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House of Representatives

The House met at 10 a.m.

The Reverend Greg Surratt, Pastor, Seacoast Christian Community Church, Mount Pleasant, South Carolina, offered the following prayer:

Father, thank You for the privilege of being an American and of living in a country that values liberty and justice for all people. We pause to remember those who, in a very real way, are defending those rights for ourselves and for others. Protect our soldiers in Iraq today, and in Afghanistan and other parts of the world. We pray for peace with our enemies and understanding from our allies.

Thank You for the gifts You have given us; the ability to lead, to choose, to decide, and to govern. Help us to use them wisely in the administration of our government today. May we debate with civility and decide with certainty the issues that lie before us. We ask for Your wisdom in areas that we lack it.

Most importantly, may our focus today be upon Your priorities for us: That we do justly, that we love mercy, and that we walk humbly before You. It is in Your name that we gather, Amen.

THE JOURNAL

The SPEAKER. 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.

Mr. TERRY. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. TERRY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New Jersey (Mr. PASCRELL) come forward and lead the House in the Pledge of Allegiance.

Mr. PASCRELL 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.

WELCOMING THE REVEREND GREG SURRATT

(Mr. BROWN of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of South Carolina. Mr. Speaker, it is with great pleasure that I welcome Pastor Greg Surratt of the Seacoast Church of Mount Pleasant, South Carolina, to Washington, D.C.

Pastor Surratt is the founder and senior pastor of Seacoast Christian Community Church, which began in February 1988 with approximately 65 members meeting in an apartment. Seacoast Church has blossomed into nine campuses and over 7,000 attendees around the State of South Carolina and Savannah, Georgia.

Pastor Surratt and his wife, Debbie, dreamed of building a church that would speak the language of the modern culture and encourage nonbelievers to investigate Christianity at their own pace, free from traditional trappings of religion that tends to turn them away. That dream is now a reality. At Seacoast, you can be sure to find a special place just for you. Whether you are a child, student, married or single, Seacoast is a program with your needs in mind.

Mr. Speaker, I commend Greg on the fine job he is doing for so many people at Seacoast Church, and thank him on behalf of the people of the First Congressional District of South Carolina for coming to Washington and sharing his time and prayers with us. I ask him to please continue to keep this body in his prayers daily. May God bless him and the entire Seacoast family.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GILCHREST). The Chair will entertain 10 one-minute speeches on each side.

REPUBLICANS SOLVE $4 BILLION PROBLEM WITH $150 BILLION EXPENDITURE

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DEFAZIO. Mr. Speaker, well, it promises to be yet another hot muggy day in Washington, D.C., so the Republican leadership are rushing to drag out a bloated tax give-away bill and rush it through before it begins to stink too badly in the heat and the light of day. It is rumored to be 4,400 pages long, but there are no printed copies available to Members of Congress, the general public, only lobbyists who wrote the bill.

It is a $4 billion problem, and it will be solved with a $150 billion burden on the American taxpayer. Only in Washington, D.C. It has to do with U.S. corporations' taxes overseas, but this bill addresses Eskimo whalers, fishing tackle manufacturers, $9 billion for tobacco growers, and it is going to privatize tax collections in the United States, giving our most private information to the private sector bill collectors. Only in America do we solve a $4

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billion problem with a $150 billion expenditure; only in a Republican America.

FATHER'S DAY

(Mr. BURGESS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BURGESS. Mr. Speaker, we have all heard the story about the visiting room in prisons that are packed on Mother's Day but empty on Father's Day.

This simple story illustrates the oftentimes unrecognized power of fatherhood as a force for the good in the lives of our children. In fact, almost three-fourths of means-tested welfare aid goes to children in homes without fathers. Children without fathers are more likely to become involved in crimes, fail in school, abuse drugs, and end up on welfare as adults.

Children raised in household structures without fathers are subject to significantly increased risks of harm. Social science overwhelmingly demonstrates that children do far better when they are raised by two married parents in a stable family relationship.

So this weekend we honor our Nation's fathers, and we should do so with the understanding of the enormous, yet sometimes silent and almost unrecognized impact that our fathers make on society at large.

As a society, we should recognize that we undervalue fathers at our peril. We should honor our fathers. I know I honor mine. Thank you, dad.

CONGRESS OWES THE AMERICAN PEOPLE BETTER

(Mr. EMANUEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EMANUEL. Mr. Speaker, later today the House will vote to solve a $4 billion tax problem with a $150 billion solution. My Republican colleagues actually wonder why they lost the South Dakota and Kentucky special elections.

This legislation and the energy bills we just passed have two things in common: They are filled with tax breaks and giveaways to the biggest special interests and donors in this town. While corporate tax rates are at their lowest level in decades, and as our workers are experiencing the slowest wage growth since World War II, this bill is a special interest gift that keeps on giving.

Here are some of the handouts: $14 billion to the energy, big oil companies; $10 billion for a Federal buyout of tobacco; $519 million for small aircraft companies; $92 million for suspension of duties on ceiling fans; $169 million for makers of Puerto Rican rum.

Mr. Speaker, think about this, $10 billion for a tobacco buyout, and we cannot finish a highway and mass transit bill that puts millions of Americans to work. Maybe what we should do is pave the roads with tobacco around here. All the while, Americans are suffering with rising health care costs and college tuition that has increased by a third. We owe the American people better than what we are going to do today.

TIME MAGAZINE'S MISTAKE

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, in a review of the book ''Prelude to War,'' Time Magazine saw fit to detail, as the book does, the location of the secret bunker used by Vice President CHENEY in the aftermath of 9/11. Both the book's author and Time Magazine were wrong to reveal the location of this site. This is not tabloid material, a photographer catching a celebrity on vacation.

Vice President CHENEY did not go to this site to relax, he went there in case our President was attacked and killed by terrorists. He went there to be ready to take control when our Nation was under attack.

Identifying this site is unacceptable and wrong. By detailing the complex and its location, the book and the magazine have combined to compromise a part of our national security. They compromised the ability to protect the man who is first in line for the Presidency. That was wrong.

HAMILTON IMAGE SHOULD REMAIN ON $10 BILL

(Mr. PASCRELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PASCRELL. Mr. Speaker, I rise to affirm my support for the image of Alexander Hamilton to remain on the face of the $10 bill. Paterson, New Jersey, a city characterized by its Great Falls, is a great city that was transformed by Hamilton to serve as one of America's first industrial centers. I have lived there all my life. I still live there.

I would like to share some of the knowledge that I have obtained about Alexander Hamilton. He arrived in America as a poor immigrant from the Caribbean island of Nevis. He attended school in New York and became involved in the American Revolution, was a great general in the battles of Trenton, Princeton, and Monmouth, and indeed at the battle of Yorktown, which was the turning point of the Revolutionary War. For those who read history, George Washington turned to him. He was his trusted aide.

Hamilton wrote 51 of the Federalist Papers. In 1789, Hamilton served in George Washington's administration, and was the first Secretary of the Treasury. His innovative mind afforded him the opportunity to use his new position to provide Americans with financial machinery, including banks.

Ronald Reagan, our dearly beloved former President, was correct when he called Alexander Hamilton ''a man of enormous intellectual capacity and courage.''

Mr. Speaker, I challenge those proponents who want to change the image on the $10 bill not to a duel, but for a little sanity here on the floor of the House.

□ 1015

ECONOMY ON THE UPSWING

(Mr. BONNER asked and was given permission to address the House for 1 minute.)

Mr. BONNER. Mr. Speaker, there is a little secret that our friends on the other side of the aisle do not want the American people to know, and that is that the dark clouds that have been hanging over our country and over our economy are beginning to blow out and a blue sky is on the horizon, 1.4 million new jobs just in the last 9 months. Homeownership, the American dream that we all learned about, is at the highest level under this President in the history of our country.

There is another little secret they do not want the American people to know, and that is that millions of Americans are taking advantage of a new prescription drug provision to Medicare by calling the 1–800 Medicare hotline and learning how they can save up to 25 percent at the register in savings on their prescription drugs.

The little old secret they do not want the American people to know is that if the American people understand this, the only dark clouds will be on their vote totals on November 2.

FSC/ETI BILL

(Mr. BLUMENAUER asked and was given permission to address the House for 1 minute.)

Mr. BLUMENAUER. Mr. Speaker, I find some small amount of irony with my friend on the other side of the aisle talking about secrets that somehow we do not want the American people to know. The American people can judge for themselves about the extent of this economic recovery who wins and who loses; and the prescription drug benefit, the seniors of this country have seen through the sham that it is.

But for them to talk about secrets, I find particularly ironic, because Members of the minority party have to come to the floor today in the 1-minutes to talk about the important FSC bill, because that is a secret; and we are voting on it in a few minutes. There is not a printed copy that is available. Only the lobbyists are aware. There will not be adequate time for debate, a meaningful debate, in 30 minutes. They will not allow amendments. They will not even allow the bipartisan alternative to be voted on on the floor.

I find a great deal of irony about their concern for secrecy. I think they

ought to start by opening up the legislative process so at least their own Members have a chance to participate with people on the other side of the aisle.

NATURAL GAS SUPPLY

(Mr. TERRY asked and was given permission to address the House for 1 minute.)

Mr. TERRY. Mr. Speaker, I commend the House for dedicating much of this week to energy, and I want to spend time today on the natural gas crisis. Clean-burning natural gas heats our homes, cooks our meals, and is used to produce almost everything we use, from food to fertilizer, to cars and clothes; but soaring natural gas prices have a devastating ripple effect on our economy. Families are paying hundreds of dollars more annually for their natural gas.

The U.S. chemical industry has cut at least 90,000 jobs in the past 4 years. Manufacturers have moved overseas where gas prices are much lower. Farmers have seen the cost of fertilizer double in 4 years as fertilizer imports have increased by 43 percent.

The Energy Policy Act, which the House passed again this week, would dramatically boost domestic natural gas supplies and lower prices. By adopting this balanced plan, we would save Americans approximately $1 trillion in natural gas costs over the next 20 years, $1 trillion saved along with hundreds of thousands of jobs.

AN ENERGY BILL ENRON WOULD LOVE

(Mr. HONDA asked and was given permission to address the House for 1 minute.)

Mr. HONDA. Mr. Speaker, one feature industry loves about the energy bill this body passed again Tuesday is a provision that would repeal the Public Utility Holding Company Act, which helps States regulate large multi-state electricity companies.

Some people say that we do not need PUHCA anymore, that its time has passed.

But exemptions from PUHCA are what enabled the actions we heard from Enron and other energy traders in recently released tapes. Here is how they described what they were doing when allowed to operate without PUHCA:

''So the rumor's true?'' one trader asked another. ''They're [expletive] taking all the money back from you guys? All the money you guys stole from those poor grandmothers in California?''

The Enron trader responded, ''Yeah, Grandma Millie, man. But she's the one who couldn't figure out how to [expletive] vote on the butterfly ballot.''

The first trader responded, ''Yeah, now she wants her [expletive] money back for all the power you've charged right up, jammed [expletive] for [expletive] $250 a megawatt hour,'' the first trader says.

