of Mr. FITZGERALD, the names of the Senator from Indiana (Mr. LUGAR), the Senator from Massachusetts (Mr. KENNEDY), the Senator from South Carolina (Mr. HOLLINGS) and the Senator from New Jersey (Mr. LUTTENBERG) were added as cosponsors of S. 2095, a bill to improve the governance and regulation of mutual funds under the securities laws, and for other purposes.

S. 2076
At the request of Mr. BAUCUS, the names of the Senator from Delaware (Mr. CARPER), the Senator from New York (Mrs. CLINTON) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 2076, a bill to amend title XI of the Social Security Act to provide direct congressional access to the office of the Chief Actuary in the Centers for Medicare & Medicaid Services.

S. 2096
At the request of Mr. LUGAR, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2096, a bill to promote a free press and open media through the National Endowment for Democracy and for other purposes.
At the request of Mr. MILLER, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 2152, a bill to amend title 10, United States Code, to provide eligibility for reserved non-regular service military retired pay before age 60, and for other purposes.

S. 2152

At the request of Mr. Baucus, the names of the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 2157, a bill to amend the Trade Act of 1974 to extend the trade adjustment assistance program to the services sector, and for other purposes.

S. 2157

At the request of Ms. Collins, the names of the Senator from Alaska (Ms. MURkowski) were added as cosponsors of S. 2158, a bill to amend the Public Health Service Act to increase the supply of pancreatic islet cells for research, and to provide for better coordination of Federal efforts and information on islet cell transplantation.

S. 2158

At the request of Mr. Bingaman, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2176, a bill to require the Secretary of Energy to carry out a program of research and development to advance high-end computing.

S. 2176

At the request of Mr. Brownback, the names of the Senator from Colorado (Mr. ALLARD), the Senator from Kentucky (Mr. Bunning), the Senator from Oklahoma (Mr. Coburn), the Senator from Maine (Ms. Collins), the Senator from Alaska (Ms. Murkowski) were added as cosponsors of S. 2178, a bill to posthumously award a Congressional Gold Medal to the Reverend Oliver L. Brown.

S. 2186

At the request of Mr. Levin, his name was added as a cosponsor of S. 2186, a bill to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958, through May 15, 2004, and for other purposes.

S. 2186

At the request of Mr. Hollings, the names of the Senator from Hawaii (Mr. Inouye), the Senator from Maryland (Ms. Mikulski), the Senator from Connecticut (Mr. Lieberman) and the Senator from Maryland (Mr. Sarbanes) were added as cosponsors of S. 2216, a bill to provide increased rail transportation security.

S. J. Res. 28

At the request of Mr. Campbell, the names of the Senator from Florida (Mr. Nelson), the Senator from Nevada (Mr. Reid), the Senator from Ohio (Mr. Voinovich) and the Senator from Pennsylvania (Mr. Santorum) were added as cosponsors of S. J. Res. 28, a joint resolution recognizing the 60th anniversary of the Allied Landing at Normandy during World War II.

S. Con. Res. 81

At the request of Mrs. Feinstein, the names of the Senator from Indiana (Mr. Bayh), the Senator from Wyoming (Mr. Thomas), the Senator from Florida (Mr. Graham), the Senator from Washington (Ms. Cantwell) and the Senator from Nevada (Mr. Ensign) were added as cosponsors of S. Con. Res. 81, a concurrent resolution expressing the deep concern of Congress regarding the failure of the Islamic Republic of Iran to adhere to its obligations under a safeguards agreement with the International Atomic Energy Agency and the engagement by Iran in activities that appear to be designed to develop nuclear weapons.

S. Con. Res. 88

At the request of Mr. Sarbanes, the names of the Senator from New Jersey (Mr. Corzine) and the Senator from North Dakota (Mr. Dorgan) were added as cosponsors of S. Con. Res. 88, a concurrent resolution expressing the sense of Congress that there should continue to be parity between the adjustments in the pay of members of the uniformed services and the adjustments in the pay of civilian employees of the United States.

S. Con. Res. 90

At the request of Mr. Levin, the names of the Senator from Nevada (Mr. Reid) and the Senator from Massachusetts (Mr. Kennedy) were added as cosponsors of S. Con. Res. 90, a concurrent resolution expressing the sense of the Congress regarding negotiating, in the United States-Thailand Free Trade Agreement, access to the United States automobile industry.

S. Res. 296

At the request of Mr. Campbell, the name of the Senator from Connecticut (Mr. Lieberman) was added as a cosponsor of S. Res. 296, a resolution designating May as 'National Cystic Fibrosis Awareness Month'.

S. Res. 311

At the request of Mr. Brownback, the names of the Senator from Ohio (Mr. DeWine), the Senator from New Jersey (Mr. Lautenberg) and the Senator from Connecticut (Mr. Lieberman) were added as cosponsors of S. Res. 311, a resolution calling on the Government of the Socialist Republic of Vietnam to immediately and unconditionally release Father Thaddeus Nguyen Van Ly, and for other purposes.

S. Res. 317

At the request of Mr. Hagel, the name of the Senator from Hawaii (Mr. Inouye) was added as a cosponsor of S. Res. 317, a resolution recognizing the importance of increasing awareness of autism spectrum disorders, supporting programs for increased research and improved treatment of autism, and improving training and support for individuals with autism.

AMENDMENT NO. 286

At the request of Mr. Bunning, the name of the Senator from Maine (Ms. Collins) was added as a cosponsor of amendment No. 2686 proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 287

At the request of Mr. Bunning, his name was withdrawn as a cosponsor of amendment No. 2687 proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 288

At the request of Mrs. Feinstein, the names of the Senator from Washington (Mrs. Murray), the Senator from Oregon (Mr. Wyden) were added as cosponsors of amendment No. 3698 intended to be proposed to S. 1637, a bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

AMENDMENT NO. 289

At the request of Mr. Bingaman, his name was added as a cosponsor of amendment No. 2839 proposed to S. Con. Res. 95, an original concurrent resolution directing the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009.
There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2220

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,--

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Community Savings and Investment Act of 2004’’.

SEC. 2. INCOME REDUCTIONS FOR QUALIFIED COMMUNITY LENDERS.

(a) IN GENERAL.—Section 11 of the Internal Revenue Code of 1986 (relating to tax imposed on corporations) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following:

‘‘(d) QUALIFIED COMMUNITY LENDERS.—

(1) IN GENERAL.—In the case of a qualified community lender, in lieu of the amount of tax imposed by subsection (a) for a taxable year shall be the sum of—

(A) 15 percent of so much of the taxable income as exceeds $250,000 but does not exceed $1,000,000, and

(B) the highest rate of tax imposed by subsection (b) multiplied by so much of the taxable income as exceeds $1,000,000.

(2) QUALIFIED COMMUNITY LENDER.—For purposes of paragraph (1), the term ‘qualified community lender’ means—

(A) which achieved a rating of ‘satisfactory record of meeting community credit needs’, or better, at the most recent examination of such bank under the Community Reinvestment Act of 1977,

(B) the outstanding local community loans of which at all times during the taxable year comprised not less than 60 percent of the total outstanding loans of that bank,

(C) meets the ownership requirements of paragraph (3), and

(D) at all times during the taxable year has total assets of not more than $1,000,000,000.

(3) OWNERSHIP REQUIREMENTS.—

(A) IN GENERAL.—The ownership requirements of this paragraph are met with respect to any bank if—

(i) there are no shares of, or other ownership interests in, the bank which are publicly traded, or

(ii) in the case of a bank the shares of which or ownership interests in which are publicly traded, the last known address of the holder of each such share or other ownership interest, including persons for whose benefit such shares or other ownership interests are held by another, is in the home State of the bank or a State contiguous to that State.

(B) HOME STATE DEFINED.—For purposes of subparagraph (A), the term ‘home State’ means—

(i) with respect to a national bank or Federal savings association, the State in which the main office of the bank or savings association is located, and

(ii) with respect to a State bank or State savings association, the State by which the bank or savings association is chartered.

(4) OTHER DEFINITIONS.—For purposes of this subsection—

(A) BANK.—The term ‘bank’—

(i) has the meaning given to such term in section 581, and

(ii) includes any bank—

(I) in which at least 80 percent of the shares of, or other ownership interests in, the bank are owned by other qualified community lenders, and

(II) the sole purpose of which is to serve the banking needs of such lenders.

(B) LOCAL COMMUNITY LOAN.—The term ‘local community loan’ means—

(i) any loan originated by a bank to any person, other than a related person with respect to the bank, who is a resident of a community in which the bank is chartered or in which it operates an office at which deposits are accepted, and

(ii) any loan originated by a bank to any person, other than a related person with respect to the bank, who is engaged in a trade or business in any such community, to the extent that all or substantially all of the proceeds of such loan are expended in connection with the trade or business of such person in any such community.

(C) RELATED PERSON.—The term ‘related person’ means, with respect to any bank, any affiliate of the bank, any person who is a director, officer, or principal shareholder of the bank, and any member of the immediate family of any such person.’’.}

(b) S CORPORATION INCOME.—Section 1 of the Internal Revenue Code of 1986 (relating to tax imposed) is amended by adding at the end the following:

‘‘(1) COMMUNITY LENDER INCOME FROM S CORPORATION.—

(1) IN GENERAL.—If a taxpayer has community lender income from a S corporation for any taxable year, the tax imposed by this section for such taxable year shall be the sum of—

(i) the tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of—

(I) the amount of community lender income taxed at a rate below 25 percent, or

(II) the lesser of—

(aa) the amount of community lender income tax computed at a rate above 25 percent, or

(bb) the amount of community lender income tax computed at—

(aa) a rate of zero on zero-rate community lender income,

(bb) a rate of 15 percent on 15 percent community lender income, and

(cc) the highest rate on excess community lender income,

(ii) the amount of community lender income at a rate of 15 percent, or

(iii) the highest rate in effect under this section with respect to the taxpayer on the excess of community lender income on which a tax is determined under clause (i) or (ii).

(2) COMMUNITY LENDER INCOME.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term ‘qualified community lender income’ means taxable income (if any) of a qualified community lender (as defined in section 11(d)(2)) that is an S corporation, determined at the entity level.

(B) ZERO-RATE COMMUNITY LENDER INCOME.—The term ‘zero-rate community lender income’ means the taxpayer’s pro rata share of so much of community lender income as does not exceed $250,000.

(C) 15 PERCENT COMMUNITY LENDER INCOME.—The term ‘15 percent community lender income’ means the taxpayer’s pro rata share of so much of community lender income as exceeds $250,000 but does not exceed $1,000,000.

(D) SPECIAL RULES.—

(i) For purposes of this paragraph, the tax imposed on any pro rata share of community lender income shall be determined under part II of subchapter S.

(ii) This subsection shall be applied after the application of subsection (b).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 3. EXCLUSION FROM INCOME TAXATION FOR INCOME DERIVED FROM BANKING SERVICES WITHIN DISTRESSED COMMUNITIES.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended by inserting after section 140A the following new section:
"SEC. 140B. BANKING SERVICES WITHIN DISTRESSED COMMUNITIES.

"(a) IN GENERAL.—At the election of the taxpayer, gross income shall not include distressed community banking income.

"(b) DISTRESSED COMMUNITY BANKING INCOME.—For purposes of subsection (a), the term ‘distressed community banking income’ means income from the operation of a depository institution which is derived from the active conduct of a banking business in a distressed community.

"(c) QUALIFIED DEPOSITORY INSTITUTION.—For purposes of this section, an institution is a qualified depository institution if—

"(1) such institution is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)),

"(2) such institution is located in, or has a branch located in, a qualified distressed community, and

"(3) as of the last day of the taxable year, at least 85 percent of its loans from its location within the qualified distressed community are local community loans (as defined in section 11(d)(4)(B))..

"(d) DISTRESSED COMMUNITY.—For purposes of this section, the term ‘distressed community’ has the meaning given the term ‘qualified distressed community’ by section 233 of the Bank Enterprise Act of 1991 (12 U.S.C. 1843a(b)).

"(e) C LERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of title 26 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 140A the following:

"Sec. 140B. Banking services within distressed communities.”

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

By Mr. BAUCUS (for himself and Mr. ROCKEFELLER):

S. 2222. A bill to amend titles XIX and XXI of the Social Security Act to clarify and ensure that the authority granted to the Secretary of Health and Human Services under section 1115 of that title is only to promote the objectives of the medicaid and state children’s health insurance programs; and for other purposes; to provide for the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Medicaid and CHIP Safety Net Preservation Act, a bill to clarify existing law and to preserve the core elements of Medicaid, the State Children’s Health Insurance Program, (CHIP), and our health care safety net, which provide needed health services to more than sixty million Americans. These programs, which are so critical to the health of our children, our parents and grandparents, and to our communities, have been threatened in recent years by waivers that undermine the very foundations of these programs. I am introducing this bill with my colleague, good friend, and the Ranking Member of the Finance Committee’s Subcommittee on Health, Senator ROCKEFELLER.

I have long been concerned about the inappropriate use of the so-called “Section 1115” waiver authority with respect to Medicaid and CHIP. Section 1115 of the Social Security Act permits the Secretary of HHS to waive provisions of the Medicaid and CHIP statutes at the request of a state if the waiver is determined to “promote the Objectives” of the program, and if it meets certain other criteria established in statute. The authority has existed since before Medicaid’s inception, and it is designed to allow states before Medicaid’s inception, and it is designed to allow states to experiment and engage in pilot and demonstration programs in a variety of Social Security Act programs. It has long been used to allow States to try innovative approaches to deliver or finance healthcare for some of our most vulnerable citizens—poor children, pregnant women and parents, individuals with disabilities, and the elderly, including many in nursing homes.

But in recent years, the waiver authority has been used increasingly aggressively and, in my view, irresponsibly. I have concerns about these waivers when I learned that waiver programs, which now affect millions of people and tens of billions of dollars annually, were being negotiated and approved in the dark. In some cases, Medicaid enrollees literally could not find out what the operating rules of Medicaid rules were in their state, because laws and rules had been waived and the new program requirements were not published in a place accessible to the public. In 2001, I and my colleague, Chairman GRASSLEY, wrote to Secretary Thompson with our concerns that the waiver process was not adequately transparent, and that there could be no accountability without transparency.

After many months and much correspondence with Secretary Thompson, I noticed some improvement in the posting of approved waiver applications. By that time, the General Accounting Office had reported that there were serious problems with 1115 waivers. Waivers were being approved without adequate public input; waivers were being approved that used funds set aside by Congress for children’s health care on childless adults; and waiver applications were being negotiated and approved with different standards applied, depending on the identity of the state applicant. Finally, and most disturbing, the GAO noted that HHS was applying a condition to one waiver that imposed a hard cap on Federal spending for a state’s elderly Medicaid enrollees over a five-year period.

Most recently, I was deeply disturbed to read press reports indicating that HHS was inviting states to prepare new more comprehensive waiver applications that would impose enforceable, global caps on state Medicaid programs. One of the crucial elements of the Medicaid program is its unique state-federal financing structure, which requires the Federal government to match a dollar for dollar eligible spending on Medicaid to be matched by at least one Federal dollar. This guaranteed matching structure provides financial stability and an incentive for states to maintain levels of health care spending in good and bad economic times. The matching structure has, over time, allowed a swift response to economic recessions, high rates of uninsurance, epidemics, disasters like Hurricane Katrina, and advances, like the advent of expensive protease inhibitors to treat AIDS. The law does not, and it should not, allow a Secretarial waiver of such a core element of Medicaid.

I also heard reported an instance where HHS announced in court, for the very first time, that the Secretary has waived the essential “EPSDT” benefits for children in one state. Beneficiaries did not even know that they were no longer entitled to the comprehensive benefit for children until they were in litigation with the State over inadequacies in the state’s Medicaid program.

And finally, I am concerned about efforts to undermine Medicaid financing for Community Health Clinics and Rural Health Clinics through the use of the 1115 waiver authority. These clinics provide desperately needed care for Medicaid and CHIP enrollees as well as millions of uninsured Americans. With our payment for CHCs and RHCs have reduced capacity to see the patients who rely on them for care.

There are some features of the Medicaid program that are so fundamental to the program that they should never be waived with the stroke of the pen of one person. And I am pleased to quote the new Administrator of the Centers on Medicare and Medicaid Services, Mark McClellan, who agreed at his nomination hearing that, and I quote, “federally imposed caps on spending are not envisioned as part of Medicaid’s structure.” He also said that core Medicaid principles, such as the program’s state and federal funding partnership and citizens’ entitlement to benefits, should not be waived. I am hopeful that, one day in the not too distant future, the Congress can have a meaningful debate on how to improve the Medicaid program that is now a healthcare lifeline for more than 50 million people, and how to improve CHIP and expand coverage to the uninsured. It is critical that we ensure that efforts to innovate through waivers are made publicly and openly, with an opportunity for stakeholder
input at every level of decision making, and with a promise that innovation will “do no harm” to the foundational principles of these safety net programs. I urge my colleagues to cosponsor this bill, which will improve the integrity of Medicaid and CHIP and ensure that they remain available and responsive to the needs of so many Americans.

I ask unanimous consent that the bill be printed in the RECORD.

Children being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2222

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Medicaid and CHIP Safety Net Preservation Act of 2004.”

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings; purposes; rule of construction.
Sec. 3. Clarification that section 1115 authority does not permit a cap on Federal financial participation.
Sec. 4. Clarification that section 1115 authority does not permit elimination of, or modification limiting, individual entitlement.
Sec. 5. Clarification that section 1115 authority does not permit elimination or modification of requirements relating to EPSDT services.
Sec. 6. Clarification that section 1115 authority does not permit elimination or modification of requirements relating to certain safety-net services.
Sec. 7. Prohibition on use of CHIP funds for health benefits coverage for childless adults.
Sec. 8. Improvement of the process for the development and approval of Medicaid and CHIP demonstration projects.
Sec. 9. Effective date.

SEC. 2. FINDINGS; PURPOSES; RULE OF CONSTRUCTION.

(a) FINDINGS.—Congress makes the following findings:

(1) Certain requirements of titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.) are central to the overall objectives of the Medicaid and State children’s health insurance programs and are not properly subject to waiver, modification, or disregard under the authority of section 1115 of the Social Security Act (42 U.S.C. 1315).

(2) Some of the requirements of titles XIX and XXI of the Social Security Act that promote the overall objectives of the Medicaid and State children’s health insurance programs have been waived, modified, or otherwise disregarded by the Secretary of Health and Human Services under such section 1115, despite explicit requirement in that section that certain requirements of the medicaid and State children’s health insurance programs only may be waived, modified, or disregarded under the authority of section 1115 of the Social Security Act.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To clarify that certain requirements of titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.), which are among those critical to achieving the objectives of Medicaid and State children’s health insurance programs, may not be waived, modified, or otherwise disregarded by the Secretary of Health and Human Services under the authority of section 1115 of the Social Security Act.

(2) To ensure that the authority granted to the Secretary of Health and Human Services under such section 1115 of the Social Security Act (42 U.S.C. 1315) with respect to the Medicaid and State children’s health insurance programs for the purpose of approving experimental, pilot, or demonstration projects is not used inappropriately.

(c) RULE OF CONSTRUCTION.—Nothing in this Act or the amendments made by this Act shall be construed to—

(1) authorize the waiver, modification, or other disregard of any provision of title XIX or XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.); or

(2) imply congressional approval of any demonstration projects using the medicaid and State children’s health insurance program under title XXI of such Act that has been approved by the Secretary of Health and Human Services as of the date of enactment of this Act.

SEC. 3. CLARIFICATION THAT SECTION 1115 AUTHORITY DOES NOT PERMIT A CAP ON FEDERAL FINANCIAL PARTICIPATION. Title XIX of the Social Security Act is amended by inserting after section 1225 the following:

“CLARIFICATIONS OF AUTHORITY UNDER SECTION 1115”.

“SEC. 1125. (a) CLARIFICATION THAT SECTION 1115 AUTHORITY DOES NOT PERMIT A CAP ON FEDERAL FINANCIAL PARTICIPATION.—The Secretary may not impose or approve under the authority of section 1115 a cap on Federal financial participation, or other restriction on payment under section 1903(a) to a State for amounts expended as medical assistance in accordance with the requirements of this title.”

SEC. 4. CLARIFICATION THAT SECTION 1115 AUTHORITY DOES NOT PERMIT ELIMINATION OR MODIFICATION LIMITING, INDIVIDUAL ENTITLEMENT. Section 1926 of the Social Security Act, as added by section 3, is amended by adding at the end the following:

“(b) CLARIFICATION THAT SECTION 1115 AUTHORITY DOES NOT PERMIT ELIMINATION OR MODIFICATION LIMITING, INDIVIDUAL ENTITLEMENT.—The Secretary may not approve or impose under the authority of section 1115 an elimination or modification limiting, individual entitlement, or other restriction on payment under section 1903(a), on and after the date of enactment of this subsection, the Secretary, with respect to a State program under title XIX or XXI (in this subsection referred to as a ‘‘State program’’), for a particular service, to do any of the following: (1) eliminate or modify a service under section 1926 of the Social Security Act, which is among those critical to achieving the objectives of Medicaid and State children’s health insurance programs, except by exception, waiver, or approval under the authority of section 1115 of the Social Security Act; and (2) eliminate or modify a service under section 1926 of the Social Security Act, which is among those critical to achieving the objectives of Medicaid and State children’s health insurance programs, except by exception, waiver, approval, or approval under the authority of section 1115 of the Social Security Act.”

SEC. 5. CLARIFICATION THAT SECTION 1115 AUTHORITY DOES NOT PERMIT ELIMINATION OR MODIFICATION OF REQUIREMENTS RELATING TO EPSDT SERVICES. Section 1926 of the Social Security Act, as added by section 3, is amended by adding at the end the following:

“(c) CLARIFICATION THAT SECTION 1115 AUTHORITY DOES NOT PERMIT ELIMINATION OR MODIFICATION OF REQUIREMENTS RELATING TO EPSDT SERVICES.—The Secretary may not impose or approve under the authority of section 1115 an elimination or modification of the requirements relating to EPSDT services described in section 1905(a)(4)(B) (relating to early and periodic screening, diagnostic, and treatment services (as defined in section 1905(c)) or of the requirements of subparagraphs (A) through (C) of section 1902(a)(3).”

SEC. 6. CLARIFICATION THAT SECTION 1115 AUTHORITY DOES NOT PERMIT ELIMINATION OR MODIFICATION OF REQUIREMENTS RELATING TO CERTAIN SAFETY-NET SERVICES. Section 1926 of the Social Security Act, as added by section 3 and amended by sections 4 and 5, is amended by adding at the end the following:

“(d) CLARIFICATION THAT SECTION 1115 AUTHORITY DOES NOT PERMIT ELIMINATION OR MODIFICATION OF REQUIREMENTS RELATING TO CERTAIN SAFETY-NET SERVICES.—The Secretary may not impose or approve under the authority of section 1115 an elimination or modification of the requirements, or other restriction on payment under section 1926 of the Social Security Act, which are among those critical to achieving the objectives of Medicaid and State children’s health insurance programs, except by exception, waiver, approval, or approval under the authority of section 1115 of the Social Security Act.”

SEC. 7. PROHIBITION ON USE OF CHIP FUNDS FOR HEALTH BENEFITS COVERAGE FOR CHILDBRED ADULTS. (a) IN GENERAL.—Section 2107 of the Social Security Act (42 U.S.C. 1397gg) is amended by adding at the end the following:

“(b) LIMITATION ON WAIVER AUTHORITY.—Notwithstanding subsection (a), the Secretary may not approve or impose under the authority of section 1115 a cap on Federal financial participation, or other restriction on payment under section 1903(a), on and after the date of enactment of this subsection, the Secretary, with respect to a State program under title XIX or XXI (in this subsection referred to as a ‘‘State program’’), for a particular service, to do any of the following: (1) eliminate or modify a service under section 1926 of the Social Security Act, which is among those critical to achieving the objectives of Medicaid and State children’s health insurance programs, except by exception, waiver, approval, or approval under the authority of section 1115 of the Social Security Act; and (2) eliminate or modify a service under section 1926 of the Social Security Act, which is among those critical to achieving the objectives of Medicaid and State children’s health insurance programs, except by exception, waiver, approval, or approval under the authority of section 1115 of the Social Security Act.”

SEC. 8. IMPROVEMENT OF THE PROCESS FOR THE DEVELOPMENT AND APPROVAL OF MEDICAID AND CHIP DEMONSTRATION PROJECTS. Section 1115 of the Social Security Act (42 U.S.C. 1315) is amended by adding after section 3 and amended by sections 4 and 5, is amended by adding at the end the following:

“(e) IMPROVEMENT OF THE PROCESS FOR THE DEVELOPMENT AND APPROVAL OF MEDICAID AND CHIP DEMONSTRATION PROJECTS.—The Secretary may not approve or impose under the authority of section 1115 a cap on Federal financial participation, or other restriction on payment under section 1903(a), for a particular service, to do any of the following: (1) eliminate or modify a service under section 1926 of the Social Security Act, which is among those critical to achieving the objectives of Medicaid and State children’s health insurance programs, except by exception, waiver, approval, or approval under the authority of section 1115 of the Social Security Act; and (2) eliminate or modify a service under section 1926 of the Social Security Act, which is among those critical to achieving the objectives of Medicaid and State children’s health insurance programs, except by exception, waiver, approval, or approval under the authority of section 1115 of the Social Security Act.”

SEC. 9. EFFECTIVE DATE. This Act shall take effect as of the date of enactment of this Act.

March 22, 2004
prior to submission of the proposal to the Secretary. Such notice shall include—

"(A) the proposal;

"(B) the methodologies underlying the proposal;

"(C) the justifications for the proposal;

"(D) the State's projections regarding the likely effect and impact of the proposal on individual and group assistance providers or suppliers of items or services under title XIX or XXI (including under any demonstration project conducted in conjunction with such title) of this Act, and the provisions of subparagraph (B); and

"(E) the State's assumptions on which the projections described in subparagraph (D) are based.

"(2) With respect to any proposal for a demonstration project, or for an amendment or extension of a demonstration project, which has not been approved or disapproved by the Secretary as of the date of enactment of this subsection, the Secretary shall—

"(A) provide public notice in the Federal Register and on the Internet website of the Centers for Medicare & Medicaid Services of the proposal, any revisions of the proposal, and any conditions for the financing or approval of the proposal;

"(B) provide adequate opportunity for public comment on the proposal, any revisions of the proposal, and any such conditions;

"(C) approve such proposal, any revisions of such proposal, and any such conditions, only if, after consideration of the public comments received, the Secretary determines that the proposal, any revisions of the proposal, and any such conditions are likely to assist in promoting the objectives of title XIX or XXI and identifies in writing the basis for such determination; and

"(D) post on such website all documentation relating to the proposal (including the written determination required under subparagraph (C)), any revisions of the proposal, and any such conditions, including if the proposal, any revisions of the proposal, and any such conditions are approved—

"(i) the final terms and conditions for the demonstration project; and

"(ii) a list identifying each provision of title XIX or XXI, and each regulation relative to either such title, with which compliance is waived, modified, or otherwise disregarded or for which costs that would otherwise not be permitted under such title will be allowed.

SEC. 9. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b), the amendments made by sections 3 through 6 shall apply to the approval on or after the date of enactment of this Act of—

"(1) a waiver, experimental, pilot, or demonstration project under title 1115 of the Social Security Act (42 U.S.C. 1315); and

"(2) an amendment or extension of such a project.

(b) Exception.—The amendment made by section 5 shall not apply with respect to any extension of approval of a waiver, experimental, pilot, or demonstration project with respect to title XXI of the Social Security Act that was first approved before 1994 and that provides a comprehensive and preventive child health program under such project that includes screening, diagnosis, and treatment of children who have not attained age 21.

Mr. ROCKEFELLER. Mr. President, I rise today to join the distinguished ranking member from Montana, Mr. Baucus, in introducing the Medicaid and CHIP Safety Net Preservation Act of 2004. Medicaid and the Children's Health Insurance Program (CHIP) provide health insurance coverage to more than 50 million vulnerable Americans, including pregnant women, kids, people with disabilities, and seniors in nursing homes. Preserving the integrity of each of these programs should be one of our top priorities. The bill that we are introducing tomorrow that Section 1115 of the Social Security Act the so-called "1115 waiver authority"—does not erode the core objectives of Medicaid and CHIP.

Medicaid and CHIP form the foundation of our Nation's health care safety net. Without them, many more Americans would be uninsured. Unfortunately, the central objectives of these entitlement programs have been threatened in recent years by short-sighted proposals to cap Federal funding, questionable administrative rules and regulations, and inappropriate waivers that essentially waive the requirements of Federal law. The Medicaid and CHIP Safety Net Preservation Act would address each of these issues by requiring the core requirements of Medicaid and SCHIP.

Congress created Medicaid in 1965 as Federal-State partnership to provide health insurance coverage to low-income families and welfare. Over the years, Medicaid has evolved into a multi-faceted health insurance program that serves working families, the disabled, and the elderly. Throughout the evolution of Medicaid, two aspects of the program have remained the same: Federal guidelines for program administration and shared Federal and State responsibility for financing. This structure has served the Medicaid program well. It maintains the national health care safety net, while also allowing Federal and State policymakers to tailor the program to meet local needs.

In 1997, I was joined by Senator CHAFER in introducing the Children's Health Insurance Program as part of the Balanced Budget Act. The purpose of this program has always been to help the children of families that do not qualify for Medicaid. At the time that CHIP was enacted, 10 million children were uninsured. Today, over 5 million children have coverage through CHIP: this includes nearly 23,000 children in the State of West Virginia. While we still have a long way to go in order to provide every child with health insurance, I believe the families whose children are covered by the CHIP program thus far would agree it serves its purpose well.

The legislation that Senator Baucus and I are introducing today is designed to make it very clear that certain requirements under Medicaid and CHIP are central to the overall objectives of these programs and are not subject to waiver. Specifically, this legislation would ensure that 1115 waivers are not used to impose global caps on Federal payments to Medicaid. It would protect the Federal guarantee of Medicaid for any waiver that would continue to have access to comprehensive health benefits under the Early and Periodic Screening, Diagnostic,
1940, when the Army Parachute Test Platoon was first authorized by the United States Department of War, and was launched when 48 volunteers began training in July of 1940. The Parachute Test Platoon performed the first official Army parachute jump on August 16, 1940.

Whereas the success of the Parachute Test Platoon immediately following the entry of the United States into World War II led to the formation of a formidable force of airborne units that, since then, have served with distinction and repeated success in armed hostilities;

Whereas among those units are the former 11th Airborne Division, the venerable 82nd Airborne Division, the versatile 101st Airborne Division (Air Assault), and the airborne regiments and battalions (some, as components of those divisions, some as separate units) that achieved distinction as the elite 75th Ranger Regiment, the 173rd Airborne Brigade, the 187th Infantry (Airborne) Regiment, the 503rd, 505th, 506th, 517th, 541st, and 542nd Parachute Infantry Regiments, the 88th Glider Infantry Regiment, the 509th, 511st, and 555th Parachute Infantry Battalions, and the 82nd Airborne Infantry Battalion;

Whereas the achievements of the airborne forces during World War II provided a basis of a highly unified force of parachute and air assault units that, over the years, have fought in Korea, Vietnam, Grenada, Panama, the Persian Gulf Region, and Somalia; they have engaged in peace-keeping operations in Lebanon, the Sinai Peninsula, the Dominican Republic, Haiti, Bosnia, and Kosovo;

Whereas the modern-day airborne force that has evolved from those World War II beginnings is an agile, powerful force that, in large part due to the experience of the 82nd Airborne Division, the 101st Airborne Division (Air Assault), and the 75th Ranger Regiment which, together with other units, comprise the quick reaction force of the Army’s XVIII Airborne Corps when not operating separately under a regional combatant commander;

Whereas that modern-day airborne force also includes other elite forces composed entirely of airborne trained and qualified special operations warriors, including Army Special Operations Forces, Fast-Roof Units, the Air Force’s pararescue forces, Navy SEALs, and Air Force combat control teams, all or most of which comprise the core of the United States Special Operations Command;

Whereas in the aftermath of the terrorist attacks on the United States on September 11, 2001, the Rangers, Special Forces, and other airborne forces, units, and units of the 82nd Airborne Division and the 101st Airborne Division (Air Assault), together with other units of the Armed Forces, have been prosecuting the war against terrorism by carrying out combat operations in Afghanistan, training operations in the Philippines, and other operations throughout the world;

Whereas in the aftermath of the President’s announcement of Operation Iraqi Freedom in March 2003, the 75th Ranger Regiment, special forces units, and units of the 82nd Airborne Division, the 101st Airborne Division (Air Assault), and the 173rd Airborne Brigade, together with other units of the Armed Forces, have been prosecuting the war against terrorism, carrying out combat operations, conducting civil affairs missions, and assisting in establishing democracy in Iraq;

Whereas the airborne forces are and will continue to be at the ready and on the forefront until the Global War on Terrorism is concluded;

Whereas of the members and former members of the United States combat airborne forces, all have achieved distinction by earning the right to wear the airborne’s “Silent Wings of Courage”, thousands have achieved the distinction of making combat jumps, 69 have been awarded the Medal of Honor, and hundreds have earned the Distinguished-Service Cross, Silver Star, or other decorations and awards for displays of such traits as heroism, gallantry, and intrepidity;

Whereas the members and former members of the United States combat airborne forces are members of a proud and honorable fraternity of the paratrooper that is marked exclusive by those distinctions which, together with their special skills and achievements, distinguish them as intrepid combat paratroopers, special forces, and (in former days) glider troops; and

Whereas the history and achievements of the members and former members of the airborne forces of the United States Armed Forces warrant special expressions of the gratitude of the American people as the airborne community celebrates August 16, 2004, as the 64th anniversary of the first official jump by the Army Parachute Test Platoon: Now, therefore, be it

Resolved by the Senate (S. Res. 286, 108th Cong., 1st Sess.), that:

(1) designates August 16, 2004, as “National Airborne Day”;

(2) requests that the President issue a proclamation recognizing the contributions of the United States Armed Forces, the paratroopers, and all others who have served with distinction in aerial operations; and that:

(a) the first day in the month of August be designated as the day to lie on the table.

(b) the Senate extend to the United States Armed Forces and veterans of the United States military and peace-keeping operations its appreciation for their service.

(c) the Senate extend to all who have served in aerial operations the respect and honor that they deserve.

(d) the Senate extend to the nation’s veterans its thanks.

(e) the Senate extend to the nation’s veterans its appreciation.

Mr. HAGEL. Mr. President, I am pleased to rise today to submit a Senate resolution which designates August 16, 2004 as “National Airborne Day.” Our friend and former colleague, the late Senator Strom Thurmond, introduced this resolution in past years. Senator Thurmond served with the 82nd Airborne Division, one of the first airborne divisions to be organized in the U.S. Army.

During a 2-year period during World War II, the regiments of the 82nd Airborne served in Italy at Anzio, in France at Normandy, and at the Battle of the Bulge.

As a member of the 82nd Airborne Division, Senator Strom Thurmond participated in the landings at Normandy in June 1944.

Later this year we will celebrate the 60th Anniversary of the D-Day landings and the Battle of the Bulge.

On June 25, 1940, the War Department authorized the Parachute Test Platoon to experiment with the potential use of airborne troops. The Parachute Test Platoon, which was composed of 48 volunteers, performed the first official Army parachute jump on August 16, 1940. The success of the Platoon led to the formation of a large and successful airborne command that has served from World War II until the present.

The 11th, 13th, 17th, and 101st Airborne Divisions and numerous other regimental and battalion size airborne units were also organized following the success of the Parachute Test Platoon. In the last 64 years, these airborne forces have performed in important military and peace-keeping operations all over the world, including Operation Iraqi Freedom.

Whereas the Parachute Test Platoon was organized on an appropriate that we designate a day to salute the contributions they have made to this Nation.

Through passage of “National Airborne Day,” the Senate will reaffirm our support for the members of the airborne community.

I would like to thank Airborne veterans and Airborne units for their tireless commitment to our Nation’s defense and for the ideas, honor, country they embody, Airborne!

AMENDMENTS SUBMITTED AND PROPOSED

SA 2860. Mrs. BOXER submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rules on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international tax rules of the United States, and for other purposes; which was ordered to lie on the table.

SA 2861. Mr. VOINOVICH (for himself and Mr. BAUTCH) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2862. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2863. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2864. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2865. Mr. BUNNING (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2866. Mr. BENNETT submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2867. Mr. MURRAY submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2868. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2869. Mr. DOLE submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2870. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2871. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2872. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2873. Mr. THOMAS submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2874. Mr. THOMAS submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2875. Ms. COLLINS (for herself, Mr. BINGMAN, Mr. MITCHELL, Mr. WARD, Mr. DACHEL, and Mr. SMITH) submitted an amendment intended to be proposed by her.
to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2875. Mrs. HUTCHISON (for herself, Mr. SMITH, and Ms. LANDRIEU) submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2877. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2879. Mr. PYOR submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2880. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2881. Mr. HARKIN (for himself, Mr. KENNEDY, Mr. SANDERS, Mr. KERRY, and Ms. MIKULSKI) proposed an amendment to the bill S. 1637, supra.

SA 2882. Mr. GRASSLEY (for Mr. BUNNING (for himself, Mrs. LINCOLN, Mr. SANTORUM, Mr. CONRAD, and Mr. BAUCUS)) proposed an amendment to amendment SA 2886 proposed by Mr. BUNNING (for himself, Ms. STABENOW, Mrs. HUTCHISON, Mr. Kyl, Mr. ROCKEFELLER) to the bill S. 1637, supra.

SA 2883. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2884. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2885. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2886. Mr. MCCONNELL (for Mr. FRIST) submitted an amendment intended to be proposed by Mr. MCCONNELL to the bill S. 1637, supra.

SA 2887. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2888. Mrs. HUTCHISON (for herself, Mr. FRIEDMAN, Mr. BONIN, and Mr. ALLEN) submitted an amendment intended to be proposed by her to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2889. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

SA 2890. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2860. Ms. BOXER submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table as follows:

At the appropriate place, insert the following:

**SEC. 2. **CREDIT AGAINSTrica NATION**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the "Blue Ribbon Commission on Comprehensive Tax Reform" (in this section referred to as the "Commission").

(b) MEMBERS.—

(A) COMPOSITION.—The Commission shall be composed of 17 members of whom—

(1) shall be appointed by the majority leader of the Senate;
(2) shall be appointed by the minority leader of the Senate;
(3) shall be appointed by the Speaker of the House of Representatives;
(4) shall be appointed by the minority leader of the House of Representatives; and
(5) shall be appointed by the President, of which no more than 3 shall be of the same party as the President.

(B) FEDERAL EMPLOYEES.—The members of the Commission shall be federal employees or former employees of the Federal Government.

(C) DATE.—The appointments of the members of the Commission shall be made not later than October 30, 2004.

3. PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy on the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

4. INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

5. MEETINGS.—The Commission shall meet at the call of the Chairman.

6. QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

7. CHAIRMAN AND VICE CHAIRMAN.—The President shall select a Chairman and Vice Chairman from among its members.

8. DUTIES OF THE COMMISSION.—

(a) STUDY.—The Commission shall conduct a thorough study of all matters relating to a comprehensive reform of the Federal tax system, including the reform of the Internal Revenue Code of 1986 and the implementation of appropriate"
At the appropriate place, insert the following:

**SEC. 501. REVISIONS TO REIT PROVISIONS.**

(a) RULES OF APPLICATION FOR FAILURE TO SATISFY SECTION 856(C)(4).—Section 856(c)(4) (relating to definition of real estate investment trust), as amended by section 101, is amended by inserting after paragraph (6) the following new paragraph:

"(7) RULES OF APPLICATION FOR FAILURE TO SATISFY PARAGRAPH (4)—

"(A) DE MINIMIS FAILURE.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

"(I) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

"(I) 1 percent of the total value of the trust's assets at the end of the quarter for which such measurement is done, and

"(II) $10,000,000, and

"(II) such failure, dispossession of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary, and

"(II) such failure, dispossession of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary.
“(B) FAILURES EXCEEDING DE MINIMIS AMOUNT.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) for a particular quarter shall nevertheless be deemed to have satisfied the requirements of such paragraph for such quarter if—

(i) such failure involves the ownership of assets the total value of which exceeds the de minimis standard described in subparagraph (A)(i) at the end of the quarter for which such measurement is done.

(ii) following the corporation, trust, or association’s identification of the failure to satisfy the requirements of such paragraph for a particular quarter, a description of each asset or set forth on the schedule specified in subparagraph (B)(ii) for the period specified in clause (iii) by the highest rate of tax specified in section 11.

(iii) the requirements of such paragraph are otherwise met within the time period specified in subclause (i).

(C) TAX.—For purposes of subparagraph (B)(iv)

(I) TAX IMPosed.—If a corporation, trust, or association fails to satisfy the requirements of this subparagraph, there is hereby imposed a tax on the failure described in subparagraph (B) of such corporation, trust, or association.

(ii) such tax shall be paid by the corporation, trust, or association pays a tax computed under subparagraph (C), and

(iii) the amount determined (pursuant to section 11.

(iv) the corporation, trust, or association pays (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of $50,000 for each failure to satisfy a provision of this part due to reasonable cause and not willful neglect.

(v) DEDUCTION OF TAX PAID FROM AMOUNT REQUIRED TO BE DISTRIBUTED.—Subparagraph (B)(i) is amended by striking “(7)” and inserting “(7) of this sub-section, section 856(c)(7)(B)(i), and section 856(g)(1).

(vi) EXPANSION OF DEFICIENCY DIVIDEND PROCEDURE.—Subsection (e) of section 860 is amended by striking “or” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting “,” and by adding at the end the following new paragraph:

(1) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.”

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 2. PHASE-IN OF APPLICATION OF CERTAIN LOSSES AGAINST INCOME OF INSURANCE COMPANIES.

(a) PHASE-IN.—

(1) IN GENERAL.—For taxable years beginning after December 31, 2003, and before January 1, 2019, if—

(A) an affiliated group includes 1 or more domestic insurance companies subject to tax under section 801 of the Internal Revenue Code of 1986.

(B) the common parent of such group has not elected under subsection (b) to treat all such insurance companies as corporations which are not includible corporations, and

(C) the consolidated taxable income of the members of the group not taxed under such section 801 results in a consolidated affiliated group for such taxable year to the extent of the applicable percentage of such loss or the applicable percentage of the taxable income of such members, whichever is less. The unused portion of such loss shall be available as a carryover, subject to the same limitations (applicable to the application of such losses to the tax liability of the members of such group for such taxable year) and the loss (or losses) carried over to such year, in applicable carryover years.
of this section or the amendments made by section 1504(a)(2) of the Internal Revenue Code of 1986 as in effect on the day before the date of enactment of this Act which includes 1 or more domestic insurance companies subject to tax under section 801 of such Code may elect to treat all such insurance companies as corporations which are not includible corporations within the meaning of the branch of the ownership, leasing, and operation by a real estate investment trust, which is a non-operating class III railroad, and substantially all of the income derived from such activities by such corporation of facilities, equipment, property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone, (1) which was held by a corporation which is a member of an affiliated group filing a consolidated return, such corporation shall be treated as satisfying the purchase requirement of section 1503(a)(2) with respect to such property to the extent such requirement is satisfied by another member of the group, and (2) notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting "5 years" for "10 years" for property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the property which is in the City of New York, New York."

(b) No Carryback Before January 1, 2004.—To the extent that a consolidated net operating loss is allowed or increased by reason of the enactment of this Act, such loss may not be carried back to a taxable year beginning before January 1, 2004.

(d) Nontermination of Group.—No affiliated group shall terminate solely as a result of the enactment of this Act or the amendments made by this Act.

(e) Subsidiary Stock Basis Adjustments.—A member corporation's basis in the stock of a subsidiary corporation shall be adjusted upon consolidation to reflect the preconsolidation income, gain, deduction, loss, distributions, and other relevant amounts during a period when such corporations are members of an affiliated group (determined without regard to section 1504(b)(2) of the Internal Revenue Code of 1986) in effect on the day before the date of enactment of this Act).

(f) Waiver of 5-Year Waiting Period.—An automatic waiver from the 5-year waiting period provided in section 1504(a)(3) of the Internal Revenue Code of 1986 shall be granted to any corporation which was previously an includible corporation as so determined and subsequently deemed includible corporation as a result of becoming a subsidiary of a corporation which was not an includible corporation solely by operation of section 1504(c)(2)(A) of such Code (as in effect on the day before the date of enactment of this Act) for purposes of the branch of the ownership, leasing, and operation by a real estate investment trust, which is a non-operating class III railroad, and substantially all of the income derived from such activities by such corporation of facilities, equipment, property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone, (1) which was held by a corporation which is a member of an affiliated group filing a consolidated return, such corporation shall be treated as satisfying the purchase requirement of section 1503(a)(2) with respect to such property to the extent such requirement is satisfied by another member of the group, and (2) notwithstanding subsections (g) and (h) of section 1033, clause (i) of section 1033(a)(2)(B) shall be applied by substituting "5 years" for "10 years" for property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone but only if substantially all of the use of the property which is in the City of New York, New York."

