

107TH CONGRESS
1ST SESSION

H. R. 2347

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2001

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Tax Empowerment and Relief for Farmers and Fisher-
6 men (TERFF) Act”.

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

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

3 (c) TABLE OF CONTENTS.—

- Sec. 1. Short title; etc.
- Sec. 2. Farm, fishing, and ranch risk management accounts.
- Sec. 3. Written agreement relating to exclusion of certain farm rental income from net earnings from self-employment.
- Sec. 4. Treatment of conservation reserve program payments as rentals from real estate.
- Sec. 5. Exemption of agricultural bonds from State volume cap.
- Sec. 6. Modifications to section 512(b)(13).
- Sec. 7. Charitable deduction for contributions of food inventory.
- Sec. 8. Income averaging for farmers and fishermen not to increase alternative minimum tax liability.
- Sec. 9. Cooperative marketing includes value-added processing through animals.
- Sec. 10. Declaratory judgment relief for section 521 cooperatives.
- Sec. 11. Small ethanol producer credit.
- Sec. 12. Payment of dividends on stock of cooperatives without reducing patronage dividends.

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

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

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

12 “(a) DEDUCTION ALLOWED.—In the case of an indi-
 13 vidual engaged in an eligible farming business or commer-
 14 cial fishing, there shall be allowed as a deduction for any
 15 taxable year the amount paid in cash by the taxpayer dur-
 16 ing the taxable year to a Farm, Fishing, and Ranch Risk
 17 Management Account (hereinafter referred to as the
 18 ‘FFARRM Account’).

1 “(b) LIMITATION.—

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

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

17 “(c) ELIGIBLE BUSINESSES.—For purposes of this
18 section—

19 “(1) ELIGIBLE FARMING BUSINESS.—The term
20 ‘eligible farming business’ means any farming busi-
21 ness (as defined in section 263A(e)(4)) which is not
22 a passive activity (within the meaning of section
23 469(c)) of the taxpayer.

24 “(2) COMMERCIAL FISHING.—The term ‘com-
25 mercial fishing’ has the meaning given such term by

1 section (3) of the Magnuson-Stevens Fishery Con-
2 servation and Management Act (16 U.S.C. 1802)
3 but only if such fishing is not a passive activity
4 (within the meaning of section 469(e)) of the tax-
5 payer.

6 “(d) FFARRM ACCOUNT.—For purposes of this
7 section—

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

13 “(A) No contribution will be accepted for
14 any taxable year in excess of the amount al-
15 lowed as a deduction under subsection (a) for
16 such year.

17 “(B) The trustee is a bank (as defined in
18 section 408(n)) or another person who dem-
19 onstrates to the satisfaction of the Secretary
20 that the manner in which such person will ad-
21 minister the trust will be consistent with the re-
22 quirements of this section.

23 “(C) The assets of the trust consist en-
24 tirely of cash or of obligations which have ade-
25 quate stated interest (as defined in section

1 1274(c)(2)) and which pay such interest not
2 less often than annually.

3 “(D) All income of the trust is distributed
4 currently to the grantor.

5 “(E) The assets of the trust will not be
6 commingled with other property except in a
7 common trust fund or common investment
8 fund.

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

16 “(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

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

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

23 “(B) any deemed distribution under—

24 “(i) subsection (f)(1) (relating to de-
25 posits not distributed within 5 years),

1 “(ii) subsection (f)(2) (relating to ces-
2 sation in eligible farming business), and

3 “(iii) subparagraph (B) or (C) of sub-
4 section (f)(3) (relating to prohibited trans-
5 actions and pledging account as security).

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

8 “(A) any distribution to the extent attrib-
9 utable to income of the Account, and

10 “(B) the distribution of any contribution
11 paid during a taxable year to a FFARRM Ac-
12 count to the extent that such contribution ex-
13 ceeds the limitation applicable under subsection
14 (b) if requirements similar to the requirements
15 of section 408(d)(4) are met.

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

19 “(f) SPECIAL RULES.—

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

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

1 “(i) there shall be deemed distributed
2 from such Account during such taxable
3 year an amount equal to such balance, and

4 “(ii) the taxpayer’s tax imposed by
5 this chapter for such taxable year shall be
6 increased by 10 percent of such deemed
7 distribution.

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

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

21 “(C) ORDERING RULE.—For purposes of
22 this paragraph, distributions from a FFARRM
23 Account (other than distributions of current in-
24 come) shall be treated as made from deposits in

1 the order in which such deposits were made, be-
2 ginning with the earliest deposits.