One of the traders, referring to efforts to stop the gouging, said, ''It's just crap. It's completely crap. It just goes against everything our country's about.''

Well, I do not know about you, but in my mind, stealing from your customers goes against everything our country is about; and this is outrageous. The American people deserve better. In fact, they deserve an apology.

PISTONS WIN IT ALL

(Mr. SMITH of Michigan asked and was given permission to address the House for 1 minute.)

Mr. SMITH of Michigan. Chauncy Billups, Tayshaun Prince, Big Ben Wallace, Richard ''Rip'' Hamilton, Rasheed Wallace, Corliss Williamson, Mehmet Okur, Lindsey Hunter, Elden Campbell, Darvin Ham, Mike James, Darko Milicic.

Mr. Speaker, these are the names of the Pistons. I would like to congratulate the Detroit Pistons for bringing the NBA championship back to the east, back to Motown, and back to the State of Michigan.

It seemed like no one believed in the Pistons, no one gave them a chance against the Laker team that had been really tailor-made to win the title.

Well, true fans believed, and our beloved team did not disappoint. The Pistons played hard every minute. They found every loose ball, controlled the offensive boards, and kept beating the Lakers down the floor. They never stopped coming and never stopped going for it. The Pistons had a whole team of role models. They had chemistry, coaching, spirit, determination, you name it. Detroit's defense was more dominant than any single player, and they are worthy of champions. They played as a team and won as a team and set a good example for all of us. Years from now, true Piston fans are going to remember this magical journey.

ENERGY

(Ms. BERKLEY asked and was given permission to address the House for 1 minute.)

Ms. BERKLEY. Mr. Speaker, this week the House has voted on energy bills that do absolutely nothing to help Nevada families with the cost of power or skyrocketing gas prices. These bills only help this administration's special interest friends. The Republican energy bill is riddled with billions of dollars of taxpayer giveaways to nuclear, oil, and gas industries. I am appalled that we would spend one more cent on nuclear energy when there is no way to safely store radioactive waste at Yucca Mountain, Nevada. This administration continues to dump money into the Yucca Mountain project despite the fact that it is unsafe and a ridiculous proposal.

I am outraged that not one of these bills puts an end to fraud and abuse perpetrated by companies like Enron. Enron's deliberate and malicious manipulation of the market stole over $1 billion from Nevadans and other Western ratepayers.

I am disgusted that we are doing nothing to reduce gas prices at a time when oil companies are reaping record profits. The FTC must investigate this industry and its practices.

Now is the time to create an energy plan that weans this country from its reliance on foreign oil and to harness renewable energy sources.

CALLING FOR SUPPORT OF JOBS CREATION BILL

(Mr. PENCE asked and was given permission to address the House for 1 minute.)

Mr. PENCE. Mr. Speaker, Indiana has lost more manufacturing jobs than any State in the Union. So today I rise to enthusiastically support congressional action on the American Jobs Creation Act. Thanks to impending sanctions by the WTO, Congress will today cut the corporate tax rate from 35 to 33 percent, provide $4 billion in relief for AMT, also known as the antimanufacturing tax, and reform the Tax Code to reduce double taxation on U.S. manufacturers that export and do business overseas like so many Indiana companies do.

1.4 million new jobs since last fall is a good start, but let us rev up the engine of the American economy, especially American manufacturers, and create good-paying American jobs by passing today the American Jobs Creation Act.

9/11

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, before I begin, let me first of all acknowledge the crisis in Sudan and demand that the Sudanese Government immediately respond to the killing in Dafor and as well the United Nations be allowed to provide humanitarian aid immediately. It is a crisis that we need to address, not yesterday, not today or tomorrow but we should have been addressing weeks and months ago.

But I speak this morning about the reflection of the existence of a 9/11 commission and to say to America and this Congress, what would we have done without knowing the truth? The headlines today suggest no Iraq-al Qaeda 9/11 link found at all, Mr. Speaker. It also says the plan was a 10-plane plan; but the most striking knowledge for all those relatives to hear was that the FAA did not, did not, did not contact the military or NORAD, was confused and did not contact in sufficient time for any intervention to occur.

It is imperative that this Congress, not next year, not in November, not in

January, investigate now, holding hearings before Judiciary, Homeland Security, Armed Services, and International Relations. It is imperative that we know the truth and that we respond to the truth and that we act on the truth.

GOOD ECONOMIC NEWS

(Mr. SHUSTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHUSTER. Mr. Speaker, I rise to salute our steadily growing economy. Sometimes it is hard to remember how the intellectual fortunes of free enterprise have fallen under high taxes and government intrusion. Now that the Bush tax cuts have started to kick in and boost the economy, we see again that job growth has remained strong and in May we gained jobs. The American people are recognizing the positive leadership of George W. Bush and the Republican Congress.

Let us look at the facts: job seekers in America are getting good news and, most importantly, jobs. There were 248,000 jobs created in May. That means more than 900,000 jobs created over the last 3 months alone. Today the unemployment rate is down to 5.6 percent, lower than the average unemployment rate of the last 3 decades. America's families are seeing the change in their kitchen-table finances. Homeownership has risen to the highest level ever and real disposable income is up to an annual average rate of 3.9 percent. Finally, our business owners are benefiting. Real business investment in equipment and software is up to an annual rate of 14 percent.

This is an economics package that puts people first. The President and the Republicans in Congress will continue to knock down the barriers of high taxes and government red tape. By removing those barriers, we see the true entrepreneurial spirit of the American people and with that spirit so grows our economy.

COMPLAINT FILED WITH ETHICS COMMITTEE

(Ms. SCHAKOWSKY asked and was given permission to address the House for 1 minute.)

Ms. SCHAKOWSKY. Mr. Speaker, when we as Members of Congress choose to look the other way at wrongdoing, when the agreed-upon standards of ethics of this body are seriously violated and no one makes a peep, the credibility of this institution is seriously damaged.

One of my colleagues has filed a complaint with the Committee on Standards of Official Conduct, the Ethics Committee. He has raised serious questions about Majority Leader TOM DELAY's conduct, questions related to bribery, extortion, fraud, money laundering, and abuse of power. Some Republicans have tried to dismiss this complaint as mere partisan politics rather than respond to the substance of the charges. The gentleman from California (Mr. DOOLITTLE) threatened that as a result of this complaint from now on it is a matter of, quote, you kill my dog, I'll kill your cat.

This House has a duty to investigate wrongdoing, and we should do it immediately and seriously; and we should do it without killing dogs or cats.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GILCHREST). Neither the content of an ethics complaint nor the fact of its filing may be debated on the floor until such time as it may become the question pending before the House.

A GREAT DAY FOR TENNESSEANS

(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, this is a great day for the people of Tennessee. It is also a great day for the people of Texas and Washington State and Florida, Wyoming, Nevada, and South Dakota because today we are going to pass the American Jobs Creation Act in this House. In that bill, there is a provision that restores the deductibility of sales tax to our Federal income tax filing. For those of us in States that do not have a State income tax, deducting that sales tax is important. For our 5 million Tennesseans, this is a great day.

Mr. Speaker, I started my fight for tax fairness when I was a member of the Tennessee State Senate, and I have continued that upon coming here to Congress. I want to thank Congressman KEVIN BRADY, Majority Leader TOM DELAY, and Chairman BILL THOMAS for their leadership and their outstanding work on this issue of tax fairness.

□ 1030

This is an enormous step forward. It is one that we have waited for since 1986. It is a great day for Tennesseans. I thank them for their leadership.

OIL COMPANY PROFITS

(Mr. MCDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCDERMOTT. Mr. Speaker, at the President's direction the Vice President presided over secret meetings with big oil, dirty coal, and a legion of industry lobbyists.

In secret they wrote an energy policy that has turned this country into a panhandler, begging for more oil. Motorists in downtown Seattle will pay an extra quarter of a billion dollars, that is billion, in just the next 90 days because of the increase in the price of a gallon of gasoline. The administration will blame it all on the war. The price of gasoline is over $2 a gallon and the price in Iraq is 5 cents a gallon.

Yes, Mr. President, it is war all right. It is war that the oil companies are waging against the American people with the knowledge and consent and assistance of the administration. Oil company profits are up over 300 percent for one company, 200 percent for another. We are waging a war all right. It is a war to get America out of the hands of pricing, special interests and back into the hands of the American people. We want our country back. November 2 is coming, Mr. Bush.

COMMENDING DELTA AIRLINES

(Mr. ISAKSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ISAKSON. Mr. Speaker, 75 years ago today in 1929 Delta Airlines flew its first six-passenger aircraft from Monroe, Louisiana to Dallas, Texas, inaugurating a great company and a great contributor to the United States of America.

Begun as a crop dusting company in the Mississippi Delta, Delta Airlines has grown to a worldwide company, employing 60,000 people, 30,000 of them in my home State of Georgia and our great City of Atlanta.

I am pleased to rise today and commend Delta Airlines on the celebration of its 75th anniversary and to commend them for the contribution they have made to the travel of the United States of America and its citizens and to business enterprise, travel, and tourism around the world.

SALUTING SONIA SCHREIBER WEITZ

(Mr. TIERNEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIERNEY. Mr. Speaker, today on June 17, 2004, the Holocaust Center of Boston North, Inc., located in Peabody, Massachusetts, and dedicated to the study of the Holocaust, Genocides, and Human Rights, will honor my constituent Sonia Schreiber Weitz with the Center's first Social Justice and Human Rights Award.

A Holocaust survivor who experienced the torture and degradation of five Nazi concentration camps and Hitler's Death March, Sonia Weitz has devoted her life to educating young people to the dangers of bystander behavior, the nature of hatred and power of one individual to create positive change. An accomplished author and poet, she is committed to fighting for human rights and sharing her experiences during the Holocaust with audiences of all ages.

Born in Krakow, Poland in 1928, young Sonia attended public schools

with both Jewish and non-Jewish friends. Only occasional whispers of anti-Semitism marred her early childhood, but in September of 1939, when Sonia was 11 years old, Germans invaded Poland and changed her life forever. Many of her relatives were murdered, the Gestapo took her mother, and she and her remaining family members were sent to a labor camp where they remained for more than a year. Sonia and her sister, Blanca, were then sent to Auschwitz, while their father and Blanca's husband were sent to Mauthausen in Austria. As liberating forces approached and the Nazis sought to destroy evidence of the camps, the inmates were sent on a death march through the snow and ice to Bergen-Belsen, in Germany, where the two sisters experienced the worst conditions of their enslavement. Finally liberated, they lived in a camp for displaced persons for 3 years before immigrating to the United States, where Sonia lives today, in Peabody, Massachusetts.

In her book, ''I Promised I Would Tell,'' Sonia Weitz shares memories of Nazi racism, dehumanization and mass murder. ''Who better to write about light after darkness than me,'' she says. A co-founder of the Holocaust Center North, Ms. Weitz has coordinated clergy conferences, media seminars, human rights awareness days, interfaith teen projects, and Holocaust survivors' workshops since 1982. She has been an appointee of the United States Holocaust Memorial Council. She is the recipient of an honorary Doctor of Humane Letters degree from Salem State College, the ADL Interfaith Award, the Facing History Human Rights Award, and countless other honors.