SA 2868. Mrs. DOLE submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; and

SEC. 2870. Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; because of any change of status of the corporation to a tax-exempt entity by reason of the application of subsection (a).

(c) Tax-Exempt Financing.—Any obligations issued by an entity described in subsection (a) shall be treated as an obligation of the State for purposes of applying section 108 and part IV of subchapter B of chapter 1 of the Internal Revenue Code of 1986.

(d) Definitions.—For purposes of this section—

(1) REAL ESTATE INVESTMENT TRUST.—The term "real estate investment trust" has the meaning given such term by section 856(a) of the Internal Revenue Code of 1986.

(2) NONOPERATING CLASS III RAILROAD.—The term "non-operating class III railroad" has the meaning given such term by part A of subtitle IV of title 49, United States Code (49 U.S.C. 10101 et seq.) and the regulations thereunder.

(3) STATE.—The term "State" includes—

(A) the District of Columbia and any possession of the United States, and

(B) any authority, agency, or public corporation of a State.

(e) Application.—Except as provided in paragraph (2), this section shall apply on and after the date on which a State becomes the owner of all of the outstanding stock of a corporation described in subsection (a).

(2) Exception.—This section shall not apply to any State which—

(A) becomes the owner of all of the voting stock of a corporate entity by reason of section 1033(a)(2) of the Internal Revenue Code of 1986;

(B) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2003; or

(C) becomes the owner of all of the outstanding stock of a corporation described in subsection (a) after December 31, 2003.

SA 2869. Mr. GRAHAM of Florida (for himself, Mr. NELSON of Florida, Ms. CANTWELL, and Mrs. MURRAY) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; and

SEC. 301. DELAY IN EFFECTIVE DATE OF FINAL REGULATIONS GOVERNING EXCLUSION OF INCOME FROM INTERNATIONAL OPERATION OF SHIPS OR AIRCRAFT.

Notwithstanding the provisions of Treasury regulation § 1.883-5, the final regulations issued by the Secretary of the Treasury relating to income derived by foreign corporations from the international operation of ships or aircraft (Treasury regulations § 1.883-1 through § 1.883-5) shall apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning after September 24, 2004.

SA 2870. Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes;
At the appropriate place insert the following:

SEC. 2. REPEAL OF APPLICATION OF BELOW-MARKET LOAN RATES TO AMOUNTS PAID TO CERTAIN CONTINUING CARE FACILITIES.

(a) In General.—Section 7872(c)(1) (relating to below-market loans to which section applies) is amended by striking subparagraph (F).

(b) Full Exception.—Section 7872(g) (relating to exceptions for, or subdivision (a) of, fied continuing care facilities) is amended—

(1) by striking paragraphs (2) and (5),

(2) by redesigning paragraphs (3) and (4) as paragraphs (2) and (3), respectively,

(3) by adding at the end of paragraph (2) (as so redesignated) the following new flush sentence:

"The Secretary shall issue guidance which limits such term to contracts which provide to an individual or individual's spouse only facilities, care, and services described in this paragraph which are customarily offered by continuing care facilities." and

(4) by striking "CERTAIN" in the heading thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning on or after the date of the enactment of this Act.

SEC. 3. 10-YEAR RATABLE INCOME INCLUSION FOR CITRUS TREES DESTROYED BECAUSE OF CITRUS TREE CANKER.

(a) In General.—Section 1033 (relating to period within which property must be placed in service) is amended by redesigning subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) Commercial Trees Destroyed Because of Citrus Tree Canker.—In the case of commercial citrus trees which are compulsorily or involuntarily converted under this paragraph to a result of the citrus tree canker, clause (i) of subsection (a)(2)(B) shall be applied as if such clause read: '2 years after the close of the taxable year in which a State or Federal plant health authority determines that the land on which such trees grew is free from the bacteria that causes citrus tree canker and permits replanting to begin'."

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

SEC. 4. 10-YEAR RATABLE INCOME INCLUSION FOR CITRUS CANKER TREE PAYMENTS.

(a) In General.—Part I of subchapter Q of chapter 1 (relating to income averaging) is amended by inserting after section 1031 the following new section:

"SEC. 1302. 10-YEAR RATABLE INCOME INCLUSION FOR CITRUS CANKER TREE PAYMENTS.

"(a) In General.—At the election of the taxpayer, any amount taken into account as income or gain by reason of receiving a citrus canker tree payment shall be included in the income of the taxpaying ratably over the 10-year period beginning with the taxable year in which the payment is received or accrued by the taxpayer.

"(b) CITRUS CANKER TREE PAYMENT.—For purposes of subsection (a), the term 'citrus canker tree payment' means a payment made to an owner of a commercial citrus grove whose income that was lost as a result of the removal of commercial citrus trees to control canker under the amendments to the citrus canker regulations (7 C.F.R. 301) as published in the Federal Register by the Secretary of Agriculture on June 18, 2001 (66 Fed. Reg. 32713, Docket No. 00-37-4).

"(c) DEFINITION OF SPACEPORT.—Section 142 of the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, to provide a specific benefit in situations where

"(i) the guarantee of the United States (or any agency or instrumentality thereof in the result of payment of rent, user fees, or other charges by the United States (or any agency or instrumentality thereof), and

"(ii) the payment of the rent, user fees, or other charges is for, and conditioned upon, the use of the spaceport by the United States (or any agency or instrumentality thereof).

"(d) CONFORMING AMENDMENT.—The heading of section 142(a) (relating to definition of 'spaceport') is amended by striking "such port" and inserting "such spaceport".

"(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SA 2872. Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table as follows:

SEC. 1. SPACEPORTS TREATED LIKE AIRPORTS UNDER EXEMPT FACILITY BOND RULES.

(a) In General.—Paragraph (1) of section 142(a) (relating to exempt facility bonds) is amended to read as follows:

"(1) airports and spaceports ."

(b) TREATMENT OF GROUND LEASES.—Paragraph (1) of section 142(b) (relating to certain facilities not governmentally owned) is amended by adding at the end the following new subparagraph:

"(C) SPECIAL RULE FOR SPACEPORT GROUND LEASES.—For purposes of subparagraph (A), spaceport property which is located on land owned by the United States and which is used by a governmental unit pursuant to a lease (as defined in section 168(h)(7)) from the United States shall be treated as owned by such unit if—

(i) the lease term (within the meaning of section 168(h)(3)) is at least 15 years, and

(ii) such unit would be treated as owning such property if such lease term were equal to the useful life of such property.

(c) DEFINITION OF SPACEPORT.—Section 142 is amended by adding at the end the following new subsection:

"(1) SPACEPORT.—For purposes of section (a)(1), the term ‘spaceport’ means—

"(A) any facility directly related and essential to servicing spacecraft, enabling spacecraft to touch down or take off, or transporting passengers or space cargo to or from spacecraft, but only if such facility is located at, or in close proximity to, the launch site or reentry site, and

"(B) any other functionally related and subordinate facility at or adjacent to the launch site or reentry site at which launch services or reentry services are provided, including a launch control center, repair shop, maintenance or overhaul facility, and rocket assembly facility.

"(2) ADDITIONAL TERMS.—For purposes of paragraph (1)—

"(A) SPACE CARGO.—The term ‘space cargo’ includes satellites, scientific experiments, other property transported into space, and any other type of payload, whether or not such property returns from space.

"(B) SPACECRAFT.—The term ‘spacecraft’ means a launch vehicle or a reentry vehicle.

"(C) OTHER TERMS.—The terms ‘launch’, ‘launch site’, ‘launch services’, ‘launch vehicle’, ‘payload’, ‘payload services’, ‘reentry site’, and ‘reentry vehicle’ shall have the respective meanings given to such terms by section 7602 of title 49, United States Code (as in effect on the date of enactment of this subsection)."

(d) EXCEPTION FROM FEDERALLY GUARANTEED BOND PROHIBITION.—Paragraph (3) of section 142(b) (relating to exceptions) is amended by adding at the end the following new subparagraph:

"(2) EXCEPTION FOR SPACEPORTS.—Paragraph (1) shall not apply to any exempt facility bond issued as part of an issue described in paragraph (1) of section 142(a) to provide a specific benefit in situations where

"(i) the guarantee of the United States (or any agency or instrumentality thereof) is the result of payment of rent, user fees, or other charges by the United States (or any agency or instrumentality thereof), and

"(ii) the payment of the rent, user fees, or other charges is for, and conditioned upon, the use of the spaceport by the United States (or any agency or instrumentality thereof).

"(e) CONFORMING AMENDMENT.—The heading of section 142(c) is amended by inserting 'spaceports.' after 'AIRPORTS'.

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

SA 2873. Mr. THOMAS submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table as follows:

SEC. 1. DEFINITION OF MANUFACTURING FACILITY FOR SMALL ISSUE BONDS.

(a) In General.—Section 144(a)(12) (relating to termination dates) is amended by striking subparagraph (B) and inserting the following new subparagraph:

"(C) MANUFACTURING FACILITY.—For purposes of this paragraph, the term ‘manufacturing facility’ means any facility which is used in—

"(i) the manufacture of tangible personal property (including processing which results in a change in the condition of such property),

"(ii) the manufacture or development of any software product or process if—

"(I) it takes more than 6 months to manufacture or develop such product, and

"(III) the software product or process comprises programs, routines, and attendant
 SEC. 24. LEASES. 

(a) IN GENERAL.—Upon''; and

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to damages received in taxable years beginning after December 31, 2002.

SEC. 602. LIMITATION ON TAX BASED ON INCOME AVERAGING FOR BACKPAY AND FRONTPAY RECEIVED ON ACCOUNT OF CERTAIN UNLAWFUL EMPLOYMENT DISCRIMINATION.

(a) IN GENERAL.—Part I of subchapter Q of chapter 1 (relating to income averaging) is amended by adding at the end the following new section:

"Sec. 140. Cross references to other Acts.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to damages received in taxable years beginning after December 31, 2002.
apply in computing the regular tax.''

section 1302 (relating to backpay period) as paragraph (3) and by inserting after paragraph (1) the following:

frontpay received on account of certain unlawful employment discrimination (or would have been so received but for subsection (a)(1)(B), divided by

(1) employment discrimination backpay and frontpay, over

(ii) the amount of deductions that would have been allowable but for subsection (a)(1)(B), divided by

(2) the number of years in the backpay period and frontpay period.

CH 13.02. Income from backpay or frontpay received on account of certain unlawful employment discrimination.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received in taxable years beginning after December 31, 2002.

SEC. 603. INCOME AVERAGING FOR BACKPAY AND FRONTPAY RECEIVED ON ACCOUNT OF CERTAIN UNLAWFUL EMPLOYMENT DISCRIMINATION NOT TO INCREASE ALTERNATIVE MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Section 55(c) (defining regular alternative minimum tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following:

("(2) COORDINATION WITH INCOME AVERAGING FOR AMOUNTS RECEIVED ON ACCOUNT OF EMPLOYMENT DISCRIMINATION.—Soley for purposes of this section, section 1302 (relating to averaging of income from backpay or frontpay received on account of certain unlawful employment discrimination) shall not apply in computing the regular tax.''

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

SA 2876. Mrs. HUTCHISON (for herself, Mr. SMITH, and Ms. LANDRIEU) submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table as follows:

At the appropriate place, insert the following:

SEC. 604. DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this section—

(a) IN GENERAL.—

(i) RECEIPTS FROM QUALIFYING PRODUCTION FACILITIES.—In the term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

(1) any sale, exchange, or other disposition of, or

(2) any lease, rental, or license of, qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States.

(ii) RECEIPTS FROM CERTAIN SERVICES.—Such term also includes the gross receipts of the taxpayer which are derived from any construction, engineering, or architectural services performed in the United States for construction projects in the United States.

SA 2877. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table as follows:

At the appropriate place, insert the following:

SEC. 603. TRANSMISSION OF PERSONALLY IDENTIFIABLE INFORMATION TO FOREIGN AFFILIATES OR SUBCONTRAC-

TORS TO INCREASE ALTERNATIVE MIN-

IMUM TAX LIABILITY.

(a) DEFINITIONS.—As used in this section, the following definitions shall apply:

(i) BUSINESS ENTERPRISE.—The term ‘business enterprise’ means any organization, association, or venture established to make a profit.

(ii) COUNTRY WITH ADEQUATE PRIVACY PROTECTION.—The term ‘country with adequate privacy protection’ means a country that has been certified by the Federal Trade Commission as having laws that provide adequate privacy protection for such information.

(iii) HEALTH CARE.—The term ‘health care business’ means any business enterprise or nonprofit organization that collects or retains personally identifiable information about consumers in relation to medical care, including—

(A) hospitals;

(B) health maintenance organizations;

(C) medical partnerships;

(D) emergency medical transportation companies;

(E) medical transcription companies; and

(F) subcontractors, or potential subcontractors, of the entities described in subparagraphs (A) through (E).

(iv) PERSONALLY IDENTIFIABLE INFORMATION.—The term ‘personally identifiable information’ includes name, bank account information, social security number, address, telephone number, passwords, mother’s maiden name, and age.

(b) TRANSMISSION OF INFORMATION.—

(1) IN GENERAL.—A business enterprise may not transmit personally identifiable information regarding a citizen of the United States to any foreign affiliate or subcontractor located in a country that is a country with adequate privacy protection, unless—

the business enterprise obtains consent from the citizen, before a consumer relationship is established or before the effective date of this section, to transmit such information to such foreign affiliate or subcontractor; and

(B) the consent referred to in subparagraph (A) is renewed by the citizen within 1 year before such information is transmitted.

(2) LIABILITY.—A business enterprise shall be liable for any damages arising from the improper storage, duplication, sharing, or other misuse of personally identifiable information by the business enterprise or by any of its foreign affiliates or subcontractors that received such information from the business enterprise.

(c) RULEMAKING.—The Chairman of the Federal Trade Commission shall promulgate regulations through which the Chairman may enforce the provisions of this section and impose a fine for a violation of this subsection.
45G. CREDIT FOR EXPENDITURES FOR MEDICAL PROFESSIONAL MALPRACTICE INSURANCE

(a) General rule.—For purposes of section 38, in the case of a taxpayer which is an eligible person, the medical malpractice insurance expenditure tax credit determined under this section for a covered year shall equal 45 percent of the percentage of the qualified medical malpractice insurance expenditures incurred by an eligible person during the covered year.

(b) Taxpayer percentage.—For purposes of subsection (a), the applicable percentage is—

(1) in the case of an eligible person described in subsection (c)(2)(A), 20 percent, and

(2) in the case of an eligible person described in subsection (c)(2)(B), 10 percent, and

(3) in the case of an eligible person described in subsection (c)(2)(C), 15 percent.

(c) Definitions.—In this section:

(1) The term ‘covered year’ means taxable years beginning in 2004 and 2005.

(2) Eligible person.—The term ‘eligible person’ means—

(A) any physician (as defined in section 3121(v) of the Internal Revenue Code) who practices in any surgical specialty or subspecialty, emergency medicine, obstetrics, anesthesiology or who does interventional work which is reflected in medical malpractice insurance expenditures, and

(B) any physician (as so defined) who practices in general medicine, allergy, dermatology, pathology, or any other specialty not otherwise described in this section, and

(C) any hospital, clinic, or long-term care provider which meets applicable legal requirements to provide the health care services involved.

(d) Determination of credit.—For purposes of subsection (b)(1), the credit determined under this section shall be claimable by the eligible person in an amount equal to the product of 45 percent of the percentage of the qualified medical malpractice insurance expenditures incurred during the covered year by the eligible person, and the average of such costs for similarly situated eligible persons.

(e) Special rules.—

(1) In general.—The credit determined under this section shall be claimed by the eligible person in an amount equal to the product of 45 percent of the percentage of the qualified medical malpractice insurance expenditures incurred during the covered year by the eligible person, and the average of such costs for similarly situated eligible persons.

(f) Limitation on carryback.—Section 38(d) (relating to carryback of credits) is amended by striking paragraph (14), and by adding at the end the following new paragraph:

(15) The medical malpractice insurance expenditure tax credit determined under section 38(d)(14) shall be applied to any taxable year beginning before 2004.

(g) Effective date.—The amendments made by this section shall be applied to expenditures incurred after December 31, 2003.

**SA 2880. Mr. DURBIN submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which is ordered to lie on the table; as follows:**

**SEC. 2. CREDIT FOR QUALIFIED EXPENDITURES FOR MEDICAL PROFESSIONAL MALPRACTICE INSURANCE.**

(a) General rule.—For purposes of section 38, in the case of a taxpayer which is an eligible person, the medical malpractice insurance expenditure tax credit determined under this section for a covered year shall equal the product of—

(1) 15 percent of the average of such costs for similarly situated eligible persons as does not exceed twice the average of such costs for similarly situated eligible persons.

(b) Applicable percentage.—For purposes of paragraph (a), the applicable percentage is—

(1) in the case of an eligible person described in subsection (c)(2)(A), 20 percent, and

(2) in the case of an eligible person described in subsection (c)(2)(B), 10 percent, and

(3) in the case of an eligible person described in subsection (c)(2)(C), 15 percent.

(c) Definitions.—In this section:

(1) The term ‘covered year’ means taxable years beginning in 2004 and 2005.

(2) Eligible person.—The term ‘eligible person’ means—

(A) any physician (as defined in section 3121(v) of the Internal Revenue Code) who practices in any surgical specialty or subspecialty, emergency medicine, obstetrics, anesthesiology or who does interventional work which is reflected in medical malpractice insurance expenditures, and

(B) any physician (as so defined) who practices in general medicine, allergy, dermatology, pathology, or any other specialty not otherwise described in this section, and

(C) any hospital, clinic, or long-term care provider which meets applicable legal requirements to provide the health care services involved.

(d) Determination of credit.—For purposes of paragraph (a), the credit determined under this section shall be claimable by the eligible person in an amount equal to the product of 15 percent of the average of such costs for similarly situated eligible persons, and the average of such costs for similarly situated eligible persons.

(e) Special rules.—

(1) In general.—The credit determined under this section shall be claimable by the eligible person in an amount equal to the product of 15 percent of the average of such costs for similarly situated eligible persons, and the average of such costs for similarly situated eligible persons.

(f) Limitation on carryback.—Section 38(d) (relating to carryback of credits) is amended by striking paragraph (14), and by adding at the end the following new paragraph:

(15) The medical malpractice insurance expenditure tax credit determined under section 38(d)(14) shall be applied to any taxable year beginning before 2004.

(g) Effective date.—The amendments made by this section shall be applied to expenditures incurred after December 31, 2003.

**SA 2881. Mr. HARKIN (for himself, Mr. KENNEDY, Mr. SARBANES, Mr. KERRY, and Ms. MIKULSKI) proposed an amendment to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; as follows:**

At the appropriate place, insert the following:

**SEC. 3. PROTECTION OF OVERTIME PAY.**

Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

(1) The Secretary shall not promulgate any rule under subsection (a) that exempts from the overtime pay provisions of section 7 any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003, and the rules thereafter in effect under subsection (a)(1) after March 31, 2003, that exempts from the overtime pay provisions of section 7 any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003, required that the employees be non-exempt.

**SA 2882. Mr. GRASSLEY (for Mr. BUNNING (for himself, Mrs. LINCOLN,
Mr. SANTORUM, Mr. CONRAD, and Mr. BAUCUS)]}} proposed an amendment to amendment SA 2686 proposed by Mr. BUNNING (for himself, Ms. STABENOW, Mrs. FIESENSTEIN, Mr. LEVIN, Mr. KOHL, and Mr. ROCKEFELLER) to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes;

as follows:

At the end of the matter proposed to be inserted at the end of the bill, add the following:

SEC. 5—FIVE-YEAR CARRYBACK OF NET OPERATING LOSSES.

(a) In General.—Subparagraph (H) of section 172(b)(1) is amended by—

(1) by inserting “5-YEAR CARRYBACK OF CERTAIN LOSSES.—” after “(H)”, and

(2) by striking “or 2002” and inserting “, 2002, or 2003”.

(b) Rules Relating to Certain Extended Net Operating Losses.—Section 172 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

“(k) Rules Relating to Certain Extended Net Operating Losses.—For purposes of this section, in the case of a taxpayer which has a net operating loss for any taxable year ending during 2003 and does not make an election under subsection (j), such taxpayer shall be deemed to have made an election under paragraphs (4)(E) and (2)(C)(iii) of section 168(k) with respect to all taxable years ending during 2003. If such election is made, then section 172(k) of such Code (as added by this section) shall be applied to the taxpayer’s taxable year ending in 2004. Such election shall be irrevocable, and such time at which such election may be prescribed by the Secretary of the Treasury. Such election, once made, shall be irrevocable.

(c) Prior Section To Have No Effect.—Notwithstanding section 311(e) of this Act, such section, and the amendments made by such section, shall not take effect.

SA 2883. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes which was ordered to lie on the table as follows:

At the end add the following:

TITLE V—HOUSING BOND AND CREDIT MODERNIZATION AND FAIRNESS PROVISIONS.

SEC. 501. REPEAL OF REQUIRED USE OF CERTAIN PRINCIPAL REPAYMENTS ON MORTGAGE SUBSIDY BOND FINANCING TO REDEEM BONDS.

(a) In General.—Subparagraph (A) of section 143(a)(2) (defining qualified mortgage issue) is amended by adding “and” at the end of clause (i), by striking “and” at the end of clause (ii) and inserting “,” and at the end of clause (iii). By inserting after subparagraph (A) the following new subparagraph (B):

“(B) 3.5 times the applicable median family income.

(c) Effective Date.—The amendments made by this section shall apply to tax returns received after the date of the enactment of this Act.

SEC. 502. MODIFICATION OF PURCHASE PRICE LIMITATION UNDER MORTGAGE SUBSIDY BOND RULES BASED ON MEDIAN FAMILY INCOME.

(a) In General.—Subparagraph (1) of section 14(e)(1) (relating to purchase price restriction) is amended to read as follows:

“(1) In General.—An issue meets the requirements of this subsection only if the acquisition cost of each residence the owner-finance of which is provided under the issue does not exceed the greater of—

“A. 90 percent of the average area purchase price applicable to the residence, or

“B. 3.5 times the applicable median family income as defined in subsection (f)."

(b) Effective Date.—The amendment made by this section shall apply to financing provided, and mortgage credit certificates issued, after the date of the enactment of this Act.

SEC. 503. DETERMINATION OF AREA MEDIATE GROSS INCOME FOR LOW-INCOME HOUSING CREDIT PROJECTS.

(a) In General.—Subparagraph (1) of section 42(g) (relating to certain rules made applicable) is amended by striking the period at the end and inserting “and the term ‘area median gross income’ means the amount equal to the greater of—

“(A) the area median gross income determined under section 107–147, or

“(B) the statewide median gross income for the State in which the project is located.’’

(b) Effective Date.—The amendment made by this section shall apply to any building placed in service after such date to the extent paragraph (1) of section 42(h) of the Internal Revenue Code of 1986 does not apply to any building by reason of paragraph (4) thereof.

SA 2884. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes which was ordered to lie on the table as follows:

On page 179, after line 25, add the following:

SEC. 501. REPEAL OF CHECK-BLOCK RULES.

(a) In General.—Paragraph (3) of section 7701(a) (relating to corporations) is amended by inserting at the end the following new sentence: “The determination as to whether any foreign business entity is a corporation shall be made without regard to any election regarding the classification of the business form of such entity and shall be made under rules similar to the rules for determining the status of such entity on December 31, 1996 (except that any foreign business entity which is defined as a corporation under regulations on the date of the enactment of this section shall continue to be classified as a corporation).”

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning in calendar years beginning after the date of the enactment of this Act.

SA 2885. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes which was ordered to lie on the table as follows:

Beginning on page 85, line 20, strike all through page 146, line 23, and insert the following:

SEC. 201. DETERMINATION OF FOREIGN PERSONAL HOLDING COMPANY INCOME WITH RESPECT TO TRANSACTIONS IN COMMODITIES.

(a) In General.—Clauses (1) and (2) of section 956(c)(1)(C) (relating to commodity transactions) are amended to read as follows:

“(1) arise out of commodity hedging transactions (as defined in paragraph (4)(A)),

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

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(b) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 954 is amended by adding after paragraph (3) the following new paragraph:

"(4) DEFINITION AND SPECIAL RULES RELATING TO COMMODITY TRANSACTIONS.—

"(A) COMMODITY HEDGING TRANSACTIONS.—For purposes of paragraph (1)(C)(i), the term 'commodity hedging transaction' means any transaction with respect to a commodity if such transaction—

"(i) is a hedging transaction as defined in section 1221(b)(2), determined—

"(I) without regard to subparagraph (A)(ii) thereof, and

"(II) by applying subparagraph (A)(i) thereof by substituting ordinary property or property described in section 1231(b)(2) for 'ordinary property', and

"(II) is clearly identified as such in accordance with section 1221(a)(7).

"(B) TREATMENT OF DEALER ACTIVITIES UNDER PARAGRAPH (1)(C).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in connection with a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C) for such corporation.

"(C) REGULATIONS.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(c) MODIFICATION OF EXCEPTION FOR DEALERS.—Clause (i) of section 954(c)(2)(C) is amended by inserting "and transactions involving physical settlement" after "including hedging transactions".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after December 31, 2004.

SA 2886. Mr. MCCONNELL (for Mr. FRIST) submitted an amendment intended to be proposed by Mr. MCCONNELL to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international tax activities in the United States, to carry out the purposes of paragraph (1)(C) to the extent permitted by subparagraph (A)(ii), and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Jumpstart Our Business Strength (JOBS) Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I.—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

Sec. 201. 20-year foreign tax credit carry-over; 1-year foreign tax credit for noncontrolled foreign corporations.

Sec. 202. Look-thru rules to apply to dividends from noncontrolled sections of domestic corporations.

Sec. 203. Foreign tax credit under alternative minimum tax.

Sec. 204. Recharacterization of overall domestic tax.

Sec. 205. Interest expense allocation rules.

Sec. 206. Determination of foreign personal holding company income with respect to transactions in commodities.

Subtitle B—International Tax Simplification

Sec. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

Sec. 212. Expansion of de minimis rule under subpart F.

Sec. 213. Attribution of stock ownership through partnerships to apply in determining section 902 and 956 credits.

Sec. 214. Application of uniform capitalization rules to foreign persons.

Sec. 215. Repeal of withholding tax on dividends from certain foreign corporations.

Sec. 216. Repeal of special capital gains tax on aliens present in the United States for 183 days or more.


Sec. 221. Active leasing income from aircraft and vessels.

Sec. 222. Look-thru treatment of payments between related controlled foreign corporations foreign personal holding company income rules.

Sec. 223. Look-thru treatment for sales of partnership interests.

Sec. 224. Election not to use average exchange rate for foreign tax paid other than in functional currency.

Sec. 225. Treatment of income tax base differences.

Sec. 226. Modification of exceptions under section 954(c)(2)(C) for financing.

Sec. 227. United States property not to include assets of a controlled foreign corporation.

Sec. 228. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.

Sec. 229. Clarification of treatment of certain transfers of intangible property.

Sec. 230. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of States real property interests.

Sec. 231. Toll on excess qualified foreign distribution amount.

Sec. 232. Exclusion of income derived from certain wagering on horse races and dog races from gross income of nonresident alien individuals.

Sec. 233. Limitation of withholding tax for Puerto Rico corporations.

Sec. 234. Report on WTO dispute settlement panels and the appellate body.

Sec. 235. Study of impact of international tax laws on taxpayers other than large corporations.

TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS

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Sec. 302. Expanding of broadband Internet access expenditures.

Sec. 303. Exemption of natural aging process in determination of production period for qualified spirits under section 263A.

Sec. 304. Modification of active business definition under section 355.

Sec. 305. Exclusion of short-term hardships of small business investment companies from acquisition indebtedness.

Sec. 306. Modified taxation of imported archery products.

Sec. 307. Modification to cooperative marketing rules to include value added processing involving animals.

Sec. 308. Extension of declaratory judgment procedure to farmers’ cooperative organizations.

Sec. 309. Temporary suspension of personal holding company tax.

Sec. 310. Increase in section 179 expensing.

Sec. 311. Five-year carryback of net operating losses.

Sec. 312. Extension and modification of re-search credit.

Sec. 313. Expansion of research credit.

Subtitle B—Manufacturing Relating to Films

Sec. 321. Special rules for certain film and television productions.

Sec. 322. Modification of application of income forecast method of depreciation.

Subtitle C—Manufacturing Relating to Timber

Sec. 331. Expensing of certain reforestation expenditures.

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Sec. 401. Clarification of economic substance doctrine.

Sec. 402. Penalty for failing to disclose reportable transactions.

Sec. 403. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.

Sec. 404. Penalty for understatements attributable to transactions lacking economic substance.

Sec. 405. Modifications of substantial understatement penalty for non-reportable transactions.

Sec. 406. Tax shelter exception to confidentiality privileges relating to taxpayer communications.

Sec. 407. Disclosure of reportable transactions.

Sec. 408. Modifications to penalty for failure to register tax shelters.

Sec. 409. Modification of penalty for failure to maintain lists of investors.

Sec. 410. Modification of actions to join certain conduct related to tax shelters and reportable transactions.

Sec. 411. Undertaking of taxpayer’s liability by income tax return preparer.

Sec. 412. Penalty on failure to report interests in foreign financial accounts.

Sec. 413. Frivolous tax submissions.

Sec. 414. Refusal of individuals practicing before the Department of Treasury.
Subtitle B—Revenue Provisions

Sec. 732. Increase in witholding from supplemental wage payments in excess of $1,000,000.

Sec. 735. Treatment of sale of stock acquired pursuant to exercise of stock option to comply with conflict-of-interest requirements.

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Subtitle C—Extensions

Sec. 737. Parity in the application of certain limits to mental health benefits.

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Sec. 744. Expanding of environmental remediation costs.

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Sec. 751. Table income limit on percentage depletion for oil and natural gas produced from marginal properties.

Sec. 752. Indian employment tax credit.

Sec. 753. Accelerated depreciation for business property on Indian reservation.

Sec. 754. Disclosure of return information relating to student loans.

Sec. 755. Extension of transfers of excess pension assets to retiree health accounts.

Sec. 756. Elimination of phaseout of credit for qualified electric vehicles.

Sec. 757. Elimination for deduction for clean-fuel vehicle property.

Subtitle D—Extraterritorial Income Exemptions

Sec. 758. Clarification of working capital for a business for purposes of accumulated earnings tax.

Sec. 759. Nonattribution of certain manufactured by persons other than controlled foreign corporation.

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Sec. 761. Treatment of nonqualified deferred compensation plans.

Sec. 762. Prohibition on deferral of gain from the exercise of stock options and restricted stock gains through deferred compensation arrangements.

Sec. 763. Increase in withholding from supplemental wage payments in excess of $1,000,000.

Sec. 764. Treatment of sale of stock acquired pursuant to exercise of stock option to comply with conflict-of-interest requirements.

Sec. 765. Determination of basis of amounts paid from foreign pension plans.

Subtitle F—Revenue Provisions

Sec. 766. Expiration of certain provisions relating to student loans.

Sec. 767. Preservation of interest where Section 943(b)(3) of such Code, as in effect on the day before the date of the enactment of this Act, was the reduction or avoidance of tax (other than a reduction in tax under section 943(e) of such Code, as in effect on the day before the date of the enactment of this Act).

Sec. 768. General Transition.

(a) In General.—In the case of a taxable year ending after the date of the enactment of this Act and beginning before January 1, 2007, for purposes of chapter 1 of such Code, a current FSC/ETI beneficiary shall be allowed a deduction equal to the transition amount determined under this subsection with respect to such beneficiary for such year.

(b) Special Rule for 2005.—The phaseout percentage for 2005 shall be the amount that bears the same ratio to 100 percent as the number of days after the date of the enactment of this Act bears to 365.

(c) Special Rule for Fiscal Year Taxpayers.—In the case of a taxpayer not using the calendar year as its tax year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the tax year of such taxpayer.

Sec. 769. Short Taxable Year.—The Secretary shall prescribe for guidance the computation of the transition amount in the case of a short taxable year.

Sec. 770. Base Period Amount.—For purposes of this subsection, the base period amount is the average FSC/ETI benefit for the tax year immediately preceding the tax year for which the FSC/ETI benefit is being determined.

Sec. 771. FSC/ETI Benefit.—For purposes of this subsection, the term ‘‘FSC/ETI benefit’’ means the average FSC/ETI benefit determined under the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>100</td>
</tr>
<tr>
<td>2005</td>
<td>83</td>
</tr>
</tbody>
</table>

Sec. 772. Exception.—Subparagraph (B) of section 943(c) of such Code (relating to the capital gains tax under section 112 of such Code, as in effect on the day before the date of the enactment of this Act) was not in effect on the day before the date of the enactment of this Act.

Sec. 773. Short Taxable Year.—The Secretary shall prescribe for guidance the computation of the transition amount in the case of a short taxable year.

Sec. 774. Base Period Amount.—For purposes of this subsection, the base period amount is the average FSC/ETI benefit for the tax year immediately preceding the tax year for which the FSC/ETI benefit is being determined.

Sec. 775. FSC/ETI Benefit.—For purposes of this subsection, the term ‘‘FSC/ETI benefit’’ means the average FSC/ETI benefit determined under the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>100</td>
</tr>
<tr>
<td>2005</td>
<td>83</td>
</tr>
</tbody>
</table>
In determining the FSC/ETI benefit there shall be excluded any amount attributable to a transaction with respect to which the taxpayer is the lessee or if the leased property was manufactured or produced in whole or in significant part by the taxpayer.

(6) SPECIAL RULE FOR AGRICULTURAL AND HOUSING PRODUCTS.—Deductions under this subsection with respect to an organization described in section 943(g)(1) of such Code, as in effect on the day before the date of enactment of this Act, shall be made at the cooperative level and the purposes of this subsection shall be carried out in a manner similar to section 199(h)(2) of such Code. Such determinations shall be in accordance with such requirements and procedures as the Secretary may prescribe.

(7) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 41(f) of such Code shall apply for purposes of this subsection.

(c) TRANSITION PERCENTAGE DETERMINATION.—For the purposes of this section—

(1) IN GENERAL.—The term ‘transition percentage’ means an amount equal to the portion of the modified taxable income of the taxpayer which is attributable to domestic production activities.

(2) VALUE OF DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this section—

(iii) the domestic production gross receipts for such taxable year, reduced by the sum of—

(B) any deduction allowed for such tax year under section 223, and

(III) any deduction or exclusion allowed for such tax year under section 169.

(d) DETERMINATION OF INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this section—

(iii) the domestic production gross receipts for such taxable year, reduced by the sum of—

(V) any property described in subsection (1)(4)(B).

(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(f) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(g) DOMESTIC WORLDWIDE FRACTION.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(h) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(i) AMOUNT OF THE DEDUCTION.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(j) DETERMINATION OF INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(k) SPECIAL RULES.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(l) ELECTRICAL ENERGY AND UTILITIES.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(m) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(n) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(o) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(p) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.

(q) QUALIFYING PRODUCTION PROPERTY.—For purposes of this section—

(iii) any deduction or exclusion allowed for such tax year under section 169.
"(i) Services (other than services of employees) used in manufacture, production, growth, or extraction activities.

(ii) Items consumed in connection with such activities.

(iii) Items incorporated as part of the property being manufactured, produced, grown, or extracted.

(B) IN GENERAL.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of this subsection.

(4) VALUE OF WORLDWIDE PRODUCTION.—

(A) IN GENERAL.—The value of worldwide production shall be determined under the principles of paragraph (2), except that—

(i) deduction gross receipts shall be taken into account, and

(ii) paragraph (3)(B) shall not apply.

(B) WORLDWIDE PRODUCTION GROSS RECEIPTS.—The worldwide production gross receipts are the amount that would be determined under subsection (e) if such subsection were applied without any reference to the United States.

(h) DEFINITIONS AND SPECIAL RULES.—

(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity—

(A) subject to the provisions of paragraph (2) and subsection (c)(3), this section shall be applied at the shareholder, partner, or similar level, and

(B) the Secretary shall prescribe rules for the allocation of this section, including rules relating to—

(i) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

(ii) additional reporting requirements.

(2) PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—

(A) IN GENERAL.—If any amount described in paragraph (1) or (3) of section 199 is—

(i) received by a person from an organization to which paragraph (1) of subsection T applies which is engaged—

(I) in the manufacturing, production, growth, or extraction in whole or significant part by any agricultural or horticultural product, or

(II) in the marketing of agricultural or horticultural products, and

(ii) allocable to the portion of the qualified production activities income of the organization which, for this paragraph, would be deductible under subsection (a) by the organization to which paragraph (3)(A) of subsection (a) applies—

(A) the portion of earnings and profits attributable to such portion shall be carried to any taxable year ending after the date of the enactment of this Act.

(B) SPECIAL RULES.—For purposes of this section—

(i) the determination of the amount of any credit allowable under section 38A or 396 for the taxable year, there shall not be taken into account—

(A) the deduction under subsection (b) for any taxable year—

(i) the determination of W-2 wages of a taxpayer shall be made without regard to any exclusion under section 3401(a)(8) for remuneration paid for services performed in a jurisdiction described in subparagraph (A), and

(ii) in determining the amount of any credit allowable under section 38A or 396 for the taxable year, there shall not be taken into account—

(B) COORDINATION WITH TRANSITION RULES.—For purposes of this section—

(A) Special rules receipts shall not include gross receipts from any transaction if the binding contract transition relief of section 101(c)(2) of the Jumpstart Our Business Strength (JOBS) Act applies to such transaction, and

(B) any deduction allowed under section 101(e) of such Act shall be disregarded in determining the portion of the taxable income which is attributable to domestic production gross receipts.

(9) SEPARATE APPLICATION TO FILMS AND VIDEOGAMES.—If the property described in subsection (a)(4) is attributable to domestic production gross receipts, the deduction may be taken for the taxable year.

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

"Sec. 199. Income attributable to domestic production activities."

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

(2) APLICATION OF SECTION 15.—Section 15 of the Internal Revenue Code of 1986 shall apply to the amendments made by this section as if they were changes in a rate of tax.

TITLE II—INTERNATIONAL TAX PROVISIONS

Subtitle A—International Tax Reform

SEC. 201. 20-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-YEAR FOREIGN TAX CREDIT CARRYBACK.

(a) General Rule.—Section 904(c)(1) (relating to carryback and carryover of excess tax paid) is amended—

(1) by striking "in the second preceding taxable year," and

(2) by striking "in the first, second, third, fourth, or fifth" and inserting "and in any of the first 20", and

(b) Excess Extraction Taxes.—Paragraph (1) of section 907(f) is amended—

(1) by striking "in the second preceding taxable year,",

(2) by striking ", and in the first, second, third, fourth, or fifth" and inserting "and in any of the first 20", and

(c) Effective Date.—

(1) Carryback.—The amendments made by subsections (a)(1) and (b)(1) shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act.

(2) Carryover.—The amendments made by subsections (a)(2) and (b)(2) shall apply to excess foreign taxes which (without regard to the amendments made by this section) may be carried to any taxable year ending after the date of the enactment of this Act.

SEC. 202. LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) General Rule.—Section 904(d)(4) (relating to look-thru rules to apply to dividends from noncontrolled section 902 corporations) is amended to read as follows:

"(4) LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.—

(A) IN GENERAL.—For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to which earnings and profits which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income described in subparagraph (1) of paragraph (1) in proportion to the ratio of—

(i) the portion of earnings and profits attributable to income described in such subparagraph, to

(ii) the total amount of earnings and profits.

(B) EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.—In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

(C) SPECIAL RULES.—For purposes of this paragraph—

(i) EARNINGS AND PROFITS.—

) I) IN GENERAL.—The rules of section 316 shall apply.
(II) REGULATIONS.—The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer’s acquisition of stock to which the distributions relate.

(II) INADEQUATE SUBSTANTIATION.—If the Secretary determines that the proper subparagraph of section 904(d) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in section 911.

(III) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

(IV) ALLOCATION WITH RESPECT TO CARRYOVER OF CREDIT.—Rules similar to subparagraph (A) also shall apply to any carryback of losses under section 591.

(V) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.
(5) Election to expand financial institution group of worldwide group.—

(A) In general.—If a worldwide affiliated group elects the application of this subsection to all financial corporations which—

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

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

(B) Financial corporation.—For purposes of this paragraph, the term ‘financial corporation’ means any corporation if at least 80 percent of its gross income is income described in section 954(b)(2)(C)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

(C) Antiabuse rules.—In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

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

(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 622), an amount of indebtedness of the electing financial institution group equal to the excess of the greater of—

(i) its average annual dividend (expressed as a percentage of current earnings and profits) distributable for such taxable year, or

(ii) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group (other than to a member of the electing financial institution group) during the 5-taxable-year period ending on the date of the enactment of this paragraph for purposes of this subsection, including regulations—

(1) providing for the direct allocation of interest expense in other circumstances when appropriate to carry out the purposes of this subsection,

(2) preventing assets or interest expense from being taken into account more than once, and

(3) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group (other than to a member of the electing financial institution group) during the 5-taxable-year period ending on the date of the enactment of this paragraph for purposes of this subsection,

(6) Election.—An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the worldwide affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all corporations which are members of such worldwide affiliated group for such taxable year and all subsequent taxable years unless revoked with the consent of the Secretary.

(B) Expansion of regulatory authority.—Paragraph (7) of section 864(e) is amended—

(1) by inserting before the comma at the end of subparagraph (B) ‘‘and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection’’, and

(2) by striking ‘‘and’’ at the end of subparagraph (E) and inserting the following new subparagraph:

‘‘(F) preventing assets or interest expense from being taken into account more than once, and’’.

(C) Effective date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 206. Determination of foreign personal holding company income with respect to transactions in commodities.

(a) In general.—Clauses (i) and (ii) of section 954(c)(1)(C) (relating to commodities transactions treated as foreign personal holding company income) are hereby repealed:

(i) amounts received under a contract for the sale of commodities, or

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

(b) Definition and special rules.—Subsection (b) of section 954 is amended by adding at the end the following new paragraph:

‘‘(2) the individual who is to perform the services, or

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

SEC. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

(a) General rule.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding company income)—

(2) Section 1246 (relating to gain on foreign investment company stock).

(b) Definition of foreign personal holding company.—The term ‘‘foreign personal holding company’’ means a financial corporation which—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(ii) without regard to subparagraph (A)(i) thereof,

(iii) by applying subparagraph (A)(ii) thereof by substituting ordinary property for personal property described in section 1221(b) for ‘‘ordinary property’’, and

(iv) by substituting ‘‘controlled foreign corporation for ‘taxpayer’ each place it appears, and

(v) is clearly identified as such in accordance with section 1221(a)(7).

(c) Treatment of dealer activities under paragraph (4).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in applying a controlled foreign corporation’s foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(B) to such corporation.

(d) Regulations.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of this section.

(e) Modification of exception for dealers.—Clause (1) of section 954(c)(2)(C) is amended by inserting ‘‘and transactions involving physical settlement’’ after ‘‘(including hedging transactions)’’. This section (and any regulations thereunder) made by this section shall apply to transactions entered into after December 31, 2004.

Subtitle B—International Tax Simplification

SEC. 211. repeal of foreign personal holding company rules and foreign investment company rules.

(a) General rule.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding company income).

(2) Section 1246 (relating to gain on foreign investment company stock).

(b) Definition of foreign personal holding company.—The term ‘‘foreign personal holding company’’ means a financial corporation which—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(ii) without regard to subparagraph (A)(i) thereof,

(iii) by applying subparagraph (A)(ii) thereof by substituting ordinary property for personal property described in section 1221(b) for ‘‘ordinary property’’, and

(iv) by substituting ‘‘controlled foreign corporation for ‘taxpayer’ each place it appears, and

(v) is clearly identified as such in accordance with section 1221(a)(7).

(b) Treatment of dealer activities under paragraph (4).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in applying a controlled foreign corporation’s foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(B) to such corporation.

(c) Regulations.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of this section.

(d) Modification of exception for dealers.—Clause (1) of section 954(c)(2)(C) is amended by inserting ‘‘and transactions involving physical settlement’’ after ‘‘(including hedging transactions)’’. This section (and any regulations thereunder) made by this section shall apply to transactions entered into after December 31, 2004.

Subtitle B—International Tax Simplification

SEC. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

(a) General rule.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding company income).

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(b) Definition of foreign personal holding company.—The term ‘‘foreign personal holding company’’ means a financial corporation which—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(ii) without regard to subparagraph (A)(i) thereof,

(iii) by applying subparagraph (A)(ii) thereof by substituting ordinary property for personal property described in section 1221(b) for ‘‘ordinary property’’, and

(iv) by substituting ‘‘controlled foreign corporation for ‘taxpayer’ each place it appears, and

(v) is clearly identified as such in accordance with section 1221(a)(7).

(b) Treatment of dealer activities under paragraph (4).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in applying a controlled foreign corporation’s foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(B) to such corporation.

(c) Regulations.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of this section.

(d) Modification of exception for dealers.—Clause (1) of section 954(c)(2)(C) is amended by inserting ‘‘and transactions involving physical settlement’’ after ‘‘(including hedging transactions)’’. This section (and any regulations thereunder) made by this section shall apply to transactions entered into after December 31, 2004.

Subtitle B—International Tax Simplification

SEC. 211. Repeal of foreign personal holding company rules and foreign investment company rules.