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

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

18 “(A) Section 220(f)(8) (relating to treat-
19 ment on death).

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

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

1 “(D) Section 408(g) (relating to commu-
2 nity property laws).

3 “(E) Section 408(h) (relating to custodial
4 accounts).

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

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

16 “(6) DEDUCTION NOT ALLOWED FOR SELF-EM-
17 PLOYMENT TAX.—The deduction allowable by reason
18 of subsection (a) shall not be taken into account in
19 determining an individual’s net earnings from self-
20 employment (within the meaning of section 1402(a))
21 for purposes of chapter 2.

22 “(g) REPORTS.—The trustee of a FFARRM Account
23 shall make such reports regarding such Account to the
24 Secretary and to the person for whose benefit the Account
25 is maintained with respect to contributions, distributions,

1 and such other matters as the Secretary may require
2 under regulations. The reports required by this subsection
3 shall be filed at such time and in such manner and fur-
4 nished to such persons at such time and in such manner
5 as may be required by such regulations.”.

6 (b) TAX ON EXCESS CONTRIBUTIONS.—

7 (1) Subsection (a) of section 4973 (relating to
8 tax on excess contributions to certain tax-favored ac-
9 counts and annuities) is amended by striking “or”
10 at the end of paragraph (3), by redesignating para-
11 graph (4) as paragraph (5), and by inserting after
12 paragraph (3) the following new paragraph:

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

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

17 “(g) EXCESS CONTRIBUTIONS TO FFARRM AC-
18 COUNTS.—For purposes of this section, in the case of a
19 FFARRM Account (within the meaning of section
20 468C(d)), the term ‘excess contributions’ means the
21 amount by which the amount contributed for the taxable
22 year to the Account exceeds the amount which may be con-
23 tributed to the Account under section 468C(b) for such
24 taxable year. For purposes of this subsection, any con-
25 tribution which is distributed out of the FFARRM Ac-

1 count in a distribution to which section 468C(e)(2)(B) ap-
2 plies shall be treated as an amount not contributed.”.

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

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

7 (4) The table of sections for chapter 43 is
8 amended by striking the item relating to section
9 4973 and inserting the following new item:

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

10 (c) TAX ON PROHIBITED TRANSACTIONS.—

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

14 “(6) SPECIAL RULE FOR FFARRM ACCOUNTS.—
15 A person for whose benefit a FFARRM Account
16 (within the meaning of section 468C(d)) is estab-
17 lished shall be exempt from the tax imposed by this
18 section with respect to any transaction concerning
19 such account (which would otherwise be taxable
20 under this section) if, with respect to such trans-
21 action, the account ceases to be a FFARRM Ac-
22 count by reason of the application of section
23 468C(f)(3)(A) to such account.”.

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

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

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

15 “(C) section 468C(g) (relating to
16 FFARRM Accounts),”.

17 (e) CLERICAL AMENDMENT.—The table of sections
18 for subpart C of part II of subchapter E of chapter 1 is
19 amended by inserting after the item relating to section
20 468B the following new item:

 “Sec. 468C. Farm, Fishing and Ranch Risk Management Ac-
 counts.”.

21 (f) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2001.

1 **SEC. 3. WRITTEN AGREEMENT RELATING TO EXCLUSION**
2 **OF CERTAIN FARM RENTAL INCOME FROM**
3 **NET EARNINGS FROM SELF-EMPLOYMENT.**

4 (a) INTERNAL REVENUE CODE.—Section
5 1402(a)(1)(A) (relating to net earnings from self-employ-
6 ment) is amended by striking “an arrangement” and in-
7 serting “a lease agreement”.

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

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 December 31, 2001.

14 **SEC. 4. TREATMENT OF CONSERVATION RESERVE PRO-**
15 **GRAM PAYMENTS AS RENTALS FROM REAL**
16 **ESTATE.**

17 (a) IN GENERAL.—Section 1402(a)(1) (defining net
18 earnings from self-employment) is amended by inserting
19 “and including payments under section 1233(2) of the
20 Food Security Act of 1985 (16 U.S.C. 3833(2))” after
21 “crop shares”.

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

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to payments made after December
3 31, 2001.

4 **SEC. 5. EXEMPTION OF AGRICULTURAL BONDS FROM**
5 **STATE VOLUME CAP.**

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

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

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to bonds issued after December
15 31, 2001.