Mr. Speaker, I am pleased to join my constituents throughout Boston's North Shore in honoring this extraordinary human being, Sonia Schreiber Weitz, and I ask that my remarks unanimously be allowed to conform with the written remarks submitted on this day.

PROVIDING FOR CONSIDERATION OF H.R. 681, AMERICAN JOBS CREATION ACT OF 2004

Mr. REYNOLDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 681 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 681

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad. The bill shall be considered as read for amendment. The amendment in the nature of a substitute recommended by the Committee on Ways and Means now printed in the bill, modified by the amendment printed in the report of the Committee on Rules accompanying this resolution, shall be considered as adopted. All points of order against the bill, as amended, are waived. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means; and (2) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. REYNOLDS asked and was given permission to revise and extend his remarks.)

Mr. REYNOLDS. Mr. Speaker, House Resolution 681 is a closed rule that provides for consideration of H.R. 4520, the American Jobs Creation Act of 2004. The rule provides one hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

The rule further provides that an amendment in the nature of a substitute recommended by the Committee on Ways and Means, as modified by the amendment printed in the Committee on Rules report accompanying the resolution, shall be considered as adopted.

The rule waives all points of order against the bill, as amended, and against its consideration.

Finally, the rule provides one motion to recommit with or without instructions.

Mr. Speaker, America's economy has taken its share of hits over the past several years. We had a triple shock of terrorist attacks, corporate scandals, and recession. But each time this economy was stricken, this administration and this Congress responded with action to move forward, to create jobs, and to spur economic growth.

In fact, in just his first few months in office, after inheriting a slowing economy, President Bush and this Congress enacted a series of tax cuts that resulted in the shortest and shallowist recession in this Nation's history. Our work towards recovery has continued throughout its time and today real GDP growth has grown at its fastest rate in 20 years. More than 1.4 million jobs have been created. The unemployment rate is below the average level in each of the past 3 decades. Productivity has grown to the fastest 3-year rate in 40 years. Home ownership is at an all-time high and we have the highest number of total payroll employees in our history.

In the particularly hard hit manufacturing sector we have seen the best 4-month period of job growth in 6 years and the manufacturing employment index was at its highest level since 1973. Even in my region of the country, which has traditionally lagged national recoveries, one prominent economic survey reported ''signs of a long awaited rebound in hiring demand were evident across most regions and industries, suggesting that the economic growth may soon begin to shift into a new higher gear.''

But our work is not done until every American looking for a job finds one, and that is why, Mr. Speaker, I am pleased to be here today on behalf of the American Jobs Creation Act by supporting this rule and underlying bill.

The most recent data shows that employment remained strong last month, evidenced by the creation of 248,000 new jobs and continuing three quarters of a strong economic growth. Now it is time to seize on this momentum and continue to take steps to grow our economy, generate jobs, boost domestic manufacturing, and protect small businesses and farmers.

As my colleagues well know, recent European sanctions on American exports are hurting our manufacturers and farmers to the tune of up to $4 billion a year. Tariffs currently stand at 8 percent and will increase a staggering 1 percent per month until FSC–ETI is repealed. These sanctions are increasing the price of U.S. goods sold outside the United States. They are reducing the exporting capability of multiple industries, and they are threatening the ability of our domestic country to create jobs here at home.

We have the power to stop them now, and without our action many small businesses and other employers face financial ruin while their employees face their own job losses. But by repealing FSC–ETI through the underlying bill, this Congress will put an end to these sanctions and help yet again to put Americans to work.

H.R. 4520 permanently reduces the corporate tax rates from 35 percent to 32 percent for domestic manufacturers, producers, farmers, and small corporations. This is yet another stimulant for job growth, encouraging production and manufacturing here at home, giving employers incentives to reinvest, expand and, most importantly, create new jobs in the United States.

Mr. Speaker, the underlying bill also addresses a fundamental hurdle in realizing even bigger job growth, the double taxation of U.S.-based manufacturers. Our global counterparts currently share a significant advantage over the United States simply due to the onerous U.S. Tax Code. In reducing this double taxation faced by U.S.-based companies, we will greatly enhance their competitiveness and ability to sell American-made goods in the global market, all the while making it easier for them to create more jobs here in the United States.

Last month the Institute for Supply Management's manufacturing index

showed the twelfth straight reading above 50 percent and the seventh reading above 60 percent. Readings at this level indicate substantial expansions in manufacturing activity, which is more good news for manufacturing job creation.

Mr. Speaker, another important part of H.R. 4520 is its relief for millions of small businesses and farmers from the Alternative Minimum Tax. Over the years this tax has burdened more and more middle-income Americans, a clearly unintended consequence. With the passage of the underlying bill today, this House will deliver much needed relief for millions of American farmers and small businesses. This relief will help keep individuals from sending exorbitant amounts of their hard-earned money to Uncle Sam and use it instead to create new jobs and new opportunities.

Finally, H.R. 4520 makes it cheaper for existing businesses to increase their investment and for entrepreneurs to also expense their new ventures. The underlying bill includes provisions to promote investment in new equipment. Increased investment such as this provides significant stimulus to the economy and further aids in boosting job growth.

Shipments of core capital goods, which is the category most directly linked to business investment, has continued to rise recently, and we can build on that progress.

Mr. Speaker, the Committee on Ways and Means has worked tirelessly on behalf of the American people and I would like to commend the chairman and committee members for their steadfast support of sound tax policy and job creation.

We have the opportunity and responsibility to not only continue, but to accelerate the last 9 months of economic growth and job creation. We can do that today by passing the American Jobs Creation Act. I urge my colleagues to support the rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker I yield myself 8 minutes.

(Mr. MCGOVERN asked and was given permission to revise and extend his remarks.)

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman from New York (Mr. REYNOLDS) for yielding me the customary 30 minutes.

Mr. Speaker, all of us recognize the need to quickly fix the FSC–ETI export tax issue. Thousands of U.S. exporters are needlessly paying 8 percent tariffs to European countries simply because the Republican-controlled Congress has failed to pass legislation to avoid these penalties. These tariffs will continue to climb 1 percentage point each month as long as the issue remains unresolved.

These retaliatory tariffs are especially hard hitting as the United States continues to experience difficult times in the manufacturing sector, which has lost nearly 3 million jobs under the Bush administration. In my congressional district in Massachusetts, jewelry, textiles, and small manufacturers have especially been hit hard by these sanctions.

Throughout the WTO process there has been bipartisan consensus that the U.S. should repeal the extraterritorial income exemption, the ETI and comply with the WTO decision. The disagreement has been over what to replace it with. Last year the gentleman from New York (Mr. RANGEL) and the gentleman from Illinois (Mr. CRANE) and the gentleman from Illinois (Mr. MANZULLO) and others introduced a bipartisan, revenue-neutral fix to this problem, H.R. 1769.

□ 1045

This bill currently has 172 bipartisan cosponsors. When our colleague, the gentleman from Indiana (Mr. HILL), filed a discharge petition in March to bring the bill immediately to the floor, 18 Members signed that petition.

The Crane-Rangel bill would take the $50 billion in tax incentives that American companies operating overseas receive under the current ETI and create new incentives for American companies to produce goods in the United States. It lowers the corporate income tax rate for U.S. companies and addresses the growing problem of U.S. companies moving their plants overseas.

Simply put, H.R. 1769 is a clean, paid-for bill that remedies the FSC/ETI problem without unduly burdening those companies that have benefited from this exemption in the past, and without unduly burdening our children and grandchildren by adding to our deficit.

So why did we not fix the problem months ago by passing the Crane-Rangel bill? Why are we not debating H.R. 1769 this morning? Why is the Republican leadership denying the gentleman from New York (Mr. RANGEL) the opportunity to offer his alternative on the floor today?

Because time after time the leadership of this House has demonstrated that it would rather offer a goody-bag of corporate tax giveaways to special interests than simply and quickly fixing the problem.

What is in this grab bag of a bill? The closer you look at it, the uglier it gets.

This bill is chock full of sweetheart deals, special fixes, and big giveaways to special interests. It looks like every lobbyist in town will be celebrating tonight. The list of provisions that favor particular companies or industries includes cruise-ship operators, whale hunters, Chinese ceiling fans, foreign gamblers, NASCAR track owners, timber companies, cattle ranchers, bourbon distillers, movies theater owners, small plane manufacturers, bow and arrow sets, fishing tackle boxes, and corporate jet owners.

This is no way to do tax policy.

The list of narrow special interest giveaways is very familiar because we have seen them all before, when a similar set of giveaways held up passage of the Armed Forces Tax Fairness Act for 18 months, until finally, finally, they were thrown out and this House decided to do the right thing and support our uniformed men and women and their families.

But like the evil poltergeists in the movie, they are back. And this time they have brought along some friends. What else is in this bill?

How about paying a private company to make a profit collecting debts owed to the IRS so that all our private tax information will now be given to private bounty hunters. How about tax provisions that give U.S. companies fresh incentives to locate operations anywhere other than in the United States by giving them even more tax shelters for their foreign income? At the very core of this bill are $35 billion in tax incentives for U.S. firms to invest overseas.

If you are a small manufacturer or farm cooperative that creates jobs and has production solely in the United States, too bad. You are simply out of luck in this bill.

Mr. Speaker, let us talk about the frosting on the cake. This bill as it is written will add at least another $34 billion to the deficit. In just 3 short years, the Bush administration and the Republican-controlled Congress have taken our Nation from record surpluses to the largest budget deficits in the history of the United States, in the history of the United States, Mr. Speaker. And now the leadership of this House wants to add at least $34 billion more to these deficits.

The legislation passed in the other body at least has the benefit of being revenue-neutral. And the Crane-Rangel bill is fully paid for.

Why is it that everyone seems to be able to pay for their corporate tax legislation except for the Republican House leadership? Why are they the only ones that want to pass the burden of debt on to future generations? And let us not forget that when all the phony accounting gimmicks such as slow phase-ins and phase-outs and sunsets provisions are factored in, the amount added to the deficit is more likely to be closer to $45 billion.

This bill may mean more jobs, Mr. Speaker, but they will not be U.S. jobs.

This bill rewards companies that move off shore, that shelter income from production abroad, and that outsource even more jobs now and forevermore.

Now, I seem to remember the Republicans saying over and over that our Tax Code is simply too complex, too confusing and too costly; but this bill, instead of simplifying and tightening the Tax Code and closing loopholes, creates over 400 pages of new and expensive special interest exceptions.

This bill makes our Tax Code more complex, not less; more unfair, not less. It does too little for those businesses that prefer to produce and hire

in the United States. It hurts farmers, stiffs small businesses, and benefits large multinational companies first and foremost.

It increases the deficit and tacks on major unrelated initiatives. Instead of simply fixing the $5 billion FSC/ETI problem, it creates a $150 billion special interest giveaway.