(a) General rule.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding company income).

(2) Section 1246 (relating to gain on foreign investment company stock).

(b) Definition of foreign personal holding company.—The term ‘‘foreign personal holding company’’ means a financial corporation which—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(ii) without regard to subparagraph (A)(i) thereof,

(iii) by applying subparagraph (A)(ii) thereof by substituting ordinary property for personal property described in section 1221(b) for ‘‘ordinary property’’, and

(iv) by substituting ‘‘controlled foreign corporation for ‘taxpayer’ each place it appears, and

(v) is clearly identified as such in accordance with section 1221(a)(7).

(b) Treatment of dealer activities under paragraph (4).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in applying a controlled foreign corporation’s foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(B) to such corporation.

(c) Regulations.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of this section.

(d) Modification of exception for dealers.—Clause (1) of section 954(c)(2)(C) is amended by inserting ‘‘and transactions involving physical settlement’’ after ‘‘(including hedging transactions)’’. This section (and any regulations thereunder) made by this section shall apply to transactions entered into after December 31, 2004.
(c) CONFORMING AMENDMENTS.—

(1) Section 11(h) is amended—

(A) in paragraph (10), by inserting “and” at the end of subparagraph (F), and by redesignating subparagraph (G) as subparagraph (H) and subparagraph (H) as subparagraph (G), and

(B) by striking “a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or a person described in section 952(b),” or “in the meaning of section 552!),”.

(2) Section 163(e)(3)(B), as amended by this Act, is amended by striking “which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or” and inserting “which is a foreign personal holding company (as defined in section 957)”.

(3) Paragraph (2) of section 171(c) is amended—

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

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

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

(5) Section 267(a)(3)(B), as amended by this Act, is amended by striking “to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or” and inserting “a controlled foreign corporation (as defined in section 957)”.

(6) Section 312 is amended by striking subsection (1).

(7) Subsection (m) of section 312 is amended by striking “or a foreign investment company (within the meaning of section 1246(b)), or a personal foreign holding company (within the meaning of section 552),”,

(8) Subsection (e) of section 419 is amended by striking paragraphs (5) and (6), and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(9) Paragraph (B) of section 465(b)(7) is amended by adding “or” at the end of clause (1), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(10) Paragraph (1) of section 543(b) is amended by inserting “and” at the end of subparagraph (A), by striking “, and”, and by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively.

(11) Subsection (h) of section 562(b) is amended by striking “or a foreign personal holding company described in section 552.”

(12) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesigning subsection (d) as subsection (c), and

(C) by striking “or this subsection (a), (b), or (c)” in subsection (e) as redesignated and inserting “subsection (a) or (b)”.

(13) Subsection (d) of section 565 is amended—

(A) by striking “and” at the end of paragraph (2), by striking paragraph (3), by redesignating paragraph (4) as paragraph (3), and by striking “(1), (2), or (3)” in paragraphs (5) and (6) as so redesignated and inserting “paragraph (1) or (2)”.

(14) Paragraph (2) of section 864(d) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(15)(A) Subparagraph (A) of section 888(b)(1) is amended to read as follows—

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

(B) Subparagraph (B) of section 888(b)(2) is amended by redesigning subparagraphs (A) and (C) as subparagraphs (A) and (B), respectively.

(16) Paragraph (3) of section 898(b) is amended to read as follows—

“(3) SHAREHOLDER.—The term ‘United States shareholder’ has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder of this section if such person is treated as a United States shareholder under section 953(c)(1);”,

(17) Subsection (c) of section 899 is amended to read as follows—

“(c) DETERMINATION OF REQUIRED YEAR.—

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

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

“(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

“(2) 1-MONTH DEFERRAL ALLOWED.—A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

“(3) MAJORITY U.S. SHAREHOLDER YEAR.—

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

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

“(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under section 1248(f)(2) by any shareholder described in such clause.

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

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

“(ii) the days during such representative period as the Secretary may prescribe.”.

(18) Clause (ii) of section 904(d)(2)(A) is amended to read as follows—

“(ii) CERTAIN AMOUNTS INCLUDED.—Except as provided in clause (iii), the term ‘passive income’ includes, except as provided in subphrase (E)(iii) or paragraph (3)(i), any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).”.

(19)(A) Subparagraph (A) of section 906(a)(1), as amended by section 204, is amended by adding “or” at the end of clause (1), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(B) The paragraph heading of paragraph (2) of section 906(g), as so redesignated, is amended by striking “FOREIGN PERSONAL HOLDING CORPORATION”.

(20) Section 951 is amended by striking subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(21) Paragraph (3) of section 959(b) is amended by striking “551,”.

(22) Paragraph (5) of section 1014(b) is amended by inserting “and before January 1, 2006,” after “2005,”.

(23) Subsection (a) of section 1016 is amended by striking paragraph (13).

(24)(A) Paragraph (3) of section 1212(a) is amended to read as follows—

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

“(A) for which it is a regulated investment company (as defined in section 581), or

“(B) for which it is a real estate investment trust (as defined in section 856).

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 2004.

(25) Paragraph (2) of section 1260(c) is amended by striking subparagraphs (H) and (J) and by redesignating subparagraph (J) as subparagraph (H).

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

(B) Subsection (e) of section 1291 is amended by striking “(as determined by the Secretary before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act)” after “section 1246”.[24]

(27) Paragraph (2) of section 1294(a) is amended to read as follows—

“(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDED UNDER SECTION 951.—The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includable in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.

(28) Section 6035 is hereby repealed.

(29) Subparagraph (D) of section 6104(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(30) Subparagraph (B) of section 6501(e)(1) is amended to read as follows—

“(B) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be commenced without assessing, at any time within 6 years after the return was filed.”.

(31) Subsection (a) of section 6679 is amended—

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

(B) by striking paragraph (3).

(32) Sections 170(f)(10)(A), 508(d), 4947, and 4948(c)(4) are each amended by striking “551(b)”, each place it appears.

(33) The table of parts for subchapter G of chapter 1 is amended by striking the items relating to part III.

(34) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the items relating to sections 1246 and 1247.

(35) The table of sections for part A of sub III of subchapter A of chapter 6 is amended by striking the item relating to section 6035.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 212. EXPANSION OF DE MINIMIS RULE UNDER SUBPART F.

(a) IN GENERAL.—Clause (ii) of section 954(b)(3)(A) (relating to de minimis, etc., rules) is amended by striking “$1,000,000” and inserting “$5,000,000”.

(b) TECHNICAL AMENDMENTS.—

(1) Clause (ii) of section 864(d)(5)(A) is amended by striking “$1,000,000” and inserting “$5,000,000”.

(2) Clause (i) of section 881(c)(5)(A) is amended by striking “$1,000,000” and inserting “$5,000,000”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.
(a) In General.—Subsection (c) of section 902 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (7) the following new paragraph:

"(7) CONSTRUCTIVE OWNERSHIP THROUGH PARTNERSHIPS.—Stock owned, directly or indirectly, by or for a partnership shall be considered as actually owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including the requirement for special partner allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership."

(b) CLARIFICATION OF COMPARABLE ATTRIBUTION UNDER SECTION 901(b)(5).—Paragraph (5) of section 901(b) is amended by striking "any individual" and inserting "any person".

(c) ELECTION TO TREAT WITHIN THE UNITED STATES, AND DOMINICAN REPUBLIC.—Section 871(a)(3) is amended—

(1) by redesignating paragraph (3) as paragraph (4), and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) ELECTION TO TREAT WITHIN THE UNITED STATES, AND DOMINICAN REPUBLIC.—In the case of a partnership, including a partnership in which such partnership is a 25-percent owner, such partnership shall be treated for purposes of this subsection as the entity treated under section 954(a)(3)(B) as income from sources within the United States, and predominately outside the United States, and United States possessions with or without which such taxable years of foreign corporations end.

SEC. 222. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN A FOREIGN PERSON OR CORPORATION AND A CONTROLLED FOREIGN CORPORATION UNDER FOREIGN PERSONAL HOLDING COMPANY PROVISIONS.

(a) In General.—Section 954(c)(1)(B) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (C) the following new subparagraph:

"(D) DIVIDENDS PAID BY A FOREIGN CORPORATION WHICH IS A RELATED CONTROLLED FOREIGN CORPORATION.—For purposes of this subsection, dividends paid by a foreign corporation which is a related person (as defined in section 881(c)(2)) shall not be treated as foreign personal holding company income to the extent attributable to a related controlled foreign corporation which is a related person (as defined in section 881(c)(2)) of the recipient corporation or partnership.

SEC. 223. LOOK-THRU RULE FOR CERTAIN PARTNERSHIP SALES.

(a) In General.—In the case of any sale by a controlled foreign corporation of an interest in a partnership in which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 224. ELECTION NOT TO USE AVERAGE EXCHANGE RATE FOR FOREIGN TAX PAID OTHER THAN IN FUNCTIONAL CURRENCY.

(a) In General.—Paragraph (1) of section 986(a) (relating to determination of foreign taxes and foreign corporation’s earnings and profits) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (C) the following new subparagraph:

"(D) ELECTIVE EXCEPTION FOR TAXES PAID OTHER THAN IN FUNCTIONAL CURRENCY.—

(i) IN GENERAL.—At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is determined in a currency other than in the taxpayer’s functional currency.

(ii) APPLICATION TO QUALIFIED BUSINESS UNITS.—An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

(iii) ELECTION.—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 225. TREATMENT OF INCOME TAX BASE DIFFERENCES.

(a) In General.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (J) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (H) the following new subparagraph:

"(J) ELECTION NOT TO APPLY TO DISPOSITIONS.—The election made by this section shall not apply to a disposition of the interest described in paragraph (1)(E).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.
tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

(ii) Election irrevocable.—Any such election shall apply to the taxable year for which the election is in effect unless revoked with the consent of the Secretary.

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

SEC. 226. MODIFICATION OF EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING.

(a) In General.—Section 954(b)(3) is amended by adding at the end the following:

(2) the term ‘controlled foreign corporation’ has the meaning given in section 958(b).

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 227. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS OF CONTROLLED FOREIGN CORPORATION.

(a) In General.—Section 966(c)(2) (relating to exceptions from property treated as United States property) is amended by striking “and” at the end of subparagraph (A) and inserting “or” in lieu thereof.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 228. PROVIDE EQUAL TREATMENT FOR INTEREST IN CONTROLLED FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS.

(a) In General.—Paragraph (1) of section 861(a) is amended by striking “and” at the end of subparagraph (A) and inserting “and” in lieu thereof.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 229. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLES OR EXCHANGES OF UNITED STATES REAL PROPERTY INTERESTS.

(a) In General.—Subparagraph (C) of section 897(h)(1), the amount which would be included in computing the gain recognized under paragraph (1) if the transfer or exchange of such property were a sale or other disposition of such property, and

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 230. MODIFICATION OF THE TREATMENT OF CERTAIN REIT DISTRIBUTIONS ATTRIBUTABLE TO GAIN FROM SALES OR EXCHANGES OF UNITED STATES REAL PROPERTY INTERESTS.

(a) In General.—Paragraph (1) of section 897(h) (relating to look-through of distributions) is amended by adding at the end the following new sentence: “Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall be treated as gain recognized upon a sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.”

(b) Conforming Amendment.—Subparagraph (3) of section 857(b) (relating to capital gains) is amended by adding at the end the following new subparagraph:

“(F) Certain distributions.—In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph) shall not be included in computing such shareholder’s gross income as a dividend from the real estate investment trust.”

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 231. TOLL TAX ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.

(a) In General.—Paragraph (2) of section III of subchapter N of chapter I is amended by adding at the end the following new section:

“SEC. 965. TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.

“(a) TOLL TAX IMPOSED ON EXCESS QUALIFIED FOREIGN DISTRIBUTION AMOUNT.—If a corporation elects the application of this section, a tax shall be imposed on the taxpayer in an amount equal to 5.25 percent of—

“(1) the taxpayer’s excess qualified foreign distribution amount, and

“(2) the amount determined under subsection (b) which is attributable to the excess qualified foreign distribution amount.

Such tax shall be imposed in lieu of the tax imposed under section 11 or 55 on the amounts described in paragraphs (1) and (2) for such taxable year.

“(b) Excess Qualified Foreign Distribution Amount.—For purposes—

“(1) in General.—The term ‘excess qualified foreign distribution amount’ means the excess (if any) of—

“(A) the aggregate dividends received by the taxpayer during the taxable year which are—

“(i) from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid, and

“(ii) described in a domestic reinvestment plan which—

“(I) is approved by the taxpayer’s president, chief executive officer, or comparable official before the payment of such dividends and subsequently approved by the taxpayer’s board of directors, management committee, executive committee, or similar body, and

“(II) provides for the reinvestment of such dividends in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital improvements, or the financial stabilization of the corporation for the purposes of job retention or creation, over—

“(B) the base dividend amount.

“(2) Base Dividend Amount.—The term ‘base dividend amount’ means an amount designated under subsection (c)(1), but not less than the average amount of dividends received during the fixed base period from 1 or more corporations which are controlled foreign corporations in which the taxpayer is a United States shareholder on the date such dividends are paid.

“(3) Fixed Base Period.—(A) In General.—The term ‘fixed base period’ means each of 3 taxable years which are among the 5 most recent taxable years of the taxpayer ending on or before December 31, 2002, determined by disregarding—

“(i) the 1 taxable year for which the taxpayer had the highest amount of dividends from 1 or more corporations which are controlled foreign corporations relative to the other 4 taxable years, and

“(ii) the 1 taxable year for which the taxpayer had the lowest amount of dividends from 1 or more corporations which are controlled foreign corporations relative to the other 4 taxable years.

“(B) Shorter Period.—If the taxpayer has fewer than 5 taxable years ending on or before December 31, 2002, then in lieu of applying subparagraph (A), the fixed base period shall include all the taxable years of the taxpayer ending on or before December 31, 2002.

“(C) Definitions and Special Rules.—For purposes of this section—

“(1) Dividends.—The term ‘dividends’ has the meaning given such term by section 316, except that the term ‘dividends’ as described in section 951(a)(1)(B), but shall not include amounts described in sections 78 and 959.

“(2) Controlled Foreign Corporations and United States Shareholders.—The term ‘controlled foreign corporation’ has the
meaning given such term by section 957(a) and the term ‘United States shareholder’ has the meaning given such term by section 951(b).

(‘‘FOREIGN TAX CREDITS.’’—The amount of any income, war, profits, or excess profit taxes paid (or deemed paid under sections 962 and 960) or accrued by the taxpayer with respect to any foreign tax which is allocable to, and constitutes, an item of income, gain, loss, or deduction included in the gross income of the taxpayer, which item of income, gain, loss, or deduction is taken into account under this chapter for the taxable year for which such tax is allocable and constitutes an item of income, gain, loss, or deduction of the taxpayer, shall equal the base dividend amount.

(‘‘Elections in which it is a United States shareholder’’) shall equal the base dividend amount.

(‘‘Determination of its taxable income from sources without the United States. For purposes of applying subparagraph (C), the principles of section 864(c)(3)(A) shall apply."

(‘‘TREATMENT OF ACQUISITIONS AND DISPOSITIONS.‘’—Rules similar to the rules of section 411(f)(3) shall apply in the case of acquisitions and dispositions of controlled foreign corporations occurring on or after the first day of the earliest taxable year taken into account in determining the fixed base period.

(‘‘TREATMENT OF UNCONSOLIDATED GROUPS.‘’—Members of an affiliated group of corporations filing a consolidated return under section 1501 shall be treated as a single taxpayer for purposes of this section.

(‘‘DESIGNATION OF DIVIDENDS.‘’—Subject to subsection (b)(2), the taxpayer shall designate the particular dividends received during the taxable year by a corporation—

(A) the excess qualified foreign distribution amount.

(B) the amount determined under section 78 which is attributable to such excess qualified foreign distribution amount, and

(C) the amounts (including assets, gross income, and other relevant bases of apportionment) which are attributable to the excess qualified foreign distribution amount which would, determined without regard to this chapter, be used to apportion the expenses, losses, and deductions of the taxpayer under section 861 and 864 in determining its taxable income from sources without the United States.

For purposes of applying subparagraph (C), the principles of section 864(c)(3)(A) shall apply."

(‘‘TREATMENT OF EXPENSES, LOSSES, AND DEDUCTIONS.‘’—Any expenses, losses, or deductions of the taxpayer allowable under subsection (b) shall be treated as a single item of income, gain, loss, or deduction of the taxpayer, and for purposes of section 861, the principles of section 864(c)(3)(A) shall apply."

(‘‘ELECTION.‘’—(1) IN GENERAL.—An election under this section shall be made by the common parent of the affiliated group which includes the taxpayer and shall apply to all members of the affiliated group.

(‘‘Regulation’’—The Secretary shall prescribe such regulations as may be necessary and appropriate to carry out the purposes of this subsection with respect to the requirements of section 951 and regulations addressing corporations which, during the fixed base period or thereafter, join or leave an affiliated group of corporations filing a consolidated return.

(‘‘APPLICATION.‘’—The table of sections for part F of chapter N of subchapter C of chapter 1 is amended by adding at the end, the following new paragraphs:

‘‘Sec. 965. Toll tax imposed on excess qualified foreign distribution amount.

(‘‘APPLICATION.‘’—The amendments made by this section shall apply only to the first taxable year of the electing taxpayer ending 120 days or more after the date of the enactment of this Act.

(‘‘EXCLUSION OF INCOME DERIVED FROM CERTAIN WAGERS ON HORSE RACES AND SPORTING EVENTS.‘’—The term ‘gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a pari-mutuel pool or similar race pool with an American wageror with respect to a pari-mutuel horse race or dog race in the United States.’’

(‘‘CONFORMING AMENDMENT.—Section 883(a)(4) is amended by striking ‘‘(5), (6), and (7)’’ and inserting ‘‘(6), (7), and (8)’’.

(‘‘EXCLUSION OF INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARI-MUTUEL POOLS.‘’—Cross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a pari-mutuel pool or similar race pool with respect to a pari-mutuel horse race or dog race in the United States.’’

(‘‘EFFECTIVE DATE.‘’—The amendments made by this section shall apply to wagers made after the date of the enactment of this Act.

(‘‘LIMITATION OF WITHHOLDING TAX FOR PUERTO RICO CORPORATIONS.‘’— (A) IN GENERAL.—Subsection (b) of section 881 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

‘‘(2) ALL CONTROLLED FOREIGN CORPORATIONS.—If dividends are received during a taxable year by a corporation—

(A) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(B) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year, subsection (a) shall be applied for such taxable year by substituting ‘‘10 percent’’ for ‘‘30 percent’’."

(‘‘WITHHOLDING.‘’—Subsection (c) of section 1442 (relating to withholding of tax on foreign corporations) is amended—

(‘‘(1) GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.‘’—For purposes, and

(‘‘(2) COMMONWEALTH OF PUERTO RICO.‘’—If dividends are received during a taxable year by a corporation—

(A) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(B) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year, subsection (a) shall be applied for such taxable year by substituting ‘‘10 percent’’ for ‘‘30 percent’’."

(‘‘CONFORMING AMENDMENTS.—Section 851 is amended—

(‘‘(a)(1) by striking ‘‘GUAM AND VIRGIN ISLANDS CORPORATIONS’’ in the heading and inserting ‘‘POSSESSIONS’’.

(‘‘(2) by striking ‘‘IN GENERAL’’ in the heading and inserting ‘‘GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS’’.

(‘‘EFFECTIVE DATE.‘’—The amendments made by this section shall be effective upon enactment of this Act.

(‘‘REPORT.‘’—Not later than March 31, 2004, the Secretary of the Treasury or the Secretary’s delegate shall conduct a study of the impact of Federal international tax rules on taxpayers other than large corporations, including the burdens placed on such taxpayers in complying with such rules.

(‘‘Advisory Committee.‘’—Not later than 180 days after the date of the enactment of this Act, the United States Trade Representative, in consultation with the Joint Committee on Taxation, shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the results of the study conducted under subsection (a), including any recommendations for legislative or administrative changes to reduce the compliance burden on taxpayers other than large corporations and for such other purposes as the Secretary determines appropriate.

(‘‘DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS.‘’—Subtitle A—General Provisions

(‘‘EXPANSION OF QUALIFIED SMALL-ISSUE BOND PROGRAM.‘’—(a) In General.—Subparagraph (F) of section 144(a)(4) (relating to $10,000,000 limit in certain cases) is amended to read as follows:

‘‘(F) ADDITIONAL CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—With respect to any issue, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).’’

(‘‘EFFECTIVE DATE.‘’—The amendment made by this section shall be effective upon enactment of this Act.

(‘‘Report.‘’—Not later than March 31, 2004, the Secretary of the Treasury or the Secretary’s delegate shall conduct a study of the impact of Federal international tax rules on taxpayers other than large corporations, including the burdens placed on such taxpayers in complying with such rules.

(‘‘Advisory Committee.‘’—Not later than 180 days after the date of the enactment of this Act, the United States Trade Representative, in consultation with the Joint Committee on Taxation, shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the results of the study conducted under subsection (a), including any recommendations for legislative or administrative changes to reduce the compliance burden on taxpayers other than large corporations and for such other purposes as the Secretary determines appropriate.

TITLE III—DOMESTIC MANUFACTURING AND BUSINESS PROVISIONS

Subtitle A—General Provisions

Section 301. Expansion of Qualified Small-Issue Bond Program.

(a) In General.—Subparagraph (F) of section 144(a)(4) (relating to $10,000,000 limit in certain cases) is amended to read as follows:

‘‘(F) ADDITIONAL CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—With respect to any issue, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).’’

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective upon enactment of this Act.

(c) Elected. Upon enactment of this Act, the term ‘‘United States shareholder’’ has the meaning given such term by section 951(a) and the term ‘‘United States holdings’’ has the meaning given such term by section 951(b).
SEC. 191. BROADBAND EXPENDITURES.

(a) TREATMENT OF EXPENDITURES.—

(1) IN GENERAL.—A taxpayer may elect to treat any qualified broadband expenditure which is purchased or placed in service by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction.

(2) QUALIFIED BROADBAND EXPENDITURES.—For purposes of this section—

(A) TREATMENT OF EXPENDITURES.—

(ii) the original use of which commences, to the extent it—

(3) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the amount of qualified broadband expenditures under subsection (a)(1) with respect to qualified equipment, next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

(A) TREATMENT OF EXPENDITURES.—

(ii) the number of potential qualified subscribers within the rural areas and underserved areas, plus

(iii) the number of potential qualified subscribers within the area which the equipment is capable of serving with current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making available similar services to subscribers through such qualified equipment.

(ii) the number of potential qualified subscribers within the area which the equipment is capable of serving with current generation broadband services or next generation broadband services, as applicable, to such a subscriber without making available similar services to subscribers through such qualified equipment.

(i) the number of potential qualified subscribers within the rural areas and underserved areas,

(2) LIMITATION.—

(A) IN GENERAL.—Qualified expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

(2) QUALIFIED BROADBAND EXPENDITURES.—

(i) only with respect to qualified equipment—

(3) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

(2) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of qualified equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in paragraph (1).

(3) CABLE OPERATOR.—The term ‘cable operator’ has the meaning given such term by section 622(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

(1) ANTENNA.—The term ‘antenna’ means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

(2) BROADBAND EXPENDITURES.—

(A) CURRENT GENERATION BROADBAND SERVICES.—The term ‘current generation broadband service’ means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

(B) NEXT GENERATION BROADBAND SERVICES.—The term ‘next generation broadband service’ means services which—

(1) ORDINARY BROADBAND EXPENDITURES.—

(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

(iii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

(iv) extends from a transmission/receive antenna (including such antenna) which serves multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

(iii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

(iv) extends from a transmission/receive antenna (including such antenna) which serves multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

(3) MULTIPLEXING OR DEMULTIPLEXING.—

(A) Only certain investment taken into account.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

(2) LEASED EQUIPMENT.—Such term shall include so much of the purchase price paid by the lessor of qualified equipment subject to a lease described in subsection (c)(2)(B) as is attributable to expenditures incurred by the lessee which would otherwise be described in paragraph (1).

(B) Sale-Leasebacks.—For purposes of this section—

(i) original use of which commences, to the extent it—

(1) ANTENNA.—The term ‘antenna’ means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

(2) BROADBAND EXPENDITURES.—

(A) CURRENT GENERATION BROADBAND SERVICES.—The term ‘current generation broadband service’ means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

(B) NEXT GENERATION BROADBAND SERVICES.—The term ‘next generation broadband service’ means services which—
(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber’s premises.

(14) QUALIFIED SUBSCRIBER.—The term ‘qualified subscriber’ means—

(A) any nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

(B) any subscriber who is utilizing such services, and

(15) RESIDENTIAL SUBSCRIBER.—The term ‘residential subscriber’ means any individual who purchases broadband services which are delivered to such individual’s dwelling.

(16) RURAL AREA.—The term ‘rural area’ means any census tract which—

(A) is not within 10 miles of any incorporated or census designated place containing 2,500 people, and

(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

(17) RURAL SUBSCRIBER.—The term ‘rural subscriber’ means any residential subscriber residing in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

(18) SATELLITE CARRIER.—The term ‘satellite carrier’ means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission to operate in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such point-to-point multipoint distribution.

(19) SATURATED MARKET.—The term ‘saturated market’ means any census tract in which, as of the date of the enactment of this Act—

(A) current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

(B) such services can be utilized—

(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

(ii) at the same time as, or substantially the same as, such services are provided by the provider to subscribers through equipment with respect to which no deduction is allowed under subsection (a)(1).

(20) SUBSCRIBER.—The term ‘subscriber’ means any person who purchases current generation broadband services or next generation broadband services.

(21) TELECOMMUNICATIONS CARRIER.—The term ‘telecommunications carrier’ has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

(A) includes all members of an affiliated group of which the telecommunications carrier is a member, and

(B) does not include a commercial mobile service carrier.

(22) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term ‘total potential subscriber population’ means, with respect to any area and based on the most recent census data, the number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

(23) UNDERSERVED AREA.—The term ‘underserved area’ means—

(A) any area which is located in—

(i) an empowerment zone or enterprise community designated under section 1391, or

(ii) the District of Columbia Enterprise Zone established under section 1406, or

(B) any census tract—

(i) the poverty level of which is at least 30 percent (based on the most recent census data), and

(ii) the median family income of which does not exceed—

(I) in the case of a census tract located in a metropolitan statistical area, 70 percent of the greater of the metropolitan area median family income or the statewide median family income, and

(II) in the case of a census tract located in a nonmetropolitan statistical area, 70 percent of the nonmetropolitan statewide median family income.

(24) UNDERSERVED SUBSCRIBER.—The term ‘underserved subscriber’ means any residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.

(f) SPECIAL RULES.—

(1) PROPERTY USED OUTSIDE THE UNITED STATES, ETC., NOT QUALIFIED.—No expenditures shall be taken into account under subsection (a)(1) with respect to the portion of the cost of any property specified in section 50(b) or with respect to the portion of the cost of any property specified in an election under section 179.

(2) BUSINESS IN THE UNITED STATES.—(A) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a)(1).

(B) ORDINARY INCOME RECUPERTY.—For purposes of section 1245, the amount of the deduction allowable under subsection (a)(1), with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(3) COORDINATION WITH SECTION 38.—No credit shall be allowed under section 38 with respect to any amount for which a deduction is allowed under subsection (a)(1).

(4) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 512(b) (relating to modifications) is amended by adding at the end the following new paragraph:

(18) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—For purposes of section 1245, the amount of the deduction allowable under subsection (a)(1), with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

(e) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency, instrumentality, or Executive agency if such agency or Executive agency is an instrumentality of the Federal Government, or any State shall be allowed to enact or cause to be enacted any regulations or ratemaking procedures that would have the effect of eliminating or reducing any deduction or portion thereof allowed to any qualified cooperative telephone company under section 191 of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) CONFORMING AMENDMENTS.—

(a) Section 263(a)(1) (relating to capital expenditures) is amended by striking ‘or’ at the end of subparagraph (G) and inserting ‘, or’, and by adding at the end the following new subparagraph:

(2) Expenditures for which a deduction is allowed under section 191(20).

(b) Section 1016(a) of such Code is amended by striking ‘and’ at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting ‘, and’, and by adding at the end the following new paragraph:

(29) to the extent provided in section 191(29).

(c) The table of sections for part VI of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 190 the following new item:

Sec. 191. Broadband expenditures.

(d) DESIGNATION OF CENSUS TRACTS.—(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (16), (22), and (23) of section 191(e) of the Internal Revenue Code of 1986 (as added by this section).

(2) In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(21) DESIGNATED MARKET.—(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(16) of such Code and for purposes of section 1245, the Secretary of the Treasury shall preclude before the end of 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts and any other information required by the Secretary of the Treasury shall not be required to be submitted before the end of 30 days after the date of the publication of such form.

(22) The Secretary of the Treasury shall publish an aggregate list of such census tracts and the applicable providers not later than 30 days after the last date such submis-sions are allowed under clause (1).

(23) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of such census tracts meeting such criteria subsequent to the list described in subparagraph (A)(1).

(24) OTHER REGULATORY MATTERS.—(1) PROHIBITION.—No Federal or State agency, instrumentality, or Executive agency if such agency or Executive agency is an instrumentality of the Federal Government, or any State shall be allowed to enact or cause to be enacted any regulations or ratemaking procedures that would have the effect of eliminating or reducing any deduction or portion thereof allowed to any qualified cooperative telephone company under section 191 of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.
(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the election to deduct qualified broadband expenditures under section 191 of the Internal Revenue Code of 1986 (as added by this Act) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access for users in low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of section 191 of such Code, including—
(A) regulations to determine how and when a taxpayer that incurs qualified broadband expenses satisfies the requirements of section 191 of such Code to provide broadband services, and
(B) regulations describing the information, records, and supporting materials that are required to provide the Secretary to substantiate compliance with the requirements of section 191 of such Code.

(4) EFFECTIVE DATE.—The amendments made by this section shall apply—
(A) to distributions after the date of the enactment of this Act, and
(B) for purposes of determining the continuation qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (b)(1)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date.

(5) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—
(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,
(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or
(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(6) ELECTION TO HAVE AMENDMENTS APPLY.—Paragraph (2) shall not apply if the distributing corporation and the distributee corporation or any affiliate of such corporation satisfy the requirements of section 1504(b) for the calendar year in which such distribution is made.

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

SEC. 303. EXEMPTION OF NATURAL AGING PROCESS IN DETERMINATION OF PRODUCTION PERIOD FOR DISTILLED SPIRITS UNDER SECTION 262A.

(a) IN GENERAL.—Section 262A(f) of the Internal Revenue Code of 1986 (relating to general exceptions) is amended by adding at the end the following new paragraph:

``(6) Exemption of natural aging process in determination of production period for distilled spirits.—For purposes of this subsection, the production period for distilled spirits shall be determined without regard to any period allocated to the natural aging process.''

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply to periods beginning after the date of the enactment of this Act.

SEC. 304. MODIFICATION OF ACTIVE BUSINESS REQUIREMENT UNDER SECTION 355.

(a) IN GENERAL.—Section 355(b) (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

``(3) SPECIAL RULES RELATING TO ACTIVE BUSINESS REQUIREMENT.—
(A) IN GENERAL.—For purposes of determining whether a corporation meets the requirement of paragraph (2)(A), all members of such corporation's separate affiliated group shall be treated as one corporation. For purposes of the preceding sentence, a corporation's separate affiliated group is the affiliated group which would be determined under section 1560(a) if such corporation were the common parent and section 1560(b) did not apply.
(B) CONTROL.—For purposes of paragraph (2)(D), all distributees which are members of the same affiliated group (as defined in section 1560(a) without regard to section 1560(b)) shall be treated as one distributee corporation.

(b) CONFORMING AMENDMENTS.—
(1) Subparagraph (A) of section 355(b)(2) is amended to read as follows:

``(A) GAINS.—(i) In general.—There is hereby imposed on any distribution of such type which is not made pursuant to an agreement which was binding on such date of enactment and at all times thereafter

(2) Section 355(b)(2) is amended by striking the last sentence.''

(c) EFFECTIVE DATE.—
(1) IN GENERAL.—The amendments made by this section shall apply—

``(A) to distributions after the date of the enactment of this Act, and
(B) for purposes of determining the continuation qualification under section 355(b)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (b)(1)) of distributions made before such date, as a result of an acquisition, disposition, or other restructuring after such date.''

``(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—
(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,
(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or
(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

(3) ELECTION TO HAVE AMENDMENTS APPLY.—Paragraph (2) shall not apply if the distributing corporation and the distributee corporation or any affiliate of such corporation satisfy the requirements of section 1504(b) for the calendar year in which such distribution is made.

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 305. EXCLUSION OF CERTAIN INDEBTEDNESS OF SMALL BUSINESS INVESTMENT COMPANIES FROM ACQUISITION DEBT.

(a) IN GENERAL.—Section 514(c) (relating to acquisition indebtedness) is amended by adding at the end the following new paragraph:

``(10) CERTAIN INDEBTEDNESS OF SMALL BUSINESS INVESTMENT COMPANIES.—For purposes of this section, the term 'acquisition indebtedness' does not include any indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 which is evidenced by a debenture—
(A) issued by such company under section 303(a) of such Act, and
(B) held or guaranteed by the Small Business Administration.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply—

``(A) to distributions after the date of the enactment of this Act.

SEC. 306. MODIFIED TAXATION OF IMPORTED ARCHERY PRODUCTS.

(a) BOWS.—Section 4161(b)(3) (relating to bows) is amended to read as follows:

``(3) ARROWS.—
(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, at a tax equal to 11 percent of the price for which so sold.
(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow, archery equipment, or component of a bow described in paragraph (2), at a tax equal to 11 percent of the price for which so sold.
(C) ARROWS.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.
``(D) Exception.—In the case of any arrow of which the shaft or any other component has been previously taxed under paragraph (1) or (2)—
(i) section 6416(b)(3) shall not apply, and
(ii) the tax imposed by subparagraph (A) shall be an amount equal to the excess (if any) of—
(I) the amount of tax imposed by this paragraph (determined without regard to this subparagraph), over
(II) the amount of tax paid with respect to this paragraph (1) or (2) on such shaft or component.

(``(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (1) or (2) on which additional components are attached.''

(b) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

``(1) by striking "other (than broadband)" after point", and
(2) by striking "Arrows..." in the heading and inserting "Arrow components."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2003.

SEC. 307. MODIFICATION TO COOPERATIVE MARKETING RULES TO INCLUDE VALUE ADDED PROCESSING INVOLVING ANIMALS.

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

``(k) COOPERATIVE MARKETING Includes VALUE-ADDED PROCESSING INVOLVING ANIMALS.—For purposes of sections 521 and 523, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.''

(b) CONFORMING AMENDMENT.—Section 521(b) is amended by adding at the end the following new paragraph:

``(7) CROSS-REFERENCE.—
``For treatment of value-added processing involving animals, see section 1388(k).''

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

SEC. 308. EXPANSION OF DECLARATORY JUDGMENT PROCEDURES TO FARMERS' COOPERATIVE ORGANIZATIONS.

(a) IN GENERAL.—Section 7B3a(1) (relating to declaratory judgments of exempt organizations) is amended by striking "or" at the end of subparagraph (B) and by adding at the end the following new subparagraph:

``(D) with respect to the initial classification or continuing classification of a cooperative as an organization described in section 521(b) which is exempt from tax under section 512(a) or'',''

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

SEC. 309. TEMPORARY SUSPENSION OF PERSONAL HOLDING COMPANY TAX.

(a) IN GENERAL.—Section 541 (relating to imposition of personal holding company tax) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply with respect to any taxable year to which section 1041(d)(1) (as in effect on the date of the enactment of this section) applies.''

``(b) COOPERATION WITH ACCUMULATED EARNINGS TAX.—Section 522(b) is amended by adding at the end the following new sentence:

``(1) paragraph (1) shall not apply to any taxable year to which section 541 does not apply.''

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

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(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 310. INCREASE IN SECTION 179 EXPENSING.

(a) In General.—Section 179(b)(2)(A) (relating to reduction in amount) is amended by inserting "50 percent of" before "the amount".

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 311. FIVE-YEAR CARRYBACK OF NET OPERATING LOSSES.

(a) In General.—Subparagraph (H) of section 331(b)(1) is amended—

(1) by inserting "5-YEAR CARRYBACK OF CERTAIN LOSSES.—" after "(H)", and

(2) by striking "or 2002" and inserting "2002", of sections 331(b) and 338.(b) Rules Relating to Certain Extended Net Operating Losses.—Section 172 is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) Rules Relating to Certain Extended Net Operating Losses.—For purposes of this section, in the case of a taxpayer which has a net operating loss for any taxable year ending during 2003 and does not make an election under subsection (j), such taxpayer shall be deemed to have made an election under paragraphs (4)(E) and (4)(F) of section 331(b) of the Internal Revenue Code of 1986 which applies to the taxpayer's taxable year ending in 2004 rather than its taxable year ending in 2003.

(1) Temporary Suspension of 90 Percent Limit on Certain NOL Carryovers.—Section 56(d)(1)(A)(ii)(I) (relating to general rule defining alternative tax net operating loss deduction) is amended—

(1) by striking "or 2002" and inserting ", 2002, or 2003", and

(2) by striking "2002, or 2003" and inserting "2002, 2003, and 2004".

(2) Technical Corrections.—

(1) Subparagraph (H) of section 172(b)(1) is amended by striking "a taxpayer which has 

(2) Section 102(c)(2) of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147) is amended by striking "before January 1, 2003" and inserting "before December 31, 1999".

(3) (A) Subclause (I) of section 56(d)(1)(A)(i) is amended—

(i) by striking "or 2002" and inserting "2002, or 2003", and


(d) Effective Dates.—

(1) In General.—Except as provided in paragraph (2), the amendments made by this section shall apply to net operating losses for taxable years ending after December 31, 2002.

(2) Technical Corrections.—The amendments made by subsection (d) shall take effect as if the amendments made by section 102 of the Job Creation and Worker Assistance Act of 2002.

(3) Election.—In the case of a net operating loss for a taxable year ending during 2003—

(A) any election made under section 172(b)(3) of such Code may (notwithstanding such section) be revoked before April 15, 2004, and

(B) any election made under section 172(j) of such Code shall (notwithstanding such section) be treated as timely made if made before April 15, 2004.

(4) Special Rule for Taxpayers with Taxable Years Ending During January.—Any taxpayer whose taxable year ending during January may elect under this paragraph to apply section 172(b)(1)(H) of the Internal Revenue Code of 1986 (as amended by this section) to its taxable year ending in 2004 rather than its taxable year ending in 2003. If such election is made, then section 172(c)(1)(B) (relating to section) shall be applied to the taxpayer's taxable year ending in 2004. Such election shall be made in such manner and at such time as may be prescribed by the Secretary of the Treasury. Such election, once made, shall be irrevocable.

SEC. 312. EXTENSION AND MODIFICATION OF RESEARCH CREDIT.

(a) Extension.—

(1) In General.—Section 41(b)(1)(B) (relating to carryback) is amended by striking "June 30, 2004" and inserting "December 31, 2005".

(2) Conforming Amendment.—Section 45G(b)(1) is amended by striking "June 30, 2004" and inserting "December 31, 2005".

(b) Increase in Rates of Alternative Incremental Credit.—Subparagraph (A) of section 41(c)(4) (relating to election of alternative incremental credit) is amended—

(1) by striking "2.65 percent" and inserting ".7 percent",

(2) by striking "4.5 percent" and inserting "4 percent",

(3) by striking "3.75 percent" and inserting "3 percent"

(c) Alternative Simplified Credit for Qualified Research Expenses.—

(1) In General.—Subsection (c) of section 41 (relating to alternative provisions) is amended by redesigning paragraphs (5) and (6) as paragraphs (7) and (8), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) Election of Alternative Simplified Credit.—

(A) In General.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to 12 percent of so much of the qualified research expenses for the 3 taxable years preceding the taxable year for which the credit is being determined from qualified research expenses in any of such taxable years.

(B) Special Rule in Case of No Qualified Research Expenses in Any of 3 Preceding Taxable Years.—

(i) Taxpayers to Which Subparagraph Applies.—The credit under this paragraph shall be equal to 6 percent of the qualified research expenses for the taxable year which the credit is being determined.

(ii) Credit Rate.—The credit determined under this paragraph shall be equal to 6 percent of the qualified research expenses for the taxable year which the credit is being determined.

(C) Election.—An election under this paragraph shall be made by the taxpayer and shall apply to the taxable year for which the credit is being determined.

(D) Coordination with Election of Alternative Incremental Credit.—

(A) In General.—Section 41(c)(1)(B) (relating to election) is amended by adding at the end of the following new paragraphs:

(1) Election.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary. An election under this paragraph made for a taxable year to which an election under paragraph (4) applies.

(2) Coordination with Election of Alternative Incremental Credit.—

(A) In General.—Section 41(c)(4)(B) (relating to election) is amended by adding at the end the following new paragraph:

"(5) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

(A) Eligible Small Businesses.—

(i) Definition.—The term 'eligible small business' means a small business with

(b) Repeal of Limitation on Contract Research Expenses Paid to Small Businesses, Universities, and Federal Laboratories.—Section 41(b)(3) (relating to contract research expenses) is amended by adding at the end the following new subparagraph:

"(D) Amounts Paid to Eligible Small Businesses, Universities, and Federal Laboratories.—

(i) In General.—In the case of amounts paid to the taxpayer—

(ii) an institution of higher education (as defined in section 3304(f)), or

(iii) an organization which is a Federal laboratory (as defined in section 3305(c)), or

"(E) Small Business.—For purposes of this subsection, the term 'eligible small business' means a small business with
respects to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

"(1) In the case of a corporation, the outstanding amount relating to the corporation (either by vote or value), and

"(II) In the case of a small business which is not a corporation, the capital and profits interests that the taxpayer holds in the business.

"(iii) SMALL BUSINESS.—For purposes of this subparagraph—

"(I) IN GENERAL.—The term ‘small business’ means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was less than 500. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

"(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.

"(iv) FEDERAL LABORATORY.—For purposes of this subparagraph, the term ‘Federal laboratory’ has the meaning given such term by section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)), as in effect on the date of the enactment of this Act.

"(B) ELECTION.—With respect to the taxable year in which the production is placed in service after the date of the enactment of this Act.

"(C) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 2004.

**Subtitle B—Manufacturing Relating to Films and Television Productions**

SEC. 321. SPECIAL RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 181 the following new section—

"SEC. 181. TREATMENT OF QUALIFIED FILM AND TELEVISION PRODUCTIONS.

"(a) Election to Treat Certain Costs of Qualified Film and Television Productions as Expenses.—

"(1) IN GENERAL.—An election under subsection (a) with respect to any qualified film or television production shall be made and filed by the Secretary and by the due date (including extensions) for filing the taxpayer’s return of tax for the taxable year in which costs of the production are first incurred.

"(2) REVOCATION OF ELECTION.—Any election made under subsection (a) may not be revoked without the consent of the Secretary.

"(b) Qualified Film or Television Production.—For purposes of this section—

"(1) IN GENERAL.—The term ‘qualified film or television production’ means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

"(2) PRODUCTION.—

"(A) IN GENERAL.—A production is described in this paragraph if such production is properly identified in accordance with section 181(d)(1). For purposes of a television series, only the first 44 episodes of such series may be taken into account.

"(B) EXCEPTION.—A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, with respect to any performer in such production.

"(c) QUALIFIED COMPENSATION.—For purposes of paragraph (1) .—

"(1) IN GENERAL.—The term ‘qualified compensation’ means compensation for services performed in the United States by actors, directors, producers, and other relevant personnel.

"(d) PARTICIPATIONS AND RESIDUALS EXCLUDED.—The term ‘compensation’ does not include participations and residuals (as defined in section 7703)) .

"(e) APPLICATION OF CERTAIN OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

"(f) TERMINATION.—This section shall not apply to qualified film and television productions commenced before January 1, 2004.

"(g) AMORTIZATION OF REMAINING COSTS.—The aggregate compensation paid for each taxable year in which the production is placed in service shall be amortized ratably over the 12-month period beginning with the month in which such production is placed in service.

"(h) Amortization of Remaining Costs.—The following new subparagraph shall be added as a deduction ratably over the 36-month period beginning with the month in which such production is placed in service:

"(2) No other deduction or amortization deduction allowable.—With respect to the basis of any qualified film or television production for which paragraph (1) is not applicable, the depreciation or amortization deduction shall be allowable.

"(i) Election.—

"(1) IN GENERAL.—An election under subsection (a) with respect to any qualified film or television production shall be made and filed by the Secretary and by the due date (including extensions) for filing the taxpayer’s return of tax under this chapter for the taxable year in which costs of the production are first incurred.

"(2) REVOCATION OF ELECTION.—Any election made under subsection (a) may not be revoked without the consent of the Secretary.

"(j) QUALIFIED FILM OR TELEVISION PRODUCTION.—For purposes of this section—

"(1) IN GENERAL.—The term ‘qualified film or television production’ means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

"(k) PRODUCTION.—

"(A) IN GENERAL.—A production is described in this paragraph if such production is properly identified in accordance with section 181(d)(1). For purposes of a television series, only the first 44 episodes of such series may be taken into account.