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

17 (a) IN GENERAL.—Paragraph (13) of section 512(b)
18 is amended by redesignating subparagraph (E) as sub-
19 paragraph (F) and by inserting after subparagraph (D)
20 the following new paragraph:

21 “(E) PARAGRAPH TO APPLY ONLY TO EX-
22 CESS PAYMENTS.—

23 “(i) IN GENERAL.—Subparagraph (A)
24 shall apply only to the portion of a speci-
25 fied payment received by the controlling

1 organization that exceeds the amount
2 which would have been paid if such pay-
3 ment met the requirements prescribed
4 under section 482.

5 “(ii) ADDITION TO TAX FOR VALU-
6 ATION MISSTATEMENTS.—The tax imposed
7 by this chapter on the controlling organiza-
8 tion shall be increased by an amount equal
9 to 20 percent of such excess.”.

10 (b) EFFECTIVE DATE.—

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

14 (2) PAYMENTS SUBJECT TO BINDING CONTRACT
15 TRANSITION RULE.—If the amendments made by
16 section 1041 of the Taxpayer Relief Act of 1997 did
17 not apply to any amount received or accrued in the
18 first 2 taxable years beginning on or after the date
19 of the enactment of this Act under any contract de-
20 scribed in subsection (b)(2) of such section, such
21 amendments also shall not apply to amounts re-
22 ceived or accrued under such contract before Janu-
23 ary 1, 2001.

1 **SEC. 7. CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF**
2 **FOOD INVENTORY.**

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

7 “(7) SPECIAL RULE FOR CONTRIBUTIONS OF
8 FOOD INVENTORY.—For purposes of this section—

9 “(A) CONTRIBUTIONS BY NON-CORPORATE
10 TAXPAYERS.—In the case of a charitable con-
11 tribution of food by a taxpayer, paragraph
12 (3)(A) shall be applied without regard to wheth-
13 er or not the contribution is made by a corpora-
14 tion.

15 “(B) LIMIT ON REDUCTION.—In the case
16 of a charitable contribution of food which is a
17 qualified contribution (within the meaning of
18 paragraph (3)(A), as modified by subparagraph
19 (A) of this paragraph)—

20 “(i) paragraph (3)(B) shall not apply,
21 and

22 “(ii) the reduction under paragraph
23 (1)(A) for such contribution shall be no
24 greater than the amount (if any) by which
25 the amount of such contribution exceeds
26 twice the basis of such food.

1 “(C) DETERMINATION OF BASIS.—For
2 purposes of this paragraph, if a taxpayer uses
3 the cash method of accounting, the basis of any
4 qualified contribution of such taxpayer shall be
5 deemed to be 50 percent of the fair market
6 value of such contribution.

7 “(D) DETERMINATION OF FAIR MARKET
8 VALUE.—In the case of a charitable contribu-
9 tion of food which is a qualified contribution
10 (within the meaning of paragraph (3), as modi-
11 fied by subparagraphs (A) and (B) of this para-
12 graph) and which, solely by reason of internal
13 standards of the taxpayer, lack of market, or
14 similar circumstances, or which is produced by
15 the taxpayer exclusively for the purposes of
16 transferring the food to an organization de-
17 scribed in paragraph (3)(A), cannot or will not
18 be sold, the fair market value of such contribu-
19 tion shall be determined—

20 “(i) without regard to such internal
21 standards, such lack of market, such cir-
22 cumstances, or such exclusive purpose, and

23 “(ii) if applicable, by taking into ac-
24 count the price at which the same or simi-
25 lar food items are sold by the taxpayer at

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

4 (2) DEFINITION OF ELECTED FARM INCOME.—

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

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

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

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

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 December 31, 2001.

1 **SEC. 9. COOPERATIVE MARKETING INCLUDES VALUE-**
2 **ADDED PROCESSING THROUGH ANIMALS.**

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

6 “(k) COOPERATIVE MARKETING INCLUDES VALUE-
7 ADDED PROCESSING THROUGH ANIMALS.—For purposes
8 of section 521 and this subchapter, the term ‘marketing
9 the products of members or other producers’ includes feed-
10 ing the products of members or other producers to cattle,
11 hogs, fish, chickens, or other animals and selling the re-
12 sulting animals or animal products.”.

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

16 **SEC. 10. DECLARATORY JUDGMENT RELIEF FOR SECTION**
17 **521 COOPERATIVES.**

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

22 “(D) with respect to the initial qualifica-
23 tion or continuing qualification of a cooperative
24 as described in section 521(b) which is exempt
25 from tax under section 521(a), or”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to pleadings filed after
3 the date of the enactment of this Act but only with respect
4 to determinations (or requests for determinations) made
5 after January 1, 2001.