Mr. Speaker, this Special Interests Christmas Tree Giveaway Act is quite simply a scandal. Now, in light of such largesse for special interests and large corporations, I was surprised when this morning the Republican majority in the Committee on Rules did not make in order an amendment proposed by the gentleman from California (Mr. LANTOS) and me. Our amendment would provide tax relief to every company and business that makes up the difference in income to an employee activated into the National Guard or Reserves and would have provided support to those same companies to train temporary employees to fill the jobs left vacant by active-duty employees.

At a time of national emergency, when members of the Reserves and National Guard are serving extended deployments in Iraq and Afghanistan, the Republican majority in the Committee on Rules decided that this modest tax relief proposal was not important or relevant enough to be considered during the debate on this bill.

This bill before us helps Halliburton and Bechtel, two corporations that are ripping off the American taxpayer through fraud and abuse of their defense contracts in Iraq; but the Republican leadership will not help the hundreds of small businesses suffering from long-term vacancies or the families whose loved ones have been activated for service in Iraq and Afghanistan.

Mr. Speaker, at the end of the debate on this rule, I will offer a motion to defeat the previous question. If the previous question is defeated, the gentleman from California (Mr. LANTOS) and I will offer our amendment to H.R. 4250 to help the Reservists and small business.

We have the chance to do the right thing today. I urge my colleagues to reject this rule and to oppose the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I spent a good deal of time doing the presentation, the fact that I think our economy is moving, that the American Jobs Creation Act of 2004 is going to create more jobs across America; and I just want to make sure that my view of that is again on the record.

Mr. Speaker, I yield 4 minutes to the gentleman from Washington (Mr. HASTINGS), a distinguished member of the Committee on Rules.

Mr. HASTINGS of Washington. Mr. Speaker, I thank the gentleman from New York (Mr. REYNOLDS) for yielding me time to speak on this rule and about the underlying bill.

Mr. Speaker, I want to celebrate an enormously important change in the Federal income Tax Code that is a key part of the American Jobs Creation Act, a return to fairness for the residents of States that have no State income tax.

The Federal 1986 Tax Reform Act eliminated the State sales tax deduction from the Federal income Tax Code, but maintained the State income tax deduction from one's Federal income tax responsibilities. Washington is a non-income tax State. Americans who live, work, and raise their families in Washington, in my view, have been treated unfairly since 1986. And Washington State is not alone. Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, and Wyoming all do not have statewide income taxes. Clearly these States are a minority in this House and, indeed, in this Congress.

There are not just party majorities and minorities in Congress, there are similar divisions on policies and issues, and this is one of them. When it comes to trying to fix the Federal Tax Code's discrimination against non-income tax States, the congressional delegations from the affected States had and have been a distinct minority in this body.

Mr. Speaker, today my colleagues and I from the affected States will have the first opportunity to correct this longstanding injustice by voting to pass the American Jobs Creation Act. It has taken hard work on both sides of the aisle to get this change made. The Washington State delegation has worked on this issue for years. Republicans and Democrats have pitched in where they are able and tried to get this job done. But probably the best illustration of just how difficult a challenge it has been to correct this injustice is to look back on who served as the most powerful member of this body after the 1986 tax reform.

That tax reform became law in October of 1986. In January of 1987 the Democrat majority in the House at that time elected a Speaker of the House from the State of Texas. When this Texas Speaker's tenure ended, the Democratic majority elected a Speaker of the House from Washington State. For four Congresses, this House was run by a Speaker from one of the nine non-income tax States. Yet even with this powerful office, the States' tax codes and fairness did not get corrected by a vote in this House.

Mr. Speaker, this just demonstrates how long and hard a road these congressional delegations from these sales tax States have been traveling.

Today we can and will make a big change for the better for our States. This bill is a tremendous victory in my view. Comments have been made that the State sales tax portion of this bill is not perfect, and it does not return the Federal Tax Codes to its pre-1986 reform wording and that the State sales tax deduction will eventually sunset. I will only say after working so long, after struggling such long odds for nearly 20 years when our States have had no deduction, I say let us grab the victory; seize the one bird in our hand as tight as we can, especially when we have not seen two birds in a bush for nearly 2 decades.

This bill will provide billions of dollars of relief to tax payers in Washington and the other States in this tax year and for the next year. Let us get this enacted into law. It will be working to include a change in the future that will make this permanent, obviously.

Mr. Speaker, I urge all of my colleagues to support this rule and especially urge all of my colleagues from non-income tax States to support the American Jobs Creation Act.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to clarify to the gentleman from Washington (Mr. HASTINGS) that the sales tax deduction provision phases out in 2 years. It is not permanent. And this morning the gentleman from Washington (Mr. HASTINGS) and other Republicans voted against making it permanent.

Mr. Speaker, I yield 5½ minutes to the gentleman from New York (Mr. RANGEL), the ranking Democrat on the Committee on Ways and Means.

(Mr. RANGEL asked and was given permission to revise and extend his remarks.)

Mr. RANGEL. Mr. Speaker, I do not really know what the Republicans are so frightened of in this bill that they allegedly are so proud of that they continuously deny the Democrats an opportunity to say, But we got a better idea.

The Republican majority has been successful in winning the votes in order to get legislation passed. I do not think they have been successful in allowing the American people to believe that they have been fair, that they have been fair to the minority, or that they have been fair to the working people, or that they have been fair to the manufacturers that work hard every day to try to create jobs. I do not think that they think that they have been fair in terms of having some sense of patriotism or some sense of pride in saying, Made in the USA.

Yes, they say this legislation creates jobs, but not jobs for Americans. Jobs for people overseas. Why would they not let the Crane-Rangel bill come out in substitute? It has been rumored because we did not have a substitute, but I am so glad to see that my friend who is the chairman of the Committee on Rules is on the floor, who is always fighting hard to do the right thing, but somehow he is overwhelmed by evil forces that deny him the opportunity to do it.

Early last night, the gentleman came to me on this floor to say he wanted to help me to have a substitute. And while we were working with the leadership to have this substitute, he came

with heavy heart to share with me that we would not have a substitute.

Why, I ask, are Republicans so afraid to allow Democrats to get a chance to vote up or down on an alternative to the lousy bill that they brought to the floor.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. RANGEL. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, I thank my friend for yielding. Let me respond by saying that the gentleman is absolutely correct, that one of the things that we try to do is we try to ensure that the minority, Democrats in this instance, have an opportunity to have their proposals considered.

In 1994 we changed the rules to ensure that an opportunity for a recommital motion would be guaranteed. We also try to add, when we can, an opportunity for a substitute to be offered.

Now, yesterday, as the gentleman is correct, when I approached him, I said, we want to work and see if we can put together a substitute proposal. And I know from the discussions that I had that there was a lot of disagreement on the minority side about exactly what kind of shape it would take.

The proposal that was submitted by my friend was in fact not a substitute. It was simply an amendment. And so we made very clear that a substitute would be what we would consider. Yes, late last night I said I was concerned and was not sure.

□ 1100

I said I was not sure that the Committee on Rules——

Mr. RANGEL. The last thing you said to me was that we would not get a substitute.

Mr. DREIER. No, I did not say that. I did not say that.

Mr. RANGEL. Well, we did not get it; that is the bottom line.

Mr. DREIER. Mr. Speaker, if the gentleman would further yield, what I said was——

Mr. RANGEL. I take back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). Both gentlemen will suspend.

Mr. DREIER. I thank my friend for yielding.

The SPEAKER pro tempore. The distinguished Committee on Rules Chairman will suspend. The time is controlled by the gentleman from New York, and if the gentleman from New York chooses to yield to the gentleman from California he may do so.

Mr. RANGEL. Mr. Speaker, we do not have a substitute, and that is the bottom line. I would think that we should not have to beg and scrape and ask them to give us a chance.

Are we asking for a chance to win? No. Do we believe that we have enough sugar and incentives that we can buy votes? No. We do not have that in our bill. We do not turn over the collection of taxes to private sector people. We do not have the ornaments that the gentleman from Washington (Mr. MCDERMOTT) will tell my colleagues about. All we have got is a fair bill to create jobs in the United States of America. That is all we have got. We do not buy votes. We just try to sell without their profits.

Mr. DREIER. Mr. Speaker, will the gentleman yield on that point?

Mr. RANGEL. Only if the gentleman promises to tell me through his remarks in response why the Democrats cannot have a substitute to be able to say that we got a better idea.

Mr. DREIER. If the gentleman would yield, I am happy to respond.

Mr. RANGEL. I thank the chairman.

Mr. DREIER. The gentleman did not come and testify before the Committee on Rules this morning and was not there when we had the markup.

The proposal that was offered by the gentleman in the Committee on Rules was, in fact, an amendment, not a substitute, which is what we stated was necessary for us to even consider it. Okay. That was not offered, and so when there was no substitute offered, of course we did not make a substitute in order because it was not even an option for the Committee on Rules.

I thank my friend for yielding.

Mr. RANGEL. You are telling me that the gentleman from California did not tell me close to midnight that we would not get a substitute, that you had tried and you were unsuccessful? Is that what the gentleman is saying?

Mr. DREIER. If gentleman will yield, what I said was I was concerned about the possibility, and I will say that there were other members of your leadership team who indicated to me at that point when we stood right here that, in fact, there was not a substitute that had been put together.

Mr. RANGEL. Mr. Speaker, I am telling my colleagues that we were told last night that we would not get a substitute. I am telling my colleagues we did not get one. I am telling my colleagues they have denied us the opportunity to express the fact that we have a bill that would have brought jobs to the United States and not abroad.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would ask all Members, while recognizing that there are strong views held on both sides of the aisle, to be more orderly in yielding and reclaiming time. The stenographer can only take down one conversation at a time; and the Chair would appreciate the courtesy of the Members.

Mr. REYNOLDS. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. THOMAS), the distinguished Committee on Ways and Means chairman.

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Speaker, I want my colleagues and those paying attention to what is going on to appreciate what has occurred on the other side of the aisle. The gentleman who is managing the bill for the rule for the minority took some time to discuss the Crane-Rangel bill. Had that been offered, that would have been a substitute. That would have been, under the rules, appropriate; but they did not offer the Crane-Rangel substitute, notwithstanding the fact that what was offered was an amendment; but I want my colleagues to understand this.

In the Committee on Ways and Means on Monday, the gentleman from New York had every opportunity to offer the Crane-Rangel substitute. It was his choice. He did not offer a substitute. He offered an amendment.

Last night, with the option of offering a substitute, he did not offer a substitute. He offered an amendment. Under the rules, it has to be a substitute.

Now why is the Crane-Rangel substitute not before us? Because it did not offer a tax cut to small business, because it did not include the appropriate and necessary elimination of the tobacco subsidy program; because it did not include the assistance to small business, called section 179, expensing; and it did not include the provisions for small S corporations to continue to reform. Those are in the underlying bill, and what the gentleman from New York and his staff did was simply cut and paste various provisions of the underlying bill, and they wanted that to be accepted.

A letter was submitted by the gentleman from New York in which it says in part, ''I request that I be allowed to add to the amendment.'' Additionally, he says, ''the additional language . . . would include.'' At one time we were able to submit material like that without having legislative language and it would be accepted. When we became the majority, there was a thrust by the now-minority to require everything to be in legislative language. That is the rules, and the gentleman wanted not to follow the rules. He wanted the rules bent for him, the very same rules they insisted that we follow.