"(B) Exception.—A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, with respect to any performer in such production.

"(c) QUALIFIED COMPENSATION.—For purposes of paragraph (1) .—

"(1) IN GENERAL.—The term ‘qualified compensation’ means compensation for services performed in the United States by actors, directors, producers, and other relevant personnel.

"(d) PARTICIPATIONS AND RESIDUALS EXCLUDED.—The term ‘compensation’ does not include participations and residuals (as defined in section 7703)) .

"(e) APPLICATION OF CERTAIN OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

"(f) TERMINATION.—This section shall not apply to qualified film and television productions commenced before January 1, 2004.

"(g) AMORTIZATION OF REMAINING COSTS.—The aggregate compensation paid for each taxable year in which the production is placed in service shall be amortized ratably over the 12-month period beginning with the month in which such production is placed in service.

"(h) Amortization of Remaining Costs.—The following new subparagraph shall be added as a deduction ratably over the 36-month period beginning with the month in which such production is placed in service:

"(2) No other deduction or amortization deduction allowable.—With respect to the basis of any qualified film or television production for which paragraph (1) is not applicable, the depreciation or amortization deduction shall be allowable.
(4) Treatment of trusts and estates.—
   "(a) In general.—Except as provided in
   subparagraph (b), this section shall not
   apply to trusts and estates.
   "(b) Repeal of amortization deduction allowed to
   estates.—The benefit of the deduction for
   amortization provided by subsection (a) shall
   be allowed to estates in the same manner as
   in the case of a decedent. The allowable
   deduction shall be apportioned between the
   income beneficiary and the fiduciary under
   regulations prescribed by the Secretary. Any
   amount of the deduction allocable to the
   fiduciary shall be taken into account for purposes of
determining the amount allowable as a deduction
under subsection (a) to such beneficiary.

(5) The item relating to section 194 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(6) The heading for section 332 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(7) The item relating to section 332 in the
table of sections for subpart E of part IV of
the Internal Revenue Code of 1986 made for a tax-
year does not exceed 5 percent of the net selling
price of the property.

(8) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(9) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(10) The heading for section 401 is amended by
    striking "REFORESTATION CREDIT".

(11) The item relating to section 401 in the
table of sections for subpart E of part IV of
the Internal Revenue Code of 1986 made for a tax-
year does not exceed 5 percent of the net selling
price of the property.

(12) The heading for section 401 is amended by
   striking "REFORESTATION CREDIT".

(13) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(14) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(15) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(16) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(17) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(18) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(19) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(20) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(21) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(22) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(23) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(24) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(25) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(26) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(27) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.

(28) The heading for section 401 is amended by
   striking "AMORTIZATION" and inserting "TREATMENT".

(29) The item relating to section 401 in the
   table of sections for subpart E of part IV of
   the Internal Revenue Code of 1986 made for a tax-
   year does not exceed 5 percent of the net selling
   price of the property.
A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such party's tax liability under subsection (a).

"(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into with a trade or business or an activity engaged in for the production of income.

"(D) TREATMENT OF LESSORS.—In applying paragraphs (2) and (3), the amount of the transaction [is to be] determined by subtracting from the amount of the reportable transaction any net amount claimed by the lessor of tangible property subject to a lease—

"(i) the expected net tax benefits with respect to the leased property shall not exceed the benefits of—

"(I) depreciation,

"(II) any tax credit, or

"(III) any other deduction as provided in guidance by the Secretary, and

"(ii) subclause (II) of paragraph (1)(B)(i) shall be disregarded in determining whether any of such benefits are allowable.

"(2) OTHER COMMON LAW DOCTRINES NOT APPLIED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or superseding any rule of law, and the requirements of this subsection shall be construed as being in addition to any other such rule of law.

"(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.

"(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of enactment of this Act.

SEC. 402. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6670 the following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

"(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement the required information with respect to a reportable transaction shall pay a penalty in the amount determined under subsection (b).

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) shall be $50,000.

"(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

"(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

"(A) IN GENERAL.—In the case of a failure under subsection (a) by—

"(i) a large entity, or

"(ii) a high net worth individual, the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

"(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means—

"(i) a corporation, and

"(ii) the highest rate of tax imposed by the Secretary as a tax avoidance transaction of a type which the Secretary determines as having a potential for tax avoidance or evasion.

"(C) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

"(d) AUTHORITY TO RESCIND PENALTY.—

"(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

"(A) the violation is with respect to a reportable transaction other than a listed transaction,

"(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

"(C) it is shown that the violation is due to an unintentional error;

"(D) imposing the penalty would be against equity and good conscience, and

"(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

"(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis, the Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be rescinded or the Commissioner or head of such Office for a determination under paragraph (1).

"(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

"(4) BURDEN OF PROOF.—A penalty rescission under paragraph (1), the Commissioner shall place in the file of the Commissioner the opinion of the Commissioner or the Commissioner's delegate that the Tax Shelter Analysis with respect to the determination, including—

"(A) the facts and circumstances of the transaction,

"(B) the reasons for the rescission, and

"(C) the amount of the penalty rescinded.

"(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

"(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

"(B) the amount of penalty rescinded under this subsection and the reasons therefor.

"(e) PENALTY REPORTED TO SEC.—In the case of a person—

"(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated under the regulations prescribed under section 486(c) for purposes of such reports, and

"(2) which—

"(A) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

"(B) is required to pay a penalty under section 6622B with respect to any nongovernmental transaction, the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify.

"(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.

"(b) DISCLOSURE BY SECRETARY.—

"(1) IN GENERAL.—Section 6103 is amended by redesignating subsection (q) as subsection (p), and by inserting after subsection (p) the following new subsection:

"(q) DISCLOSURE RELATING TO PAYMENTS OF CERTAIN PENALTIES.—Notwithstanding any other provision of law, the Secretary shall disclose in any returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 403. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

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

"SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

"(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for a taxable year, an addition to the tax and an equal to 20 percent of the amount of such understatement.

"(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

"(A) the product of—

"(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

"(ii) the highest rate of tax imposed by section 11 in the case of a taxpayer which is a corporation, and

"(B) the amount of the increase (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax), and

the proper tax treatment of such item.

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

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

(A) any listed transaction, and

(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

(1) IN GENERAL.—Subsection (a) shall be applied by substituting ‘‘30 percent’’ for ‘‘20 percent’’ with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

(2) RULES APPLICABLE TO ASERTION AND COMPROMISE OF PENALTY.—

(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel’s delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

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

(e) SPECIAL RULES.—

(1) PERSONS TO WHOM PENALTIES, ETC., APPLY ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatement amounts for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) of paragraph (A) over the aggregate amount of reportable transaction understatement amounts and non-economic substance transaction understatement amounts.

(2) COORDINATION WITH OTHER PENALTIES.—

(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6662 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662(b) or 6663.

(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplemenation to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplemenation is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, a ‘‘noneconomic substance transaction understatement’’ has the meaning given such term by section 6662B(c).

(5) CROSS REFERENCE.—

For reporting of section 6662A(e) penalty to the Securities and Exchange Commission, see section 6707A(e).

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2)(A) is amended by adding at the end the following new subparagraph:

(IV) has an arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained,

(2) DISQUALIFIED OPINIONS.—For purposes of clause (l), an opinion is disqualified if the opinion—

(i) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

(ii) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

(iii) does not identify and consider all relevant facts,

(iv) is not signed by all individuals who are principal authors of the opinion, or

(v) fails to meet any other requirement as the Secretary may prescribe.

(c) REASONABLE CAUSE EXCEPTION.—

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

(4) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

(I) IN GENERAL.—No penalty shall be imposed with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

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

(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6661,

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

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

A taxpayer failing to adequately disclose in accordance with section 6661 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

(3) RULES RELATING TO REASONABLE BE LIEF.—For purposes of paragraph (2)—

(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

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

(ii) is related directly to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

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

(II) the opinion is described in clause (iii).

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

(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates, or

(II) is indirectly or directly by a material advisor with respect to the transaction,

(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained,

(iv) has an arrangement with respect to the transaction which provides that contractual disputes between the taxpayer and the advisor are to be settled by arbitration or that disputes damages are paid to the advisor for such transaction, or

(v) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

(d) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by striking ‘‘section 6662(d)(2)(C)(ii)’’ and inserting ‘‘section 1274(b)(3)(C)’’.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ‘‘(as defined in section 6662(d)(2)(C)(iii))’’ in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘‘tax shelter’’ means—

(i) a partnership or other entity,

(ii) any investment plan or arrangement, or

(iii) any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ‘‘(as part’’ and inserting ‘‘section 6662 or 6663’’.

(5) Subsection (b) of section 732(b) is amended by striking ‘‘section 6662(d)(2)(C)(iii)’’ and inserting ‘‘section 1274(b)(3)(C)’’.

(A) The heading for section 6662 is amended to read as follows:

SECTION 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

Sec. 6662. Imposition of accuracy-related penalty on underpayments.
Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable economic substance transactions.

(C) EFFECT OF AMENDMENTS.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 404. PENALTY FOR UNDERSTATEMENTS AT- TRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:
"SEC. 662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understate-ment for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understate-ment.

(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 per-cent’ with respect to the portion of any non-economic substance transaction understate-ment with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

(1) In general.—The term ‘noneconomic substance transaction understate-ment’ means any amount which would be an understate-ment under section 6662(a)(1) if section 6662A were applied by taking into account items attributable to noneconomic sub-stance transactions rather than items to which section 6662A would apply without regard to this paragraph.

(2) NONECONOMIC SUBSTANCE TRANS-ACTION.—The term ‘noneconomic substance transaction’ means any transaction if—

(A) there is a lack of economic substance (within the meaning of section 7701(a)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 6694(a)(1), or

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

(d) RULES APPLICABLE TO COMPROMISE OF PENALTIES.—

(1) In general.—If the 1st letter of pro-posed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Ap-peals has been sent with respect to a penalty to which this section applies, only the Com-missioner of Internal Revenue may com-promise all or any portion of such pen-alties.

(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

(e) CONFORMING AMENDMENTS.—Penal-ties. —Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

(f) CROSS REFERENCES.—

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

(2) For reporting of penalty imposed under this section to the Securities and Ex-change Commission, see section 6707A(e).

(b) SPECIAL RULE.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enact-ment of this Act.

SEC. 405. MODIFICATIONS OF SUBSTANTIAL UN-DERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) relating to special rule for corporations is amended to read as follows:

"(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substan-tial understate-ment of income tax for any taxable year if the amount of the understate-ment for the taxable year exceeds the lesser of—

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

(ii) $10,000,000."

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

"(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable be-lief that the tax treatment was more likely than not the proper treatment, or"

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

"(D) The item relating to section 6112 in the tables of sections for subchapter B of chapter 61 is amended to read as follows:

"Sec. 6112. Disclosure of reportable trans-actions.".

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

"SEC. 6112. MATERIAL ADVISORS OF REPORT-ABLE TRANSACTIONS MUST KEEP LISTS OF.—

(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6104) shall maintain, in such manner as the Secretary may by regulations pre-scribe, a—

(i) list of positions for which the Secretary may prescribe regulations which provide—

(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would oth-erwise be required to meet such require-ments,

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

(3) such rules as may be necessary or ap-propriate to carry out the purposes of this section.

(b) CONFORMING AMENDMENTS.—

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

"Sec. 6111. Disclosure of reportable trans-actions.".

(2)(B) The item relating to section 6111 in the tables of sections for subchapter B of chapter 61 is amended to read as follows:

"Sec. 6111. Disclosure of reportable trans-actions.".

(3)(A) The heading for section 6708 is amended to read as follows:

"SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISERS WITH RESPECT TO REPORTABLE TRANSACTIONS.".

(B) The item relating to section 6708 in the tables of sections for part I of subchapter B of chapter 68 is amended to read as follows:

"Sec. 6708. Failure to maintain lists of advisers with respect to reportable transactions.

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Subparagraph (A) of section 6112(b)(1), as redesignated by
SEC. 409. MODIFICATION OF PENALTY FOR FAILING TO REPORT SURPLUS TAX SHELTERS.

(a) In General.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

"SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

"(a) In General.—If a person who is required under section 6112(a) with respect to any reportable transaction—

"(2) fails to file or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b) and

"(2) $50 percent of the gross income derived by such person with respect to, or assistance, or advice which is provided with respect to, the listed transaction before the date the return including the transaction is filed under section 6112.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (b).

(c) CERTAIN RULES TO APPLY.—The provisions of section 6707(a)(4) shall apply to any penalty imposed under this section.

(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A.
(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

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

(a) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a submission if any portion of such submission—

(i) is based on a position which the Secretary has identified as frivolous under subsection (a)(3)(B).

(ii) reflects a desire to delay or impede the administration of Federal tax laws.

(b) SPECIFIED SUBMISSION.—The term ‘specified submission’ means—

(i) a request for a hearing under—

(1) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

(2) section 6330 (relating to notice and opportunity for hearing before levy), and

(ii) an application under—

(1) section 6159 (relating to agreements for payment of tax liability in installments),

(2) section 6702 (frivolous tax submissions),

(3) subsection (a)(3)(B) of section 6700 (promoting abusive tax shelters),

(4) section 6702A (relating to certain trompe-l’oeil transactions),

(5) section 6703 (relating to offers-in-compromise and installment agreements),

(6) section 6706 (relating to transactions and noneconomic substance shelters),

(7) section 6709 (relating to transactions in which a taxpayer makes or is a party to any activity with respect to which a penalty is imposed under section 6703 for a transaction involving the presentation of a document or statement which is false or fraudulent),

(8) section 6709A (relating to transactions in which a taxpayer makes a frivolous request for a hearing or for a statement descriptive of the activity giving rise to the penalty), and

(9) section 6709B (relating to transactions in which a taxpayer fails to include on or return with any filing or return any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, or the statement for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

(A) the date on which the Secretary is furnished the information described in subparagraph (B) of section 6709B(a) and

(B) the date that a material advisor (as defined in section 6709B(b)) relaying the information to the Secretary fails to timely provide a statement described in subparagraph (A) of section 6709B(a).

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraphs (1) and (2) shall not apply with respect to such submission.

(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall periodically review a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall add to such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(I).

(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to, or in lieu of, any penalties otherwise applicable.

(f) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS.—Notwithstanding any other provision of this section, the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(g) CIRCUMSTANCES WHERE PENALTY IS NOT APPLICABLE.—If an activity with respect to which a penalty is imposed under this section is not an activity with respect to which such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.

(h) PENALTIES IN ADDITION TO OTHER PENALTIES.—For purposes of this section—

(i) a request for a hearing under—

(1) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

(2) section 6330 (relating to notice and opportunity for hearing before levy),

(ii) an application under—

(1) section 6159 (relating to agreements for payment of tax liability in installments),

(2) section 6702 (frivolous tax submissions),

(3) subsection (a)(3)(B) of section 6700 (promoting abusive tax shelters),

(4) section 6702A (relating to certain trompe-l’oeil transactions),

(5) section 6703 (relating to offers-in-compromise and installment agreements),

(6) section 6706 (relating to transactions and noneconomic substance shelters),

(7) section 6709 (relating to transactions in which a taxpayer makes or is a party to any activity with respect to which a penalty is imposed under section 6703 for a transaction involving the presentation of a document or statement which is false or fraudulent),

(8) section 6709A (relating to transactions in which a taxpayer makes a frivolous request for a hearing or for a statement descriptive of the activity giving rise to the penalty), and

(9) section 6709B (relating to transactions in which a taxpayer fails to include on or return with any filing or return any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, or the statement for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

(A) the date on which the Secretary is furnished the information described in subparagraph (B) of section 6709B(a) and

(B) the date that a material advisor (as defined in section 6709B(b)) relaying the information to the Secretary fails to timely provide a statement described in subparagraph (A) of section 6709B(a).

(i) REMOVAL OF PERSONAL INCOME.—In the case of a personal income derived (or to be derived) from the activity giving rise to the penalty, such penalty shall not exceed the gross personal income derived (or to be derived) from the activity giving rise to the penalty.

(j) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.
"(2) CORPORATIONS.—If the return, affidavit, claim, or other document relates to the tax liability of a corporation, paragraph (1)(A) shall be applied by substituting $20,000 for $2,000.

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

SEC. 420. FORMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 8202 of subchapter A of chapter 62 of title 26, United States Code, is amended by inserting before the period at the end thereof the following new provision:

"Upon request of the Secretary of the Treasury, the Secretary of the Treasury shall, jointly with the Attorney General, the Securities and Exchange Commission, and the Commissioner of Internal Revenue, study the prevailing methods of improving, the sharing of information related to the promotion of prohibited tax shelters or tax avoidance schemes and other potential violations of Federal law.

(b) REPORT.—The Secretary shall, not later than 1 year after the date of the enactment of this Act, report to the appropriate committees of the Congress the results of the study under subsection (a), including any recommendations for legislation.

Subtitle B—Other Corporate Governance Provisions

SEC. 421. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end thereof the following new subsection:

"In prescribing such regulations, the Commissioner of Internal Revenue, in consultation with the appropriate committees of the Congress, may prescribe additional rules applicable to corporations filing consolidated returns under section 1502 that are different from other provisions of this title that would otherwise apply if such corporations filed separate returns.

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating any corporation described in paragraph (4) in relation to the Commissioner of Internal Revenue, study referred to in subsection (a), as being applicable to the type of factual situation in 253 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall take effect upon the date of the enactment of this Act.

SEC. 422. DECLARATION BY CHIEF EXECUTIVE OFFICER RELATING TO FEDERAL ANNUAL INCOME TAX RETURN OF A CORPORATION.

(a) IN GENERAL.—The Federal annual tax return of a corporation with respect to income shall also include a declaration signed by the chief executive officer (or other chief executive officer of the corporation) that such corporation does not have a chief executive officer, under penalties of perjury, that the corporation has in place processes and procedures to ensure that such return complies with the Internal Revenue Code of 1986 and that the chief executive officer was provided reasonable assurance of the accuracy of all material aspects of such return. The preceding sentence shall not apply to a Federal annual tax return of a regulated investment company (within the meaning of section 551 of such Code).

(b) EFFECTIVE DATE.—This section shall apply to Federal annual tax returns of a corporation with respect to income for taxable years ending after the date of the enactment of this Act.

SEC. 423. DECLARATION OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) IN GENERAL.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

"(f)

"(1) FINES, PENALTIES, AND OTHER AMOUNTS.—

"(A) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (3) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

"(B) EXCPTION FOR CLAIMS FOR PAYMENT.—In prescribing such regulations, the Commissioner of Internal Revenue, in consultation with the appropriate committees of the Congress, may prescribe additional rules applicable to claims for payment by or to any person or entity described in paragraph (3).

SEC. 424. DISALLOWANCE OF DEDUCTION FOR PUNITIVE DAMAGES.

(a) DISALLOWANCE.—(1) IN GENERAL.—Section 162(g) is amended—

"(A) by striking "Any person who—" and inserting "Any person who—", and

"(B) by striking "$1,000,000", and inserting "$20,000".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act.

SEC. 425. LIMITATION ON BUILT-IN LOSSES.

(a) IN GENERAL.—Section 851 of such Code is amended by inserting at the end thereof the following new subsection:

"(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED ON ACCOUNT OF BUILT-IN LOSSES.—Amounts paid or incurred with respect to any section 857(b) interest or any section 857(b)(1) interest which is treated as section 857(b) interest shall not apply to the Federal annual tax return of a corporation for any year.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act.

SEC. 426. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662(a) (as redesignated by subsection (a)) is amended by striking "$500,000" and inserting "$1,000,000".

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

SEC. 427. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662 (relating to underpayment of tax due to fraud) is amended by striking "$1,000,000" and inserting "$20,000".

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

SEC. 428. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662(a) (as redesignated by subsection (a)) is amended by striking "$20,000" and inserting "$1,000,000".

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

SEC. 429. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662 (relating to underpayment of tax due to fraud) is amended by striking "$1,000,000" and inserting "$20,000".

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

SEC. 430. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662 (relating to underpayment of tax due to fraud) is amended by striking "$1,000,000" and inserting "$20,000".

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

SEC. 431. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662 (relating to underpayment of tax due to fraud) is amended by striking "$1,000,000" and inserting "$20,000".

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

SEC. 432. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662 (relating to underpayment of tax due to fraud) is amended by striking "$500,000" and inserting "$1,000,000".

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

SEC. 433. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662 (relating to underpayment of tax due to fraud) is amended by striking "$1,000,000" and inserting "$20,000".

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

SEC. 434. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662 (relating to underpayment of tax due to fraud) is amended by striking "$1,000,000" and inserting "$20,000".

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

SEC. 435. LIMITATION ON PENALTY FOR UNDERSTATEMENT OF TAX DUE TO FRAUD.

(a) IN GENERAL.—Section 6662 (relating to underpayment of tax due to fraud) is amended by striking "$1,000,000" and inserting "$20,000".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns of any taxable year beginning after the date of the enactment of this Act.
(but for this subsection) be an importation of a net built-in loss in a transaction if the transferor's aggregate adjusted bases of property so transferred are less than the transferee's aggregate adjusted bases of property in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 332 TRANSACTIONS.—

(A) IN GENERAL.—If—

(i) the property transferred by a transferor in any transaction which is described in sub-section (a) and which is not described in paragraph (1) of this subsection, and

(ii) the transferor's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferor's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

(B) ALLOCATION OF BASIS REDUCTION.—The amendment made by subsection (a) shall apply to transactions before February 13, 2003.

(2) LIQUIDATIONS.—The amendment made by subsection (b) shall apply to liquidations after February 13, 2003.

SEC. 432. NO REDUCTION OF BASIS UNDER SECTION 332 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.—

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

(1) no allocation may be made to stock in a corporation (or any person which is related (within the meaning of section 267(b) or 707(b)(1)) to which (i) is a partner in the partnership, and

(2) no amount not allocable to stock by reason of paragraph (1) shall be allocated to partnership property in such manner as the Secretary may prescribe.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately after such transaction.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after January 1, 2003.

SEC. 433. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of chapter M of chapter 1 is amended by striking the item relating to liquidation of subsidiary and inserting the following:

"(2) by striking ‘‘REMIC, or FASIT’’ and inserting ‘‘REMIC’’.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ‘‘REMIC, or FASIT’’ and inserting ‘‘REMIC’’.

(2) Clause (ii) of section 382(d)(4)(B) is amended by striking ‘‘REMIC, or FASIT’’ to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies, and inserting ‘‘or a REMIC to which part IV of subchapter M applies, or a FASIT’’.

(3) Paragraph (1) of section 582(c) is amended by striking ‘‘, and any regular interest in a FASIT,’’ and inserting ‘‘, or any REMIC, FASIT, or REMIC, or REMIC, FASIT, or REMIC’’.

(4) Paragraph (E) of section 856(c)(5) is amended by striking the last sentence.

(b) BY STRIKING ‘‘REMIC, FASIT’’ EACH PLACE IT APPEARS—

(1) Subparagraph (A) of section 7701(a)(3)(B) is amended by striking ‘‘and’’.

(2) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to FASIT.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 14, 2003.

(2) EXCEPTION FOR EXISTING FASITS.—

(i) Section 860G(a)(3) is amended by striking ‘‘REMIC, FASIT, or REMIC’’.

(3) Paragraph (C) of section 1292(e)(4) is amended by striking ‘‘REMIC, or FASIT’’.

(4) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking ‘‘and any regular interest in a FASIT’’, and

(B) by striking ‘‘or FASIT’’ each place it appears.

(11) Subparagraph (A) of section 7701(1)(2) is amended by striking ‘‘or a FASIT’’.

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to FASIT.

(c) EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.—

(a) IN GENERAL.—Section 163(b) is amended by inserting ‘‘or equity
held by the issuer (or any related party) in any other person" after "or a related party".

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of an entity (which includes a debt instrument issued after February 13, 2003) is acquired as part of an arrangement described in paragraph (a) by reason of paragraph (1) with respect to the instrument, the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(k), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (5) the following new paragraph:

"(5) EXCITATION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of paragraphs (1), (2), (2)(A), and (2)(B) of section 1297, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475."

(c) CONFORMING AMENDMENTS.—Paragraph (3) of section 163(k) is amended—

(1) by striking "or a related party" in the material preceding subparagraph (A) and inserting "or any other person"; and

(2) by striking "or interest" each place it appears.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after February 13, 2003.

SEC. 435. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (relating to acquisitions made to evade income tax) is amended to read as follows:

"(a) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation (as defined in section 7874(a)(4)), such entity shall be treated for purposes of this title as a domestic corporation."}

SEC. 436. MODIFICATION OF INTERACTION BETWEEN SUBPART F AND PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) LIMITATION ON EXCITPTION FROM PFIC RULES FOR UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—Paragraph (2) of section 1297(e) (relating to passive foreign investment company) is amended by adding at the end the following flush sentence:

"Such term shall not include any period if the earning of subpart F income by such corporation during such period would result in an instrument with respect to a related party (as defined in section 951(a)(1)(A)(i)) of income under section 951(a)(1)(A)(i)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of controlled foreign corporations beginning after February 13, 2003, and to taxable years of United States shareholders holding shares of such corporations for taxable years of controlled foreign corporations ending after such date.

Subtitle D—Provisions to Discourage Expatriation

SEC. 441. TAX TREATMENT OF INVERTED CORPORATIONS.

(a) IN GENERAL.—Subchapter C of chapter 1 shall be substituted for the term 'dealer in securities' has the meaning given such term by section 475."
"(4) Inversion Gain.—For purposes of this section, the term ‘inversion gain’ means any income or gain required to be recognized under section 931(a), 367(b), 6662, or 1248, or under the provisions of chapter 1, subchapter C, section 59, by reason of the transfer during the applicable period of stock or other properties by an acquired entity—

(A) as part of the acquisition described in subsection (a)(2)(A) to which subsection (b) applies, or

(B) after such acquisition to a foreign related partnership.

The Secretary may provide that income or gain from the sale of inventories or other transactions in the ordinary course of a trade or business shall not be treated as inversion gain if—

(A) as of the date of the acquisition, or within 3 years thereafter, the transferred property would not be integral to an inversion, or

(B) the Secretary determines that the transfer of the property is not an integral part of an inversion.

"(5) Coordination With Section 172 and Minimum Tax.—Rules similar to the rules of paragraphs (3) and (4) of section 6662(c)(a) shall apply for purposes of this section.

"(6) Statute of Limitations.—

(A) In General.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any taxable year shall expire 3 years before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner and form as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(A) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period by reason of the transfer during the applicable period of stock or other properties by an acquired entity.

(B) Reversion.—If the transfer of the property or properties by which such requirements are met.

"(7) Coordination With Section 382.—Rules similar to the rules of paragraphs (3) and (4) of section 382(b)(a) shall apply for purposes of this section.

"(8) Minimum Tax.—

(A) In General.—Subject to such conditions, limitations, and exceptions as the Secretary may prescribe, if, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, a domestic corporation stock of which is traded on an established securities market acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership of such domestic corporation or partnership, such actions shall be treated as pursuant to a plan.

(B) Plan Deemed in Certain Cases.—If a foreign corporation or entity, or a corporation or entity which is under common control with a foreign corporation or entity, acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership, the plan shall be treated as pursuant to a plan.

"(9) Reporting For Certain Related Transactions.—

(A) Elections.—In the case of an acquired entity which is under common control with any member of a group of related entities described in section 1504(b)(3) but which—

(i) is not a member of such group; or

(ii) is a member of such group which is not under common control with any member of such group, and

(B) Section 382 Returns.—Sections 382(b)(3) and (b)(4) shall not apply to an acquired entity which is under common control with any member of a group of related entities described in section 1504(b)(3) unless such acquired entity is a member of such group or is under common control with such acquired entity.

(B) In General.—If a plan described in subparagraph (A) of this paragraph is completed—

(i) under subsection (a)(2)(A) is completed.

(C) Special Rules For Related Partnerships.—For purposes of applying subsection (a)(2)(A) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

(D) Treatment of Certain Rights.—The Secretary shall prescribe such regulations as may be necessary—

(i) to treat warrants, options, contracts for the purchase of property, rights, or any similar interests as stock,

(ii) to treat stock as not stock.

(E) Expatriation Transaction.—For purposes of section 7874, the term ‘domestic corporation’ means any entity which, after an acquisition described in subsection (a)(2)(A) to which subsection (b) applies, is under common control with any member of a group of related entities described in section 1504(b)(3). Except that section 1504(b)(3) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

(F) Inversion Gain.—

(G) Additional Definitions and Special Rules.—For purposes of this section—

(1) Rules For Application of Subsection (a)(2).—In applying subsection (a)(2) for purposes of subsection (b)(2)(B)—

(A) certain stock disregarded.—There shall not be taken into account in determining the ownership for purposes of subsection (a)(2)(B)—

(i) stock held by members of the expanded affiliated group which includes the foreign corporation or entity which is under common control with such acquired entity—

(ii) stock of such entity which is sold in a public offering or private placement relating to the acquisition described in subsection (a)(2)(A).—

(II) is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which includes the foreign corporation or entity which is under common control with such acquired entity;

(III) is a member of the same expanded affiliated group which includes the foreign corporation or entity which is under common control with such acquired entity and is not a member of, and does not have such a relationship and is not under such common control with any member of, the expanded affiliated group which includes the foreign corporation or entity which is under common control with such acquired entity; or

(IV) that, as a result of a completed corporate expatriation transaction, any taxable corporation or entity which is under common control with the corporate expatriation issuer shall be subject to the taxation of any capital gains realized with respect to such
securities, and the amount of any such capital gains tax that would apply as a result of the transaction.

(2) DEFINITIONS.—In this subsection, the following terms shall apply:

(A) CORPORATE EXPATRIATION TRANSACTION.—The term ‘corporate expatriation transaction’ means any transaction, or series of transactions, described in subsection (a) or (b) of section 7674 of the Internal Revenue Code of 1986.

(B) DOMESTIC ISSUER.—The term ‘domestic issuer’ means an issuer created or organized in the United States or under the law of the United States or of any State.

(2) EFFECTIVE DATE.—Section 14(d) of the Securities Exchange Act of 1934 (as added by this subsection) shall apply with respect to corporate expatriation transactions (as defined in that section) proposed on and after the date of enactment of this Act.

SEC. 422. IMPOSITION OF MARK-TO-MARKET TAX ON INDIVIDUALS WHO EXPATRIATE.

(a) IN GENERAL.—Subpart A of part II of subchapter N of chapter 1 is amended by inserting after section 777 the following new section:

SEC. 777A. TAX RESPONSIBILITIES OF EXPATRIATES.

“(a) GENERAL RULES.—For purposes of this subtitle—

(1) MARK-To-MARKET.—As explained in subsections (d) and (f), any property of a covered expatriate to whom this section applies shall be treated as sold on the day before the expatriation date for its fair market value.

(2) RECOGNITION OF GAIN OR LOSS.—In the case of any sale under paragraph (1)—

(A) notwithstanding any other provision of this subtitle or of any provision of this title relating to property transferred by the expatriate, the gain from the sale shall be treated for the taxable year as an amount realized from a sale or exchange under section 1001.

(B) any gain arising from such sale shall be treated for the taxable year as an amount realized from a sale or exchange under section 1001.

(3) TERMINATION OF POSTPONEMENT.—No property transferred under section 7701(b)(1)(A)(i)(I) shall be treated as sold if the taxpayer consents to the waiver of any right of such form and manner, and in such amount, as the Secretary determines, in subsection (a) or (b) of section 7774 of the Internal Revenue Code of 1986.

(4) SECURITY.—

(i) provides security for payment of tax in such form and manner, and in such amount, as the Secretary requires, in subsection (a) or (b) of section 7774 of the Internal Revenue Code of 1986.
(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A), and

(iii) to the extent provided in regulations, any foreign pension plan or similar retirement arrangements or programs.

(e) Definitions.—For purposes of this section—

(1) Expatriate.—The term ‘expatriate’ means—

(A) any United States citizen who relinquishes citizenship, and

(B) any long-term resident of the United States who—

(i) ceases to be a lawful permanent resident of the United States (within the meaning of section 711(b)(6)), or

(ii) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the United States.

(2) Expatriation Date.—The term ‘expatriation date’ means—

(A) the date an individual relinquishes United States citizenship, or

(B) in the case of a long-term resident of the United States, the date of the event described in clause (i) or (ii) of paragraph (1)(B).

(3) Relinquishment of Citizenship.—A citizen shall be treated as relinquishing United States citizenship on the earliest of—

(A) the date the individual renounces such individual’s United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (b) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

(B) the date the individual furnished to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)-(4)),

(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

(D) the date a court of the United States cancels a naturalized citizen’s certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

(4) Long-Term Resident.—The term ‘long-term resident’ has the meaning given to such term by section 877(c)(2).

(f) Special Rules Applicable to Beneficiary of Qualified Trust.—

(1) In General.—Except as provided in paragraph (2), if an individual is determined under paragraph (3) to hold an interest in a trust on the day before the expatriation date—

(A) the individual shall not be treated as having sold such interest,

(B) such interest shall be treated as a separate share in the trust, and

(C)(i) such separate share shall be treated as a separate trust consisting of the assets allocable to such share,

(ii) the separate share shall be treated as having sold its assets on the day before the expiration of their fair market value, and as having distributed all of its assets to the individual as of such time, and

(iii) the individual shall be treated as having contributed the assets to the separate trust.

Subsection (a)(2) shall apply to any income, gain, or loss of the individual arising from a distribution described in subparagraph (C)(ii). In determining the amount of such distribution, proper adjustments shall be made for liabilities of the trust allocable to an individual, and for any taxes attributable to a qualified trust.

(2) Special Rules for Interests in Qualified Trusts.—

(A) In General.—If the trust interest described in paragraph (1) is an interest in a qualified trust—

(i) paragraph (1) and subsection (a) shall not apply, and

(ii) in addition to any other tax imposed by this title, there is hereby imposed on each distribution with respect to such interest a tax in the amount determined under subparagraph (B).

(B) Amount of Tax.—The amount of tax under subparagraph (A)(ii) shall be equal to the lesser of—

(i) the highest rate of tax imposed by section 1(e) for the taxable year which includes the day before the expatriation date, multiplied by the amount of the distribution, or

(ii) the balance in the deferred tax account immediately before such date.

(C) Designations.—For purposes of subparagraph (B)(ii)—

(i) OPENING BALANCE.—The opening balance in a deferred tax account with respect to any trust interest is an amount equal to the allocable expatriation gain with respect to such interest.

(ii) INCREASE FOR INTEREST.—The balance in the deferred tax account shall be increased by the amount of interest determined on the balance in the account at the time the interest accrues, for periods after the 90th day after the expatriation date, by using the rates and method applicable under section 6621 for underpayments of tax for purposes of this paragraph.

(iii) NONVESTED INTEREST.—The term ‘nonvested interest’ means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

(iv) ADJUSTMENTS.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

(D) ALLOCABLE EXPATRIATION GAIN.—For purposes of this paragraph, the allocable expatriation gain shall be the amount of gain which would be allocable to such beneficiary’s vested and nonvested interests in the trust if all assets allocable to such interests.

(E) TAX DEDUCTED AND WITHHELD.—

(i) In General.—The tax imposed by subparagraph (A)(ii) shall be deducted and withheld with respect to any nonvested interest, to the extent provided in regulations, by the amount of taxes imposed under subparagraph (A)(i) on amounts payable to any other beneficiary.

(ii) Exception Where Failure to Deduct May not be Deducted and Withheld.—

(A) the tax imposed by subparagraph (A)(ii) shall be imposed on the trust and each trustee shall be personally liable for the amount of such tax which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and

(B) any other beneficiary of the trust shall be entitled to recover from the distributee the amount of such tax imposed on the other beneficiary.

(F) Disposition.—If a trust ceases to be a qualified trust at any time, a covered expatriation date with the date of such cessation, disposition, or death, whichever is applicable, or

(ii) the balance in the tax deferred account immediately before such date.

Such tax shall be imposed on the trust and trustees shall be personally liable for the amount of such tax and any other beneficiary of the trust shall be entitled to recover from the covered expatriate or the estate the amount of such tax imposed on the other beneficiary.

(G) Definitions and Special Rules.—For purposes of this paragraph—

(i) Qualified Trust.—The term ‘qualified trust’ means a trust which is described in section 7701(a)(30)(E).

(ii) Vested Interest.—The term ‘vested interest’ means any interest which, as of the day before the expatriation date, is vested in the beneficiary.

(iii) Nonvested Interest.—The term ‘nonvested interest’ means, with respect to any beneficiary, any interest in a trust which is not a vested interest. Such interest shall be determined by assuming the maximum exercise of discretion in favor of the beneficiary and the occurrence of all contingencies in favor of the beneficiary.

(iv) Adjustments.—The Secretary may provide for such adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, in order to ensure that gain is taxed only once.

(V) Coordination With Retirement Plan Rules.—This subsection shall not apply to an interest in a trust which is a part of a retirement plan to which subsection (d)(2) applies.

(G) Determination of Beneficiaries’ Interest in Trust.—

Determinations Under Paragraph (1).—For purposes of paragraph (1), a beneficiary’s interest in a trust shall be based upon all relevant facts and circumstances, including—

(A) the terms of the instrument creating the trust and any letter of wishes or similar document, including the terms of the trust instrument and any letter of wishes or similar document, historical patterns of trust distributions, and the existence of and functions performed by a trust protector or any similar adviser.

(B) Other Determinations.—For purposes of this section—

(i) Constructive Ownership.—If a beneficiary of a trust is a corporation, partnership, trust, or estate, the shareholders, partners, or beneficiaries shall be deemed to be the beneficiaries for purposes of this section.

(ii) Taxpayer Return Position.—A taxpayer shall clearly indicate on its income tax returns of any year in which recognition of income or gain is deferred shall terminate on the day before the expiration of such year.

(iii) Methodology Used to Determine Taxpayer’s Trust Interest Under this Section.—

(A) The methodology used to determine that taxpayer’s trust interest under this section, and

(B) If the taxpayer knows (or has reason to know) that any other beneficiary of such trust is using a different methodology to determine such beneficiary’s trust interest under this section.

(iv) Termination of Deferrals, etc.—In the case of any covered expatriate, notwithstanding any other provision of this title—

(A) any period during which recognition of income or gain is deferred shall terminate on the day before the expatriation date, and
"(2) any extension of time for payment of tax shall cease to apply on the day before the expiration date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

"(h) IMPOSITION OF TENTATIVE TAX.—

"(1) IN GENERAL.—If an individual is required to include any amount in gross income by reason of this section, the Secretary shall impose a tentative tax on such amount equal to the amount of tax which would be imposed if the taxable year were a short taxable year ending on the expatriation date.

"(2) DUE DATE.—The due date for any tax imposed by paragraph (1) shall be the 90th day after the expatriation date.

"(3) TREATMENT OF TAX.—Any tax paid under paragraph (1) shall be treated as a payment of the tax imposed by this chapter for the taxable year to which subsection (a) applies.

"(4) DEFERRAL OF TAX.—The provisions of subsection (b) shall apply to the tax imposed by this subsection to the extent attributable to gain includible in gross income by reason of this section.

"(1) SPECIAL LIENS FOR DEFERRED TAX AMOUNTS.—

"(i) IMPOSITION OF LIEN.—

"(A) In the case of a covered expatriate who relinquishes United States citizenship on or after January 1, 2004, the Secretary shall impose a lien on the delinquent amount, including any interest, additional amount, additional tax, assessable penalty, and costs attributable to the delinquent amount, which results in the deferred tax imposed by reason of subsection (a), on the delinquent amount (including any interest, additional amount, additional tax, assessable penalty, and costs attributable to the delinquent amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).

"(B) DEFERRED AMOUNT.—For purposes of this subsection, the deferred amount is the amount of the increase in the covered expatriate’s income tax which, but for the election under subsection (a)(4) or (b), would have occurred by reason of this section for the taxable year including the expatriation date.

"(2) PERIOD OF LIEN.—The lien imposed by this subsection shall arise on the expiration date and continue until—

"(A) the liability for tax by reason of this section becomes unenforceable by reason of lapse of time, or

"(B) it is established to the satisfaction of the Secretary that no further tax liability remains on account of this section.

"(3) CERTAIN RULES APPLY.—The rules set forth in subsections (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this subsection as if it were a lien imposed by section 6324A.

"(j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

"(k) INCLUSION IN INCOME OF GIFTS AND BEQUESTS RECEIVED BY UNITED STATES CITIZENS AND RESIDENTS FROM EXPATRIATES.—Section 102(d) of the Internal Revenue Code of 1986 (as added by subsection (b)) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(E)) is amended to read as follows:

"(e) DEFERRED AMOUNT.—For purposes of this section, the deferred amount is the increase in the tax imposed by this section on the delinquent amount (including any interest, additional amount, additional tax, assessable penalty, and costs attributable to the delinquent amount) that results from the deferral of any tax imposed by reason of subsection (a), on the delinquent amount (including any interest, additional amount, additional tax, assessable penalty, and costs attributable to the delinquent amount) shall be a lien in favor of the United States on all property of the expatriate located in the United States (without regard to whether this section applies to the property).
\textbf{SEC. 444. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.}

(a) \textbf{IN GENERAL.}—Section 855(a) \textit{(relating to allocation in case of reinsurance agreement between United States and foreign government or agency)} is amended by striking "source and character" and inserting "amount, source, or character."

(b) \textbf{EFFECTIVE DATE.}—The amendments made by this section shall apply to any risk reinsured after April 11, 2002.

\section*{SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.}

(a) \textbf{IN GENERAL.}—The acquiring corporation in any taxable acquisition shall make a return (according to the forms or regulations prescribed by the Secretary) setting forth—

(1) a description of the acquisition,

(2) the name and address of each shareholder of the acquired corporation which is required to recognize gain (if any) as a result of the acquisition,

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

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

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

(b) \textbf{NOMINEE REPORTING.}—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

(c) \textbf{TAXABLE ACQUISITION.}—For purposes of this section, the term "taxable acquisition" means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

\section*{STATEMENTS TO BE BIG FURNISHED TO SHAREHOLDERS.}—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth on such return a written statement showing—

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

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

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

The written statement required under the preceding sentence shall be furnished to the shareholders on or before January 31 of the year following the calendar year during which the taxable acquisition occurred."

\section*{ASSESSABLE PENALTIES.}

(1) Subparagraph (B) of section 6724(d)(1) \textit{(relating to definitions)} is amended by redesignating clauses (ii) through (xvii) as clauses (iii) through (xviii), respectively, and by inserting after clause (i) of such section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

\section*{STATEMENTS TO BE BIG FURNISHED TO SHAREHOLDERS.}—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth on such return a written statement showing—

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

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

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

The written statement required under the preceding sentence shall be furnished to the shareholders on or before January 31 of the year following the calendar year during which the taxable acquisition occurred."

\subsection*{STATEMENTS TO BE BIG FURNISHED TO SHAREHOLDERS.}

(1) Subparagraph (B) of section 6724(d)(1) \textit{(relating to definitions)} is amended by redesignating clauses (ii) through (xvii) as clauses (iii) through (xviii), respectively, and by inserting after clause (i) of such section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

\section*{STATEMENTS TO BE BIG FURNISHED TO SHAREHOLDERS.}—Every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth on such return a written statement showing—

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

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

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

The written statement required under the preceding sentence shall be furnished to the shareholders on or before January 31 of the year following the calendar year during which the taxable acquisition occurred."

The amendments made by this section shall take effect on July 11, 2002; except that before such date shall not be taken into account in apportioning income in subsection (a) and in determining the percentage (as determined by reference to the value (or change in value) of stock in such corporation (or any such member).

The amendments made by this section shall take effect on July 11, 2002; except that before such date shall not be taken into account in apportioning income in subsection (a) and in determining the percentage (as determined by reference to the value (or change in value) of stock in such corporation (or any such member).
“(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).”;

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

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

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

Subtitle E—International Tax

SEC. 451. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT EARNINGS IN UNRELATED PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

“(A) obligations of the United States, made by this section shall apply to acquisitions after the date of the enactment of this Act.

SEC. 452. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF CERTAIN HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

“(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

“(1) IN GENERAL.—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

“(A) obligations of the United States, without regard to subparagraph (C) and (2) of paragraph (2) of such section, or

“(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 1841(c)), without regard to subparagraph (C) or (2) of section 1841(c), or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by value of the stock of such corporation.”;

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

SEC. 453. PREVENTION OF MISALIGNMENT OF INTEREST AND ORIGINAL ISSUE DISCOUNT IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ACCOUNT.—Section 168(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (C) as (G) and by inserting after subparagraph (C) the following new subparagraph:

“(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

“(ii) any corporation in which the same percentage of stock in the controlled foreign corporation is not in existence after the date of the enactment of this Act.

“(ii) which is a common parent of an affiliated group,

“(ii) stock of which is directly owned by the distributee foreign corporation,

“(ii) which has not been in existence at all times during the period as the Secretary may prescribe.”.

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

SEC. 454. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) IN GENERAL.—Section 985(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new subparagraph:

“(ii) any item of income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.”;

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

SEC. 455. RECAPTURE OF OVERALL FOREIGN TAXES ON LOSSES IN CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 988(f)(3) (relating to dispositions) is amended by adding at the end the following new subparagraph:

“(ii) the taxpayer owned immediately before such transaction or series of transactions.