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

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

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

13 “(A) ELECTION TO ALLOCATE.—

14 “(i) IN GENERAL.—In the case of a
15 cooperative organization described in sec-
16 tion 1381(a), any portion of the credit de-
17 termined under subsection (a)(3) for the
18 taxable year may, at the election of the or-
19 ganization, be apportioned pro rata among
20 patrons of the organization on the basis of
21 the quantity or value of business done with
22 or for such patrons for the taxable year.

23 “(ii) FORM AND EFFECT OF ELEC-
24 TION.—An election under clause (i) for any
25 taxable year shall be made on a timely

1 filed return for such year. Such election,
2 once made, shall be irrevocable for such
3 taxable year.

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

7 “(i) shall not be included in the
8 amount determined under subsection (a)
9 with respect to the organization for the
10 taxable year,

11 “(ii) shall be included in the amount
12 determined under subsection (a) for the
13 taxable year of each patron for which the
14 patronage dividends for the taxable year
15 described in subparagraph (A) are included
16 in gross income, and

17 “(iii) shall be included in gross income
18 of such patrons for the taxable year in the
19 manner and to the extent provided in sec-
20 tion 87.

21 “(C) SPECIAL RULES FOR DECREASE IN
22 CREDITS FOR TAXABLE YEAR.—If the amount
23 of the credit of a cooperative organization de-
24 termined under subsection (a)(3) for a taxable
25 year is less than the amount of such credit

1 shown on the return of the cooperative organi-
2 zation for such year, an amount equal to the
3 excess of—

4 “(i) such reduction, over

5 “(ii) the amount not apportioned to
6 such patrons under subparagraph (A) for
7 the taxable year,

8 shall be treated as an increase in tax imposed
9 by this chapter on the organization. Such in-
10 crease shall not be treated as tax imposed by
11 this chapter for purposes of determining the
12 amount of any credit under this subpart or sub-
13 part A, B, E, or G.”.

14 (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER
15 CREDIT.—

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

21 (2) SMALL ETHANOL PRODUCER CREDIT NOT A
22 PASSIVE ACTIVITY CREDIT.—Clause (i) of section
23 469(d)(2)(A) is amended by striking “subpart D”
24 and inserting “subpart D, other than section
25 40(a)(3),”.

1 (3) ALLOWING CREDIT AGAINST MINIMUM
2 TAX.—

3 (A) IN GENERAL.—Subsection (c) of sec-
4 tion 38 (relating to limitation based on amount
5 of tax) is amended by redesignating paragraph
6 (3) as paragraph (4) and by inserting after
7 paragraph (2) the following new paragraph:

8 “(3) SPECIAL RULES FOR SMALL ETHANOL
9 PRODUCER CREDIT.—

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

12 “(i) this section and section 39 shall
13 be applied separately with respect to the
14 credit, and

15 “(ii) in applying paragraph (1) to the
16 credit—

17 “(I) subparagraphs (A) and (B)
18 thereof shall not apply, and

19 “(II) the limitation under para-
20 graph (1) (as modified by subclause
21 (I)) shall be reduced by the credit al-
22 lowed under subsection (a) for the
23 taxable year (other than the small
24 ethanol producer credit).

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

6 (B) CONFORMING AMENDMENT.—Sub-
7 clause (II) of section 38(c)(2)(A)(ii) is amended
8 by striking “(other” and all that follows
9 through “credit)” and inserting “(other than
10 the empowerment zone employment credit or
11 the small ethanol producer credit)”.

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

16 **“SEC. 87. ALCOHOL FUEL CREDIT.**

17 “Gross income includes an amount equal to the sum
18 of—

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

22 “(2) the alcohol credit determined with respect
23 to the taxpayer for the taxable year under section
24 40(a)(2).”.

1 (c) CONFORMING AMENDMENT.—Section 1388 (re-
2 lating to definitions and special rules for cooperative orga-
3 nizations), as amended by section 9, is amended by adding
4 at the end the following new subsection:

5 “(1) CROSS REFERENCE.—For provisions relating to
6 the apportionment of the alcohol fuels credit between coop-
7 erative organizations and their patrons, see section
8 40(g)(6).”.

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

12 **SEC. 12. PAYMENT OF DIVIDENDS ON STOCK OF COOPERA-**
13 **TIVES WITHOUT REDUCING PATRONAGE**
14 **DIVIDENDS.**

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

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

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