I want to offer my colleagues three quotes: Beauty is in the eye of the beholder; all politics is local; and patriotism is the last refuge of scoundrels.

My colleagues heard the gentleman from Washington. I have here the 1985 markup document from the then-Democratically controlled Committee on Ways and Means, Chairman Dan Rostenkowski. The position in the House was to remove from the Tax Code the sales tax exemption, the income tax exemption, and the property tax exemption. Fairness.

What happened in the final law was that if you were a renter in a State that raised its revenue by sales tax, you got no relief; but if you paid income tax in a State that used income tax and you were a homeowner, you got relief. That is not equitable. That is not fair. Twenty years ago that occurred. I say it is fairly reasonable to

give people 1 day out of 20 years. This is their day.

A provision in this bill will be ridiculed about eliminating the excise tax on arrows for goodness sakes. We are going to hear a lot of crocodile tears hitting the floor about us not helping small business. The technology that is currently controlling the arrows market was invented in the United States; but if you have a foreign arrow coming in, it is on the shelf cheaper than the arrow made in the United States. Why in the world would we let, longer than absolutely necessary, discrimination against an American product? That is in this bill. It is time to eliminate it. They should get a day.

Tackle boxes. If it is pink and it is called a cosmetic box, it does not carry a tax. If it is olivedrab and called a fishing tackle box, it is exactly the same, except for the color, it carries a tax. Whether it is pink or olivedrab or red or black, the color of something should not determine how it is treated. It should be fairly treated if it is the same box.

We have sonar fishing equipment in here. Guess what? If you do not use the latest technology LED screening, you do not get relief from the 3 percent excise tax. Why in the world would we stop technology? Why? Because the law is written that way. They deserve a day.

When my colleagues argue that it is eliminating American democracy to not let somebody not follow the rules, that is not American democracy; that is un-American.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

The distinguished chairman of the Committee on Ways and Means refused to show me or the gentleman from New York (Mr. RANGEL) the same courtesy that the gentleman from New York (Mr. RANGEL) showed the chairman of the Committee on Rules, and he refused to answer the question as to whether or not the Committee on Rules would have made in order the Crane-Rangel alternative, in whatever form it would have been in. The answer is clearly they would not have.

The gentleman mentioned American democracy. Twenty amendments were denied in the Committee on Rules. That is not democracy.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Speaker, one of those amendments denied debate was a bipartisan effort by me and the gentleman from Arizona (Mr. FLAKE). Someone in Washington needs to speak up today for conservative principles because this House Republican leadership has lost any pretense of fiscal responsibility.

Today, in this bill, Republicans are awarding $10 billion, this is billion with a B, to tobacco growers. They call it a buyout, but it is really a sellout to the tobacco industry. If this measure is approved, tobacco will get cheaper; more of it can be grown, and all American taxpayers will be the losers.

With the near go-it-alone occupation of Iraq continuously draining funds out the Treasury spigot faster than American taxpayers can pour their hard-earned funds into it, there is nothing conservative about giving away $10 billion to the tobacco industry.

Ten billion dollars would give tens of thousands of young Americans the college education they cannot afford. They could give tens of thousands of American mothers the peace of mind that comes when they know their children have health insurance. Ten billion dollars could also buy a lot of homeland security; but instead, Congress is spending that $10 billion to reward the producers of a lethal product that each year ruins the lives of families with death and disease.

This is not a job-creation bill. It is a disease-creation bill. Eighty percent of registered voters this week across America expressed their opposition to this tobacco bailout by the Congress. Unfortunately, the well-heeled lobbyists of Big Tobacco not the people, are the ones dictating this. Little wonder that this outrageous giveaway never had a public hearing, was never debated in Committee, and is being considered today in a way that denies any amendment to strike it.

If this measure is approved, the tobacco industry will once again make a killing out of this Congress, a Congress that is addicted to nicotine campaign contributions.

Mr. REYNOLDS. Mr. Speaker, I yield 2 minutes to the gentleman from Kentucky (Mr. LEWIS).

Mr. LEWIS of Kentucky. Mr. Speaker, I would like to reply to the gentleman that just spoke. I think he referred to this as Big Tobacco. Well, I am from Kentucky, and I can tell my colleagues that we are talking about small tobacco farms and family farms where men and women and their children get out in the fields every summer and try to eke out a living in the tobacco fields by the sweat of their brow.

They have had to purchase a government program, they have had to buy a quota in order to grow tobacco or they could not grow it. They contributed through an assessment fee to pay for a price support program on their own. It was not from taxpayers; and since 1997 that quota program has been cut over half, and now it is pretty difficult for them to maintain that living on that family farm.

It is the last thing that has allowed them to make a profit on their farm, if they made a profit. It was a program that allowed them to put their kids through college or to buy Christmas presents or to buy clothing for their kids. This is about small family farms in about seven to 10 States in this country. It is about an asset that they had to pay for that now is being taken away from them by the government; and we are eliminating something that, it is amazing to me, that for years I have heard we have got to get rid of this program, we have got to get rid of this program. Well, we are getting rid of it in this bill, and we are doing it by being fair with the tobacco farmers and the tobacco States and their families, not Big Tobacco, but that small farmer down in Kentucky and Tennessee and Virginia and Florida and Georgia and North Carolina and all those States that produce tobacco.

Mr. COLLINS. Mr. Speaker, will the gentleman yield?

Mr. LEWIS of Kentucky. I yield to the gentleman from Georgia.

Mr. COLLINS. Mr. Speaker, is it not true that one of the reasons that the quota has gone down in recent years is because of the imported tobacco that has come in and the quota is based on domestic amount?

Mr. LEWIS of Kentucky. Absolutely.

Mr. COLLINS. Is that not what is hurting? It is time to end this program. These are small farmers who need help, who are in debt; and the purpose of this program is to buy a quota from the government.

Mr. LEWIS of Kentucky. The gentleman is absolutely right.

Mr. MCGOVERN. Mr. Speaker, may I inquire how much time remains on each side.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MCGOVERN) has 14 minutes remaining and the gentleman from New York (Mr. REYNOLDS) has 11 minutes remaining.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. MCDERMOTT), a member of the Committee on Ways and Means.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks, and include extraneous material.)

□ 1115

Mr. MCDERMOTT. Mr. Speaker, there seems to be a lot of confusion out here. I declare that the rubber stamp session is now in order. We are back here today doing what the Republicans love to do: That is, come out here and rubber stamp this 900-page perfect piece of legislation.

The Democrats have no opportunity to offer a substitute or an amendment. They were denied. They asked for amendments, they were denied. This is a perfect piece of legislation. The fact is we have a rubber-stamp Congress. And why are we doing that? Because Christmas has come on the 17th of June.

Now my Latino friends call this ''feliz Navidad,'' but I call it the fleecing of America. This is a Christmas tree bill that has everything in sight on it. If there is an amendment in this bill, there are 5 votes behind it or 10 votes or 20 votes. They would not accept an amendment unless they voted for the bill. That is how it was put together.

The fact is that the chairman of the committee in November of 2003 lost this piece of legislation on the floor. It got stuck. He could not move it. He went over to a meeting with EU in November and told them he was sorry

they had not put sanctions on this country because then he lost his leverage to move this bill. He had to make the American people uncomfortable. In my district, the sanctions went on Weyerhaeuser, on paper products and on construction materials. I do not know what the sanctions did in central California; but when the Committee on Ways and Means is going to the WTO people and saying could you please put some sanctions on the United States so I can get a bill through Congress, there is something really wrong.

This Christmas tree bill is put out here in order to give $150 billion of Christmas presents in June. We are all going home in a week, and we will have a fund-raiser, so Members, bring your rubber stamps.

[From Dow Jones Newswires, June 17, 2004]

SANCTIONS ALTER DYNAMIC ON HOUSE TAX BILL

(By Rob Wells)

WASHINGTON.—The reality of European Union trade sanctions against U.S. exporters is a key dynamic propelling a corporate tax bill through the U.S. House this week.

The House Ways and Means Committee late Monday approved a bill, sponsored by committee chairman Bill Thomas, R-Calif., to end a controversial U.S. export tax break ruled illegal by the World Trade Organization in 2002.

That tax break is called ''foreign sales corporation'' or the ''extraterritorial income exclusion act.'' The WTO allowed the European Union to impose up to $4 billion a year in trade sanctions until the U.S. repealed the export tax break, which benefits Boeing Co. (BA), General Electric Corp. (GE), Intel Corp. (INTC) and others.

A version of Thomas' bill passed the committee in October. It stalled in the House amid opposition from a bloc of Republicans who said the bill doesn't do enough to benefit U.S. manufacturers.

A frustrated Thomas disagreed, saying his bill helps manufacturers. International tax law changes in his plan would benefit a broad range of companies, including U.S. multinationals, he said.

In November 2003, Thomas' bill was stuck in the House and he lost another piece of leverage. The E.U. postponed the date it would begin sanctions on U.S. companies from Jan. 1 to March 1.

Thomas, in a November 2003 meeting with European Union Trade Commissioner Pascal Lamy, expressed disappointment the E.U. didn't impose sanctions on U.S. companies sooner—on Jan. 1 instead of March 1, according to three people familiar with the conversation.

Thomas said earlier sanctions would have increased leverage needed to push his corporate tax bill through Congress, these people said. One person attended the Thomas-Lamy meeting while the others were briefed by Lamy or other participants.

A House Republican aide said Thomas ''made the observation reflecting what members had told to him and concerns they had raised.'' Thomas had ''made similar observations in other meetings,'' the House aide said.

Thomas' comments were interpreted differently by others.

''It puts you in a position where you want draconian sanctions placed on U..S. companies early,'' said another House aide who spoke to Lamy after the Thomas meeting.

The account circulated widely for months among lobbyists and lawyers who handle trade and international tax issues; several offered an unflattering view of Thomas' remarks. One U.S. lobbyist recalled that during a visit with Lamy's staff in Brussels, ''I heard the same story'' that Thomas ''has been cheering on retaliation.''

A U.S.-based tax professional said his client relayed a similar account after meeting with E.U. trade officials. A Lamy spokeswoman declined to comment on private conns between Lamy and members of Congress.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I sit here and I listen to some of my colleagues on the other side of the aisle try to rewrite history. It was only 4 hours ago that we were in the Committee on Rules. We took testimony. Some of the Members who are the loudest critics on the floor today were not there.

When I came to this Congress, I had served almost all of my entire career in the minority. I know what it is like to have to cough up a substitute and not be able to do it because of the diversity of the minority party in coming up with it. I did not see a substitute. It was awfully clear there was no substitute for the committee's consideration.

Now there are a number of line-by-line amendments that were brought before the committee by the minority in rollcall votes. They are well recorded. There will be no document that says there was a substitute before the Committee on Rules.

Mr. McGOVERN. Mr. Speaker, will the gentleman yield?

Mr. REYNOLDS. I yield to the gentleman from Massachusetts.