“(i) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(4)), and

“(ii) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation in which the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in which the taxpayer owned immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation.

“(iii) EXCEPTION.—A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

“(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(4)), and

“(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation in which the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in which the taxpayer owned immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation.

“(ii) which is a foreign personal holding company

“(iii) of section 1297), a deduction shall be allowable only to the extent that the necessary expenses are incurred in the trade or business in which the payor is predominately engaged.”;

“(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

“(I) IN GENERAL.—The term ‘applicable domestic corporation', for purposes of section 952(c)(1)(B), is includible during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 959(a)) stock in such corporation.

“(II) SECRETARIAL AUTHORITY.—The Secretary may exempt certain transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominately engaged.

“(III) APPROPRIABLE DISPOSITION.—For purposes of clause (i), the term ‘applicable disposition’ means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation.

“(III) EXCEPTION.—A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

“(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(4)), and

“(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation in which the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in which the taxpayer owned immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation.

“(IV) CONTROLLED FOREIGN CORPORATION.—For purposes of this subparagraph, the term ‘controlled foreign corporation’ has the meaning given such term by section 957, and a passive foreign investment company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a foreign personal holding company (as defined in section 952), a deduction shall be allowable only to the extent that the necessary expenses are incurred in the trade or business in which the payor is predominately engaged.

“(V) STOCK OWNERSHIP.—For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 959.

“(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

SEC. 456. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) IN GENERAL.—Section 988(e)(3) is amended by redesignating subsection (b) as subsection (m) and by inserting after subsection (k) the following new subsection:

“(k) E F F E C T I V E D A T E.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

March 22, 2004
“(1) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN INCOME OTHER THAN DIVIDENDS ETC. —

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

“A property is held by the recipient of the item for 15 days or less during the 30-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

“B the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make a related disposition with respect to property in substantially similar or related property.

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

“(2) EXCEPTION FOR TAXES PAID BY DEALERS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

“(B) QUALIFIED TAX.—For purposes of subparagraph (A), the term ‘qualified tax’ means a tax paid or accrued more than 30 days after the date of discharge of indebtedness if—

“1) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and,

“2) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

“(C) DEALER.—For purposes of subparagraphs (A) and (B), the term ‘dealer’ means—

1) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof, and,

2) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

“(D) REGULATIONS.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exceptions to this paragraph and to treat other taxes as qualified taxes.

“(3) EXCEPTIONS.—The Secretary may by regulation provide that paragraph (1) shall not apply to any property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

“(4) REGULATIONS.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

TITLE 26—INCOME TAXES

SEC. 461. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) In General.—Section 1296 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (f) the following new subsection:

“(f) TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulation provide that rules similar to the rules in this section and section 365(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section and section 365(e), as the case may be, would not apply.”.

(b) CROSS REFERENCE.—Subsection (e) of section 365 is amended by adding at the end the following new paragraph:

“(7) CROSS REFERENCE.—

“For treatment of stripped interests in certain accounts or entities holding preferred stock, section 1235 or any similar rule.”

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

SEC. 462. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERSHIPS AND S CORPORATIONS.

(a) In General.—Section 168(h) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (b) as paragraph (c) and by inserting after paragraph (c) the following new paragraph:

“(b) APPLICATION TO PARTNERSHIPS AND S CORPORATIONS.—

“(A) IN GENERAL.—This subsection shall apply to partnerships and S corporations in the same manner as it applies to C corporations.

“(B) ALLOCATIONS TO CERTAIN CORPORATE PARTNERS.—If a C corporation is a partner in a partnership—

“1) the corporation’s allocable share of indebtedness and interest income of the partnership shall be taken into account in applying this subsection to the corporation, and

“2) if a deduction is not disallowed under this subsection with respect to any interest expense of the partnership, this subsection shall be applied separately in determining whether a deduction is allowable to the corporation with respect to the corporation’s allocable share of such interest expense.”.

(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. 463. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) In General.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness) is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (D) the following new subparagraph:

“(D) REGULATIONS.—For purposes of paragraph (8), the Secretary may by regulations prescribe rules relating to a partnership in the case of any discharge of indebtedness, if—

“1) a debtor corporation transfers stock, or

“B) a debtor partnership transfers a capital or profits interest in such partnership, to a creditor in satisfaction of its recourse or nonrecourse loan, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest, in case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to cancellations occurring on or after the date of the enactment of this Act.

SEC. 464. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

“(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

“(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

“1) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

“2) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the recognized gain with respect to such offsetting position as the aggregate unrecognized gain with respect to all such offsetting positions, and

“(iii) any loss described in clause (i) shall not otherwise be taken into account for purposes of this title.”.

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following new clause (ii):

“(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is greater than the basis of such position in the hands of the taxpayer at the time the straddle is created,” and

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

“The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle and the positions comprising such straddle, which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.”.

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), this recognized gain is applied to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.”.

(4) CONFORMING AMENDMENT.—Section 1092(c)(6) is amended by striking “(B)” and inserting “(C)”.

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d)(2) (relating to definitions and specifications of nonfinancial contracts as part of a straddle by delivering property to which the position relates and such position, if terminated, would result in a realized gain, which is then subject to a tax, at a tax rate of 25 percent) is amended by striking at the end the following new paragraph:

“(B) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates and such position, if terminated, would result in a realized loss, which is then subject to a tax, at a tax rate of 25 percent.”.

(c) REPEAL OF STOCK EXCEPTION.—
(1) IN GENERAL.—Paragraph (3) of section 1992(d) (relating to definitions and special rules) is amended to read as follows:

“(3) SPECIAL RULES FOR STOCK.—For purposes of paragraphs (1) and (2), stock shall be treated as property which includes—

“(a) any stock which is a part of a straddle in personal property which is a position with respect to such stock or substantially similar or related property, or

“(b) any stock of a corporation formed or available for use for personal property which offset positions taken by any shareholder.

“(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (a) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includable corporations of an affiliated group (within the meaning of section 1564(a)) shall be treated as 1 taxpayer.”.

(2) CONFORMING AMENDMENT.—Section 1236(b)(1) is amended by striking “;” except that the term ‘personal property’ shall include stock”.

(d) MODIFICATIONS OF QUALIFIED COVERED CALL EXCEPTION.—

(1) EFFECTS ON WHICH OPTIONS MAY BE TRADED.—

(A) IN GENERAL.—Section 1992(c)(4)(B)(i) is amended by striking “or other market which the Commission or the rules prescribed by the Commission to carry out the purposes of this paragraph”.

(B) REGULATIONS.—Section 1992(c)(4)(B)(ii) is amended by adding at the end the following new paragraph:

“(ii) any stock of a corporation formed or available for use for personal property which offset positions taken by any shareholder.”.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after May 14, 2003.

SEC. 468. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking “possessing”— and all that follows through “(B)” and inserting “possessing”.

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

“(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

“(A) IN GENERAL.—Except as specifically provided in an applicable provision, section (a)(2) shall be applied to an applicable provision as if it read as follows:

“(B) BROTHER-SISTER CONTROLLED GROUP.—

Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)(B)) stock possessing—

“(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

“(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock described in clause (A) only to the extent such stock ownership is identical with respect to each such corporation.”.

(c) ELECTION.—For purposes of this section, any provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under section (a).

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

SEC. 469. MANDATORY BASIS ADJUSTMENTS IN CONNECTION WITH PARTNERSHIP TRANSFERS OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 736 is repealed.

(b) ALTERNATIVE BASIS DEFINITION FOR TRANSFERS OF PARTNERSHIP INTERESTS.

(A) IN GENERAL.—Section 736(a)(2)(B)(ii) (relating to alternative basis) is amended by adding at the end the following new paragraph:

“(ii) if the entity to which the stock or securities were transferred distribute to the transferee the stock or securities to which the assets transferred to such transferee do not exceed the adjusted bases of such assets transferred.”.

(B) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting “with respect to which the stock or securities to which the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 357” after “section 358(a)(1)(D)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 470. MODIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 367(c)(9)(A) is amended by adding at the end the following:

“Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of actively participating in the earnings and growth of the corporation.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to elections after May 14, 2003.

SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1) By striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(2) By adding the end of the following new subsection:

“(3) by striking ‘optional’ in the heading.

(c) ADJUSTMENT TO BASIS OF PARTNERSHIP PROPERTY.—Section 734 is amended—

(1) by striking “with respect to which the election provided in section 734 is in effect” in the matter preceding paragraph (1) of subsection (b),

(2) by striking subsection (a) and by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(3) by adding at the end the following new subsection:

“(4) by striking ‘optional’ in the heading.”.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (d) of section 732 is repealed.

(2) Section 755(a) is amended—

(A) by striking “section 734(b) (relating to the optional adjustment)” and inserting “section 734(a) (relating to the adjustment)”,

(B) by striking “section 734(b) (relating to the optional adjustment)” and inserting “section 734(a) (relating to the adjustment)”,

(3) Section 755(c), as added by this Act, is amended by striking “section 734(b)” and inserting “section 734(a)”.

(4) Section 756(c)(2) is amended by striking “optional”.

(5) Section 774(a) is amended by striking “section 734(b)” both places it appears and inserting “section 734(a)”.

(6) The item relating to section 734 in the table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking “Optional”.

(7) The item relating to section 734 in the table of sections for subpart C of chapter 1 is amended by striking “Optional”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to distributions made after the date of the enactment of this Act.

(2) REPEAL OF SECTION 732(d).—The amendments made by subsections (b) and (d) shall apply to—

(A) except as provided in subparagraph (B), transfers made after the date of the enactment of this Act, and

(B) in the case of any transfer made on or before such date to which section 732(d) applies, distributions made after the date which is 2 years after such date of enactment.

PART III—DEPRECIATION AND AMORTIZATION

SEC. 471. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1) Section 1696 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.
(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of real property) is amended by striking paragraph (4).

(3) Section 1233 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking "AMORTIZATION" and inserting "DEDUCTION" in the heading.

SEC. 476. LIMITATION ON DEDUCTIONS ALLOWABLE FOR SOFTWARE LEASED TO TAX-EXEMPT ENTITIES.

(a) GENERAL.—Section 168(g)(3) (relating to lease of software which would be tax-exempt use property as defined in subsection (h) of section 188 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 184(b)(3))."

(b) LEASE TERM TO INCLUDE RELATED SERVICES OR OTHER TAX-EXEMPT ENTITIES.—Subparagraph (A) of section 168(g)(3) (relating to lease term) is amended by inserting "and", by redesignating clause (i) as clause (ii), and by inserting "(iii) the term of the lease shall include a term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—"

"(i) which is part of the same transaction (or series of related transactions) which includes the lease, and

"(ii) which is with respect to the property subject to the lease or substantially similar property, and

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 477. LIMITATIONS ON TREATMENT OF LEASED PROPERTY USED BY GOVERNMENT ENTITIES OR OTHER TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new subparagraph:

"(c) DEFINITIONS.—For purposes of this section—"

"(1) TAX-EXEMPT USE LOSS.—The term "tax-exempt use loss" means—"

"(A) the sum of—"
“(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

(ii) the aggregate deductions for interest paid or incurred with respect to such property, except—

“(B) the aggregate income from such property.

“(2) Tax-Exempt Use Property.—The term ‘tax-exempt use property’ has the meaning given to such term by section 168(h)(9)(C)(i) (without regard to paragraph (1)(C) or (3) thereof and determined as if property described in section 168(h)(9)(C)(i) were tangible personal property).

Such term shall not include property with respect to which the credit under section 42 is allowed but for this sentence, would be tax-exempt property solely by reason of section 168(h)(9)(C)(i).

“(d) Exception for Certain Leases.—This section applies to any lease of property which meets the requirements of all of the following paragraphs:

“(1) Property Not Financed with Tax-Exempt Bonds or Federal Funds.—A lease of property meets the requirements of this paragraph if no part of the property was financed (directly or indirectly) from—

“(A) the proceeds of an obligation the interest on which is exempt from tax under section 103(a) and which (or any refunding of such obligation) is allowed and which, but for this sentence, would be tax-exempt property solely by reason of section 168(h)(9)(C)(i).

“(B) Federal funds.

The Secretary may by regulations provide for a de minimis exception from this paragraph.

“(2) Availability of Funds.—

“(A) In General.—A lease of property meets the requirements of this paragraph if (at any time during the lease term) not more than an allowable amount of funds are—

(i) subject to any arrangement referred to in subparagraph (B), or

(ii) set aside or expected to be set aside, to or for the benefit of the lessor or a lender, or to or for the benefit of the lessee to satisfy the lessee’s obligations or options under the lease. Funds shall be treated as described in clause (ii) only if a reasonable person would conclude, based on the facts and circumstances, that such funds are so described.

“(B) Arrangements.—The arrangements referred to in this subparagraph are—

(i) a defeasance arrangement, a loan by the lessee to the lessor or a lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement involving a lease prepayment, a sinking fund arrangement, or any similar arrangement (whether or not such arrangement provides credit support), and

(ii) any other arrangement identified by the Secretary in regulations.

“(3) Allowable Amount.—

“(A) In General.—Except as otherwise provided in this subparagraph, the term ‘allowable amount’ means an amount equal to 20 percent of the lessee’s adjusted basis in the property at the time the lease is entered into.

“(B) Certain Arrangements Permitted in Certain Cases.—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the credit-worthiness of the lessee. In no event may such regulations permit a percentage less than 20 percent.

“(C) Option to Purchase.—If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price for which the property may be purchased.

“(D) No Allowable Amount for Certain Arrangements.—The allowable amount shall be zero in the case of any arrangement which involves—

“(I) a loan from the lessee to the lessor or a lender;

“(II) any deposit, letter of credit, or payment undertaking agreement involving a lender, or

“(III) any credit support made available to the lessor or a lender;

(a) property does not have a claim which is senior to the lessee.

For purposes of subclause (I), the term ‘loan’ shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

“(B) Lessor Must Make Substantial Equity Investment.—A lease of property meets the requirements of this paragraph if—

“(A) the lessor has the option to purchase the property at the end of the lease term or the leased property at the time the lease is terminated is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor’s adjusted basis in the property as of that time, and

“(B) maintains such investment throughout the term of the lease, and

“(C) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

Subparagraphs (A)(i) and (B) shall not apply if the lease term is described in section 168(h)(1)(C)(ii), or in the case of qualified technological equipment, is described in section 168(h)(3). These exceptions of subparagraph (B), the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

“(D) Lessee May Not Bear More Than Minimal Risk of Loss.—

“(A) In General.—A lease of property meets the requirements of this paragraph if there is no arrangement under which more than a minimal risk of loss (as determined under regulations) in the value of the property is borne by the lessee.

“(B) Certain Arrangements Fail Requirement.—In no event will the requirements of this paragraph be met if there is any arrangement under which the lessee bears—

“(i) any portion of the loss that would occur if the fair market value of the leased property were less than its reasonably expected fair market value at the end of the lease term, or

“(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

“(E) Property with More Than 7-Year Class Life.—In the case of a lease—

“(A) of property with a class life (as defined in section 168(h)(1)) of more than 7 years, and

“(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

“(F) Regulatory Requirements.—A lease of property meets the requirements of this paragraph if such lease of property meets such requirements as the Secretary may prescribe by regulations.

“(G) Special Rules.—

“(I) Treatment of Former Tax-Exempt Use Property.—

“(A) In General.—In the case of any former tax-exempt use property—

“(i) any deduction allowable under subparagraph (b) (with respect to such property for any taxable year) shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

“(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as allocable under subsection (b) with respect to such property in the next taxable year.

“(B) Former Tax-Exempt Use Property.—For purposes of this subsection, the term ‘former tax-exempt use property’ means any property which—

“(i) is not tax-exempt use property for the taxable year, but

“(ii) was tax-exempt use property for any prior taxable year.

“(2) Disposition of Entire Interest in Property.—If during the taxable year a taxpayer disposes of the taxpayer’s entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

“(3) Coordination with Section 469.—This section shall be applied before the application of section 469.

“(f) Other Definitions.—For purposes of this section—

“(1) Related Parties.—The terms ‘lessor’, ‘lender’ and ‘lessee’ include any related party (within the meaning of section 197(f)(9)(C)(i)).

“(2) Lease Term.—The term ‘lease term’ has the meaning given to such term by section 168(i)(3).

“(3) Lender.—The term ‘lender’ means, with respect to any lease, a person that makes a loan to the lessee which is secured (or economically similar to being secured) by the lease or the leased property.

“(4) Loan.—The term ‘loan’ includes any similar arrangement.

“(g) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this section, including regulation which—

“(1) allow in appropriate cases the aggregation of property subject to the same lease, and

“(2) provide for the determination of the allocation of interest expense for purposes of this section.

“(h) Conforming Amendment.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

“Sec. 470. Limitations on losses from tax-exempt use property.

“(i) Effective Date.—The amendments made by this section shall apply to leases entered into after November 18, 2003.

PART IV—ADMINISTRATIVE PROVISIONS

SEC. 481. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) In General.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: “The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).”

(b) Effective Date.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 482. EXTENSION OF IRS USER FEES.

(a) In General.—Section 7528(c) (relating to termination) is amended by striking “December 31, 2004” and inserting “September 30, 2013”.

(b) Effective Date.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.
SEC. 483. DOUBLING OF CERTAIN PENALTIES, FINES, AND INTEREST ON UNDERPAYMENTS RELATED TO CERTAIN OFFSHORE FINANCIAL ARRANGEMENTS.

(a) DETERMINATION OF PENALTY.—

(1) NOTWITHSTANDING any other provision of law, in the case of an applicable taxpayer—

(A) the determination as to whether any interest or applicable penalty is to be imposed with respect to any arrangement to which any initiative described in subparagraph (A) was the subject of the initial arrangement (which rely on the use of offshore arrangements). Under regulations prescribed by the Secretary, rules similar to the rules of section 6621 (relating to interest on underpayments), a deposit which is returned to a taxpayer shall be treated as the date such amount is deposited.

(B) DISPUTABLE TAX.—The term 'disputable tax' means any tax imposed under chapter 41, 42, 43, or 44 which has not been assessed, and which the taxpayer reasonably believes is attributable to the taxpayer's reasonable estimate of tax attributable to disputable items.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into after the date of the enactment of this Act.

SEC. 485. EXTENSION OF CUSTOMS USER FEES.

Section 1301(b)(5) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking "March 31, 2004" and inserting "September 30, 2013".

SEC. 486. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

"SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

"(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary to pay, for purposes of section 6601 (relating to interest on underpayments), any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be treated in such manner as the Secretary may prescribe.

"(b) NO INTEREST IMPOSED.—To the extent that such deposit is made with the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

(d) PAYMENT OF INTEREST.—

"(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period during which such deposit is attributable to a disputable tax for such period.

"(2) SAFETY DEPOSITS.—A deposit made on 38-day letter.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

"(3) OTHER DEFINITIONS.—For purposes of this section—

"(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

"(i) has a reasonable basis for its treatment as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

"(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

"(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

"(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

"(e) USE OF DEPOSITS.—

"(1) PAYMENT OF TAX.—Except as otherwise provided by the Secretary, deposits shall be treated as used for the payment of tax in the order deposited.

"(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.

"(f) CLEANSER.—The treatment of amounts for purposes of this section and for purposes of section 6603 is in addition to other procedures under law.

"(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER Revenue Procedure 84-38.—In the case of an amount held by the Secretary of the Treasury, rules similar to the rules of section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of section 6603.

SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

"SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

"(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

"(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term 'qualified tax collection contract' means any contract which—

"(1) is for the services of any person (other than an officer or employee of the Treasury Department)

"(A) to locate and contact any taxpayer specified by the Secretary, (B) to request full payment from such taxpayer of an amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

"(2) is for the services of any person (other than an officer or employee of the Treasury Department)

"(A) to locate and contact any taxpayer specified by the Secretary, (B) to request full payment from such taxpayer of an amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

"(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

"(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services.

"(3) prohibits subcontractors from—

"(A) having as a deposit tax collectors,

"(B) providing quality assurance services, and

"(C) composing debt collection notices, and

"(4) permits subcontractors to perform other services only with the approval of the Secretary.

"(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

"(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

"(4) RATE OF INTEREST.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

"(5) USE OF DEPOSITS.—

"(1) PAYMENT OF TAX.—Except as otherwise provided by the Secretary, deposits shall be treated as used for the payment of tax in the order deposited.

"(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.

"(b) CLEANSER.—The treatment of amounts for purposes of this section and for purposes of section 6603 is in addition to other procedures under law.

"(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER Revenue Procedure 84-38.—In the case of an amount held by the Secretary of the Treasury, rules similar to the rules of section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of section 6603.

SEC. 487. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

"SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

"(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

"(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term 'qualified tax collection contract' means any contract which—

"(1) is for the services of any person (other than an officer or employee of the Treasury Department)

"(A) to locate and contact any taxpayer specified by the Secretary, (B) to request full payment from such taxpayer of an amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

"(2) is for the services of any person (other than an officer or employee of the Treasury Department)
collection contract for the costs of services performed under such contract. The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited to any taxpayer shall be determined without regard to this subsection.

(3) No Federal Liability.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.


(f) Cross References.—

(1) For damages for uninsured authorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

(2) Conforming Amendments.—

(A) Section 7860(a) is amended by inserting “8306,” before “7651”.

(B) The table of sections for subchapter A of chapter 37 is amended by adding at the end the following new item:

“Sec. 6306. Qualified Tax Collection Contracts.”

(b) Civil Damages for Certain Unauthorized Collection Actions by Persons Performing Services Under a Qualified Tax Collection Contract.—

(1) In General.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

“Sec. 7433A. Civil Damages for Certain Unauthorized Collection Actions by Persons Performing Services Under a Qualified Tax Collection Contract.

“(a) In General.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

(b) Modifications.—For purposes of subsection (a)—

“(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into a tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the United States.

“(2) Any person may bring a civil action against the United States for—

“(A) a violation of this section;

“(B) damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract; and

“(C) a violation of subsection (b) in connection with the performance of services under a qualified tax collection contract.

“(3) Subsections (c), (d)(1), and (e) of section 7433 shall not apply to the sale or exchange of any property described in paragraph (1)(B)(iii) of any patent, copyright, trademark, ware, or similar property, or applications or registrations of such property.

“(4) Subsections (a) and (b) shall not apply to the sale or exchange of—

“(A) for purposes of paragraph (1) of section 1563(b)(2), any payment (whether royalties or other receipts) consisting of premiums.

“(B) for purposes of this section, the term ‘insurance company’ has the meaning given to such term by section 818(a).”.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

§495. Limitations on deduction for charitable contributions of patents and similar property.

(a) Deduction Allowed Only to the Extent of Basis.—Section 170(e)(1)(B) (relating to certain contributions of ordinary income and capital gain property) is amended by striking “or” at the end of clause (i), and by adding “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(ii) any patent, copyright, trademark, trade name, trade secret, know-how, software, or similar property, or applications or registrations of such property.”.

(b) Treatment of Contributions Where Donor Receives Interests.—Subsection (a) of section 170(e) is amended by adding at the end the following new paragraph:

“(7) Special Rules for Contributions of Patents and Similar Property Where Donor Receives Interests.—

“(A) Insurance companies (as defined in section 6333) shall not be treated as a qualified interest the right to receive other payments from the donee, but only if the donee does not possess a right to receive property described in paragraph (1)(B)(iii) (other than copyrights which are described in section 1221(a)(5) or 1231(b)(1)(C)) contributed by the taxpayer to the donee.

“(ii) Secretarial Authority.—(I) In General.—Except as provided in subclause (II), the Secretary may by regulation or other administrative action treat as a qualified interest the right to receive other payments from the donee, but only if the donee does not possess a right to receive property described in paragraph (1)(B)(iii) (other than copyrights which are described in section 1221(a)(5) or 1231(b)(1)(C)) contributed by the taxpayer to the donee.

“(II) Conforming Amendment.—Clause (I) of section 170(e)(2)(A) is amended by striking “exceed $350,000 but”.

(3) Special Rule.—In the case of contributions of ordinary income and capital gain property described in paragraph (1)(B)(iii) made by this section shall apply to taxable years beginning after December 31, 2003.

§496. Clarification of exemption from tax for small property and casualty insurance companies.

(a) In General.—Section 501(c)(15)(A) is amended to read as follows:

“(A) Insurance companies (as defined in section 818(a)) other than life (including interinsurers and reciprocal underwriters) if—

“(1) the gross receipts for the taxable year do not exceed $600,000, and

“(ii) more than 50 percent of such gross receipts consist of premiums.”.

(b) Controlled Group Rule.—Section 501(c)(15)(C) is amended by inserting “, except that the term ‘controlled group’ shall be determined in applying section 1563 for purposes of section 831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be treated ‘before the end’.”.

(c) Conforming Amendment.—Clause (i) of section 831(b)(2)(A) is amended by striking “exceed $350,000 but”.

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.
"(1) EXCEPTIONS.—The Secretary may not treat as a qualified interest the right to receive any payment which provides a benefit to the donor which is greater than the benefit received by the donee or the right to receive any portion of the proceeds from the sale of the property contributed.

"(ii) LIMITATION.—An interest shall be treated as a qualified interest under this paragraph only if the taxpayer has no right to receive any payment described in clause (i) or (ii) after the date of the earlier of (A) the date on which the legal life of the contributed property expires or the date which is 20 years after the date of the contribution.

"(g) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 498. BONDING PERIOD FOR PREFERRED STOCK.

(a) IN GENERAL.—Section 1(h)(11)(B)(iii)(I) is amended to read as follows:—

"(i) Dispositions of Donated Property—

"(B) The item relating to section 6050L in subsection (b) shall not apply to any procurements covered by the World Trade Organization Government Procurement Agreement.

"(c) National Security Exemption.—Subsection (b) shall not apply to any procurements for national security purposes entered into by—

"(1) the Department of Defense or any agency or entity thereof; or

"(2) the Department of the Army, the Department of the Navy, the Department of the Air Force, or any other military department.

"(d) The prohibition on disbursement of funds to or for a State under paragraph (1) does not apply with respect to the performance outside the United States of a State contract outside the United States if—

"(A) the chief executive of such State—

"(i) determines that the property or services needed by the State are available only by means of performance of the contract outside the United States and no property or services available by means of performance of the contract inside the United States would satisfy the State’s need; and

"(ii) transmits a notification of such determination to the head of the executive agency of the United States that administers the authority under which such funds are disbursed to or for the State; and

"(B) the head of the executive agency receiving the notification of such determination—

"(i) confirms that the facts warrant the determination; and

"(ii) approves the determination; and

"(iii) transmits a notification of the approval of the determination to the Director of the Office of Management and Budget.

"(2) In this subsection, the term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"(3) Subsections (b) and (c) shall not apply to procurement covered by the World Trade Organization Government Procurement Agreement.

"(e) RESPONSIBILITIES OF OMB.—The Director of the Office of Management and Budget shall—

"(1) maintain—

"(A) the waivers granted under subsection (b)(2), together with the determinations and certifications on which such waivers were based; and

"(B) the notifications received under subsection (c)(2)(B)(iii); and

"(2) transmit to Congress promptly after the end of each quarter of each fiscal year a report that sets forth—

"(A) the waivers that were granted under subsection (b)(2) during such quarter; and

"(B) the notifications that were received under subsection (c)(2)(B)(iii) during such quarter.

ANNUAL GAO REVIEW.—The Comptroller General shall—

"(1) review, each fiscal year, the waivers granted during such fiscal year under subsection (b)(2) during such quarter; and

"(2) submit to Congress promptly after the end of each quarter of each fiscal year a report that sets forth—

"(A) the waivers that were granted under subsection (b)(2) during such quarter; and

"(B) the notifications that were received under subsection (c)(2)(B)(iii) during such quarter.
“(2) promptly after the end of such fiscal year, transmit to Congress a report containing a list of the contracts covered by such waivers and exception together with a brief description of the performance of each such contract to the maximum extent feasible outside the United States.”

(2) CLERICAL AMENDMENT.—The table of sections in section 1(b) of such Act is amended by striking subsection (vii) and inserting after subsection (vi) the following new subsection:

“Sec. 42. Limitations on off-shore performance of contracts.”

(b) INAPPLICABILITY TO STATES DURING FIRST TWO FISCAL YEARS.—Section 2(c) of the Office of Federal Procurement Policy Act (as added by subsection (a)) shall not apply to obligations of funds to a State during the fiscal year in which this Act is enacted and the next fiscal year.

SEC. 502. REPEAL OF SUPERSEDED LAW.

Section 647 of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 (division F of Public Law 108–199) is amended by striking subsection (e).

SEC. 503. EFFECTIVE DATE AND APPLICABILITY.

(a) IN GENERAL.—This title and the amendments made by this title shall take effect 30 days after the Secretary of Commerce certifies that the amendments made by this title will protect and will not cause harm to the United States economy. The initial certification shall be made by the Secretary of Commerce no later than 90 days after the enactment of this Act. Such certification must be renewed on or before January 1 of each year in order for the amendments made by this title to be in effect for that year.

(b) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—The provisions of this title shall not apply to the extent that they may be inconsistent with obligations under international agreements. Within 90 days of this legislation, the Office of Management and Budget, in consultation with the Office of the United States Trade Representative, shall develop guidelines for the implementation of this provision.

TITLE VI—OTHER PROVISIONS

Subtitle A—Provisions Relating to Housing

SEC. 601. TREATMENT OF QUALIFIED MORTGAGE BONDS.

(a) YEAR HOLIDAY.—Section 143(a)(2)(IV) of the Internal Revenue Code of 1986 shall not apply to bonds issued during the 1-year period beginning on the date of the enactment of this Act with respect to any bond outstanding on such date.

(b) REPEAL OF REQUIRED USE OF CERTAIN PRINCIPAL REPAYMENTS ON MORTGAGE SUBSIDY BOND FINANCINGS TO REDEEM BONDS.—

(1) IN GENERAL.—Subparagraph (A) of section 143(a)(2) (defining qualified mortgage bond) is amended by adding “and (ii)” at the end of clause (ii), by striking “, and” at the end of clause (iii) and inserting a period, and by striking the last sentence.

(2) CONFORMING AMENDMENT.—Clause (ii) of section 143(a)(2)(D) is amended by striking “(and clause (iv) of subparagraph (A))”.

(iii) The amendments made by this subsection shall apply to bonds issued after the date of the enactment of this Act.

SEC. 602. PREMIUMS FOR MORTGAGE INSURANCE.

(a) IN GENERAL.—Paragraph (3) of section 163(h) (relating to qualified residence interest) is amended by adding after subparagraph (D) the following new subparagraph:

“(E) Mortgage insurance premiums treated as interest.”

(b) IN GENERAL.—Subparagraph (1) of section 163(h) (relating to qualified residence interest) is amended by adding after subparagraph (D) the following new subparagraph:

“(E) Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this subsection as qualified residence interest.”

(c) RULES OF SECTIONS 25A AND 25BB.—Subsection (c)(1) of section 25A (relating to the Home Mortgage Interest Deduction) of the Internal Revenue Code of 1986 is amended by striking “or” where it appears after “not included in gross income by reason of section 163” and inserting “and not included in gross income by reason of section 163, if such mortgage insurance premium is paid or accrued in taxable years beginning before January 1, 2006.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to interest paid or accrued in taxable years beginning after December 31, 2004, and ending before January 1, 2006.

SEC. 603. INCREASE IN HISTORIC REHABILITATION CREDIT FOR CERTAIN LOW-INCOME HOUSING FOR THE ELDERLY.

(a) IN GENERAL.—Section 42(c)(5) of the Internal Revenue Code of 1986 is amended by striking “5 percent” and inserting “15 percent”.

(b) PROCEEDS OF BONDS MAY BE USED FOR CONSTRUCTION AND LAND ACQUISITION.—Paragraph (5) of section 1397Z(2) (defining qualified low-income housing bond) is amended by adding the following new subparagraph:

“(A) such obligation—

(i) is part of an issue 95 percent or more of which was issued after December 31, 2003; and

(ii) which is placed in service after the date of the enactment of this subsection.”

(c) INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.—Section 6505(b) (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subparagraph:

“(C) INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.—Section 6505(b) (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding the following new subparagraph:

“(C) The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance policies for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

“(D) STATEMENT TO BE FURNISHED TO INDIANS WITH RESPECT TO WHOM INFORMATION IS ASCERTAINED.—The Secretary shall provide each individual with respect to whom information is ascertained with a written statement describing the basis for such ascertaining the Indian on which the facility is to be constructed.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2003.

SEC. 615. MODIFICATIONS OF AUTHORITY OF INDIAN TRIBAL GOVERNMENTS TO ISSUE TAX-EXEMPT BONDS.

(a) PROCEDURES OF BONDS MAY BE USED FOR CONSTRUCTION AND LAND ACQUISITION.—Paragraph (3) of section 1397Z(2) (defining qualified low-income housing bond) is amended by—

(1) by striking “rehabilitating or repairing” in subparagraph (A) and inserting “constructing, rehabilitating, or repairing”, and

(2) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following:

“(D) acquiring the land on which the facility is to be constructed.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2003.

SEC. 615. MODIFICATIONS OF AUTHORITY OF INDIAN TRIBAL GOVERNMENTS TO ISSUE TAX-EXEMPT BONDS.

(a) IN GENERAL.—Section 7871(c) (relating to Indian tribal governments treated as States for certain purposes) is amended to read as follows:

“(A) IN GENERAL.—Subsection (a) of section 108 shall apply to any obligation issued by an Indian tribal government (or subdivision thereof) only if—

(1) such obligation—

(i) is part of an issue 95 percent or more of the net proceeds of which are to be used to...
(ii) Bioenergy.—The term ‘bioenergy’ means biomass used in the production of energy, including liquid, solid, or gaseous fuels, electricity, and heat.

(b) Effective Date.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 615. CONSERVATION BONDS.

(a) Tax-Exempt Bond Financing.—

(1) In general.—For purposes of the Internal Revenue Code of 1986, any qualified forest conservation bond issued as an exempt facility bond under section 142 of such Code.

(b) Qualified Forest Conservation Bond.—

For purposes of this section, the term ‘qualified forest conservation bond’ means any bond issued as part of an issue if—

(A) 95 percent or more of the net proceeds (as defined in section 158(a)(3) of such Code) of such issue are to be used for qualified project costs,

(B) such bond is issued for a qualified organization, and

(C) such bond is issued before December 31, 2006.

(c) Limitation on Aggregate Amount Issued.—

(A) In general.—The maximum aggregate face amount of bonds which may be issued under this subsection shall not exceed $1,500,000,000 for all projects (excluding refunding bonds).

(B) Allocation of Limitation.—The limitation described in paragraph (A) shall be allocated by the Secretary of the Treasury for the period beginning on the date of issuance of such bonds, and

(C) such bond is issued for a qualified organization.

(d) Qualified Project Costs.—For purposes of this subsection, the term ‘qualified project costs’ means the sum of—

(A) the cost of acquisition by the qualified organization from an unrelated person of forests and forest land which at the time of acquisition or immediately thereafter are subject to a conservation restriction described in subsection (c)(2),

(B) capitalized interest on the qualified forest conservation bonds for the 3-year period beginning on the date of issuance of such bonds, and

(C) credit enhancement fees which constitute qualified guarantee fees (within the meaning of section 138 of such Code).

(e) Special Rules.—In applying the Internal Revenue Code to qualified forest conservation bonds, the following modifications shall apply:

(A) Section 146 of such Code (relating to volume limitations) shall not apply to such land.

(B) For purposes of section 147(b) of such Code (relating to maturity), the term ‘qualified forest conservation bond’ shall not be subject to the limitation described in section 141 of such Code.

(C) The net proceeds of the refunding bond and the proceeds of the issue to refund the refunded bond shall not be subject to the limitation described in section 141 of such Code.

(D) net proceeds of the refunding bond and the proceeds of the issue to refund the refunded bond shall not be subject to the limitation described in section 141 of such Code.

(E) the net proceeds of the refunding bond and the proceeds of the issue to refund the refunded bond shall not be subject to the limitation described in section 141 of such Code.

(F) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

(G) the net proceeds of the refunding bond and the proceeds of the issue to refund the refunded bond shall not be subject to the limitation described in section 141 of such Code.

(b) Special Rules and Definitions.—

(1) Exclusion of Gaming.—An obligation described in paragraph (A) or (B) of paragraph (1) may not be used to finance any portion of a building in which class II or III gaming (as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2702)) is conducted or housed.

(ii) Indian Reservation.—For purposes of paragraph (1), the term ‘Indian reservation’ means—

(i) a reservation, as defined in section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and

(ii) lands held under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) by a Native corporation as defined in section 3(m) of such Act (43 U.S.C. 1602(m)).

(2) Effective Date.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

SEC. 614. DEFINITION OF MANUFACTURING FACILITY FOR SMALL ISSUE BONDS.

(a) In General.—Section 144(a)(12) (relating to termination dates) is amended by striking subparagraph (C) and inserting the following new subparagraphs:

(C) MANUFACTURING FACILITY.—For purposes of this paragraph, the term ‘manufacturing facility’ means any facility which is used in—

(i) the manufacture of tangible personal property, or

(ii) the manufacture or development of any software product or process if—

(I) it takes more than 6 months to manufacture or develop such product,

(II) the manufacture or development could not with due diligence be reasonably expected to occur in less than 6 months, and

(III) the software product or process comprises programs, routines, and attendant documentation developed and maintained for use in computer and telecommunications technology, or

(iii) the manufacture or development of any biobased product or bioenergy if—

(I) it takes more than 6 months to manufacture or develop, and

(II) the manufacture or development could not with due diligence be reasonably expected to occur in less than 6 months.

(b) Related Facilities.—For purposes of subparagraph (C), the term ‘manufacturing facility’ includes a facility which is directly and functionally related to a manufacturing facility (determined without regard to subparagraph (C)) if—

(i) such facility, including an office facility and a research and development facility, is located on the same site as the manufacturing facility, and

(ii) such facility is used in the exercise of any essential government function.

(c) In General.—Section 152 of the Internal Revenue Code of 1986 (relating to limitations on acquisition or immediately thereafter is subject to a conservation restriction described in subsection (c)(2),

(d) In General.—For purposes of section 147(b) of the Internal Revenue Code, the term ‘qualified organization’ means any organization which was acquired with proceeds of qualified forest conservation bonds,

(e) In General.—For purposes of section 147(b) of the Internal Revenue Code, the term ‘qualified forest conservation bond’ means a commercial or industrial product (other than food or feed) which is derived from a biobased product, or the propagation, growth, production, or harvest of a plant, animal, marine, or forestry material.

(f) In General.—For purposes of section 147(b) of the Internal Revenue Code, the term ‘qualified organization’ means any organization which was acquired with proceeds of qualified forest conservation bonds,

(g) In General.—For purposes of section 147(b) of the Internal Revenue Code, the term ‘qualified forest conservation bond’ means a commercial or industrial product (other than food or feed) which is derived from a biobased product, or the propagation, growth, production, or harvest of a plant, animal, marine, or forestry material.

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(z) In General.—For purposes of section 147(b) of the Internal Revenue Code, the term ‘qualified organization’ means any organization which was acquired with proceeds of qualified forest conservation bonds,
timber harvested from the land exceeds the requirement of paragraph (3)(B)(ii)(I), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be increased, under rules prescribed by the Secretary of the Treasury, by the sum of the tax benefits attributable to such excess and interest at the underpayment rate under section 6621 of such Code for the period of the underpayment.

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

(1) QUALIFIED CONSERVATION PLAN.—The term ‘qualified conservation plan’ means a multiple land use program or plan which—

(A) is administered primarily for the purposes of protecting and enhancing wildlife and fish, timber, scenic attributes, recreation, and soil and water quality of the forest and forest land;

(B) mandates that conservation of forest and forest land is the single-most significant use of the forest and forest land, and

(C) requires that timber harvesting be consistent with—

(i) restoring and maintaining reference conditions for the region’s ecotype,

(ii) a governmental unit described in section 170(c)(1) of such Code,

(iii) enhancing research opportunities in any educational programs designed to inform the public of, and discourage, the illegal taking of fish and wildlife, and

(iv) maintaining or restoring the sources’ ecological health for purposes of preventing damage from fire, insect, or disease,

(v) protecting and promoting fish and wildlife and their habitats, and

(vi) maintaining or restoring the sources’ ecological health for purposes of preventing damage from fire, insect, or disease,

(2) CONSERVATION RESTRICTION.—The conservation restriction described in this paragraph is a restriction which—

(A) is granted in perpetuity to an unrelated person who is described in section 170(h)(3) of such Code and which, in the case of a governmental unit, is organized and operated for conservation purposes,

(B) meets the requirements of clause (ii) or (iii)(II) of section 170(h)(4)(A) of such Code,

(C) obligates the qualified organization to pay the expenses incurred by the holder of the conservation restriction in monitoring compliance with such restriction, and

(D) requires an increasing level of conservation benefits to be provided whenever circumstances allow it.

(3) QUALIFIED ORGANIZATION.—The term ‘qualified organization’ means an organization—

(A) which is a nonprofit organization substantially all of the activities of which are charitable, scientific, or educational, including scientific, restoring, managing, and developing forest lands and other renewable resources for the long-term charitable, educational, scientific and public benefit;

(B) more than half of the value of the property of which consists of forests and forest land acquired with the proceeds from qualified forest bonds;

(C) which periodically conducts educational programs designed to inform the public of environmentally sensitive forestry management and conservation techniques; and

(D) which has at all times a board of directors—

(i) at least 20 percent of the members of which are individuals who are or were at any time within 5 years before the beginning of a term of membership on the board, an employee, member, or agent of a member of the board with respect to officer, director of, or held a material financial interest in, a commercial forest products enterprise with which the qualified organization has a contractual or other financial arrangement,

(ii) the bylaws of which require at least two-thirds of the members of the board of directors to vote affirmatively to approve the qualified conservation plan and any change thereto, and

(iii) if upon dissolution, is required to dedicate its assets to—

(I) an organization described in section 501(c)(3) of such Code which is organized and operated for conservation purposes, or

(II) a governmental unit described in section 170(c)(1) of such Code.

(4) UNRELATED PERSON.—The term ‘unrelated person’ means a person who is not a related person.

(5) RELATED PERSON.—A person shall be treated as related to another person if—

(A) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or 501(c)(1), of such Code, determined by substituting ‘‘25 percent’’ for ‘‘50 percent’’ each place it appears therein, and

(B) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

Subtitle C—Provisions Relating to Certain Higher Education Expenses

SEC. 621. SPECIAL PLACED IN SERVICE RULE FOR BONUS DEPRECIATION PROPERTIES.

(a) IN GENERAL.—Section 168(k)(2)(D) (relating to special rules) is amended by adding at the end the following new clause:

(iii) SYNDICATION.—For purposes of subparagraph (A)(i), if—

(I) property is originally placed in service after September 10, 2001, by the lessor of such property,

(II) such property is sold by such lessor or any subsequent purchaser within 3 months after the date so placed in service (or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

(III) the user of such property after the last sale during such period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service after the date so placed in service, or, in the case of multiple units of property subject to the same lease, after 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and

(b) DEFINITION.—Section 168(i) (relating to definitions and special rules) is amended by inserting the following new subparagraph after “subparagraph (A)(i):”:

(15) MOTORSPORTS ENTERTAINMENT COMPLEX.—

(A) IN GENERAL.—The term ‘motorports entertainment complex’ means a racing track and related facilities permanently situated on land and which during the applicable period is scheduled to host one or more racing events for automobiles (of any type), trucks, motorcycles that is open to the public for the price of admission.

(B) ANCILLARY AND SUPPORT FACILITIES.—Such term shall include, if owned by the complex and provided for the benefit of patrons of the complex—

(i) ancillary grounds and facilities and land improvements in support of the complex’s activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

(ii) support facilities (including food and beverage service, souvenir vending, and other nonlodging accommodations), and

(iii) appurtenances associated with such facilities and related attractions and amusement parks, ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, administrative services assets, warehouses, administrative buildings, hotels, or motels.

(C) EXCEPTION.—Such term shall not include—

(i) transportation infrastructure, administrative services assets, warehouses, administrative buildings, hotels, or motels.

(D) APPLICABLE PERIOD.—For purposes of subparagraph (A), the term ‘applicable period’ means the period ending the later of the last day of—
“(i) the 24 month period following the first day of the month in which the asset is or was placed in service, or

(ii) the 24 month period ending December 31, 2004, that the asset remains in service during such period.”.

(c) Effective Date.—

(1) IN GENERAL.—The amendments made by this section shall apply to any property placed in service after the date of the enactment of this Act.

(2) INFRINGEMENT.—Nothing in the amendments made by this section shall be construed to affect the treatment of expenses incurred on or before the date of the enactment of this Act.

SEC. 624. MINIMUM TAX RELIEF FOR CERTAIN TAXPAYERS.

(a) Election to Increase Minimum Tax Credit Limitation in Lieu of Bonus Depreciation.—

(1) IN GENERAL.—Section 33 (relating to credit for prior year minimum tax liability) is amended by adding at the end the following new subsection:

“(e) Additional Credit in Lieu of Bonus Depreciation.—

“(1) IN GENERAL.—In the case of a corporation making an election under this subsection for any taxable year, the limitation under section 199 shall be increased by an amount equal to 50 percent of the bonus depreciation amount.