Mr. McGOVERN. Mr. Speaker, I appreciate the gentleman yielding. How many of those amendments were made in order?

Mr. REYNOLDS. None.

Mr. McGOVERN. Mr. Speaker, I thank the gentleman.

Mr. REYNOLDS. The amendments were brought before the committee. Again, there was no substitute.

I did see a Rangel amendment that excluded all parts of the tax cuts and left the tobacco bill.

Today this body, after this rule is passed, is going to have the opportunity to make a decision: Tax cuts and a competitive agenda, or the same old business as usual, drag it out, mess it up.

Today, with H.R. 4520, the American Jobs Creation Act of 2004, my colleagues are going to be able to end sanctions by repealing the FSC–ETI, compensating for lost benefits by permanently cutting corporate tax rates for domestic manufacturers and producers and farmers and small corporations.

It is going to provide a pro-growth tax incentive for manufacturers, small businesses and farmers to help create more American jobs, and it is going to enhance the competitiveness of U.S.-based companies engaging in exporting and/or manufacturing by greatly reducing double taxation. These companies receive more than 90 percent of the FSC–ETI benefits under the current law.

Mr. Speaker, we talked about it a long time. Today we are going to have a vote up or down. America deserves this legislation because it is going to give everyone who wants a job an opportunity to get a job.

Mr. Speaker, I reserve the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). The Chair would remind Members on both sides of the aisle that the rules governing debate indicate that a Member controlling time may yield time to another Member if he or she chooses. It is not appropriate under the rules of the House to blurt out questions and statements without having been recognized or yielded to.

Mr. McGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me also say that the Republican leadership made it clear last night that no substitute in any form would have been made in order.

Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. LANTOS).

Mr. LANTOS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, the bizarre priorities of my colleagues on the other side of the aisle this morning are shocking. Faced with a choice between taking care of our Nation's citizen soldiers or giving employers incentives to ship jobs overseas, the leadership on the other side of the aisle has chosen outsourcing.

As we all know, the continuing activation of military reservists to serve in Iraq and Afghanistan has imposed a tremendous burden on many of our country's businesses. In fact, the United States Chamber of Commerce estimates that 70 percent of reservists who are sent to active duty work in small and medium-sized companies. When their employees are asked to leave their jobs and serve our Nation, many of these businesses are unable to continue operating successfully and face severe financial difficulties, even bankruptcy. These employers are sacrificing much so that America can be safe.

To address this matter, the gentleman from Massachusetts (Mr. McGOVERN) and I offered an amendment that would have given all American businesses a tax credit to help them continue to pay their employees who are called to active duty, as well as help small businesses temporarily replace reservists who have been called to duty.

Mr. Speaker, this common-sense amendment would have encouraged all employers, but especially small businesses to rebridge the gap between what their employees earn in civilian life and what the military pays when they are on active duty. Those who do so would be eligible to receive a tax credit of up to $15,000 of the wages they

pay to members of the Guard and Reserves for as long as they are on active duty status.

Many small employers are having a difficult time hiring temporary workers to replace their employees who have been called up to active duty in the National Guard or the Reserves. The Lantos-McGovern amendment will provide a tax credit of up to $6,000 to help small employers defray the costs of hiring a new worker to replace a guardsman or reservist who has been called up to active duty. Small manufacturers would be eligible for a tax credit of up to $10,000 to assist in hiring temporary workers.

The cost of this amendment was offset by striking a provision, section 311, that we let companies invest their profits anywhere in the world except in the United States. By allowing companies to get the benefits of low tax rates for investments located in high-tax countries, the bill is creating a strong incentive to invest overseas, which will result in the United States losing both capital and jobs.

Instead of providing incentives to send jobs abroad, Congress should take action to help businesses cope with the loss of an employee to active duty and we should protect employees and their families from suffering a pay cut while serving our Nation. We cannot let the cost of that service force businesses into financial ruin and leave reservists and their families to suffer substantial losses in pay.

What kind of values do our actions reflect if we are prepared to send people overseas to fight for our security, leaving their families and employers vulnerable to financial hardship, while giving U.S. businesses ever more rewards for shipping jobs out of the country. This is a topsy-turvy set of priorities which we must reject.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from California (Mr. LANTOS) outlined a couple of things, and the debate on this rule also should bring us back to perspective on this.

I thought I understood from the gentleman that his plan encourages American companies to outsource overseas. The U.S. companies only benefit if they manufacture in the United States. This plan temporarily reduces the tax rate on repatriated income but only if that income is currently reinvested in the United States.

The plan provides for $13 billion in transitional tax relief to manufacturing and production in the United States. It eliminates double taxation on foreign sales corporations and will not allow these businesses to expand their operations hiring Americans.

Finally, any sanctions imposed by the EU and other tariffs imposed on the American products will encourage business expansion, creating jobs right here at home in the United States.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. ETHERIDGE).

(Mr. ETHERIDGE asked and was given permission to revise and extend his remarks.)

Mr. ETHERIDGE. Mr. Speaker, I thank the gentleman for yielding me this time.

On behalf of my North Carolina farm families, I rise today to support H.R. 4520. Since 1997, tobacco quota has been cut by more than 50 percent in tobacco-growing regions. Consequently, farm families have seen their income cut by more than half. Widows and widowers, who use quota rents as their 401(k)s, have likewise seen their income fall.

I ask Members, could they survive if their salary had been permanently cut by 50 percent or more? I think we know the answer to that: It would be very difficult.

The time for action is running out. We need to jump-start the process of reforming the current program, and we need to do it now. H.R. 4520 accomplishes this by including provisions for a tobacco buyout, and this is not a buyout for the companies, it is for the small farmers and the allotment holders across the tobacco-growing regions.

They have finally decided it is time for a change. They have had a hard time getting there, but the consequences they see is if they do not this year, they could face as much as a 30 percent cut this fall because of foreign tobacco flooding into America. This really is about helping people who work every day in the fields of this country making a living.

On the underlying bill, I would have preferred the approach of the Crane-Rangel bill, which I cosponsored, but beggars cannot be choosers. I thank the distinguished gentleman from California, chairman of the Committee on Ways and Means, for including the buyout provision in his bill. But I caution the gentleman, when it goes to conference with the Senate, remember the advice of the ancient Spartan women who gave this advice to their sons before battle, ''Come back with your shield, or come back on it.''

Mr. Speaker, I would say to the gentleman from California, come back with this buyout or do not come back.

Mr. REYNOLDS. Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

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Mr. BLUMENAUER. Mr. Speaker, I listened a moment ago as my friend from New York talked about: ''dragging it out and messing it up.'' I can think of no better terminology to describe the bill before us today, because it has been ''drug out and messed up.''

I heard my friend, the chair of the Committee on Ways and Means, somehow assailing our side of the aisle for wanting to ''bend the rules'' when the rule that we are debating here today allows all points of order against the bill to be waived. So, they bend the rules for things that they want to protect; but if we are seeking an opportunity to have meaningful amendments, a meaningful alternative, somehow that is trying to ''bend the rules.''

Certified smart people of good faith could have found a way to have allowed a meaningful debate on this floor. We have a serious bipartisan alternative offered up by the gentleman from Illinois (Mr. CRANE), the gentleman from New York (Mr. RANGEL), the gentleman from Illinois (Mr. MANZULLO), people who have a proposal that is paid for, that would not increase the deficit, that would not be all ''messed up and drug out.'' But we are not going to permit that today. We are limiting debate on this proposal to 30 minutes, despite being something that has tied this Congress in knots for months and is a problem that is weighing against small manufacturers across this country.

There are legitimate policy differences. There is a great deal of emotion. There is a great deal of significant policy underlying it. We are not going to have an opportunity to deal with that. There is no good reason to have permitted only 30 minutes of debate on the other side of the aisle.

Maybe they think that is better, because this proposal is moving through this Chamber in a fog of over 700 pages of technical Tax Code and report language that the vast majority of this Chamber has had no access to and certainly has not had a chance to study it even if they had the time. I would suggest that this is a testimony to how far the rhetoric of the majority obscures their action and suggests contempt for people in both parties who disagree with them.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I know that my colleagues in the Chamber know there is a debate on. I believe those who are watching throughout the offices know there is a debate on. I hope America knows. We are having that debate first on this rule, and we are seeing viewpoints expressed. And then we will have full debate on the Ways and Means chair and ranking member managing the underlying legislation. Let it be clear that there will be 2 full hours of debate that this honorable body will have on this issue. I am sure there will be many different viewpoints that are expressed. At the end, I hope we are successful in passing this legislation so that we can continue to grow jobs in America.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas (Mr. STENHOLM).

Mr. REYNOLDS. Mr. Speaker, I yield 30 seconds to the gentleman from Texas (Mr. STENHOLM).

Mr. STENHOLM. Mr. Speaker, I rise in deep sadness about the way this House is being run. A rule which denies the ranking member of the Committee

on Ways and Means an opportunity to offer a serious, responsible amendment on an issue as important as this is should embarrass all of us who care about this House.

Mr. DREIER. Mr. Speaker, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from California.

Mr. DREIER. Mr. Speaker, let me just say that there was no substitute submitted to the Committee on Rules. I think it is important for us to note that we would have had an opportunity to consider that if we had had a substitute put together. We had a cut-and-bite amendment, a perfecting amendment provided from the ranking minority member. I thank my friend for yielding.

Mr. STENHOLM. Mr. Speaker, I must respectfully differ with the chairman of the Committee on Rules. The majority has justified the decision of the Committee on Rules to not allow the minority to offer an amendment because it is not a complete substitute. That explanation would be laughable if it were not so sad. The gentleman from New York (Mr. RANGEL) submitted a comprehensive substitute to all of the provisions within the jurisdiction of the Committee on Ways and Means. He did not get into the Committee on Agriculture, which is what we should do around here. I would be perfectly willing as the ranking member of the Committee on Agriculture to work with the Committee on Ways and Means and the Committee on Rules. But for the gentleman from California to stand on the floor and say that he followed the rules of the House is not correct.

I am troubled, also, that this rule waives budget points of order and allows us to pass legislation adding another $34 billion-plus to the deficit. The other body passed a bill that would not add to the deficit. Some of us are making the argument that we ought to go with pay-as-you-go. I believe that. I heard speech after speech after speech last night arguing about a million here and a million there, and today it is billions, and wink and smile and then come to the floor and say, well, we are following the rules.

Anytime this body begins to deny the minority party the opportunity to have a say and to honestly have it applied by the rules of this House, we are in danger of big trouble. This rule should be defeated. The Committee on Rules should go back and draft a fair rule, and I am talking about the rule. The merits of the bill, there are a lot of things in it I want to work with them on. This rule should be defeated by anyone that cares about fiscal responsibility.

Mr. REYNOLDS. Mr. Speaker, this is a fair and customary rule. I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. I thank the gentleman for yielding me this time.

Mr. Speaker, for 10 years, a bipartisan group of legislators has been fighting to get tobacco regulated by the Food and Drug Administration. The FDA regulates products from Tylenol to bottled water to macaroni and cheese; yet it does not have the authority to regulate tobacco, the only product that will kill you if used specifically as directed.