“(2) Bonus Depreciation Amount.—For purposes of paragraph (1), the bonus depreciation amount for any taxable year is an amount (not in excess of $10,000,000) equal to the product of:

“(A) 30 percent, and

“(B) the excess (if any) of—

“(i) the aggregate amount of depreciation which would be determined under section 168 for property placed in service during such taxable year if no election under this subsection were made, over

“(ii) the aggregate allowance for depreciation allowable with respect to such property placed in service for such taxable year.

“(3) Aggregation Rule.—All members of the same controlled group of corporations shall be treated as 1 corporation for purposes of this subsection.

“(4) Election.—Sections 33(b)(1)(A) (other than paragraph 2(F)(ii) thereof) shall not apply to any property placed in service during a taxable year by a corporation making an election under this subsection without regard to this paragraph, or

“(B) 50 percent of the lesser of—

“(i) the amount which would be determined under this subsection if the tentative minimum tax liability treated as being zero in applying paragraph (1) to such credit, or

“(ii) the amount of the current year business credit.

“(5) Effective Date.—The amendments made by this subsection shall apply to taxable years beginning in 2004.

Subtitle D—Expansion of Business Credit

SEC. 631. NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by redesignating sections 45E and 45F as sections 45P and 45G, respectively, and by inserting after section 45E the following new section:

“SEC. 45D. NEW MARKETS TAX CREDIT FOR NATIVE AMERICAN RESERVATIONS.

“(a) Allowance of Credit.—

“(1) IN GENERAL.—For purposes of section 38, in the case of a qualified equity investment on a credit allowance date of such investment which occurs during the taxable year, the Native American new markets tax credit determined under this section for such taxable year is an amount equal to the applicable percentage of the amount paid to the reservation development entity for such investment at its original issue.

“(2) Applicable Percentage.—For purposes of paragraph (1), the applicable percentage is—

“(A) 5 percent with respect to the first 3 credit allowance dates and

“(B) 6 percent with respect to the remainder of the credit allowance dates.

“(3) Credit Allowance Date.—For purposes of paragraph (1), the term ‘credit allowance date’ means, with respect to any qualified equity investment—

“(A) the date on which such investment is initially made, and

“(B) each of the 6 anniversary dates of such date.

“(b) Qualified Investment.—For purposes of this section—

“(1) IN GENERAL.—For purposes of section 38, the term ‘qualified equity investment’ means any equity investment in a qualified reservation development entity if—

“(A) such investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash,

“(B) substantially all of such cash is used by the reservation development entity to make qualified low-income reservation investments, and

“(C) such investment is designated for purposes of this section by the reservation development entity.

“Such term shall not include any equity investment issued by a reservation development entity more than 5 years after the date that such entity receives an allocation under subsection (f). Any allocation not used within such 5-year period may be reallocated by the Secretary to another qualified low-income reservation development entity.

“(2) Limitation.—The maximum amount of equity investments issued by a reservation development entity which may be designated under subsection (f) to such entity shall not exceed the portion of the limitation amount allocated under subsection (f) to such entity.

“(3) Safe Harbor for Determining Use of Cash.—The requirement of paragraph (1)(B) shall be treated as met if at least 85 percent of the aggregate gross assets of the reservation development entity are invested in qualified low-income reservation investments.

“(4) Treatment of Subsequent Purchasers.—The term ‘qualified equity investment’ includes any equity investment which would (but for paragraph (1)(A)) be a qualified equity investment of the taxpayer if such investment was a qualified equity investment in the hands of a prior holder.

“(5) Redemption.—A rule similar to the rule of section 1392(c)(3) shall apply for purposes of this subsection.

“(6) Equity Investment.—The term ‘equity investment’ means—

“(A) any stock (other than nonqualified preferred stock as defined in paragraph 351(g)(2)) in an entity which is a corporation, and

“(B) any capital interest in an entity which is a partnership.

“(7) Reservation Development Entity.—For purposes of this section—

“(a) IN GENERAL.—The term ‘reservation development entity’ means any domestic corporation or partnership if—

“(i) the primary function of the entity is serving, or providing investment capital for, low-income reserves,

“(ii) the entity maintains accountability to the Secretary through their representation on any governing board of the entity or on any advisory board of the entity, and

“(iii) the entity is certified by the Secretary for purposes of this section as being a reservation development entity.

“(8) Exception.—For purposes of subparagraph (a)(1), the term ‘reservation development entity’ shall not certify an entity as a reservation development entity if such entity is also certified as a qualified community development entity under section 45D(c).

“(9) Qualified Low-Income Reservation Investments.—For purposes of this section—

“(a) IN GENERAL.—For purposes of section 38, the term ‘qualified low-income reservation investment’ means—

“(A) any capital or equity investment in, or loan to, any qualified active low-income reservation business,

“(B) the purchase from another reservation development entity of any loan made by such entity which is qualified to be a qualified low-income reservation investment, and

“(C) any equity investment in, or loan to, any reservation development entity.

“(b) Qualified Active Low-Income Reservation Business.—

“(A) IN GENERAL.—For purposes of paragraph (1), the term ‘qualified active low-income reservation business’ means, with respect to any taxable year, any corporation (including a nonprofit corporation) or partnership if for such year—

“(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income reservation,

“(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income reservation,

“(iii) a substantial portion of the services performed for such entity by its employees is performed in any low-income reservation,

“(iv) less than 5 percent of the average of the aggregate unadjusted bases of the properties which are attributable to collectibles (as defined in paragraph 469(m)(2)) other than collectibles that are held primarily for
sale to customers in the ordinary course of such business, and

"(v) less than 5 percent of the average of the aggregate unadjusted bases of the property or any portion thereof attributable to nonqualified financial property (as defined in section 1397(c)(3))."

"(B) PROPRIETORSHIP.—Such term shall include any entity owned and controlled, directly or indirectly, by an individual as a proprietor if such business would meet the requirements of subparagraph (A) were it incorporated.

"(C) PORTIONS OF BUSINESS MAY BE QUALIFIED ACTIVE LOW-INCOME RESERVATION BUSINESS.—The term 'qualified active low-income reservation business' includes any trades or businesses that would qualify as qualified active low-income reservation business if such trades or businesses were separately incorporated.

"(D) QUALIFIED BUSINESS.—For purposes of this subsection, the term 'qualified business' has the meaning given to such term by section 465(b)(3).

"(E) LOW-INCOME RESERVATION.—For purposes of this section, the term 'low-income reservation' means any Indian reservation (as defined in section 188(b)(6)) which has a poverty rate of at least 40 percent.

"(F) NATIONAL LIMITATION ON AMOUNT OF INVESTMENTS DESIGNATED.—

"(1) IN GENERAL.—There is a Native American new markets tax credit limitation for any calendar year of $50,000,000 for each of calendar years 2004 through 2007.

"(2) ALLOCATION OF LIMITATION.—The limitation under paragraph (1) shall be allocated by the Secretary among reservation development entities selected by the Secretary. In making allocations under the preceding sentence the Secretary shall give priority to any entity—

"(A) with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or

"(B) which intends to satisfy the requirement under subsection (b)(1)(B) by making qualified low-income reservation investments in 1 or more businesses in which persons unrelated to such entity (within the meaning of section 267(b) or 707(b)(1)) hold the majority equity interest.

"(G) UNUSED LIMITATION.—If the Native American new markets tax credit limitation for any calendar year exceeds the aggregate amount allocated under paragraph (2) for such calendar year, the limitation for the succeeding calendar year shall be increased by the amount of such excess. No amount may be carried over under the preceding sentence to any other year.

"(H) RECAPTURE OF CREDIT IN CERTAIN CASES.—

"(1) IN GENERAL.—If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a reservation development entity, there is a recapture event with respect to such credit, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

"(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

"(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment in the taxable years in which such event occurs,

"(B) the interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year, determined for the period beginning on the due date for filing the return for the prior taxable year involved.

"No deduction shall be allowed under this chapter for interest determined in subparagraph (B).

"(3) RECAPTURE EVENTS.—For purposes of paragraph (1), there is a recapture event with respect to an equity investment in a reservation development entity if—

"(A) such entity ceases to be a reservation development entity,

"(B) the proceeds of the investment cease to be used as required of subsection (b)(1)(B), or

"(C) such investment is redeemed by such entity.

"(4) SPECIAL RULES.—

"(A) TAX BENEFIT RULE.—The tax for the taxable year under section 1031 with respect to any qualified active low-income reservation business under paragraph (1) only with respect to credits allowed because of reason of this section which were used to reduce tax liability. In the case of credits not used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

"(F) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment. This subsection shall not apply for purposes of sections 1221, 1231, and 1250.

"(1) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the provisions of this section, including regulations—

"(1) which limit the credit for investments which are directly or indirectly subsidized by other Federal tax benefits (including the credit under section 42 and the exclusion from gross income under section 103(a)),

"(2) which prevent the abuse of the purposes of this section,

"(3) which establish rules for determining whether the requirement of subsection (b)(1)(B) is treated as met, and

"(4) which impose appropriate reporting requirements, and

"(5) which apply the provisions of this section to newly formed entities.

"(G) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 is amended by redesignating paragraphs (14) and (15) as paragraphs (16) and (17), respectively, and after paragraph (16) the following new paragraph:

"(17) THE NATIVE AMERICAN NEW MARKETS TAX CREDIT BEFORE JANUARY 1, 2004.—No portion of the unused business credit for any tax year attributable to the credit under section 45E may be carried back to a taxable year ending before January 1, 2004.

"(H) DEDUCTION FOR UNUSED CREDIT.—Subsection (c) of section 196 is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

"(11) THE NATIVE AMERICAN NEW MARKETS TAX CREDIT DETERMINED UNDER SECTION 45E(A), AND

"(I) CONFORMING AMENDMENTS.—

"(1) Section 38(b)(15), as redesignated by subsection (c)(1), is amended by striking "45E(c)" and inserting "45F(c)".

"(J)蜱 STRIKING "45E(A)" AND INSERTING "45F(A)".

"(2) Section 38(b)(16), as redesignated by subsection (b)(1), is amended by striking " wasteful and unrelated use" and inserting "and a lack of purposefulness".

"(3) Section 196(c)(11), as redesignated by subsection (b)(2), is amended by striking "section 45E and inserting "section 45F".

"196(c)(11), as redesignated by subsection (c), is amended by striking "45E(a)" and inserting "45F(a)".

"(4) Section 101(b)(28) is amended—

"(A) by striking "45E(a)" and inserting "45F(a)".

"(B) by striking "section 45F(c)(1)" and inserting "section 45F(c)(1)".

"(C) by redesignating paragraph (v) of section 39 for purposes of determining the amount of credits under section 45F, and

"(D) by inserting "45E" after "45F(a)".

"(J)蜱 STRIKING "45F(A)".

"(3) Section 101(b)(28) is amended—

"(A) by striking "45E(a)" and inserting "45F(a)".

"(B) by striking "section 45F(c)(1)" and inserting "section 45F(c)(1)".

"(C) by redesignating paragraph (v) of section 39 for purposes of determining the amount of credits under section 45F, and

"(D) by inserting "45E" after "45F(a)".

"(K)蜱 STRIKING "45F(A)" AND INSERTING "45F(A)".

"(L) Section 196(c)(11), as redesignated by subsection (b)(2), is amended by striking "section 45E and inserting "section 45F".

"(M) Section 101(b)(28) is amended—

"(A) by striking "45E(a)" and inserting "45F(a)".

"(B) by striking "section 45F(c)(1)" and inserting "section 45F(c)(1)".

"(C) by redesignating paragraph (v) of section 39 for purposes of determining the amount of credits under section 45F, and

"(D) by inserting "45E" after "45F(a)".

"(N)蜱 STRIKING "45F(A)".

"(O) Section 196(c)(11), as redesignated by subsection (b)(2), is amended by striking "section 45E and inserting "section 45F".

"(P) Section 101(b)(28) is amended—

"(A) by striking "45E(a)" and inserting "45F(a)".

"(B) by striking "section 45F(c)(1)" and inserting "section 45F(c)(1)".

"(C) by redesignating paragraph (v) of section 39 for purposes of determining the amount of credits under section 45F, and

"(D) by inserting "45E" after "45F(a)".

"(Q)蜱 STRIKING "45F(A)" AND INSERTING "45F(A)".
chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following:

"SEC. 45H. READY-RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.

"(a) GENERAL RULE.—For purposes of section 38, the Ready-Reserve-National Guard employee credit determined under this section shall be reduced under rules similar to the rules under section 42(d), except that—

"(i) the determination of the adjusted basis of any building shall be made as of the beginning of the credit period, and

"(ii) such basis shall include development costs properly attributable to such building.

"(b) DEVELOPMENT COSTS.—For purposes of subparagraph (A)(ii), the term ‘development costs’ includes—

"(i) site preparation costs,

"(ii) State and local impact fees,

"(iii) reasonable development costs,

"(iv) professional fees related to basis items,

"(v) construction financing costs related to basis items other than land, and

"(vi) on-site and adjacent improvements required by State and local governments.

"(2) QUALIFIED RURAL INVESTMENT BUILDING.—The term ‘qualified rural investment building’ means any building which is part of a qualified rural investment project at all times during the period in which the building is placed in service.

"(A) beginning on the 1st day in the compliance period on which such building is part of such an investment project, and

"(B) ending on the last day of the compliance period with respect to such building.

"(C) Rehabilitation Expenditures Treated as Separate New Building.—Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building under the rules of section 42(e).

"(D) DEFINITION AND SPECIAL RULES RELATING TO CREDIT PERIOD.—

"(1) CREDIT PERIOD DEFINED.—For purposes of this section, the term ‘credit period’ means, with respect to any building, the period beginning with the taxable year in which the building is first placed in service.

"(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT PERIOD.—

"(A) IN GENERAL.—The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by multiplying such credit by the fraction—

"(i) the numerator of which is the number of full months of such year during which such building was in service, and

"(ii) the denominator of which is 12.

"(B) DISALLOWED 1ST YEAR CREDIT ALLOWED IN 11TH YEAR.—Any reduction by reason of subparagraph (A) for the 1st taxable year of the credit period shall not be recomputed in the 11th taxable year.

"(3) CREDIT PERIOD FOR EXISTING BUILDINGS NOT TO BEGIN BEFORE REHABILITATION CREDIT ALLOWED.—The credit for an existing building shall not be recomputed in the taxable year of the credit period for rehabilitation expenditures with respect to the building.

"(E) QUALIFIED RURAL INVESTMENT PROJECT.—

"(1) GENERAL.—The term ‘qualified rural investment project’ means any investment project of 1 or more qualified rural investment buildings located in a qualifying county (as defined in paragraph (2)(B)(i) and, if necessary to the project, any contiguous county) and selected by the State according to its qualified rural investment plan.

"(2) QUALIFYING COUNTY.—The term ‘qualifying county’ means any county which—

"(A) is outside a metropolitan statistical area (defined as such by the Office of Management and Budget), and

"(B) during the 20-year period ending with the calendar year preceding the date of enactment of this Act, has a net outward migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

"(F) QUALIFIED RURAL INVESTMENT PROJECT ALLOWABLE WITH RESPECT TO INVESTMENT PROJECTS LOCATED IN A STATE.—
"(1) Credit may not exceed credit amount allocated to building.—The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the rural investment credit dollar amount allocated to such building under rules similar to the rules of section 42(h)(1).

"(2) Credit amount to apply to all taxable years ending during or after credit allocation year.—Any rural investment credit dollar amount allocated to any building for any calendar year—

"(A) shall apply to such building for all taxable years in the credit period ending during or after such calendar year, and

"(B) be the aggregate rural investment credit dollar amount of the allocating agency only for such calendar year.

"(3) Rural investment credit dollar amount for agencies.—

"(A) In general.—The aggregate rural investment credit dollar amount which a rural investment credit agency may allocate for any calendar year is the portion of the State rural investment credit ceiling allocated under this paragraph for such calendar year to such agency.

"(B) State ceiling initially allocated to state rural investment credit agencies.—Except as provided in subparagraphs (D) and (E), the State rural investment credit ceiling for each calendar year shall be allocated to the rural investment credit agency of such State. If there is more than 1 rural investment credit agency of a State, all such agencies shall be treated as a single agency.

"(C) State rural investment credit ceiling.—The State rural investment credit ceiling applicable to any State and any calendar year shall be an amount equal to the sum of—

"(i) the unused State rural investment credit ceiling (if any) of such State for the preceding calendar year,

"(ii) $185,000 for each qualifying county in the State,

"(iii) the amount of State rural investment credit ceiling returned in the calendar year, plus

"(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (i), the unused State rural investment credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (ii) through (iv) over the aggregate rural investment credit dollar amount allocated for such year. For purposes of clause (ii), the amount of State rural investment credit ceiling returned in the calendar year equals the rural investment credit dollar amount previously allocated within the State to any investment project which fails to meet the 10 percent threshold test under section 42(h)(10)(ii) on a date after the close of the calendar year in which the allocation was made or which does not become eligible for inclusion in its rural investment project within the period required by this section or the terms of the allocation or to any investment project with respect to which an allocation is canceled by mutual consent of the rural investment credit agency and the allocation recipient.

"(D) Unused rural investment credit carryovers allocated among certain states.—

"(i) In general.—The unused rural investment credit carryover of a State for any calendar year is the excess (if any) of the unused State rural investment credit ceiling for such year (as defined in subparagraph (C)(ii)) over the excess (if any) of—

"(II) the aggregate rural investment credit dollar amount allocated for such year,

"(III) FORMULA FOR ALLOCATION OF UNUSED RURAL INVESTMENT CREDIT CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused rural investment credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

"(IV) QUALIFIED STATE.—For purposes of this subparagraph, the term 'qualified State' means, with respect to a calendar year, any State—

"(I) which allocated its entire State rural investment credit ceiling for the preceding calendar year, and

"(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

"(E) State may provide for different allocation.—Rules similar to the rules of section 146(e) and paragraph (2)(B) thereof shall apply for purposes of this paragraph.

"(F) Population.—For purposes of this paragraph, population shall be determined in accordance with section 146(j).

"(G) Cost-of-living adjustment.—

"(i) In general.—In the case of a calendar year after 2005, the $185,000 amount in subparagraph (C) shall be increased by an amount equal to—

"(II) 0.5 percent of the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by subtracting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) Early reversion.—Any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the nearest lower multiple of $5,000.

"(H) Portion of State ceiling set-aside for certain investment projects involving qualified nonprofit organizations.—

"(i) In general.—In the case of a calendar year after 2005, the $185,000 amount in subparagraph (C) shall be increased by an amount equal to—

"(II) such dollar amount, multiplied by

"(III) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by subtracting 'calendar year 2004' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) Early reversion.—Any increase under clause (i) which is not a multiple of $5,000 shall be rounded to the nearest lower multiple of $5,000.

"(I) Investment projects involving qualified nonprofit organizations.—

"(i) In general.—For purposes of paragraphs (A) and (B), a qualified rural investment project described in subparagraph (B).

"(ii) Determination of percentage.—For purposes of this paragraph, the term 'qualified nonprofit organization' means an organization if—

"(I) such organization is described in any paragraph of section 501(c) and is exempt from tax under section 501(a),

"(II) such organization is determined by the Secretary to be carrying on activities described in section 170(b)(1)(A) for the public welfare,

"(III) 1 of the exempt purposes of such organization includes the fostering of rural investment,
investment credit dollar amount to any building, the rural investment credit agency shall specify the applicable percentage and the maximum eligible basis which may be taken into account under this subsection with respect to such building. The applicable percentage and maximum eligible basis so specified shall not exceed the applicable percentage and maximum determined under rules similar to the rules of section 42(j).

(6) OTHER DEFINITIONS.—For purposes of this subsection—

(A) RURAL INVESTMENT CREDIT AGENCY.—

The term ‘rural investment credit agency’ means any agency authorized to carry out this subsection.

(B) RULES TREATED AS STATES.—The term ‘State’ includes a possession of the United States.

(7) PORTION OF STATE CELL-ASIDE FOR QUALIFIED RURAL SMALL BUSINESS INVESTMENT CREDITS.—Not more than 10 percent of the State rural investment credit ceiling for any State for any calendar year may be allocated to qualified rural small business investment credits under section 42(b).

(8) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) COMPLIANCE PERIOD.—The term ‘compliance period’ means, with respect to any building, the period of 10 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2) NEW BUILDING.—The term ‘new building’ means a building the original use of which begins with the taxpayer.

(3) EXISTING BUILDING.—The term ‘existing building’ means any building which is not a new building.

(4) APPLICATION TO ESTATES AND TRUSTS.—In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax in subsection (a) shall be determined between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(5) RECAPTURE OF CREDIT.—If—

(i) as of the close of any taxable year in the compliance period, the amount of the eligible basis of any building with respect to which the taxpayer’s tax under this chapter is not more than 1 building or only a portion of a building, the taxpayer’s tax under this chapter for any calendar year may be allocable by reason of subsection (a)

(ii) any proceeds or receipts expected to be generated by reason of tax benefits

(iii) the percentage of the rural investment credit dollar amount used for investment credit dollar amount allocated to an investment project which is not made in accordance with established priorities and selection criteria, and

(iv) the reasonableness of the developmental and operational costs of the investment project.

(A) IN GENERAL.—A determination under subparagraph (A) shall be made as of each of the taxable years to which the election under paragraph (2) applies.

(B) CERTIFICATION AS TO AMOUNT OF OTHER SUBSIDIES.—

(i) The application for the rural investment credit dollar amount shall be accompanied by a description of the amount determined under subparagraph (F) of section 147(f)(2) (other than subparagraph (F)(ii) thereof) which is a factor in the determination of the amount so allocated.

(ii) The application shall be accompanied by documentation satisfactory to the Secretary that the project is necessary or appropriate to carry out the purposes of this section, including regulations—

(A) investment projects which include more than 1 building or only a portion of a building.
“(B) buildings which are sold in portions.

“(2) providing for the application of this section to short taxable years,

“(3) preventing the avoidance of the rules of this section by the carryover of any taxable year business credit for any taxable year which is attributable to the qualified rural small business investment credit determined under section 42A, as amended by this Act, is amended by adding at the end the following:

“(19) the qualified rural small business investment credit determined under section 42A(a).

“(c) LIMITATION ON CARRYBACK.—Section 63(b) (relating to carryback and carryforward of unused credits), as amended by this Act, is amended by adding at the end the following:

“(1) the qualified rural small business investment credit determined under section 42A, as amended by this Act, is amended by adding at the end the following:

“(d) LIMITATION ON CARRYBACK.—Section 63(b) (relating to carryback and carryforward of unused credits), as amended by this Act, is amended by adding at the end the following:

“(1) the qualified rural small business investment credit determined under section 42A, as amended by this Act, is amended by adding at the end the following:

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

“SEC. 653. CREDIT FOR MAINTENANCE OF RAILROAD TRACK.

“(a) GENERAL RULE.—For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 15 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

“(b) LIMITATION.—The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

“(1) $10,000, and

“(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.

“(c) ELIGIBLE TAXPAYER.—For purposes of this section, the term ‘eligible taxpayer’ means—

“(1) any Class II or Class III railroad, and

“(2) any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.

“(d) QUALIFIED RAILROAD TRACK MAINTENANCE EXPENDITURES.—For purposes of this section, the term ‘qualified railroad track maintenance expenditures’ means expenditures (whether or not otherwise chargeable to income) for the operation and maintenance of railroad track (including roadbed, bridges, and related tract structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad.

“(e) OTHER DEFINITIONS AND SPECIAL RULES.—

“(1) CLASS II OR CLASS III RAILROAD.—For purposes of this section, the terms ‘Class II railroad’ and ‘Class III railroad’ have the meanings given such terms by the Surface Transportation Board.

“(2) CONTROLLED GROUPS.—Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

“(3) BASIS ADJUSTMENT.—For purposes of this section, the term ‘basis’ means—

“(A) the basis of any qualified railroad track maintenance expenditures paid or incurred during any taxable years beginning after December 31, 2001, and before January 1, 2008.

“(B) the basis of any qualified railroad track maintenance expenditures paid or incurred during any taxable years beginning after December 31, 2001, and before January 1, 2008.

“(4) APPLICATION OF SECTION.—This section shall apply to qualified railroad track maintenance expenditures paid or incurred during any taxable years beginning after December 31, 2001, and before January 1, 2008.

“(5) LIMITATION ON CARRYBACK.—Section 62(d) (relating to the limitation on the carryback of credits), as amended by this Act, is amended by adding at the end the following paragraph:
"(14) No carryback of railroad track maintenance credit before effective date.—No portion of the unused business credit for any taxable year which is attributable to railroad track maintenance credits determined under section 45I may be carried to a taxable year beginning before January 1, 2005.".

(c) Conforming Amendments.—

(1) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking "plus" at the end of paragraph (29), by striking the period at the end of paragraph (29) and inserting "plus", and by adding at the end the following new paragraph:

"(29) "No railroad track maintenance credit determined under section 45I(a).".".

(2) Subsection (a) of section 1016, as amended by this Act, is amended by striking "and" at the end of paragraph (29), by striking the period at the end of paragraph (29) and inserting ", and", and by adding at the end the following new paragraph:

"(30) in the case of railroad track with respect to which a credit was allowed under section 45I, to the extent provided in section 45(e)(2).".

(d) Clerical Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45F the following new item:

"Sec. 45I. Railroad track maintenance credit.".

(e) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 436. RAILROAD REVITALIZATION AND SECURITY INVESTMENT CREDIT.

(a) Railroad Revitalization and Security Investment Credit.—

(1) In general.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

"Sec. 45J. Railroad Revitalization and Security Investment Credit.".

(2) Qualified Project Expenditures.—

"(1) IN GENERAL.—The amount of the credit allowed under subsection (a) for any taxable year with respect to any project for which qualified project expenditures are made shall not exceed the amount allocated to such project under this subsection for the calendar year in which the taxable year begins.

"(2) State Limitation.—

"(A) IN GENERAL.—There is a State railroad revitalization and security investment credit limitation for each calendar year. Such limitation is the amount which bears the same ratio to $100,000,000 as the allocation number for such State bears to the allocation number for all States.

"(B) Allocation Number.—For purposes of subparagraph (A), the allocation number is, with respect to a State, the sum of the following:

"(i) The number of railroad and public road grade crossings on interstate passenger rail routes within the State.

"(ii) The number of intercity passenger rail miles within the State.

"(iii) The number of intercity embankments and embankments for each passenger within the State.

"(3) Unused credit carryovers allocated among states.—

"(A) IN GENERAL.—The unused credit carryover for all States for any calendar year shall be reallocated to each qualified State in an amount which is the same ratio to $165,000,000 as the allocation number for such State bears to the allocation number for all States.

"(B) Unused Credit Carryover.—For purposes of this paragraph, the term "unused credit carryover" means, with respect to any State for any calendar year, the unused credit carryover for all States for such calendar year.

"(C) Qualified States.—For purposes of this paragraph, the term "qualified State" means any State—

"(i) which allocated its entire State limitation amount under paragraph (4) for the calendar year, and

"(ii) for which a request is made to receive an allocation under this paragraph.

"(4) Allocation within States.—Each State shall allocate the limitation amount allocated to such State under paragraph (2) in an amount which is its intercity passenger rail transportation which are included in the State rail plan of such State.".

"(5) New York City rail projects.—In addition to the amounts allocated under paragraph (2), the Secretary shall allocate a limitation of $100,000,000 for each calendar year to the State rail plan for qualified project expenditures within such city.

"(d) State Rail Plan.—For purposes of this section, the term "State rail plan" means the plan prepared and maintained in accordance with chapter 225 of title 49, United States Code.

"(e) Basis Adjustment.—For purposes of this section, if a credit is allowed under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so allowed.

"(f) Good faith.—No credit shall be allowed under this section with respect to any expenditures for which a credit is allowed under section 45J.

"(g) Credit transferrability.—Any credit allowable under this section may be transferred (but not more than once) if—

"(1) the credit exceeds the tax liability of the taxpayer for the taxable year, or

"(2) the taxpayer is not subject to any tax imposed by this chapter by reason of having a tax-exempt status.

"(h) Application of section.—This section shall apply to qualified project expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

"(1) Limitation.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45J(a) may be carried back to any taxable year beginning before January 1, 2005.

"(2) No carryback of section 45J credit before effective date.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45J(a) may be carried back to any taxable year beginning before January 1, 2005.

"(1) In general.—Part B of subtitle V of title 49, United States Code, is amended by striking "plus" at the end of paragraph (19), by striking the period at the end of paragraph (19) and inserting ", plus", and by adding at the end the following new paragraph:

"(21) the railroad revitalization and security investment credit determined under section 45J(a)."

(h) Application.—This section shall apply to qualified project expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

"(1) IN GENERAL.—The unused credit carryover for all States for any calendar year shall be reallocated to each qualified State in an amount which is the same ratio to $100,000,000 as the allocation number for such State bears to the allocation number for all States.

"(B) Allocation Number.—For purposes of subparagraph (A), the allocation number is, with respect to a State, the sum of the following:

"(i) The number of railroad and public road grade crossings on interstate passenger rail routes within the State.

"(ii) The number of intercity passenger rail miles within the State.

"(iii) The number of intercity embankments and embankments for each passenger within the State.

"(3) Unused credit carryovers allocated among states.—

"(A) IN GENERAL.—The unused credit carryover for all States for any calendar year shall be reallocated to each qualified State in an amount which is the same ratio to $100,000,000 as the allocation number for such State bears to the allocation number for all States.

"(B) Unused Credit Carryover.—For purposes of this paragraph, the term "unused credit carryover" means, with respect to any State for any calendar year, the unused credit carryover for all States for the calendar as the allocation number for such qualified State bears to the allocation number for all States.

"(C) Qualified States.—For purposes of this paragraph, the term "qualified State" means any State—

"(i) which allocated its entire State limitation amount under paragraph (4) for the calendar year, and

"(ii) for which a request is made to receive an allocation under this paragraph.

"(4) Allocation within States.—Each State shall allocate the limitation amount allocated to such State under paragraph (2) in an amount which is its intercity passenger rail transportation which are included in the State rail plan of such State.".

"(5) New York City rail projects.—In addition to the amounts allocated under paragraph (2), the Secretary shall allocate a limitation of $100,000,000 for each calendar year to the State rail plan for qualified project expenditures within such city.

"(d) State Rail Plan.—For purposes of this section, the term "State rail plan" means the plan prepared and maintained in accordance with chapter 225 of title 49, United States Code.

"(e) Basis Adjustment.—For purposes of this section, if a credit is allowed under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so allowed.

"(f) Good faith.—No credit shall be allowed under this section with respect to any expenditures for which a credit is allowed under section 45J.

"(g) Credit transferrability.—Any credit allowable under this section may be transferred (but not more than once) if—

"(1) the credit exceeds the tax liability of the taxpayer for the taxable year, or

"(2) the taxpayer is not subject to any tax imposed by this chapter by reason of having a tax-exempt status.

"(h) Application of section.—This section shall apply to qualified project expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

"(2) Limitation on carryback.—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

"(15) No carryback of section 45J credit before effective date.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45J(a) may be carried back to any taxable year beginning before January 1, 2005.

"(2) No carryback of section 45J credit before effective date.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45J(a) may be carried back to any taxable year beginning before January 1, 2005.

"(1) In general.—Part B of subtitle V of title 49, United States Code, is amended by striking "plus" at the end of paragraph (19), by striking the period at the end of paragraph (19) and inserting ", plus", and by adding at the end the following new paragraph:

"(21) the railroad revitalization and security investment credit determined under section 45J(a)."

(h) Application.—This section shall apply to qualified project expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

"(1) IN GENERAL.—The unused credit carryover for all States for any calendar year shall be reallocated to each qualified State in an amount which is the same ratio to $100,000,000 as the allocation number for such State bears to the allocation number for all States.

"(B) Unused Credit Carryover.—For purposes of this paragraph, the term "unused credit carryover" means, with respect to any State for any calendar year, the unused credit carryover for all States for the calendar as the allocation number for such qualified State bears to the allocation number for all States.

"(C) Qualified States.—For purposes of this paragraph, the term "qualified State" means any State—

"(i) which allocated its entire State limitation amount under paragraph (4) for the calendar year, and

"(ii) for which a request is made to receive an allocation under this paragraph.

"(4) Allocation within States.—Each State shall allocate the limitation amount allocated to such State under paragraph (2) in an amount which is its intercity passenger rail transportation which are included in the State rail plan of such State.".
§ 22501. Authority

(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with this chapter.

(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

(2) establish or designate a State rail plan approval authority to approve the plan;

(3) make the State’s approved plan available to the public and transmit a copy to the approval authority to approve the plan;

(4) revise the plan no less frequently than once every 5 years.

§ 22502. Purposes

(a) PURPOSES.—The purposes of a State rail plan shall be as follows:

(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

(2) To present priorities and strategies to enhance rail service in the State that benefits the public.

(3) To serve as the basis for Federal and State investment within the State.

(b) CONTENT.—The State rail plan shall establish the period covered by such plan.

(c) CONSISTENCY WITH STATE TRANSPORTATION EFFORTS.—A State rail plan shall be consistent with the State transportation planning goals and programs and shall set forth the transportation role within the State transportation system.

§ 22503. Transparency; coordination

(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for public involvement and other input on a proposed State rail plan under this chapter to the following:

(1) The public.

(2) Rail carriers.

(3) Commuter and transit authorities operating in, or affected by rail operations within, the State.

(4) Units of local government.

(5) Other parties interested in the preplanning and review of the State rail plan.

(b) INTERGOVERNMENTS.—A State must coordinate with the freight and passenger rail service activities and initiatives of regional planning agencies, regional transportation authorities, and municipalities within or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, municipalities, and local governments as deemed appropriate by the State.

§ 22504. Content

(a) IN GENERAL.—Each State rail plan shall contain the following:

(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State’s surface transportation system.

(2) A comprehensive review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

(3) A statement of the State’s passenger rail service objectives, including minimum service levels, for intercity passenger rail transportation within the State’s surface transportation system.

(4) A general analysis of rail’s transportation, economic, and environmental impacts in the State, including congestion mitigation and economic development, air quality, land-use, energy-use, and community impacts.

(b) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

(c) A statement of freight financing issues for rail projects and service in the State, including a list of current and prospective public capital and operating funding resources, freight subsidies, State taxation, and other financial policies relating to rail infrastructure development.

(d) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stakeholders.

(e) A review of major passenger and freight modal rail connections and facilities within the State, including seaports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.

(f) A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

(g) A performance evaluation of passenger rail service operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

(h) A list of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this chapter, and a plan for funding any recommended development of such corridors in the State.

(i) A statement that the State satisfies the conditions set forth in section 22102.

(j) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(5) shall include the following matters:

(A) Two lists for rail capital projects, 1 list for freight rail capital projects and 1 list for intercity passenger rail capital projects.

(B) A detailed funding plan for the projects.

(2) PROJECT LIST CONTENT.—The lists of freight and intercity passenger rail capital projects shall contain—

(A) A description of the anticipated public and private benefits of each such project; and

(B) A statement of the correlation between—

(i) public funding contributions for the projects; and

(ii) the public benefits.

(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

(A) Contributions from non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

(B) Rail capacity and congestion effects.

(C) Effects to highway, aviation, and maritine capacity, congestion, or safety.

(D) Regional balance.

(E) Environmental impact.

(F) Economic and employment impacts.

(G) Projected ridership and other service measures for freight and rail projects.

§ 22505. Approval

“The State rail plan approval authority established or designated under section 22501(b)(2) may approve a State rail plan for the purposes of this chapter if—

(1) the plan meets all of the requirements applicable to State plans under this chapter;

(2) for each ready-to-commence project listed in the plan, the State, or in the case of freight and intercity passenger rail capital improvement projects under the plan—

(4) the project meets all safety and environmental requirements, including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.) applicable to the project under law; and

(5) the State has entered into an agreement with any owner of rail infrastructure for use of such infrastructure or right-of-way directly by the project that provides for the State to proceed with the project and includes assurances regarding capacity and compensation for use of such infrastructure or right-of-way, if applicable; and

(6) the content of the plan is coordinated with the State’s surface transportation plans developed pursuant to section 136 of title 25.

§ 22506. Definitions

In this chapter:

(1) PRIVATE BENEFIT.—The term ‘private benefit’ means—

(A) a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and other positive community effects; and

(B) shall be determined on a project-by-project basis, based upon an agreement between the State and the affected persons or private entities.

(2) PUBLIC BENEFIT.—The term ‘public benefit’ means—

(A) a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and other positive community effects; and

(B) shall be determined on a project-by-project basis, based upon an agreement between the State and the persons or private entities involved in the project.

(3) STATE.—The term ‘State’ means any of the 50 States and the District of Columbia.

(4) STATE RAIL TRANSPORTATION AUTHORITY.—The term ‘State rail transportation authority’ means the State agency or official responsible under the direction of the Chief Executive of the State or a State law for preparing, maintaining, coordinating, and administering the State rail plan under this chapter.”.

(2) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle V of chapter 1 of title 23, United States Code, is amended by inserting after the item relating to chapter 223 the following:

“225. STATE RAIL PLANS........... 22501.”.

Subtitle E—Miscellaneous Provisions

SEC. 61. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS TAXABLE INCOME.

(a) IN GENERAL.—Subsection (b) of section 512 relating to unrelated business taxable income is amended by adding at the end the following new paragraph:

“(B) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

(1) IN GENERAL.—The term ‘eligible taxpayer’ means—

(A) generally—

(1) the taxpayer who, with respect to a property, any organization exempt from tax under section 501(a) which—
(I) acquires from an unrelated person a qualifying brownfield property, and

(II) pays or incurs eligible remediation expenditures with respect to such property in an amount in excess of the greater of $500,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined without regard to a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

(ii) Exception.—Such term shall not include any organization which is—

(A) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property;

(B) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

(C) the result of a reorganization of a business entity which was so potentially liable.

(3) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

(i) IN GENERAL.—The term qualifying brownfield property means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 190(c)(4)(B) in the State in which the property is located) as a brownfield site within the meaning of section 1301(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property, which is complicating the expansion, redevelopment, or reuse of the property given the property’s reasonably anticipated future land uses or capacity for uses of the property.

(iii) ELMER COSTS.—For purposes of this subparagraph, a remedial action is substantially complete with respect to any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

(iv) SUBSTANTIAL COMPLETION.—

(A) IN GENERAL.—The term eligible remediation expenditures means—

(i) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire a qualifying brownfield property;

(ii) any environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage;

(iii) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property, the interest of which is exempt from tax under section 163, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property,

(B) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary in character under the rules of section 1250 property, including amounts deducted as repairs, maintenance, or other expenditures.

(C) SPECIAL RULES FOR PARTNERSHIPS.—

(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner in a qualifying partnership which acquires, remediates, and sells a qualifying brownfield property, this section shall not apply to the partner’s distributive share of the qualifying partnership’s gain or loss from the sale, exchange, or other disposition of such property.
(“I) Receipt.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (B) applies, and the taxpayer satisfies the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs (taking into account any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment attributable to such property under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such disposition occurred and ending on the date of payment of the tax.

(iii) Related Persons.—For purposes of this paragraph, a person shall be treated as related to another person if—

(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting ‘‘25 percent’’ for ‘‘50 percent’’ each place it appears therein, and

(ii) the taxpayer is a non-profit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

(H) Special Rules for Multiple Property Transactions.—

(i) In General.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

(ii) Election.—An election under clause (i) shall be made with the eligible taxpayer’s or qualifying partnership’s timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective beginning on the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

(iii) Revocation.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. If the revocation by an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under this subsection in respect of the re-qualifying brownfield property subject to the revoked election.

(i) Recapture.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (B) applies, and the taxpayer satisfies the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs (taking into account any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment attributable to such property under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such disposition occurred and ending on the date of payment of the tax.

(ii) Related Persons.—For purposes of this paragraph, a person shall be treated as related to another person if—

(iii) Receipt.—If an eligible taxpayer supersedes and the time for filing a claim for refund for the tax on such gain or loss under section 6213 is extended under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081 et seq.) for any reason, the claim for refund may be filed and the tax may be refunded for the taxable year in which such failure occurs (taking into account any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment attributable to such property under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such disposition occurred and ending on the date of payment of the tax.

(iii) Special Rules for Multiple Property Transactions.—

(i) In General.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

(ii) Election.—An election under clause (i) shall be made with the eligible taxpayer’s or qualifying partnership’s timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective beginning on the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

(iii) Revocation.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. If the revocation by an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under this subsection in respect of the re-qualifying brownfield property subject to the revoked election.

(i) Recapture.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (B) applies, and the taxpayer satisfies the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs (taking into account any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment attributable to such property under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such disposition occurred and ending on the date of payment of the tax.

(ii) Related Persons.—For purposes of this paragraph, a person shall be treated as related to another person if—

(iii) Receipt.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (B) applies, and the taxpayer satisfies the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs (taking into account any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment attributable to such property under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such disposition occurred and ending on the date of payment of the tax.

(iii) Special Rules for Multiple Property Transactions.—

(i) In General.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

(ii) Election.—An election under clause (i) shall be made with the eligible taxpayer’s or qualifying partnership’s timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective beginning on the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

(iii) Revocation.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. If the revocation by an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under this subsection in respect of the re-qualifying brownfield property subject to the revoked election.
an employee for asserting rights or taking other actions permitted by law.’’

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes and costs paid after December 31, 2003, with respect to any judgment or settlement occurring after such date.

SEC. 641. EXCLUSION FROM PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.

(a) In General.—Section 108(c) (relating to student loans) is amended by adding at the end the following new paragraph:

(4)crollments under National Health Service Corps Loan Repayment Program and Certain State Loan Repayment Programs.—If the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimburments for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.

(b) CONFORMING AMENDMENT.—The heading and the first sentence of subsection (c) shall be amended by striking ‘‘REIMBURSED’’.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received by an individual in taxable years beginning after December 31, 2003.

SEC. 645. CERTAIN EXPENSES OF RURAL LETTER CARRIERS.

(a) In General.—Section 62(2) (relating to treatment of certain reimbursed expenses of rural mail carriers) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following:

‘‘(2) SPECIAL RULE WHERE EXPENSES EXCEED REIMBURSEMENTS.—Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimburments for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.’’

(b) CONFORMING AMENDMENT.—The heading for section 62(2) is amended by striking ‘‘REIMBURSED’’.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 646. METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDING.

(a) In General.—In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the contract commencement date occurs shall be determined under a method identical to the method used in the case of a qualified oil or gas contract (as defined in section 10203(b)(2)(B) of the Revenue Code of 1987).

(b) RECAPTURE OF TAX BENEFIT.—In the case of a qualified naval ship contract to which paragraph (a) applies, the taxpayer’s tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period described in subsection (a) shall be increased by the excess (if any) of—

(1) the amount of tax which would have been imposed during such period if this section had not been enacted, over

(2) the amount of tax so imposed during such period.

(c) QUALIFIED NAVAL SHIP CONTRACT.—For purposes of this section—

(1) In General.—The term ‘‘qualified naval ship contract’’ means any contract or portion thereof that is for the construction in the United States of 1 ship or submarge for the Federal Government if the taxpayer reasonably expects the acceptance date will occur not later than the construction commencement date.

(2) ACCEPTANCE DATE.—The term ‘‘acceptance date’’ means the date 1 year after the construction commencement date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarge.

(3) CONSTRUCTION COMMENCEMENT DATE.—The term ‘‘construction commencement date’’ means the date on which the physical fabrication of any section or component of the ship or submarge begins.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contracts for ships or submarges with respect to which the construction commencement date occurs after the date of the enactment of this Act.

SEC. 647. SUSPENSION OF POLICYPHERS SURPLUS ACCOUNT PROVISIONS.

(a) In General.—Section 815 (relating to distributions to shareholders from pre-1994 policyholders surplus account) is amended by adding at the end the following new subsection:

‘‘(c) APPLICATION OF SECTION.—This section shall not apply to stock life insurance companies for taxable years beginning after December 31, 2003, and beginning before January 1, 2006.’’

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 648. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) In General.—Subsection (a) of section 1038 (relating to patronage dividend defined) is amended by adding at the end the following new paragraph:

(6) Such agreement relates—

(1) to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year, or

(2) to the extent such termination payment is reinvested in property used in a motor vehicle retail sale and service dealership, and

(b) RULES FOR ELECTION.—(1) FORM OF ELECTION.—The taxpayer shall make an election under this section in such form and manner as the Secretary of the Treasury may prescribe and shall include in such election the amount of the termination payment received, the identification of the real property to which such payment relates, and such other information as the Secretary may prescribe.

(2) ELECTION ON AMENDED RETURN.—The Secretary of the Treasury shall permit an election under this section on an amended return for taxable years beginning before the date of the enactment of this Act.

(3) STATUTE OF LIMITATIONS.—Notwithstanding the provisions of any other law or rule of law, the statutory period for the assessment for any deficiency attributable to any termination payment gain shall be extended until 3 years after the date the Secretary of the Treasury is notified by the taxpayer of the like-kind exchange, or such other information as the Secretary may request.

SEC. 662. INCREASE IN ESTATE TAX VALUE OF LIFE INSURANCE ON SPECIFIED LIVES.