This year we stand on the verge of a historic compromise to get tobacco regulated by the FDA, but the shameless $10 billion tobacco buyout in this bill threatens the progress that we have made. This sweetheart deal gives billions to Big Tobacco from the pockets of taxpayers with no strings attached. It requires nothing to improve public health in return. This buyout kills our hope for FDA regulation by taking it off the negotiating table.

I urge my colleagues to vote against this rule and against this bill. It is inexcusable and indefensible that this product, macaroni and cheese, is regulated by the FDA; but this product, one of the only products that will kill you if used specifically as directed, we cannot get FDA regulation.

Mr. MCGOVERN. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the continuing activation of military Reservists to serve in Iraq and the war on terror has imposed a tremendous burden on many of our country's businesses. For too many of these small businesses, the temporary loss of these employees makes it difficult to continue operating successfully, and many are faced with severe financial difficulties, even bankruptcy. Why not help alleviate some of this burden for these employers who are doing the right thing for their employees and their families?

It is ironic that the party that never met a tax cut they did not like and that claims to support small business would deny small businesses a tax credit to help pay their employees who are serving their country in a time of war. I cannot imagine why the Republican leadership denied the full House an opportunity to vote on this amendment. Certainly this is a more important issue than tax relief for Chinese ceiling fan makers.

I urge my colleagues to vote ''no'' on the previous question and let this House vote on tax fairness for small businesses whose employees are bravely serving their country in the Armed Forces.

Mr. Speaker, I ask unanimous consent that the text of the amendment be printed in the RECORD immediately before the vote on the previous question.

The SPEAKER pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from Massachusetts.

There was no objection.

Mr. MCGOVERN. Mr. Speaker, I yield back the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. DREIER), the distinguished chairman of the Committee on Rules.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, let me at the outset talk briefly about this issue of minority rights. I feel very strongly about the rights of the minority, doing everything that we possibly can to ensure that in the Madisonian spirit of minority rights, their ideas are considered. That is why when we went from minority to majority status exactly 10 years ago, we guaranteed something that was often denied to us, and I served for 14 years in the minority, it was often denied to us as members of the minority, and that was an opportunity to offer a motion to recommit the bill, a bite at the apple. It was often denied to us, and we have guaranteed that. I will say that we try whenever we possibly can to make in order a substitute, a substitute measure when it is brought to us in the Committee on Rules.

Mr. Speaker, I have to say that working back and forth with Members of the minority, I tried to last night see if we could, in fact, have a substitute and make it in order. I will admit I said to them that I was not sure that we would be able to, but the opportunity was still there for Members of the minority to give us a chance to consider a substitute measure in the Committee on Rules, and it did not happen.

Having said that, Mr. Speaker, let me say that I believe that we should be here celebrating, celebrating the fact that we are on the verge of passing very important legislation that is going to build on the fact that the measures that we have passed in a bipartisan way dealing with our Tax Code under the leadership of the gentleman from California (Mr. THOMAS), the proposal that initially was submitted to us by the President of the United States, has created in excess of 1 million jobs over the past 3 months.

We are going to be able to have a chance today with this legislation to build on that. That is why I want to say something that has not been raised here at all. I want to thank the European Union and the World Trade Organization for getting us to this point. In 1947 when the General Agreement on Tariffs and Trade was established, the goal was a very clear and simple one. It was to eliminate tariff barriers so that we could have the free flow of goods and services and capital.

What is it that has happened? We have seen the WTO build on that and one of the goals, of course, is the elimination of subsidization. The WTO was right. The FSC/ETI provisions have been subsidies; and what we are doing is we are, in fact, phasing those out. We are phasing those out because they have chosen to, at a rate of 1 percent a month, increase the burden on U.S. products trying to get into their markets.

So what is happening? Rather than simply pointing outside, we are looking

at ourselves, realizing that one of the challenges that we face as we try to compete globally is the tax and regulatory burden that exists in the United States of America, impinging on our workers, our manufacturers, our producers the chance to get into new markets worldwide. That is why what we are doing with this policy in bringing about a reduction in that tax burden, it is the right thing to do. It is going to create more jobs right here at home.

How the other side of the aisle can constantly complain that this is going to do nothing but create jobs overseas is beyond me. What we are doing here is we are reducing the burden that exists on job creators, meaning that there will be a greater chance to create even more jobs here in the United States.

Mr. Speaker, it has been a long time in coming. The gentleman from California (Mr. THOMAS) and members of the Committee on Ways and Means and many of the rest of us have been involved working for 2 years on this measure. It has been discussed, it has been debated, there have been hearings; and we now have had an hour of debate on this, and we will now have another hour of debate and an up-or-down vote. It is not perfect legislation. We all know that there is no such thing as perfection emerging from this place; but as we deal with this challenge, it does create a wonderful new opportunity for the workers of the United States of America.

Mr. Speaker, I urge my colleagues to support this rule and support the underlying measure which we are going to be voting on.

The material previously referred to by Mr. MCGOVERN is as follows:

PREVIOUS QUESTION FOR H. RES. 581

H.R. 4520—AMERICAN JOBS CREATION ACT OF 2004

In the resolution strike ''and (2)'' and insert the following:

''(2) the amendment printed in Sec. 2 of this resolution if offered by Representative LANTOS of California or Representative MCGOVERN of Massachusetts or a designee, which shall be in order without intervention of any point of order, shall be considered as read, shall not be subject to a demand for a division of the question, and shall be separately debatable for 60 minutes equally divided and controlled by the proponent and an opponent; and (3)''

SEC. 2.

AMENDMENT TO H.R. 4520, AS REPORTED

OFFERED BY: MR. LANTOS OF CALIFORNIA

At the end of subtitle H of title II of the bill, add the following new section (and conform the table of contents accordingly):

SEC. 297. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.

(a) READY RESERVE-NATIONAL GUARD CREDIT.—

(1) 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. 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 for any taxable year with respect to each Ready Reserve-National Guard employee of an employer is an amount equal to 50 percent of the lesser of—

''(1) the actual compensation amount with respect to such employee for such taxable year, or

''(2) $30,000.

''(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term 'actual compensation amount' means the amount of compensation paid or incurred by an employer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

''(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' means—

''(A) active duty, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

''(B) hospitalization incident to such duty.

''(2) COMPENSATION.—The term 'compensation' means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer's gross income under section 162(a)(1).

''(3) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

''(e) PORTION OF CREDIT REFUNDABLE.—

''(1) IN GENERAL.—In the case of an employer of a qualified first responder, the aggregate credits allowed to a taxpayer under subpart C shall be increased by the lesser of—

''(A) the credit which would be allowed under this section without regard to this subsection and the limitation under section 38(c), or

''(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this subsection) would increase if the limitation imposed by section 38(c) for any taxable year were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

''(2) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'employer payroll taxes' means the taxes imposed by—

''(i) section 3111(b), and

''(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the rate under section 3111(b)).

''(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

''(3) QUALIFIED FIRST RESPONDER.—For purposes of this subsection, the term 'qualified first responder' means any person who is—

''(A) employed as a law enforcement official, a firefighter, or a paramedic, and

''(B) a Ready Reserve-National Guard employee.''.

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general 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:

''(16) the Ready Reserve-National Guard employee credit determined under section 45G(a).''.

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) (relating to rule for employment credits) is amended by inserting ''45G(a),'' after ''45A(a),''.

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45F the following:

''Sec. 45G. Ready Reserve-National Guard employee credit.''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.—

(1) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding after section 30A the following new section:

''SEC. 30B. READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—In the case of an eligible taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the sum of the employment credits for each qualified replacement employee under this section.

''(2) EMPLOYMENT CREDIT.—The employment credit with respect to a qualified replacement employee of the taxpayer for any taxable year is equal to 50 percent of the lesser of—

''(A) the individual's qualified compensation attributable to service rendered as a qualified replacement employee, or

''(B) $12,000.

''(b) QUALIFIED COMPENSATION.—The term 'qualified compensation' means—

''(1) compensation which is normally contingent on the qualified replacement employee's presence for work and which is deductible from the taxpayer's gross income under section 162(a)(1),

''(2) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

''(3) group health plan costs (if any) with respect to the qualified replacement employee.

''(c) QUALIFIED REPLACEMENT EMPLOYEE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified replacement employee' means an individual who is hired to replace a Ready Reserve-National Guard employee or a Ready Reserve-National Guard self-employed taxpayer, but only with respect to the period during which such Ready Reserve-National Guard employee or Ready Reserve-National Guard self-employed taxpayer participates in qualified active duty, including time spent in travel status.

''(2) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' has the meaning given such term by section 45G(d)(3).

''(3) READY RESERVE-NATIONAL GUARD SELF-EMPLOYED TAXPAYER.—The term 'Ready Reserve-National Guard self-employed taxpayer' means a taxpayer who—

''(A) has net earnings from self-employment (as defined in section 1402(a)) for the taxable year, and

''(B) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in section 10142 and 10101 of title 10, United States Code.

''(d) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under sections 51(a) and 1396(a) with respect to any employee shall be reduced by the credit allowed by this section with respect to such employee.

''(e) LIMITATIONS.—

''(1) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(B) the tentative minimum tax for the taxable year.

''(2) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) to a taxpayer for—

''(A) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

''(B) the 2 succeeding taxable years.

''(f) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means a small business employer or a Ready Reserve-National Guard self-employed taxpayer.

''(2) SMALL BUSINESS EMPLOYER.—

''(A) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

''(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(3) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' has the meaning given such term by section 45G(d)(1).

''(4) SPECIAL RULES FOR CERTAIN MANUFACTURERS.—

''(A) IN GENERAL.—In the case of any qualified manufacturer—

''(i) subsection (a)(2)(B) shall be applied by substituting '$20,000' for '$12,000', and

''(ii) paragraph (2)(A) of this subsection shall be applied by substituting '100' for '50'.

''(B) QUALIFIED MANUFACTURER.—For purposes of this paragraph, the term 'qualified manufacturer' means any person if—

''(i) the primary business of such person is classified in sector 31, 32, or 33 of the North American Industrial Classification System, and

''(ii) all of such person's facilities which are used for production in such business are located in the United States.

''(5) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e)(1) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to each of the 3 taxable years preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(6) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.''.

(2) NO DEDUCTION FOR COMPENSATION TAKEN INTO ACCOUNT FOR CREDIT.—Section 280C(a) (relating to rule for employment credits) is amended—

(A) by inserting ''or compensation'' after ''salaries'', and

(B) by inserting ''30B,'' before ''45A(a),''.

(3) CONFORMING AMENDMENT.—Section 55(c)(2) is amended by inserting ''30B(e)(1),'' after ''30(b)(3),''.