(a) In General.—Section 2034(a)(1) (relating to support of spouse, former spouse, or child) is amended by adding at the end the following new paragraph:

‘‘(2) INCREASED DEDUCTION.—In the case of a decedent who—

(1) died after December 31, 2003, and before January 1, 2006, and

(2) was a surviving spouse, former spouse, or child of the decedent on December 31, 2003, the deduction allowable under subsection (a) shall be increased by $100,000.’’

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to decedents dying after December 31, 2003.
SEC. 653. BLUE RIBBON COMMISSION ON COMPREHENSIVE REFORM.
(a) ESTABLISHMENT.—The Commission shall conduct a thorough study of all matters relating to a comprehensive reform of the Federal tax system, including the reform of the Internal Revenue Code of 1986 (and, if the determina-
tion (if appropriate) of other types of tax systems.
(7) POWERS OF THE COMMISSION.—
(1) HEARINGS.—The Commission shall hold hearings.
(2) STAFF.—The Chairman of the Commission shall select a staff.
(3) STAFF.—The Commission may secure directly from
(a) RENEWAL COMMUNITIES.—Section 1400E
(b) AREA.—An area is described in this
(3) PERIOD OF APPOINTMENT; VACANCIES.—
(1) STUDY.—The Commission shall conduct
(2) TRAVEL EXPENSES.—The members of the
(1) COMPENSATION OF MEMBERS.—Each
(2) MEMBERS.—The Commission shall be com-
(1) CONGRESSIONAL RECORD — SENATE
March 22, 2004
SEC. 651. EXPANSION OF DESIGNATED RENEWAL
COMMUNITY AREA BASED ON 2000 CENSUS DATA.
(a) RENEWAL COMMUNITIES.—Section 1400E (relating to designation of renewal communities) is amended by adding at the end the following new subsection:
"(g) EXPANSION OF DESIGNATED AREAS.—
"(1) Expansion based on 2000 Census.—At the request of the nominating entity with re-
spect to a renewal community, the Secretary of Housing and Urban Development may ex-
 pand the area designated as a renewal community to in-
clude any census tract—
"(A) which, at the time such community was nominated, met the requirements of this section and such community but for the failure of such tract to meet 1 or more of the population and poverty rate re-
quirements of this section using 1990 census data, and
"(B) which meets all failed population and poverty rate requirements of this section using 2000 census data.
"(2) Expansion to certain areas which do not meet population requirements.—
"(A) In General.—At the request of 1 or more Federal agencies, the Secretary of Housing and Urban Development may expand a designated area to include such area.
"(B) Area.—An area is described in this subparagraph if—
"(i) the area is adjacent to at least 1 other area designated as a renewal community;
"(ii) the area has a population less than the population required under subsection (c)(2)(C), and
"(III) the area meets the requirements of subparagraphs (A) and (B) of subsection (c)(2) and subparagraph (A) of subsection (c)(3), or
"(ii) the area contains a population of less than 200 people.
"(3) APPlicability.—Any expansion of a re-
newal community under this section shall take effect as provided in subsection (b).
(b) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the amendments made by sec-
tion 101 of the Community Renewal Tax Rel-
SEC. 652. REDUCTION OF HOLDING PERIOD TO 12 MONTHS FOR PURPOSES OF DETER-
MINING WHETHER HORSES ARE SEC-
TURES WITH RESPECT TO ESOPS.
(a) IN GENERAL.—Subparagraph (A) of section 1212(b)(3) (relating to definition of prop-
erty used in the trade or business) is amend-
ed by inserting "and horses".
(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.
SEC. 653. BLUE RIBBON COMMISSION ON COM-
PREHENSIVE TAX REFORM.
(a) ESTABLISHMENT.—
(1) IN GENERAL.—There is established the "Blue Ribbon Commission on Comprehensive Tax Reform (in this section referred to as the "Commission").
(2) MEMBERS.—
(A) COMPOSITION.—The Commission shall be composed of—
(i) 3 shall be appointed by the majority leader of the Senate;
(ii) 3 shall be appointed by the minority leader of the Senate;
(iii) 3 shall be appointed by the Speaker of the House of Representatives;
(iv) 3 shall be appointed by the minority leader of the House of Representatives; and
(v) 5 shall be appointed by the President, of which no more than 3 shall be of the same party as the President.
(b) PAYMENT OF ALLOWANCES.—The members of the Commission may be employees or former employees of the Federal Government.
(c) DATE.—The appointments of the members of the Commission shall be made not later than October 30, 2004.
(d) APPOINTMENTS.—Members shall serve without compensation in the performance of the duties of the Commission. Any vacancy in the Com-
mision shall not affect its powers, but shall be filled in the same manner as the original appointments.
(e) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall meet at the call of the Chairman.
(f) MEETINGS.—The Commission shall meet at the call of the Chairman.
(g) QUORUM.—A quorum of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.
(h) CHAIRMAN AND VICE CHAIRMAN.—The President shall select a Chairman and Vice Chairman from among its members.
(i) DUTIES OF THE COMMISSION.—The Commission shall have the duties prescribed for the Commission and the powers granted to the Commission pursuant to subsection (a)(2), the Commission shall submit a report to the President and Congress which shall contain a detailed statement of the findings and conclusions of the Commission, its recom-
men
dations for such legislation and ad-
ministrative actions as it considers appro-
priate.
(j) POWERS OF THE COMMISSION.—
(1) HEARINGS.—The Commission shall hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.
(2) INFORMATION FROM FEDERAL AGENCIES.—
The Commission may secure from Federal agencies such in-
formation as the Commission considers neces-
sary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department shall furnish such information to the Commission.
(3) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.
(4) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.
(d) COMMISSION PERSONNEL MATTERS.—
(1) MEMBERS.—Each member of the Commission who is not an of-
ficer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of pay prescribed for level IV of the Executive Schedule under section 5316 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.
(e) COMPENSATION.—
(A) IN GENERAL.—The Chairman of the Commission, without regard to the civil service laws and regulations, may engage in an executive director and such other additional personnel as may be nec-

ecessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.
(f) PROCUREMENT OF TEMPORARY AND INTER-
MITTENT SERVICES.—The Commissioner of the Commission may procure temporary and intermittent services under section 3109(b)(5) of title 5, United States Code, at rates for indi-
viduals which do not exceed the daily equiva-

lent of the annual rate of basic pay pre-
scribed for level V of the Executive Schedule under section 5316 of such title.
(2) TERMINATION OF THE COMMISSION.—The Commission shall terminate 90 days after the date on which the Commission submits its report under subsection (b).
(f) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated such sums as are necessary to the Commission to carry out this section.
SEC. 654. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH RESPECT TO S COR-
PORATION STOCK.
(a) IN GENERAL.—Section 479(d)(1) of the In-
ternal Revenue Code of 1986 is amended by adding at the end the following new flush sentences:
"A plan shall not be treated as violating the requirements of section 401, 409, or sub-
section (c) of section 403, merely by reason of any distribution de-
scribed in section 402(a) with respect to S corporation stock which constitutes qual-
fying employer securities if the distribution is, in accordance with the plan provisions, used to make payments on a loan described in paragraph (3) of the proceeds of which were used to acquire the qualifying employer securities (whether or not allocated to particip-

ants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that such securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such partici-
pant.”
(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1998.
SEC. 655. CLARIFICATION OF WORKING CAPITAL FOR REASONSABLY ANTICIPATED NEEDS OF A BUSINESS FOR PURPOSES OF ACCUMULATED EARNINGS TAX.

(a) In General.—Section 337(b) (relating to special rules) is amended by adding at the end the following paragraph:

"(6) WORKING CAPITAL.—The reasonably anticipated needs of a business for any taxable year shall include working capital for the business in an amount which is not less than the sum of the cost of goods, operating expenses, taxes, and interest expense which the business is expected to incur during the preceding taxable year, unless the amount so incurred as part of a plan a principal purpose of which is to increase the limitation under this subsection shall not be taken into account.".

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003, and before January 1, 2004.

Subtitle F—Revenue Provisions

PART I—GENERAL REVENUE PROVISIONS

SEC. 661. TREASURY REGULATIONS ON FOREIGN TAX CREDIT.

Section 901, as amended by this Act, is amended by redesignating subsection (m) as subsection (q) and by inserting after subsection (i) the following new subsection:

"(m) REGULATIONS.—The Secretary may prescribe regulations disallowing a credit under section 901 with respect to—

(1) foreign taxes paid for periods beginning after December 31, 2003,

(2) any foreign tax paid by a corporation that is not a controlled foreign corporation for periods beginning before January 1, 2004, or

(3) any foreign tax paid by a corporation that is not a controlled foreign corporation for periods beginning after December 31, 2003.

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after January 1, 2004.

SEC. 662. NONATTRIBUTION OF CERTAIN MANUFACTURING BY PERSONS OTHER THAN CONTROLLED FOREIGN CORPORATIONS.

(a) In General.—Section 954(d) (defining foreign base company sales income) is amended by adding at the end the following new paragraph:

"(5) Nonattribution of Certain Manufacturing Activity.—For purposes of this subsection, in determining whether income of a controlled foreign corporation is foreign base company income, any manufacturing, production, or construction by a person other than an individual who is an employee of the corporation shall not be attributed to the corporation.".

(b) Effective Date.—(1) In General.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act, and to taxable years of United States shareholders with respect to which such taxable years of foreign corporations end.

(2) No Inference.—Nothing in the amendment made by this section shall be construed to infer that any person engaged in the manufacturing, production, or construction for taxable years beginning before the date of the enactment of this Act, and to taxable years of United States shareholders with respect to which such taxable years of foreign corporations end.

SEC. 663. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYERS.

(a) In General.—Section 6409(g) (relating to suspension of interest and certain penalties where secretary fails to contact taxpayer) is amended by striking "(1) period (18-month period in the case of taxable years beginning before January 1, 2004)" both places it appears and inserting "(18-month period)."

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

PART II—PENSION AND DEFERRED COMPENSATION

SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS.

(a) In General.—Subchapter D of chapter 1 is amended by adding at the end the following new section:

"Sec. 409A. INCLUSION IN GROSS INCOME OF DEFERRED COMPENSATION UNDER NONQUALIFIED DEFERRED COMPENSATION PLANS.

"(a) Rules Relating to Constructive Receipt.—

"(1) In General.—

"(A) General Rule.—When compensation is deferred under a non-qualified deferred compensation plan—

(i) if the failure to include such compensation in gross income is attributed to the participant's or beneficiary's failure to take steps reasonably necessary to include such compensation in gross income under section 409A in the year in which such compensation is deferred, the failure to include such compensation is treated as a failure to take steps reasonably necessary to include such compensation in gross income in the year after in which such compensation is deferred, and

(ii) if the failure to include such compensation in gross income is attributed to the participant's or beneficiary's failure to take steps reasonably necessary to include such compensation in gross income in any year, the failure to include such compensation in gross income in the year after in which such compensation is deferred.

"(B) Incentive Compensation.—Except as provided in regulations, the requirements of subparagraph (A) do not apply with respect to incentive compensation.

"(B) Special Rules.—

(ii) Separation from Service of Specified Employee.—In the case of a specified employee the requirements of this section are met if—

(i) the separation from service was not the result of a reduction in the employer's business activities,

(ii) within 6 months after the date of separation from service, the employer ceases to include the employee in the plan, and

(iii) the employee elects to be treated as if the separation from service had not occurred.

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after January 1, 2004.

(c) In General.—Section 4999 of part 1 of subchapter D of chapter 1 is amended by adding at the end the following new subsection:

"(f) GROSS INCOME INCLUSION.—If any taxable year of a specified employee (as defined in section 414(i)) of a corporation the stock in which is publicly traded on an established securities market or other similar market begins in the first taxable year in which a participant becomes eligible to participate in the plan, such election to defer such compensation is made during the preceding taxable year or at such other time as prescribed by the Secretary.
may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan."

"(C) Section 414(b) is amended by inserting at the end the following new paragraph:

"(13) the total amount of deferrals under a nonqualified deferred compensation plan (within the meaning of section 409A(d)) shall be determined by subtracting from the amount of the present value of the deferred compensation at the time of the deferral the amount of any present value of a benefit under a qualified deferred compensation plan that is in a form of a lump sum payment at the end of the 10-year period beginning at the time of the deferral.

(b) General rules relating to terminations of certain existing arrangements. —Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.

(c) Guidance relating to change of ownership or control. —Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.

(d) Effective date. —

(1) In general. —The amendments made by this section shall apply to amounts deferred in taxable years beginning after December 31, 2004.

(2) Earnings attributable to amount previously deferred. —The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.
section 409(a)(2) of the Internal Revenue Code of 1986 (as added by this section), terminate participation or cancel an outstanding deferral election with regard to amounts earned after December 31, 2004, if such amounts are includible in income as earned.

SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE EXERCISE OF A STOCK OPTION ON UNRESTRICTED STOCK GAINS THROUGH DEFERRED COMPENSATION ARRANGEMENTS.

(a) In General.--(1) In General.―A taxpayer electing to exchange an option to purchase employer securities—"(1) to which subsection (a) applies, or
"(2) which is described in subsection (e)(3), or any other property based on employer securities transferred to the taxpayer, for a right to receive future payments, then, notwithstanding any other provision of this title, there shall be included in gross income for the taxable year of the exchange an amount equal to the present value of such right (or such other amount as the Secretary may by regulations specify). For purposes of this section, each term employed in this title, which is a term of the Internal Revenue Code of 1986, shall apply for purposes of this section to the extent that the term is used in a provision of this Act.

(b) Effective Date.—(1) The amendments made by this section shall apply to wages paid after December 31, 2004. (2) Subsection (b) shall be applied to any exchange after December 31, 2004.

SEC. 673. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS IN EXCHANGE FOR RETIREMENT CONTRIBUTIONS.

(a) In General.—If an employer elects under Treasury Regulation 1.3402(g)-1 to determine the amount to be deducted and withheld from supplemental wages paid to an employee by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 26 percent (or the corresponding rate in effect under section 1(1)(2) of the Internal Revenue Code of 1986 for taxable years beginning in the calendar year in which the payment is made).

(b) Special Rule for Large Payments.—(1) In General.—Notwithstanding section 672, an employer may reduce any supplemental wage payment, when added to all such payments previously made by the employer to the employee during the calendar year, exceeds $1,000, the rate used with respect to such excess shall be equal to the maximum rate of tax in effect under section 1 of such Code for taxable years beginning in such calendar year.

(2) Aggregation.—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 are treated as a single employer for purposes of this subsection.

(c) Conformity Amendment.—Section 12373 of the Revenue Reconciliation Act of 1993 (Public Law 103-66) is repealed.

(d) Effective Date.—The provisions of this section, and the amendments made by this section, shall apply to payments made after December 31, 2003.

SEC. 674. TREATMENT OF SALE OF STOCK ACQUIRED PURSUANT TO EXERCISE OF STOCK OPTIONS TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.

(a) In General.—Section 421 of the Internal Revenue Code of 1986 (relating to general Revenue Code of 1986 for taxable years beginning after December 31, 2004, if such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)), such disposition shall be treated as meeting the requirements of section 422(a)(1) or 422(a)(1), whichever applies.

(b) Effective Date.—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 675. DETERMINATION OF BASIS OF AMOUNTS PAID FROM FOREIGN PENSION PLANS.

(a) In General.—Section 414(t)(2) is amended by inserting ''83(i),''.

(b) Effective Date.—The provisions of this section shall apply to any exchange after December 31, 2004.

SEC. 676. DETERMINATION OF BASIS OF AMOUNTS PAID FROM FOREIGN PENSION PLANS.

(a) In General.—Paragraph (5) of section 51(d) is amended to read as follows:

''(5) Designated community resident.---''(A) In General.—The term 'designated community resident' includes any security issued by the employer.

(b) Controlled Group Rules.—Section 414(t)(2) is amended by modifying the following subsections:

(i) (1) is amended by striking ''and'' at the end the following new subsection: ''(ii) on or after January 1, 2004, and before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act, and'' after December 31, 2005.

(ii) Subsection (f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185(f)) is amended by striking ''or'' at the end the following new subsection: ''or December 31, 2005.''

(iii) Paragraph 712(f) of the Employee Retirement Income Security Act (ERISA) is amended by adding the following new subsection:

''(6) the amendments made by subsection (a) shall apply to distributions on or after the date of the enactment of this Act.

TITLES VII—EXTENSIONS OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Extensions

SEC. 701. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) In General.—Section 9812(f) is amended—

(1) by striking ''and'' at the end of paragraph (1) and inserting ''or'',

(2) by striking paragraph (2) and inserting the following new paragraphs:

''(3) on or after January 1, 2004, and before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act, and'' after December 31, 2005.

(b) ERISA.—Section 712(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185(f)) is amended by striking ''or'' at the end the following new subsection: ''or December 31, 2004'' and inserting ''after December 31, 2005.''

(c) PHS.—Section 2705(f) of the Public Health Service Act (42 U.S.C. 300gg-5(f)) is amended by striking ''on or after December 31, 2004'' and inserting ''after December 31, 2005.''

(d) Effective Dates.—

(1) Section (a) shall apply to services furnished on or after December 31, 2003.

(2) Section (b) shall apply to services furnished on or after December 31, 2004.

(3) Subsections (b) and (c) shall apply to services furnished on or after December 31, 2004.

SEC. 702. MODIFICATIONS TO WORK OPPORTUNITY CREDIT AND WELFARE-TO-WORK CREDIT.

(a) In General.—Paragraph (1) of section 51(d) is amended by striking ''or'' at the end of paragraph (G), by striking the period at the end and inserting a period, and by adding at the end the following new paragraph:

''(H) a long-term family assistance recipient.''

(b) Long-Term Family Assistance Recipient.—(1) Subsection (d) of section 51(d) is amended by redesigning paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following new paragraph:

''(11) Long-Term Family Assistance Recipient.---The term 'long-term family assistance recipient' means any individual who is certified by the designated local agency—''(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 12-month period ending on the hiring date, and''(B) as having a hire date which is not more than 2 years after the end of the earliest such 18-month period, or

(c) Inclusion of Income.—(1) Subparagraph (B) of section 51(c)(4) is amended by striking ''December 31, 2005'' and inserting ''December 31, 2006'',

(d) Inclusion of Income.—(1) Subsection (c) of section 51(a) is amended by striking ''December 31, 2006'' and inserting ''December 31, 2007'',

(e) Clarification of Treatment of Individuals Under Individual Work Plans.—Subparagraph (d) of section 51(d) is amended by relating to vocational rehabilitation referral is amended by striking ''or'' at the end of clause (i), by striking the period at the end of clause (ii), and inserting ''and'', and by adding at the end the following new clause:

''(iii) an individual work plan developed and implemented by an employment network pursuant to section 114(b) of the Social Security Act with respect to which the requirements of such subsection are met.''

(f) Effective Dates.—

(1) Extension of Credits.—The amendments made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

(2) Modifications.—The amendments made by subsections (b), (c), (d), and (e) shall apply to individuals who begin work for the employer after December 31, 2004.

SEC. 703. CONSOLIDATION OF WORK OPPORTUNITY CREDIT WITH WELFARE-TO-WORK CREDIT.

(a) In General.—Paragraph (1) of section 51(d) is amended by striking ''or'' at the end of paragraph (G), by striking the period at the end of subparagraph (D) and inserting a period, and by adding at the end the following new paragraph:

''(H) a long-term family assistance recipient.''

(b) Long-Term Family Assistance Recipient.—(1) Subsection (d) of section 51(d) is amended by redesigning paragraphs (10) through (12) as paragraphs (11) through (13), respectively, and by inserting after paragraph (9) the following new paragraph:

''(11) Long-Term Family Assistance Recipient.---The term 'long-term family assistance recipient' means any individual who is certified by the designated local agency—''(A) as being a member of a family receiving assistance under a IV–A program (as defined in paragraph (2)(B)) for at least the 18-month period ending on the hiring date, and''(B) as having a hire date which is not more than 2 years after the end of the earliest such 18-month period, or

(c) Inclusion of Income.—(1) Subparagraph (B) of section 51(c)(4) is amended by striking ''December 31, 2005'' and inserting ''December 31, 2006'',

(d) Inclusion of Income.—(1) Subsection (c) of section 51(a) is amended by striking ''December 31, 2006'' and inserting ''December 31, 2007'',

(e) Clarification of Treatment of Individuals Under Individual Work Plans.—Subparagraph (d) of section 51(d) is amended by relating to vocational rehabilitation referral is amended by striking ''or'' at the end of clause (i), by striking the period at the end of clause (ii), and inserting ''and'', and by adding at the end the following new clause:

''(iii) an individual work plan developed and implemented by an employment network pursuant to section 114(b) of the Social Security Act with respect to which the requirements of such subsection are met.''

(f) Effective Dates.—

(1) Extension of Credits.—The amendments made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

(2) Modifications.—The amendments made by subsections (b), (c), (d), and (e) shall apply to individuals who begin work for the employer after December 31, 2004.
“(C)(i) as being a member of a family which ceased to be eligible for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such family may be eligible for such assistance; and
“(ii) as having a hiring date which is not more than 2 years after the date of such cessation.”

(c) INCREASED CREDIT FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 is amended by inserting after subsection (d) the following new subsection:

“(e) CREDIT FOR EMPLOYMENT OF LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—
“(1) IN GENERAL.—With respect to the employment of a long-term family assistance recipient—
“(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and
“(B) in lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to such a recipient shall not exceed $10,000.
“(2) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term ‘qualified second-year wages’ means qualified wages as—
“(A) which are paid to a long-term family assistance recipient, and
“(B) which are attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such recipient determined under subsection (b)(2).
“(3) GENERAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If such recipient is an employee to whom subparagraph (A) or (B) of subsection (b)(1) applies, rules similar to the rules in such subparagraphs shall apply except that—
“(A) such subparagraph (A) shall be applied by substituting ‘$10,000’ for ‘$6,000’; and
“(B) such subparagraph (B) shall be applied by substituting ‘$333.33’ for $500.”.

(d) REPEAL OF SEPARATE WELFARE-TO-WORK CREDIT.—
“(1) IN GENERAL.—Section 51A is hereby repealed.
“(2) CLE buRAL AMENDMENT.—The table of sections of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 51A.
“(3) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to individuals and families who begin work for the employer after December 31, 2003.

SEC. 704. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Subparagraph (D) of section 1400L(d)(1) is hereby amended by striking “2003” and inserting “2003, 2004, and 2005”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 705. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 170(e)(4)(B) is hereby amended by inserting “or assemblage” after “constructed”.

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—
“(1) IN GENERAL.—Clause (ii) of section 170(e)(4)(B) is hereby amended by inserting “or assemblage” after “constructed” and “or assemblage” after “construction”.
“(2) SPECIAL RULE.—Section 170(e)(6) is hereby amended by striking “2003” and inserting “2005”.

(c) CONFORMING AMENDMENTS.—Paragraph (D) of section 170(e)(6) is hereby amended by inserting “or assemblage” after “constructed” and “or assemblage” after “construction”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2003.

SEC. 706. DEDUCTION FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraph (D) of paragraph (2) of section 160G is hereby amended by inserting “2003” and, after such subparagraph, “2004, 2005, and 2006”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 707. DEDUCTION FOR CERTAIN EXPENSES OF SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 170(e)(4)(B) is hereby amended by inserting “or assemblage” after “constructed”.

(b) COMPUTER TECHNOLOGY AND EQUIPMENT FOR EDUCATIONAL PURPOSES.—
“(1) IN GENERAL.—Clause (ii) of section 170(e)(4)(B) is hereby amended by inserting “or assemblage” after “constructed” and “or assemblage” after “construction”.
“(2) SPECIAL RULE.—Section 170(e)(6) is hereby amended by striking “2003” and inserting “2005”.

(c) CONFORMING AMENDMENTS.—Subparagraph (D) of section 170(e)(6) is hereby amended by inserting “or assemblage” after “constructed” and “or assemblage” after “construction”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after December 31, 2003.

SEC. 708. EXPANSION OF ENVIRONMENTAL REMEDIATION COSTS.

(a) EXTENSION OF DEPARTMENT OF DEFENSE REMEDIATION DATE.—Subsection (b) of section 198 is hereby amended by striking December 31, 2003 and inserting December 31, 2005.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenditures paid or incurred after December 31, 2003.

SEC. 709. EXPANSION OF CERTAIN NEW YORK LIBERTY ZONE BENEFITS.

(a) EXTENSION OF TAX-EXEMPT BOND FINANCING.—Subparagraph (D) of section 1400L(d)(1) is hereby amended by striking “2005” and inserting “2006”.

(b) CLARIFICATION OF BONDS ELIGIBLE FOR ADVANCE REFUNDING.—Subsection 1400L(e)(2)(B) (relating to bonds described) is hereby amended by striking “, or” and inserting “or the Municipal Assistance Corporation, or”.

(c) ELECTION OUT TECHNICAL AMENDMENT.—Subsection (c) is hereby amended by adding at the end of the following new paragraph:
“(6) ELECTION OUT.—For purposes of this subsection, rules of section 186(k)(2)(C)(iii) shall apply.”.

(d) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall take effect as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002.

SEC. 710. TEMPORARY SPECIAL RULES FOR TAXATION OF LIFE INSURANCE COMPANIES.


(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.


(a) IN GENERAL.—Subparagraph (A) of section 809(h) is hereby amended by striking “2003” and inserting “2003, 2004”.

(b) AMENDMENTS.—The amendments made by sections 13181 and 6521A shall not apply with respect to disclosures or inspections made pursuant to this paragraph.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 712. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

(a) IN GENERAL.—Subparagraph (A) of section 9601 is hereby amended by striking “2003, 2004, and 2006” and inserting “2003, 2004, and 2005”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2004.

SEC. 713. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Subparagraph (A) of section 31(b) is hereby amended by striking “2003” and inserting “2003, 2004, and 2005”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 714. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraph (C) of section 45(c)(3) is hereby amended by striking “2003” and inserting “2003, 2004, and 2005”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 715. TAXABLE INCOME LIMIT ON PERCENT-AGE DEPRECIATION FOR OIL AND NATURAL GAS PROPERTIES.

(a) IN GENERAL.—Subparagraph (D) of section 613(a)(6) is hereby amended by striking “January 1, 2004” and inserting “January 1, 2005”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2003.
SEC. 716. INDIAN EMPLOYMENT TAX CREDIT.
Section 46A(f) (relating to termination) is amended by striking ‘‘December 31, 2004’’ and inserting ‘‘December 31, 2005’’.

SEC. 717. ACCELERATED DEPRECIATION FOR BUSINESS PROPERTY ON INDIAN RESERVATION.
Section 168(j)(8) (relating to termination) is amended by striking ‘‘December 31, 2004’’ and inserting ‘‘December 31, 2005’’.

SEC. 718. DISCLOSURE OF RETURN INFORMATION RELATING TO STUDENT LOANS.
Section 6109(l)(13)(D) (relating to termination) is amended by striking ‘‘December 31, 2004’’ and inserting ‘‘December 31, 2005’’.

SEC. 719. EXTENSION OF TRANSFERS OF EXCESS PRESCRIPTION DRUG ELIGIBILITY CONSIDERATION TO RETIREE HEALTH ACCOUNTS.
(a) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—Paragraph (5) of section 420(b) (relating to expiration) is amended by striking ‘‘December 31, 2005’’ and inserting ‘‘December 31, 2013’’.

(b) AMENDMENTS OF ERISA.—

(2) Section 403(c)(1) of such Act (29 U.S.C. 1108(c)(1)) is amended by striking ‘‘Tax Relief Extension Act of 1999’’ and inserting ‘‘Jumpstart Our Business Strength (JOBS) Act’’.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended—
(A) by striking ‘‘January 1, 2006’’ and inserting ‘‘January 1, 2014’’, and
(B) by striking ‘‘Tax Relief Extension Act of 1999’’ and inserting ‘‘Jumpstart Our Business Strength (JOBS) Act’’.

(c) MINIMUM COST REQUIREMENTS.—
(1) IN GENERAL.—Section 420(c)(3)(E) is amended by adding at the end the following new clause:

‘‘(ii) insignificant cost reductions permitted.—‘‘(I) IN GENERAL.—An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed thereunder, the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

‘‘(II) ELIGIBLE EMPLOYER.—For purposes of subclause (I), an eligible employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (9)(c) of section 220(c) shall apply in determining the amount of an employer’s gross receipts.’’

(2) CONFORMING AMENDMENT.—Section 220(o)(3)(E) is amended by striking ‘‘The Secretary’’ and inserting: ‘‘(I) IN GENERAL.—The Secretary’’.

(3) EFFECTIVE DATE.—The amendments made by this section shall be effective for taxable years ending after the date of the enactment of this Act.

SEC. 720. ELIMINATION OF PHASEOUT OF CREDIT FOR QUALIFIED ELECTRIC VEHICLES.
(a) IN GENERAL.—Section 30(b) is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(b) CONFORMING AMENDMENTS.—
(1) Section 30(b)(11)(A) is amended by striking ‘‘section 30(b)(3)(B)’’ and inserting ‘‘section 30(b)(2)(B)’’.

(2) Section 30(c)(2) is amended by striking ‘‘30(b)(3)’’ and inserting ‘‘30(b)(2)’’.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2005.

SEC. 721. ELIMINATION OF PHASEOUT FOR DESTRUCTION FOR CLEAN-FUEL VEHICLE PROPERTY.
(a) IN GENERAL.—Paragraph (1) of section 179A(b) is amended by striking—

‘‘(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—The cost which may be taken into account under subparagraph (a)(1)(A) with respect to any motor vehicle shall not exceed—

‘‘(A) in the case of a motor vehicle not described in subparagraph (B) or (C), $2,000.

‘‘(B) in the case of any truck or van with a gross vehicle weight rating of 10,000 pounds but not greater than 26,000 pounds, $5,000.

‘‘(C) $50,000 in the case of—

‘‘(i) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

‘‘(ii) any bus which has a seating capacity of at least 20 adults (not including the driver).’’.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to property placed in service after December 31, 2005.

Subtitle B—Revenue Provisions

SEC. 731. DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.
(a) IN GENERAL.—Subsection (f) of section 170 (relating to special rules for donations of motor vehicles, boats, and airplanes) is amended by adding at the end the following new paragraph:

‘‘(11) CONTRIBUTIONS OF USED MOTOR VEHICLES, BOATS, AND AIRPLANES.—‘‘(A) IN GENERAL.—In the case of a contribution of a qualified vehicle in excess of $500—

‘‘(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer furnishes such a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes acknowledgment with the taxpayer’s return of tax which includes the deduction, and

‘‘(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds from the sale of such vehicle, which subparagraph (A)(ii) does not apply—

‘‘(I) a certification that the vehicle was sold in an arm’s-length transaction between unrelated parties,

‘‘(II) the gross proceeds from the sale, and

‘‘(III) the amount of such gross proceeds is the deductible amount.

‘‘(B) CONTENT OF ACKNOWLEDGMENT.—An acknowledgment meets the requirements of this subparagraph if it includes the following information:

‘‘(i) The name and taxpayer identification number of the donor.

‘‘(ii) The vehicle identification number or similar identifying information of the donor.

‘‘(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply and which is sold by the donee organization—

‘‘(I) a certification that the vehicle was sold in an arm’s-length transaction between unrelated parties,

‘‘(II) the gross proceeds from the sale, and

‘‘(III) the amount of such gross proceeds is the deductible amount.

‘‘(C) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions after June 30, 2004.

‘‘(D) INFORMATION TO SECRETARY.—A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

‘‘(E) QUALIFIED VEHICLE.—For purposes of this paragraph, the term ‘qualified vehicle’ means—

‘‘(1) self-propelled vehicle manufactured primarily for use on public streets, roads, and highways,

‘‘(2) boat, or

‘‘(3) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

(Sec. 6717. Fraudulent Acknowledgments with Respect to Donations of Motor Vehicles, Boats, and Airplanes.

Any donee organization required under section 170(f)(11)(A) to furnish a contemporaneous written acknowledgment to a donor which knowingly furnishes a false or fraudulent acknowledgment, or which knowingly fails to furnish such acknowledgment in the manner, at the time, and showing the information required under section 170(f)(11), or regulations prescribed thereunder, shall be subject to a penalty equal to—

‘‘(1) in the case of an acknowledgment with respect to a qualified vehicle to which section 170(f)(11)(A)(ii) applies, the greater of the value of the tax benefit to the donor or the gross proceeds from the sale of such vehicle, and

‘‘(2) in the case of an acknowledgment with respect to any other qualified vehicle to which section 170(f)(11) applies, the greater of the value of the tax benefit to the donor or $5,000.

(b) PENALTY FOR FRAUDULENT ACKNOWLEDGMENTS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

(SEC. 6717. FRAUDULENT ACKNOWLEDGMENTS WITH RESPECT TO DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

‘‘Any donee organization required under section 170(f)(11)(A) to furnish a contemporaneous written acknowledgment to a donor which knowingly furnishes a false or fraudulent acknowledgment, or which knowingly fails to furnish such acknowledgment in the manner, at the time, and showing the information required under section 170(f)(11), or regulations prescribed thereunder, shall be subject to a penalty equal to—

‘‘(1) in the case of an acknowledgment with respect to a qualified vehicle to which section 170(f)(11)(A)(ii) applies, the greater of the value of the tax benefit to the donor or the gross proceeds from the sale of such vehicle, and

‘‘(2) in the case of an acknowledgment with respect to any other qualified vehicle to which section 170(f)(11) applies, the greater of the value of the tax benefit to the donor or $5,000.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions after June 30, 2004.

(Sec. 6717. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes.)

(Sec. 6717. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes.)
SEC. 732. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4123(a)(1) (defining taxable vaccine) is amended adding at the end the following new subparagraph:

"(M) Any trivalent vaccine against influenza.

(b) CONFORMING AMENDMENT.—Section 9510(c)(1)(A) is amended by striking "October 18, 2000" and inserting "the date of the enactment of the Start Our Business Act".

(b) EFFECTIVE DATE.—

(1) DELIVERIES.—This amendment made by this section shall apply to sales and uses on or after the date of the enactment of this Act, or

(B) the date on which the Secretary of Health and Human Services lists any vaccine against influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 733. TREATMENT OF CONTINGENT PAYMENT FOR CONVERTIBLE DEBT INSTRUMENTS.

(a) IN GENERAL.—Section 1272(d)(1) relating to regulation authority is amended—

(1) by striking "The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary", and

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

"(2) TREATMENT OF CONTINGENT PAYMENT FOR CONVERTIBLE DEBT.—

(A) IN GENERAL.—In the case of a debt instrument which—

(i) is convertible into stock of the issuing corporation, or in stock or debt of a related party (within the meaning of section 267(b) or 770(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt, and

(ii) provides for contingent payments, any regulations which require original issue discount of a noncontingent fixed rate debt instrument shall be applied as requiring that comparable yield be determined by reference to a noncontingent fixed rate debt instrument which is convertible into stock.

(B) SPECIAL RULE.—For purposes of subparagraph (A), the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after the date of the enactment of this Act.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SA 2887. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

"SEC. MANUFACTURERS’ JOBS CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following:

"SEC. 45G. MANUFACTURERS’ JOBS CREDIT.

(1) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the manufacturer’s jobs credit determined under this section is an amount equal to the lesser of—

(A) the excess of the W-2 wages paid by the taxpayer during the taxable year over the W-2 wages paid by the taxpayer during the preceding taxable year,

(B) the W-2 wages paid by the taxpayer during the taxable year to any employee who is an eligible AIA recipient (as defined in section 35(c)(2)) for any month during such taxable year.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage for any month is

(A) the numerator of which is the excess (if any) of the value of worldwide production for the taxable year over such modified value for the preceding taxable year, and

(B) the denominator of which is the excess (if any) of the value of worldwide production of the taxpayer for the taxable year over such value for the preceding taxable year.

(3) DEFINITIONS.—For purposes of this subsection—

(A) VALUE OF WORLDWIDE PRODUCTION.—The value of worldwide production for any taxable year shall be determined under subsection (g)(4).

(B) MODIFIED VALUE.—The term ‘modified value of worldwide production’ means the value of worldwide production determined by not taking into account any item taken into account in determining the value of domestic production gross receipts (as defined in section 199) for any year.

(C) ELIGIBLE TAXPAYER.—For purposes of this section, the term ‘eligible taxpayer’ means any taxpayer—

(1) which has domestic production gross receipts for the taxable year and the preceding taxable year, and

(2) which is not treated at any time during the taxable year as an inverted domestic corporation under section 7874.

(d) DEFINITIONS.—For purposes of this section—

(1) IN GENERAL.—Any term used in this section which is also used in section 199 shall have the meaning given such term by section 199.

(2) SPECIAL RULE FOR W-2 WAGES.—Notwithstanding paragraph (1), the amount of W-2 wages taken into account with respect to an employee for any taxable year shall not exceed $50,000.

(e) CERTAIN RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 199 shall apply.

(f) TERMINATION.—This section shall not apply to any taxable year beginning after December 31, 2016.

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking “plus” at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting “plus”, and by adding at the end the following:

"(15) the manufacturer’s jobs credit determined under section 45G shall apply.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following:

"Sec. 45G. Manufacturer’s jobs credit.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2016.

SA 2888. Mrs. HUTCHISON (for herself, Mr. FRIST, Ms. CANTWELL, and Mr. ANDERSON) submitted an amendment intended to be proposed by her to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection 164 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(22) GENERAL SALES TAX.—For purposes of subsection (a)—

"(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

(1) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(A) without regard to the reference to State and local income taxes,

(B) as if State and local general sales taxes were referred to in a paragraph thereof,

(2) CERTAIN RULES APPLICABLE.—

(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

(1) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(A) without regard to the reference to State and local income taxes,

(B) as if State and local general sales taxes were referred to in a paragraph thereof,

(2) CERTAIN RULES APPLICABLE.—

(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

(1) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

(A) without regard to the reference to State and local income taxes,
shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

(ii) the fact that the rate of tax applicable with respect to the entire amount of such item is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

(D) EXEMPTION FROM TAX FOR CERTAIN SETTLEMENT FUNDS.—Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

(E) COMPENSATING USE TAXES.—A compensating tax that is imposed with respect to an item which may be treated as the rate of tax.

(F) SEPARATELY STATED GENERAL SALES TAXES.—If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer’s trade or business) to the seller, such amount shall be treated as a tax imposed on the sale of such item.

(G) AMOUNT OF DEDUCTION TO BE DETERMINED UNDER TABLES.—(i) IN GENERAL.—The amount of the deduction allowed under this paragraph shall be determined under tables prescribed by the Secretary.

(ii) REQUIREMENTS FOR TABLES.—The tables prescribed under clause (i) shall reflect the provisions of this paragraph and shall be based on the average consumption by taxpayers on a State-by-State basis, as determined by the Secretary, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxes.

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

SA 2889. Mr. SANTORUM submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. 1. EXTENSION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 (relating to credit for producing fuel from a nonconventional source) is amended by adding at the end the following new subsection:

(b) EXTENSION FOR OTHER FACILITIES.—Notwithstanding subsection (f), in the case of a facility for producing coke or coke gas which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2007, this section shall apply with respect to any amount so stated is paid by the consumer (other than in connection with the consumer’s trade or business) to the seller, such amount shall be treated as a tax imposed on the sale of such item.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2009.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON WATER AND POWER

Ms. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that the following bills have been added to the agenda for the hearing scheduled for Subcommittee on Water and Power of the Committee on Energy and Natural Resources on Thursday, March 25th, at 2:30 p.m. in Room SD-366 of the Dirksen Senate Office Building:

2218 a bill to direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States to provide a clean, safe, affordable, and reliable water supply to rural residents and establish guidelines for projects and for other purposes. S. 1727 a bill to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978, and S. 1791, a bill to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.


SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources, to conduct oversight on National Heritage Areas, including findings and recommendations of the General Accounting Office, the definition of a National Heritage Area, the definition of national significance as it relates to National Heritage Areas, recommendations for establishing National Heritage Areas as units of the National Park System, recommendations for prioritizing proposed studies and designs, and options for developing a National Heritage Area Program within the National Park Service.

The hearing will take place on Tuesday, March 30, 2004 at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–366 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact: Tom Lillie at (202) 224–5161 or Sarah Creachbaum at (202) 224–6293.
AUTHORITY FOR COMMITTEES TO MEET
SPECIAL COMMITTEE ON AGING
Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Monday, March 22, 2004, from 2 p.m.–5 p.m. in Dirksen 628 for the purpose of conducting a hearing.
The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR
Mr. HARKIN. Mr. President, I ask unanimous consent that David Sinsky of my staff be granted floor privileges for the duration of today's and tomorrow's debate.
The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF THE 91ST MEETING OF THE GARDEN CLUB OF AMERICA
Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Con. Res. 97, and the Senate then proceed to its immediate consideration.
The PRESIDING OFFICER. Without objection, it is so ordered.
The clerk will report the concurrent resolution by title.
The assistant journal clerk reads as follows:
A concurrent resolution recognizing the 91st annual meeting of The Garden Club of America.

Whereas in our Nation's Capital, The Garden Club of America has held its 91st annual meeting in Washington, DC April 24 through 27, 2004;
Whereas The Garden Club of America has 195 member clubs in 40 States and the District of Columbia, representing more than 17,000 members;
Whereas since its founding in 1913, The Garden Club of America has become a recognized leader in the fields of horticulture, conservation, historic preservation, and civic improvement, and an influential organization in the protection of America's environment;
And whereas in our Nation's Capital, The Garden Club of America was instrumental in the founding of the National Arboretum, the development of the Archives of American Gardens at the Smithsonian Institution, and the creation and installation of the Butterfly Habitat Garden which now graces The National Mall at the National Museum of Natural History; Now, therefore, be it
Resolved by the Senate (the House of Representatives concurring), That Congress commends The Garden Club of America for the many contributions it has made in our Nation's Capital and in communities across the United States, and sends its best wishes on the occasion of its 91st annual meeting in Washington, DC, April 24 through 27, 2004.

APPPOINTMENTS
The PRESIDING OFFICER. The Chair, on behalf of the Democratic Leader, pursuant to Public Law 108–199, appoints the following individuals to serve as members of the Helping to Enlarge the Livelihood of People (HELP) Around the Globe Commission: Leo J. Hindery, Jr. of New York and Gayle E. Smith of Washington, DC.
The Chair, on behalf of the Majority Leader, pursuant to Public Law 108–199, Section 104(c), (1)(A), appoints the following individual to serve as a member of the Abraham Lincoln Study Abroad Fellowship Program: Ms. Christine Vick of Washington, DC.

ORDERS FOR TUESDAY, MARCH 23, 2004
Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:45 a.m. tomorrow, Tuesday, March 23. I further ask unanimous consent that following the prayer and pledge the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day and the Senate then begin a period of morning business until 11 a.m. with the majority leader or his designee in control of the first half of the time and the Democratic leader or his designee in control of the remaining time; provided that at 11 a.m., the Senate recessed from S. 1677, the JOBS bill; provided further that Senator GRASSLEY be recognized at that time.
I further ask unanimous consent that the Senate recess from 12:30 p.m. until 2:15 p.m. for the weekly party luncheons.
The PRESIDING OFFICER. Is there objection?
Mr. REID. Mr. President, reserving the right to object, on this side we believe we are entitled to an up-or-down vote regarding the most important issue facing many Americans; that is, overtime. I just returned from our recess when I met with the fire and police personnel in the State of Nevada. They all brought this up. We know there is an effort not to have a vote, the reason being this amendment will die. I say to my friend from Nevada, to have further repetitious votes on the same issue, I say to my friend from Nevada there will be other authorizing bills coming along shortly after the JOBS bill which will be open to such amendments, and this underlying bill happens to be one I believe Senators on both sides of the aisle think needs to pass. In fact, the imposition of penalties against U.S. companies has already begun—my understanding is March 1. I think we all understand the need to pass this bill to prevent the escalation of those penalties against U.S. business here in the coming months.
If there were not another opportunity, I say to my good friend from Nevada, to have further repetitious votes on the same issue, I might understand it. But there will be other authorizing bills coming up shortly that will give the other side an opportunity to offer amendments on the very same subject.
I hope cloture will be invoked. The right of the minority is still there to offer these nongermane or irrelevant amendments on other authorizing bills that will be coming along very shortly.

Also, we have other amendments—not many but a few amendments—one dealing with China. Senator SCHUMER has wanted to offer an amendment for a long time on this bill dealing with international trade, among other things.

Mr. MCCONNELL. Mr. President, let me say in response to my good friend from Nevada, as he knows full well, we have already voted on this once. We voted on it last year. Having continuing votes on the same subject strikes some Members in the Senate, on this side of the aisle, as not exactly the best way to move forward. But even if it is insisted by the other side that we have repetitious votes on the same issue, I say to my friend from Nevada there will be other authorizing bills coming along shortly after the JOBS bill which will be open to such amendments, and this underlying bill happens to be one I believe Senators on both sides of the aisle think needs to pass. In fact, the imposition of penalties against U.S. companies has already begun—my understanding is March 1. I think we all understand the need to pass this bill to prevent the escalation of those penalties against U.S. business here in the coming months.
If there were not another opportunity, I say to my good friend from Nevada, to have further repetitious votes on the same issue, I might understand it. But there will be other authorizing bills coming up shortly that will give the other side an opportunity to offer amendments on the very same subject.
I hope cloture will be invoked. The right of the minority is still there to offer these nongermane or irrelevant amendments on other authorizing bills that will be coming along very shortly.
Mr. McCONNELL. Mr. President, a short while ago I filed a cloture motion relative to the JOBS bill. That cloture vote will occur on Wednesday of this week. The chairman will be back tomorrow to discuss the importance of this legislation, and we hope to finish the House Amendment by then. It will still be considered prior to the cloture vote, and we will continue to look for an opportunity to consider amendments that are relevant to the underlying bill. Rollcall votes are, therefore, possible during the remaining sessions. Senators will be notified when the first vote is scheduled.

Mr. REID. Mr. President, if my friend will allow me to make one brief statement, we understand the importance of the underlying bill. That is the reason we have agreed to have a list of finite amendments. It is not often we have tax bills come across the floor. This is a tax bill. We have been told on many occasions that it is the overtime issue. This bill is important. As I explained earlier today, the Senator from Iowa has withheld on a number of important pieces of legislation in an effort to move them through the Senate. But that time has come to an end. He is agreeable to doing it at a later time anymore. We are going to have a vote on this legislation.

If this legislation is important to the administration—which I am hopeful and confident it is—we should have a vote on this overtime issue. I repeat: The reason the administration doesn’t want a vote on this overtime issue is it will pass. There is no question about it. Members in the majority and virtually everyone in the minority will vote for this most important amendment.

I hope this legislation is allowed to go forward. If it isn’t, it will be directed back to the President of the United States for doing what he has directed back to the President of the United States for doing. If it isn’t, it will be distant amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBUN. Mr. President, if I know I have been given permission to speak in morning business. I have two separate issues totally unrelated, and I would like to address both of them. The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBUN. Mr. President, I believe there is no one more opposed to the concept of caps, which is the only proposal that has been brought consistently to the Senate. To say we will sit as a jury for medical malpractice cases across America is to take away the jury system, which is basic to American government. Instead of 12 people in your neighborhood and community making the decision, we will make the decision, and we will decide the maximum amount one can recover, regardless of the injury which you, as an innocent patient, suffered.

We need to address tort reform that does not include caps on noneconomic losses. We can. I hope we can. I have said to the doctors and hospitals, I have reached out across the aisle to my friends on the Republican side to find common ground. Be prepared to make concessions on both sides, but let’s address it now. We cannot allow this to continue.

The one thing we all agree on is even if tort reform is passed tomorrow, it will be years before it has any impact in reducing medical malpractice premiums. Why? Because the doctors in practice today who performed surgeries or dispensed medical services in years gone by are liable for years under statutes of limitations for what they have done in the past, and those years could be extended to a period when the actual injury is discovered which could be many years after the act was committed. Even if we change the law today, all of that past conduct and exposure to liability will be there, and
malpractice premiums will continue to be very high.

What I have proposed is that we do something immediately to provide relief to doctors and to hospitals. What I have suggested is that we consider the establishment of a tax credit for a percentage of the current medical malpractice premiums being paid and will pay during the years 2004 and 2005. If a doctor is in a high-risk specialty with increased risk of complications, they would be eligible for a tax credit equivalent to 20 percent of their total malpractice premium. The credit would be taken for premiums up to twice the statewide average for the specialty in which the doctor practices.

Let me explain that. A doctor can deduct medical malpractice insurance costs now from his business costs or his business revenue. We could add to that a 20-percent tax credit on top of the deduction. That would help these doctors immensely in dealing with the increase in these malpractice premiums. High-risk doctors include those in all surgical services and subspecialties, emergency medicine, obstetrics, or anesthesiology, or those doctors who do interventional work that is reflected in their malpractice premiums.

Doctors who practice in lower risk specialties—general medicine, for example—would be eligible for a 10-percent tax credit.

For-profit hospitals are eligible for a tax credit equivalent to 15 percent of their total malpractice premium, including those that are not-for-profit, as well, if they need malpractice insurance.

Those that are nonprofit institutions, hospitals and nursing homes, are eligible for reimbursement under a 2-year grant to the Health Resources Services Administration at the Department of Health and Human Services. What we are trying to do is provide immediate relief while we work out the issues of reducing medical errors and tort reform, understanding if we pass legislation today, dealing with those two issues, tort reform and medical errors, these doctors and hospitals would still see staggering premiums for years to come. This is a responsible way to address the immediate need.

I say to my friends in the medical community, though you may not agree with me on the issue of caps, I hope you understand that even if you had your way and passed the caps limiting recovery for those who are victims of medical malpractice, the premiums would still continue to increase on your current insurance.

This Durbin-Graham amendment, also supported by Senator Patty Murray of Washington, provides immediate relief.

COLLEGE BASKETBALL

Mr. DURBIN. Mr. President, the second issue I would like to address is an issue that could not be more timely. The issue is “March Madness.” Frankly, everywhere I have gone today—in the airport, while traveling, as I came back to my office—everybody is abuzz about the basketball games over the weekend.

I am happy the University of Illinois is going into Sweet 16. There have been upsets and great victories, and those who love college basketball cannot help but be excited about the tournament. It is college basketball really brought home to America in a way like no other sport. Sixty-five teams start, and in the end one will be champion.

But, frankly, when we take a closer look and understand the reality of who the players are, it calls into question whether or not in many cases this is college basketball.

Let me tell you what I mean. Mr. President, I ask unanimous consent to have printed in the Record today’s lead editorial in the Chicago Tribune of March 22.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Chicago Tribune]

THE REAL MARCH MADNESS

If you’re a basketball fan, you know how many college teams qualify each year for the NCAA men’s tournament: 65. But can you honestly be expected to guess how many of those teams would graduate if there was a requirement that they had to graduate at least half of their athletes?

If you guessed a third, you’d be about right.

Commentary about college sports often focuses on programs with serious shortcomings. So let it be noted that there are some universities that have exemplary records combining athletics and scholarships. Among the schools with teams in this year’s tournament, Kansas graduates 73 percent of its players in four years of their original enrollment. At Dayton, 82 percent get a degree, and at Lehigh, the figure is 90 percent. Atop them all is Stanford, with a 100 percent graduate rate (and a number one seed in the tournament).

Three years ago, the Knight Foundation Commission on Intercollegiate Athletics proposed that postseason competition be limited to teams that graduate at least 50 percent of their players. But the NCAA obviously has a long way to go. Of the 65 teams playing (in the tournament) this year, only 21 would qualify under that rule—down from 22 last year.

For that matter, 10 of the teams [in the NCAA tournament] fail to graduate even 20 percent of their players.

This is what commission Chairman William Friday, president emeritus of the University of North Carolina, noted:

Four of the teams in the men’s tournament failed to graduate a single athlete over the period we reviewed.

The information here talks about the general graduation rate. We call this college basketball. But if we were to learn that there was a team headed for the Sweet Sixteen or the Final Four that did not have a single college player graduate, we would cry fraud. This is supposed to be about college athletes participating against one another. But if you have schools involved in the tournament that don’t graduate the athletes involved in the basketball game are ever going to graduate, are these truly college students, is this really college basketball?
Mr. President, I ask unanimous consent to have printed in the RECORD a commentary from that same newspaper written by Derrick Z. Jackson, entitled "Suppressing the bad news on NCAA graduation rates."

The only objection, the material was ordered to be printed in the RECORD, as follows:

SUPPRESSING THE BAD NEWS ON NCAA GRADUATION RATES

(By Derrick Z. Jackson)

Not to be fooled by the federal government's attempts to delete key portions of reports on global warming, health disparities, and racism within the Justice Department, here comes the National Collegiate Athletic Association. This august body is eliminating the graduation rates of basketball players. What is good for the Bush administration is wonderful news for the Universities of Cincinnati, Kentucky, Louisville and Memphis.

March Madness ought to be canceled with the scandal that is in the computer banks of the NCAA's 2003 Graduation Rates Report. The report covers whether scholarship athletes who entered school in the falls of 1993, 1994, 1995 or 1996 graduated within six years. The NCAA used a long-term way to see whether a university is providing an education to its athletes or pipping them in an era where CBS is paying the NCAA $6 billion over 10 years to broadcast men's games and where an additional $3.5 billion will be wagered illegally on this year's tournament alone, according to The Wall Street Journal. The money is half the annual budget of the chronically underfunded Head Start.

That is March Madness enough, but now the NCAA has quietly adjusted the graduation rates to satisfy "a new interpretation" of federal laws which say that information on any category containing only one or two students "must be suppressed." In basketball, which has far fewer players than football or baseball teams, the new rules amount to liberation from any accountability whatsoever on the part of college athletic departments and their presidents.

Because of the new rules, 37 of the 65 men's teams in this year's tournament did not publish graduation rates of their African-American players. Sixteen schools published no graduation rate at all.

Nine of the 16 schools that mysteriously had no graduation rate whatsoever just happened to include last year's most hideous offenders. Alabama (0 percent for black men and 13 percent overall in the 2002 report), Cincinnati (0 percent for black men, 17 percent overall), and Memphis (0 percent overall).

Louisville (0 for black men, 10 percent overall), Kentucky (13 percent and 33 percent overall), and Southern Illinois (14 percent for black men and 27 percent overall).

Among New England schools in the men's and women's tournament, the Connecticut men's team published its general and woeful graduation rate of 27 percent, but withheld its black rate. The UConn women's team published its general graduation rate of 67 percent but withheld its black rate. Boston College's men's team published both its 46 percent overall and 67 percent African-American rate. BC's women's team published its 71 percent overall rate but withheld its black rate.

Rates for Providence's men were 42 percent overall, 50 percent for black men. Vermont's men were 55 percent overall and the school withheld a figure for black men. Maine's women were at 69 percent overall, with no black women to count.

In the cases of the New England schools, the withholding of the black rate actually did not affect the overall rate much as the white rate was similar to the overall rate. But it was very clear that many other schools purposely hid disastrous rates. For instance, Georgia Tech did not publish the rate of its black athletes. But with a white graduation rate of 60 percent, it managed to plummet to an overall rate of 27 percent.

Texas Tech did not publish the rates for black athletes. But with a white graduation rate of 59 percent, it had an overall rate of only 33 percent.

Last year, 13 men's schools had a 0 graduation rate for basketball players and 33 percent for Black and White students. The average black male graduation rate for the 65-team field was 35 percent. With the graduation provided by the new privacy rules, only one university in the 2003 NCAA report published a black men's graduation rate under 38 percent. That was Eastern Washington, where the rate was zero.

That is probably because that school is not a perennial NCAA powerhouse. Give it time.

A couple more appearances in March Madness and school officials will join Kentucky, Cincinnati, and Louisville in erasing its records, too. The NCAA is re-electing its president and needs some more bureaucrats to delete the truth, he knows where he can find it.

At the NCAA and in our nation's athletic departments.

Mr. DURBIN. Mr. JACKSON comes at this issue a little differently. Mr. JACKSON says, let's take a close look and see how many are graduating who are minorities, African Americans. He says:

This is March Madness . . . but now NCAA has quietly adjusted the graduation rates to satisfy "a new interpretation" of federal laws which say that information on any category containing only one or two students "must be suppressed."

What it basically means is that these schools will not publish the graduation rates of their athletes, and particularly will not publish the graduation rates of the African-American athletes who are playing basketball.

Because of the new rules (as interpreted by the NCAA), 37 of the 65 men's teams in this year's tournament did not publish graduation rates of their African-American players.

Sixteen schools published no graduation rates at all.

Nine of the 16 schools that mysteriously had no graduation rate whatsoever just happened to include last year's most hideous offenders.

He lists the following universities: Alabama University, zero-percent graduation rate for Black players, and 13 percent overall—this is in a 2002 report—Cincinnati, zero percent for African-American players, 27 percent overall; Louisville, zero percent for black men, 10 percent overall; Kentucky, 13 percent for African Americans, 33 percent overall; Southern Illinois, 14 percent for Black men, 27 percent overall; Memphis, zero percent in both groups.

Mr. President, the reason I think these two items should be in the RECORD is that all of us enjoy watching college basketball. But, frankly, if these athletes we are watching are not really college students, we are not really college students, we are not watching the best of college basketball; we are watching the best of colleges and universities that are sending teams of so-called students who have not even a ghost of a chance of ever graduating from their institution.

These men in the men's tournament are being used. They are being used as players on the court in the hope that some of them will end up in professional basketball. I am sure that is their ambition, but such a small pittance ever do.

So we watch and applaud and talk about our alma maters and their devotion to education when, in fact, these schools know full well that the people who are being put on the court to play this game are, frankly, never going to graduate in most instances in many of these schools.

What do the universities get out of it? A lot of money. They go to the NCAA tournament, and the money comes back to them in revenue, money that might have been spent to help some of their players get the help they need to go on to graduate. But, sadly, that never happens.

Mr. President, I am going to be looking at this interpretation of the NCAA rule which allows them to suppress and, frankly, refuse to publish the graduation rate of African-American players who are at the NCAA tournament, and, frankly, in all other sports. I think that should be public knowledge.

I think the leaders at the universities have an obligation to not only have the players on the court but to make certain those teams are made up of real students who, with the help of the university,
The following officers are appointed for the appointment in the United States Army to the grade indicated in the United States Senate, March 22, 2004:

- Col. Carla G. HAWLEY-BOWLAND, 0000
- Maj. Gen. Carol A. STOCK, 0000
- Maj. Gen. George W. WEIGHTMAN, 0000

To be brigadier general

- Maj. Gen. John W. MCDONALD, 0000
- Maj. Gen. Ronald A. HOLMES, 0000

To be major general

- Maj. Gen. Robert J. fianco, 0000
- Maj. Gen. George E. WRIGHT, 0000
- Maj. Gen. Michael J. WYATT, 0000

To be lieutenant general

- Maj. Gen. Anthony R. LAUSSON, 0000
- Maj. Gen. Robert J. ZIRKLE, 0000

To be major general

- Maj. Gen. Ronald A. HOLMES, 0000
- Maj. Gen. John W. MCDONALD, 0000

To be general

- Maj. Gen. Michael W. WYATT, 0000
- Maj. Gen. Robert J. Mian, 0000

To be brigadier general

- Maj. Gen. John W. MCDONALD, 0000
- Maj. Gen. Ronald A. HOLMES, 0000

To be major general

- Maj. Gen. Michael W. WYATT, 0000
- Maj. Gen. Robert J. Mian, 0000

To be general

United States Tax Court for a term of fifteen years:

The following named officer for appointment:

The following named officers for appointment to the grades indicated in the United States Army under Title 10, U.S.C., Section 624:

The following named officers for appointment to the grades indicated in the United States Army under Title 10, U.S.C., Section 624:

To be colonel

To be lieutenant colonel

WITHDRAWAL

Executive message transmitted by the President to the Senate on March 22, 2004, withdrawing from further Senate consideration the following nomination:

GLEN L. BOWER, OF ILLINOIS, TO BE A JUDGE OF THE UNITED STATES TAX COURT FOR A TERM OF FIFTEEN YEARS AFTER HE TAKES OFFICE, WHICH WAS SENT TO THE SENATE ON JANUARY 1, 2003.
RECOGNIZING MARINA MARTINEZ

HON. HILDA L. SOLIS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Monday, March 22, 2004

Ms. SOLIS. Mr. Speaker, I rise today to pay tribute to Marina Martinez. She was a true leader and an inspirational woman who passed away on March 15, 2004.

A community activist in El Sereno, California, Marina Martinez promoted parental involvement and advocated for parental rights to ensure that every child receives a quality education. She began her lifelong commitment to children by volunteering both as a Girl Scout leader and Boy Scout den mother in 1959. Since that time, Marina chaired numerous organizations and provided leadership to many local, State, and Federal organizations. These organizations and positions included the Commissions of Education Advisory in 1972 and the Bilingual Teacher Training Center in 1976. Most notably, she was appointed by the dean of the School of Education to serve as a member of the Advisory Committee of the Bilingual Teacher Training Center.

Marina Martinez also served as the council appointee to the Citizens Unit for Participation in Housing and Community Development in 1978 and was a proud member of other long-standing community-based organizations in El Sereno. These organizations included the Mexican-American Education Commission, National Clients Council for the Legal Aid Foundation, the Community Alliance for Education, and the El Sereno Community Coordinating Council.

Even with the tragic death of her son Ismael Martinez on December 7, 1980, Marina and her husband, Joe, did not move away from their El Sereno community. On the contrary, they turned their pain into strength and vowed to help other families with similar tragedies by establishing the Victims of Crime in El Sereno (VOCES). Several years ago, Marina’s beloved husband, Joe, passed away.

Marina was a loving and caring community leader. Every Christmas, she made sure that victims of senseless violence would not be forgotten. Her message was shared throughout the community every December by organizing tree lighting ceremonies in Huntington Drive, with each tree decorated with red ribbons honoring the deceased victims.

I have known and supported Marina since my years as a California State Assembly member. She leaves behind three grown children and a beautiful community she helped build. She will always be remembered for her stewardship and hard work to improve her community and the citizens who lived in it. We will miss her greatly, and may she rest in peace.

PERSONAL EXPLANATION

HON. ROGER F. WICKER
OF MISSISSIPPI
IN THE HOUSE OF REPRESENTATIVES

Monday, March 22, 2004

Mr. WICKER. Mr. Speaker, I was regretfully absent on March 10 and 11, 2004. Had I been present, I would have voted “yea” on roll call votes 45, 46, 47, 54, 56, and 57. I would have voted “nay” on roll call votes 48, 49, 50, 51, 52, and 53.

SPEECH OF

HON. MICHAEL C. BURGESS
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Monday, March 22, 2004

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Darlene Montgomery Ryan for being recognized as a 2004 honoree of the Leading Women Entrepreneurs of the World. Darlene Montgomery Ryan is the co-founder, principal owner, president and chief executive officer of PharmaFab, a contract pharmaceuticals formulator and manufacturer located in the Dallas/Fort Worth area.

In February, the Leading Women Entrepreneurs of the World announced the names of the 2004 honorees who will be distinguished at an international awards ceremony and gala in Sydney, Australia, May 9–13, 2004. Chosen by an international selection committee from hundreds of nominees worldwide, these outstanding businesswomen represent nine countries and over $600 million in annual sales.

PharmaFab, started by Darlene, her brother, and their father in late 1994, has been recognized as one of the 500 fastest-growing private companies in the United States for the past 3 years in a row. Prior to starting PharmaFab, Darlene was a partner in a worldwide accounting firm recognized as an expert in international taxation. She is a certified public accountant, with a BA in math and German from DePauw University and an MBA from the University of Chicago.

In addition to her leading role at PharmaFab, Darlene Montgomery Ryan is an officer in the Generic Pharmaceutical Association, which is dedicated to reducing health care costs for all of us. In her spare time, Darlene teaches Junior Achievement classes to children and acts as a board member for several local charities, and is highly involved in her community.

I congratulate Darlene Montgomery Ryan for her contribution not only to my local community but also to our country for being only one out of the nine honorees to be recognized from the United States. I applaud her efforts and support her desire to improve health care in the United States.

RELATING TO THE LIBERATION OF THE IRAQI PEOPLE AND THE VALIANT SERVICE OF THE UNITED STATES ARMED FORCES AND COALITION FORCES

SPEECH OF

HON. ROSA L. DELAURO
OF CONNECTICUT
IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 17, 2004

Ms. DE LAURO. Mr. Speaker, all of us in this chamber are united in our commitment to support our troops in Iraq. It is that commitment that creates a strong presumption in my own mind on any resolution that recognizes their honorable goals, their services to country and their need for best support possible.

Along with my Democratic colleagues, we would also rush to sponsor and support a resolution that highlighted the crimes of Saddam
Hussein. There was never any disagreement in this Chamber on the evil he represented and we all applauded our troops for bringing him to justice. They did the job they were asked to do and more.

But I pause on supporting this resolution on two counts. This war has not brought greater stability. It has not so much as America's leadership position or created stronger alliances. While our soldiers have fought with honor—even as we speak here—the administration failed to support their efforts with a plan to win the peace, bring stability or share the burden and risk. We still wait for the President to speak honestly with the American people about the failed intelligence estimates and the reasons for the rush to war. America remains isolated, which is itself a risk to our security and our troops.

This resolution is silent on these questions and the leadership will not allow them to be addressed.

There is no commitment to ensuring that our troops have the best protection equipment available, no commitment to getting wounded troops the best health care as quickly as possible. There is no mention of the heroic contributions our reserve troops have provided or the very serious challenges that lie ahead in Iraq. Any resolution honoring and supporting our troops would express these sentiments.

What I find most egregious is that at the very moment we debate this resolution, the Budget Committee is considering a budget that omits funding for many of our most pressing priorities in Iraq. During consideration of this budget, the majority has turned aside efforts to increase our commitment to health care for reservists, for military housing programs and to educate military schoolchildren.

At a time when we have families of troops searching the Internet to buy body armor for their loved ones in Iraq because this Congress has failed to provide it for them, that is the very least we should be doing for these brave men and women. Had Democrats been allowed the elemental rights of a minority, we would have incorporated language that made clear Congress's first obligation was to provide our troops in Iraq with the security and the best equipment available.

To be frank, the hypocrisy of this Congress in offering this resolution but not the actual support, tempts me to fight back and protest on behalf of our men and women in Iraq and in the reserves.

But stronger in my heart is an appreciation for our troops that keep us free. I cast my vote for those words in the resolution and express my personal exception to the majority's maneuvering that has diminished their resolution and our work.

Fortunately, we will have more opportunities to express our views about our postwar policy in Iraq and failure to genuinely support our military and veterans.

"A RUN FOR THEIR SON"

HON. BARNEY FRANK
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Monday, March 22, 2004

Mr. FRANK of Massachusetts. Mr. Speaker, we talk here often about family values, with good reason, because defending the family is one of the most important parts of our job. One way to do that is to give truly inspirational examples of how families have pulled together, especially in those very difficult, tragic times when awful events befall good people.

One such inspirational example was recently chronicled in the New Bedford Standard Times, describing the determination of Elsie and Tony Souza, of New Bedford to compete in a marathon to honor the memory of their son Christopher, who was tragically taken from them ten years ago at the age of twenty-six. I had the privilege of knowing Christopher, who was tenacious and I have been working with Tony and Elsie Souza. Tony is the Executive Director of the Waterfront Historic Area League, an extremely important, innovative and effective organization working to advance the cultural and—therefore—economic fortunes of New Bedford. Elsie has been since 1993 the Deputy Director of my Massachusetts operation, based in my New Bedford office.

This excellent article by Don Cuddy in the New Bedford Standard Times gives a sense of these wonderful parents and the extent to which they truly exemplify family values, and I ask that the article be printed here.

[From the New Bedford Standard Times, Mar. 19, 2004]

A RUN FOR THEIR SON

(By Don Cuddy)

NEW BEDFORD—"Tony! It’s a quarter to five." Tony took an eight count. It was another black, freezing, Jan. morning and the mercury was not moving. Neither was the city. There were no cars on the roads, the grate on Union Street was deserted and the shops on Union Street had been locked down and abandoned.

The cobbled streets of the historic district were dead still until the door on Center Street creaked open. Just as they had for months, two shadowy figures emerged from within and began to run silently through the darkness.

Up the hill to frigid Buttonwood Park they labored side by side, then around to Haw-thorne Street and back to downtown where the first streaks of light became visible in the eastern sky.

Beginning with a promise in the fall and underpinned by a sense of duty, Tony and Elsie Souza have held faithfully to their training program as they move ever closer to their goal of completing this year’s New Bedford Half-Marathon.

There will be some mixed emotions when they step to the starting line Sunday and take their places with the other runners. This year marks the 10th anniversary of their son’s passing. The need arose to find something to mark the occasion and it was Elsie’s idea that they should run the race.

Christopher J. Souza had a bright future until he was fatally stricken with cancer at the age of 26. After obtaining a degree in Russian language and literature from Syracuse University, he worked for Sen. Ted Kennedy in Washington before moving to Boston in 1994 to complete his master’s degree. Always athletic, he was training for the Boston Marathon in March of that year when he began to experience breathing difficulties. He saw a doctor and was given a sinus infection.

In fact, he had a tumor in his chest, an offshoot of testicular cancer. When he came home to New Bedford in July at his mother’s urging, he was finally given a chest X-ray. Three weeks later he was in a coma. The end came in November.

"There was no warning at all," Tony said. "After they took the chest X-ray I went to the doctor’s office on a Saturday morning and, I’ll never forget, he said ‘I think you better sit down.’" Within five days his son was on life-support. Christopher underwent chemotherapy while in a coma. When he came out of it, for a very short time it appeared we might have beaten the odds. But it was not to be.

In tribute to his memory the New Bedford couple have committed to running the race and, because of their enduring love for their son of New Bedford, they have also offered a trophy and a cash prize in Christopher’s name. The first city residents, male and female, to cross the finish line this year will receive the Christopher Jon Souza Award and $200.

"Chris loved sports and he was a great runner, so last fall I just decided that I was going to run it," Elsie said. "To convince Tony, I said, ‘We’re going to do this for Chris.’ So every day I get up at 4 a.m. and read the paper before we go. He hopes there’s a snowstorm out and prays that I’ll go back to bed.”

Tony laughed. "She has all her clothes laid out the night before, too," he said.

"I used to run. I ran the Ocean State Marathon in 91. I did the Boston Marathon in D.C. with Chris. I was 48 and he was 24. He was very competitive, just like Elsie. She won’t let me pass her.

"But after he died I just quit. Before he passed I promised Chris I’d get back and it’s been 10 years, so I was saying to myself: ‘I guess you broke your promise.’ I’d put on so much weight but I went on a diet and now I’ve lost 27 pounds. I got frostbite on my legs and hands in January and it’s just healing up now. We’ve been through everything but last Saturday we did 10 miles. We’re ready.”

For Elsie it was even tougher. She had never been a runner and suffered bouts of asthma as a child that confined her to bed much of the winter, but they never contemplated quitting. Their loss has strengthened them. They have stayed together through the training and intend to do the same on Sunday.

Once they had committed to entering the race, the idea of adding the award came naturally.

"As parents, losing an only child has been very difficult," Tony said. "We’ve forged on, we think bravely, but they are always with you and you don’t want them to go away, so anything we can do to memorialize him we do.

The Souzas have also established a scholarship fund in their son’s memory.

"We love New Bedford and we believe that this race exemplifies all the good things about this community," Elsie said. "The people who put it together are doing it against all odds..."

In recognition of that the Souzas decided to make their own contribution.

"People here work so hard to try to make things better and we suffer so needlessly from a bad reputation," Tony said. "When you see all these runners coming down here it shows we are doing something right."

Tony and Elsie Souza have already endured the greatest lose a parent can. Nevertheless, they are always with you and you don’t want them to go away, so anything we can do to memorialize him we do.

The Souzas have also established a scholarship fund in their son’s memory.

"We love New Bedford and we believe that this race exemplifies all the good things about this community," Elsie said. "The people who put it together are doing it against all odds..."

In recognition of that the Souzas decided to make their own contribution.
and so dead-set on justifying the President's decision to go to war that they use the opportunity to honor our troops as an excuse to explain away the war. And they purposely excluded Democrats in the drafting process so that they could have it their way, and their way alone. Their failure to reach across the aisle and make this resolution bipartisan is wrong and discredits the memory of those who serve, and those who have sacrificed, and those who have died.

As written, this resolution states that the “United States and the world have been made safer by the removal of Saddam Hussein and the Baath party from power.” There is certainly not unanimity on that point. The Bush administration has tried hard to change the reasons the President took this country to war. We were told that Saddam Hussein was hand-in-hand with Al Qaeda; that he was constructing weapons of mass destruction; and that he had a program to create nuclear weapons. We were led to believe that Iraq was arming itself to attack us—and to attack us imminently.

But now little of what they told us appears to be true. It now appears that the President’s rationale for war in Iraq was fundamentally and deeply flawed. Judging from the 27 people killed in a car bombing in Baghdad this afternoon or the 200 people killed in Madrid only 6 days ago, it appears that the undisputed enemy that all Americans recognize, Al Qaeda, is as strong as ever. No weapons of mass destruction have been found. The sober warnings from the President about an Iraqi nuclear program were exaggerated and based on discredited and unverified reports.

So, while every Member of Congress is glad that Saddam Hussein is no longer in power and no longer a menace to the people of Iraq, it is certainly not clear that removing Saddam Hussein has made the United States any safer, or that it was worth the terrible cost of 564 American lives, thousands of Americans wounded, and over $150 billion—so far.

It seems to me that, if the Republican leadership really wanted to salute the troops involved in this year-old war, they would join with Democrats to draft a resolution of praise and honor that every Member would support. Even more fitting would be an immediate vote on legislation to ensure that all of our troops are properly armed and outfitted, and that they and their families will be taken care of. The President’s budget request shortchanges our troops and the generations of American soldiers before them.

And so, Mr. Speaker, I will vote against this resolution. We must support our troops with action, not with political rhetoric.
SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, March 23, 2004 may be found in the Daily Digest of today’s RECORD.

MEETINGS SCHEDULED

MARCH 24

9 a.m. Governmental Affairs
Investigations Subcommittee
To hold hearings to examine problems facing the credit counseling industry, focusing on cases of misconduct among credit card counseling agencies and their for-profit service providers and what solutions may be available to repair the industry.
SD-342

9:30 a.m. Commerce, Science, and Transportation
To hold hearings to examine port security.
SR-253

Indian Affairs
To hold hearings to examine S. 1529, to amend the Indian Gaming Regulatory Act to include provisions relating to the payment and administration of gaming fees.
SD-562

10 a.m. Appropriations
Defense Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2005 for the Department of the Air Force.
SD-192

11:30 a.m. Energy and Natural Resources
Business meeting to consider pending calendar business.
SD-366

2 p.m. Armed Services
Airland Subcommittee
To hold hearings to examine Navy and Air Force aviation programs in review of the Defense Authorization request for fiscal year 2005 and future years defense program.
SR-232A

2:30 p.m. Banking, Housing, and Urban Affairs
Housing and Transportation Subcommittee
To hold hearings to examine the real estate appraisal industry, focusing on related issues involving financial markets and community investments, risk management, and consumer protection.
SD-538

2:30 p.m. Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to examine S. 433, to provide for enhanced collaborative forest stewardship management with the Clearwater and Nez Perce National Forests in Idaho, S. 2180, to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado, and H.R. 1964, to assist the States of Connecticut, New Jersey, New York, and Pennsylvania in conserving priority lands and natural resources in the Highlands region.
MARCH 25

9:30 a.m. Armed Services
To hold hearings to examine the role of the U.S. Northern Command and U.S. Special Operations Command in defending the homeland and in the global war on terrorism, in review of the defense authorization request for fiscal year 2005, to be followed by a closed session in SH-210.
SH-216

10 a.m. Appropriations
Interior Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2005 for the Department of the Interior.
SD-419

10:30 a.m. Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2005 for the Department of Health and Human Services.
SD-192

11:30 a.m. Appropriations
Commodity, Justice, State, and the Judiciary Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2005 for the Department of State.
SD-116

12:30 p.m. Appropriations
Veterans Affairs
To hold hearings to examine the President’s proposed budget request for fiscal year 2005 for the Executive Office of the President and the Independent Agencies.
SD-345

1 p.m. Appropriations
Agriculture, Rural Development, and Related Agencies Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2005 for programs under its jurisdiction.
SD-192

2 p.m. Appropriations
Veterans Affairs
To hold hearings to examine the nominations of Paul S. Diamond, to be United States District Judge for the Eastern District of Pennsylvania.
SD-226

2:30 p.m. Appropriations
Veterans Affairs
To hold hearings to examine proposed budget estimates for fiscal year 2005 for the Department of Veterans Affairs, AMVETS, American Ex-Prisoners of War, the Vietnam Veterans of America, and the Military Officers Association of America.
SD-628

3:30 p.m. Appropriations
Health, Education, Labor, and Pensions
To hold hearings to examine the budget estimates for fiscal year 2005 for the Department of Health and Human Services.
SD-430

4 p.m. Appropriations
Veterans Affairs
To hold hearings to examine the nominations of Thomas Bolling Robertson, of Virginia, to be Ambassador to Slovenia, Miles T. Bivins, of Texas, to be Ambassador to Sweden, and Michael Christian Polt, of Tennessee, to be Ambassador to Serbia and Montenegro.
SD-419

5 p.m. Appropriations
Strategic Forces Subcommittee
To hold hearings to examine proposed legislation to amend the African Growth and Opportunity Act to expand certain trade benefits to eligible sub-Saharan African countries.
SD-491

6 p.m. Appropriations
Energy and Natural Resources
To hold hearings to examine the nominations of Paul S. Diamond, to be United States District Judge for the Eastern District of Pennsylvania.
SD-406

7 p.m. Appropriations
Energy and Natural Resources
To hold hearings to examine the nominations of Paul S. Diamond, to be United States District Judge for the Eastern District of Pennsylvania.
SD-366

Banking, Housing, and Urban Affairs
To hold an oversight hearing to examine national flood insurance repetitive losses.
SD-358

Veterans’ Affairs
To hold hearings to examine proposed budget estimates for fiscal year 2005 for the Environmental Protection Agency.
SD-192
CONGRESSIONAL RECORD — Extensions of Remarks

MARCH 30

9 a.m.
Indian Affairs
To hold oversight hearings to examine Inter-Tribal Timber Council’s Indian Forest Management Assessment Team report.

9:30 a.m.
Armed Services
To hold closed hearings to examine the second interim report of the Iraq Survey Group.

10 a.m.
Energy and Natural Resources
To hold hearings to examine the implementation of the Energy Employees Occupational Illness Compensation Program Act of 2000.

Indian Affairs
To hold hearings to examine S. 868, to amend the Coos, Lower Umpqua, and Siuslaw Restoration Act to provide for the cultural restoration and economic self-sufficiency of the Confederation Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon.

2 p.m.
Armed Services
Airland Subcommittee
To hold hearings to examine the proposed Defense Authorization Request for fiscal year 2005 and the Future Years Defense Program, focusing on Army aviation programs.

2:30 p.m.
Energy and Natural Resources
National Parks Subcommittee
To hold oversight hearings to examine National Heritage Areas, including findings and recommendations of the General Accounting Office, the definition of a National Heritage Area, the definition of national significance as it relates to National Heritage Areas, recommendations for establishing National Heritage Areas as units of the National Park System, recommendations for prioritizing proposed studies and designations, and options for developing a National Heritage Area Program within the National Park Service.

MARCH 31

9:30 a.m.
Armed Services
Personnel Subcommittee
To hold hearings to examine the Defense authorization request for fiscal year 2005, focusing on active and Reserve military and civilian personnel programs.

10 a.m.
Health, Education, Labor, and Pensions
Business meeting to consider pending calendar business.

Indian Affairs
Business meeting to consider pending calendar business.

2:30 p.m.
Foreign Relations
European Affairs Subcommittee
To hold hearings to examine the effects of the Madrid Terrorist Attacks on U.S. European cooperation in the war on terrorism.

SEPTEMBER 21

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine the legislative presentation of the American Legion.

POSTPONEMENTS

MARCH 24

9:30 a.m.
Foreign Relations
To hold hearings to examine intellectual property piracy issues.


Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S2833–S2946

Measures Introduced: Five bills and two resolutions were introduced, as follows: S. 2218–2222, S.J. Res. 30, and S. Res. 322.

Measures Reported:

Reported on Thursday, March 18, during the adjournment:

Report to accompany S. 1172, to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention. (S. Rept. No. 108–245)

S. 2096, to promote a free press and open media through the National Endowment for Democracy and for other purposes. (S. Rept. No. 108–246)

S. 2127, to build operational readiness in civilian agencies. (S. Rept. No. 108–247)

S. 2144, to authorize appropriations for the Department of State and international broadcasting activities for fiscal year 2005, for the Peace Corps for fiscal year 2005 through 2007, for foreign assistance programs for fiscal year 2005, with amendments. (S. Rept. No. 108–248)

Measures Passed:

The Garden Club of America: Committee on the Judiciary was discharged from further consideration of S. Con. Res. 97, recognizing the 91st annual meeting of The Garden Club of America, and the resolution was then agreed to.

Jumpstart Our Business Strength (JOBS) Act: Senate resumed consideration of S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and taking action on the following amendments proposed thereto: Adopted:

Bunning Amendment No. 2686, to accelerate the phase-in of the deduction relating to income attributable to domestic production activities.

Grassley (for Bayh) Amendment No. 2687, to provide for the extension of certain expiring provisions.

Grassley (for Bunning) Amendment No. 2882 (to Amendment No. 2687), to provide for the extension of the special net operating loss carryover provision.

Pending:

Harkin Amendment No. 2881, to amend the Fair Labor Standards Act of 1938 to clarify provisions relating to overtime pay.

McConnell Motion to Recommit the bill to the Committee on Finance, with instructions to report back forthwith the following amendment: McConnell (for Frist) Amendment No. 2886, in the nature of a substitute.

A motion was entered to close further debate on the motion to recommit to the Committee on Finance (listed above) and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Wednesday, March 24, 2004.

Appointments:

Helping to Enhance the Livelihood of People Around the Globe Commission: The Chair, on behalf of the Democratic Leader, pursuant to Public Law 108–199, appointed the following individuals to serve as members of the Helping to Enhance the Livelihood of People Around the Globe Commission: Leo J. Hindery, Jr., of New York, and Gayle E. Smith, of Washington, D.C.

Abraham Lincoln Study Abroad Fellowship Program: The Chair, on behalf of the Majority Leader, pursuant to Public Law 108–199, appointed the following individual to serve as a member of the Abraham Lincoln Study Abroad Fellowship Program: Ms. Christine Vick of Washington, D.C.

Executive Reports of Committee:

The following executive reports of committee were submitted on Thursday, March 18, 2004, during the adjournment:

By Mr. Lugar, from the Committee on Foreign Relations:

Nominations Received: Senate received the following nominations:
Jonathan W. Dudas, of Virginia, to be Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.
Constance Berry Newman, of Illinois, to be an Assistant Secretary of State (African Affairs).
Jendayi Elizabeth Frazer, of Virginia, to be Ambassador to the Republic of South Africa.
Thomas Neil Hull III, of New Hampshire, to be Ambassador to the Republic of Sierra Leone.
R. Niels Marquardt, of California, a Career Member of the Senior Foreign Service, Class of Counselor to be Ambassador to the Republic of Cameroon, and to serve concurrently and without additional compensation as Ambassador to the Republic of Equatorial Guinea.
Roger A. Meece, of Washington, to be Ambassador to the Democratic Republic of the Congo.
Lauren Moriarty, of Hawaii, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, for the rank of Ambassador during her tenure of service as United States Senior Official to the Asia-Pacific Economic Cooperation Forum.
Mitchell B. Reiss, of Virginia, for the rank of Ambassador during his tenure of service as Special Envoy for Northern Ireland.
1 Air Force nomination in the rank of general.
3 Army nominations in the rank of general.
4 Navy nominations in the rank of admiral.
Routine lists in the Air Force, Army.

Nominations Withdrawn: Senate received notification of withdrawal of the following nominations:
Glen L. Bower, of Illinois, to be a Judge of the United States Tax Court for a term of fifteen years after he takes office, which was sent to the Senate on January 7, 2003.

Committee Meetings
(Committees not listed did not meet)

DEMENTIA
Special Committee on Aging: Committee concluded a hearing to examine certain criminal situations involving seniors with dementia, focusing on a recent tragedy in Ocala, Florida, involving the death of a senior citizen suffering from dementia and the killing of a local police officer, after receiving testimony from Commander Gary Gotham, USN, Woodbridge, Virginia; Donna Cohen, University of South Florida Department of Aging and Mental Health, Tampa; Max B. Rothman, Florida International University College of Health and Urban Affairs, Miami; and Constantine G. Lykesos, Johns Hopkins University and Hospital, Baltimore, Maryland, on behalf of the Alzheimer’s Association.

Speaker: Read a letter from the Speaker wherein he appointed Representative Petri to act as Speaker pro tempore for today.

Policy Committee of the White House Conference on Aging—Appointments: The Chair announced the Speaker’s appointment of the following members on the part of the House to the Policy Committee of the White House Conference on Aging: Representatives Shaw and McKeon.

Quorum Calls—Votes: There were no votes or quorum calls.

Adjournment: The House met at 12 noon and adjourned at 12:03 p.m.

Committee Meetings

No committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, p. D255)

S. 2136, to extend the final report date and termination date of the National Commission on Terrorist Attacks Upon the United States, to provide additional funding for the Commission. Signed on March 16, 2004. (Public Law 108–207)


COMMITTEE MEETINGS FOR TUESDAY,
MARCH 23, 2004

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, and Education, to hold hearings to examine Alzheimer’s disease research, 9:30 a.m., SD–G50.

Subcommittee on Homeland Security, to hold hearings to examine proposed budget estimates for fiscal year 2005 for the Transportation Security Administration and the United States Coast Guard, both of the Department of Homeland Security, 10 a.m., SD–124.

Subcommittee on Commerce, Justice, State, and the Judiciary, to hold hearings to examine the transformation of the Federal Bureau of Investigation, focusing on information technology, management and training, 10:30 a.m., SD–430.

Subcommittee on Energy and Water Development, to hold hearings to examine proposed budget estimates for fiscal year 2005 for the Department of Energy’s Office of National Nuclear Security Administration, 2:30 p.m., SD–138.

Committee on Armed Services: to hold hearings to examine atomic energy defense activities of the Department of Energy relating to the Defense Authorization request for fiscal year 2005, 9:30 a.m., SD–106.

Subcommittee on Readiness and Management Support, to hold hearings to examine the Defense Authorization Request for fiscal year 2005, focusing on Department of Defense financial management, 2:30 p.m., SR–232A.

Committee on Banking, Housing, and Urban Affairs: to resume hearings to examine current investigations and regulatory actions regarding the mutual fund industry, focusing on fund operations and governance, 10 a.m., SD–538.

Committee on Commerce, Science, and Transportation: to hold hearings to examine use of scientific information in federal policy making, 10 a.m., SR–253.

Subcommittee on Communications, to hold hearings to examine spyware, 2:30 p.m., SR–253.

Committee on Environment and Public Works: to hold oversight hearings to examine the implementation of the United Nations Convention on the Law of the Sea, 2 p.m., SD–406.

Committee on Foreign Relations: to hold hearings to examine the current status of United States and Mexico relations, focusing on immigration policy and the bilateral relationship, 9:30 a.m., SD–419.

Committee on Governmental Affairs: to hold joint hearings with the House Committee on Government Reform to examine U.S. Postal Service reform issues, 2:30 p.m., 2154 RHOB.

Committee on the Judiciary: to hold hearings to examine a proposed constitutional amendment to preserve traditional marriage, 10 a.m., SR–325.

Full Committee, to hold hearings to examine the challenges and solutions involving the counterfeiting and theft of tangible intellectual property, 2:30 p.m., SD–226.

Special Committee on Aging: to hold hearings to examine the impact of Internet fraud on seniors, focusing on congressional efforts to ensure that federal and state enforcement agencies take the proper steps to protect seniors and prosecute cybercriminals, 10:30 a.m., SD–628.

House

Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, on Education Programs, 10 a.m., 2358 Rayburn.

Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy and Human Resources,
hearing entitled “Legal and Practical Issues Related to the Faith-Based Initiative,” 10 a.m., 2154 Rayburn.


Committee on Rules. Subcommittee on Legislative and Budget Process, to continue hearings to assess the effectiveness of the current budget process and consider new reform and enforcement proposals—Part II, 11 a.m., H–313 Capitol.

Permanent Select Committee on Intelligence. Subcommittee on Human Intelligence, Analysis and Counterintelligence, executive, hearing on CIA Compensation Reform, 4 p.m., H–405 Capitol.

Joint Meetings

Joint Meetings: Senate Committee on Governmental Affairs, to hold joint hearings with the House Committee on Government Reform to examine U.S. Postal Service reform issues, 2:30 p.m., 2154 RHOB.
Next Meeting of the SENATE

9:45 a.m., Tuesday, March 23

Senate Chamber

Program for Tuesday: After the transaction of any morning business (not to extend beyond 11 a.m.), Senate will continue consideration of S. 1637, Jumpstart Our Business Strength (JOBS) Act.

(Senate will recess from 12:30 p.m. until 2:15 p.m. for their respective party conferences.)

Next Meeting of the HOUSE OF REPRESENTATIVES

12:30 p.m., Tuesday, March 23

House Chamber

Program for Tuesday: Consideration of Suspensions:

1. H.R. 958, Hydrographic Services Amendments of 2003;
3. H.R. 2489, Cowlitz Indian Tribe Distribution of Judgment Funds Act;
4. H.R. 3926, Organ Donation and Recovery Improvement Act; and
5. H. Res. 522, Expressing the sense of the House of Representatives that there is a critical need to increase awareness and education about heart disease and the risk factors of heart disease among women.

Extensions of Remarks, as inserted in this issue

HOUSE

Baca, Joe, Calif., E417
Burgess, Michale C., Tex., E415
DeLauro, Rosa L., Conn., E415
Frank, Barney, Mass., E416
Meek, Kendrick B., Fla., E417
Sanders, Bernard, Vt., E415
Solís, Hilda L., Calif., E415
Wicker, Roger F., Miss., E415