(4) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 30A the following new item:

''Sec. 30B. Ready Reserve-National Guard replacement employee credit.''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(c) APPLICATION OF ANNUAL EXCLUSION LIMIT UNDER SECTION 911 TO HOUSING COSTS.—

(1) IN GENERAL.—Section 911(c) (relating to housing cost amount) is amended by adding at the end the following new paragraph:

''(4) LIMIT ON EXCLUSION FOR EMPLOYER PROVIDED HOUSING COSTS.—The housing cost amount for any individual for any taxable year attributable to employer provided amounts shall not exceed the excess (if any) of—

''(A) the product of—

''(i) the exclusion amount determined under subsection (b)(2)(D) for the taxable year, and

''(ii) a fraction equal to the number of days of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1) divided by the number of days in the taxable year, over

''(B) the foreign earned income of the individual excluded under subsection (a)(1) for the taxable year.''

(2) CONFORMING AMENDMENT.—Section 911(c)(1) is amended by striking ''The'' and inserting ''Except as provided in paragraph (4), the''.

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

Strike section 311 of the bill (relating to look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules), redesignate sections 312 through 316 of the bill as sections 311 through 315, respectively, and conform the table of contents accordingly.

Mr. REYNOLDS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. McGOVERN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 233, nays 193, not voting 7, as follows:

[Roll No. 256]

YEAS—233

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chandler
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo

Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—193

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Clay
Clyburn
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Herseth
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—7

Conyers
DeMint
Gephardt
Hastings (FL)
Kilpatrick
Quinn
Ruppersberger

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE) (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1209

Mr. MARSHALL changed his vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. MCGOVERN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 230, noes 195, not voting 8, as follows:

[Roll No. 257]

AYES—230

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Chabot
Chandler
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—195

Abercrombie
Ackerman
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Castle
Clay
Clyburn
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Edwards
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Herseth
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Platts
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Shays
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—8

Conyers
DeMint
Gephardt
Hastings (FL)
Kilpatrick
Quinn
Ruppersberger
Waxman

□ 1218

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3308

Mr. BEAUPREZ. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 3308.

The SPEAKER pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from Colorado?

There was no objection.

AMERICAN JOBS CREATION ACT OF 2004

Mr. THOMAS. Mr. Speaker, pursuant to House Resolution 681, I call up the

bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 681, the bill is considered read for amendment.

The text of H.R. 4520 is as follows:

H.R. 4520

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''American Jobs Creation Act of 2004''.

(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.—The table of contents of this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—END SANCTIONS AND REDUCE CORPORATE TAX RATES FOR DOMESTIC MANUFACTURING AND SMALL CORPORATIONS

Sec. 101. Repeal of exclusion for extraterritorial income.
Sec. 102. Reduced corporate income tax rate for domestic production activities income.
Sec. 103. Reduced corporate income tax rate for small corporations.

TITLE II—JOB CREATION TAX INCENTIVES FOR MANUFACTURERS, SMALL BUSINESSES, AND FARMERS

Subtitle A—Small Business Expensing

Sec. 201. 2-year extension of increased expensing for small business.

Subtitle B—Depreciation

Sec. 211. Recovery period for depreciation of certain leasehold improvements and restaurant property.
Sec. 212. Modification of depreciation allowance for aircraft.
Sec. 213. Modification of placed in service rule for bonus depreciation property.

Subtitle C—S Corporation Reform and Simplification

Sec. 221. Members of family treated as 1 shareholder.
Sec. 222. Increase in number of eligible shareholders to 100.
Sec. 223. Expansion of bank S corporation eligible shareholders to include IRAs.
Sec. 224. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.
Sec. 225. Transfer of suspended losses incident to divorce, etc.
Sec. 226. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.
Sec. 227. Exclusion of investment securities income from passive income test for bank S corporations.
Sec. 228. Treatment of bank director shares.
Sec. 229. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.
Sec. 230. Information returns for qualified subchapter S subsidiaries.
Sec. 231. Repayment of loans for qualifying employer securities.

Subtitle D—Alternative Minimum Tax Relief

Sec. 241. Foreign tax credit under alternative minimum tax.
Sec. 242. Expansion of exemption from alternative minimum tax for small corporations.
Sec. 243. Income averaging for farmers not to increase alternative minimum tax.

Subtitle E—Restructuring of Incentives for Alcohol Fuels, Etc.

Sec. 251. Reduced rates of tax on gasohol replaced with excise tax credit; repeal of other alcohol-based fuel incentives; etc.
Sec. 252. Alcohol fuel subsidies borne by general fund.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

Sec. 261. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

Subtitle G—Incentives to Reinvest Foreign Earnings in United States

Sec. 271. Incentives to reinvest foreign earnings in United States.

Subtitle H—Other Incentive Provisions

Sec. 281. Special rules for livestock sold on account of weather-related conditions.
Sec. 282. Payment of dividends on stock of cooperatives without reducing patronage dividends.
Sec. 283. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
Sec. 284. Distributions from publicly traded partnerships treated as qualifying income of regulated investment companies.
Sec. 285. Improvements related to real estate investment trusts.
Sec. 286. Treatment of certain dividends of regulated investment companies.
Sec. 287. Taxation of certain settlement funds.
Sec. 288. Expansion of human clinical trials qualifying for orphan drug credit.
Sec. 289. Simplification of excise tax imposed on bows and arrows.
Sec. 290. Repeal of excise tax on fishing tackle boxes.
Sec. 291. Sonar devices suitable for finding fish.
Sec. 292. Income tax credit to distilled spirits wholesalers for cost of carrying Federal excise taxes on bottled distilled spirits.
Sec. 293. Suspension of occupational taxes relating to distilled spirits, wine, and beer.

TITLE III—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

Sec. 301. Interest expense allocation rules.
Sec. 302. Recharacterization of overall domestic loss.
Sec. 303. Reduction to 2 foreign tax credit baskets.
Sec. 304. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.
Sec. 305. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.
Sec. 306. Clarification of treatment of certain transfers of intangible property.
Sec. 307. United States property not to include certain assets of controlled foreign corporation.
Sec. 308. Election not to use average exchange rate for foreign tax paid other than in functional currency.
Sec. 309. Repeal of withholding tax on dividends from certain foreign corporations.
Sec. 310. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.
Sec. 311. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.
Sec. 312. Look-thru treatment for sales of partnership interests.
Sec. 313. Repeal of foreign personal holding company rules and foreign investment company rules.
Sec. 314. Determination of foreign personal holding company income with respect to transactions in commodities.
Sec. 315. Modifications to treatment of aircraft leasing and shipping income.
Sec. 316. Modification of exceptions under subpart F for active financing.

TITLE IV—EXTENSION OF CERTAIN EXPIRING PROVISIONS

Sec. 401. Allowance of nonrefundable personal credits against regular and minimum tax liability.
Sec. 402. Extension of research credit.
Sec. 403. Extension of credit for electricity produced from certain renewable resources.
Sec. 404. Indian employment tax credit.
Sec. 405. Work opportunity credit.
Sec. 406. Welfare-to-work credit.
Sec. 407. Certain expenses of elementary and secondary school teachers.
Sec. 408. Extension of accelerated depreciation benefit for property on Indian reservations.
Sec. 409. Charitable contributions of computer technology and equipment used for educational purposes.
Sec. 410. Expensing of environmental remediation costs.
Sec. 411. Availability of medical savings accounts.
Sec. 412. Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.
Sec. 413. Qualified zone academy bonds.
Sec. 414. District of Columbia.
Sec. 415. Extension of certain New York Liberty Zone bond financing.
Sec. 416. Disclosures relating to terrorist activities.
Sec. 417. Disclosure of return information relating to student loans.
Sec. 418. Cover over of tax on distilled spirits.
Sec. 419. Joint review of strategic plans and budget for the Internal Revenue Service.
Sec. 420. Parity in the application of certain limits to mental health benefits.
Sec. 421. Combined employment tax reporting project.
Sec. 422. Clean-fuel vehicles.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

Sec. 501. Deduction of State and local general sales taxes in lieu of State and local income taxes.

TITLE VI—REVENUE PROVISIONS
Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation
Sec. 601. Tax treatment of expatriated entities and their foreign parents.
Sec. 602. Excise tax on stock compensation of insiders in expatriated corporations.
Sec. 603. Reinsurance of United States risks in foreign jurisdictions.
Sec. 604. Revision of tax rules on expatriation of individuals.
Sec. 605. Reporting of taxable mergers and acquisitions.
Sec. 606. Studies.
Subtitle B—Provisions Relating to Tax Shelters
PART I—TAXPAYER-RELATED PROVISIONS
Sec. 611. Penalty for failing to disclose reportable transactions.
Sec. 612. Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc.
Sec. 613. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
Sec. 614. Statute of limitations for taxable years for which required listed transactions not reported.
Sec. 615. Disclosure of reportable transactions.
Sec. 616. Failure to furnish information regarding reportable transactions.
Sec. 617. Modification of penalty for failure to maintain lists of investors.
Sec. 618. Penalty on promoters of tax shelters.
Sec. 619. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 620. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 621. Penalty on failure to report interests in foreign financial accounts.
Sec. 622. Regulation of individuals practicing before the Department of the Treasury.
PART II—OTHER PROVISIONS
Sec. 631. Treatment of stripped interests in bond and preferred stock funds, etc.
Sec. 632. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
Sec. 633. Disallowance of certain partnership loss transfers.
Sec. 634. No reduction of basis under section 734 in stock held by partnership in corporate partner.
Sec. 635. Repeal of special rules for FASITs.
Sec. 636. Limitation on transfer of built-in losses on REMIC residuals.
Sec. 637. Clarification of banking business for purposes of determining investment of earnings in United States property.
Sec. 638. Alternative tax for certain small insurance companies.
Sec. 639. Denial of deduction for interest on underpayments attributable to nondisclosed reportable transactions.
Sec. 640. Clarification of rules for payment of estimated tax for certain deemed asset sales.
Sec. 641. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
Sec. 642. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
Sec. 643. Exclusion from gross income for interest on overpayments of income tax by individuals.
Sec. 644. Deposits made to suspend running of interest on potential underpayments.
Sec. 645. Partial payment of tax liability in installment agreements.
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TITLE I—END SANCTIONS AND REDUCE CORPORATE TAX RATES FOR DOMESTIC MANUFACTURING AND SMALL CORPORATIONS

SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

(2) The table of subparts for such part III is amended by striking the item relating to subpart E.

(3) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(4) The second sentence of section 56(g)(4)(B)(i) is amended by striking ''114 or''.

(5) Section 275(a) is amended—

(A) by inserting ''or'' at the end of paragraph (4)(A), by striking ''or'' at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(6) Paragraph (3) of section 864(e) is amended—

(A) by striking:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

''(A) IN GENERAL.—For purposes of''; and inserting:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of'', and

(B) by striking subparagraph (B).

(7) Section 903 is amended by striking ''114, 164(a),'' and inserting ''164(a)''.

(8) Section 999(c)(1) is amended by striking ''941(a)(5),''.

(c) EFFECTIVE DATE.—Except as provided in subsection (d), the amendments made by this section shall apply to transactions after December 31, 2004.

(d) TRANSITIONAL RULE FOR 2005 AND 2006.—

(1) IN GENERAL.—In the case of transactions during 2005 or 2006, the amount includible in gross income by reason of the amendments made by this section shall not exceed the applicable percentage of the amount which would have been so included but for this subsection.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be as follows:

(A) For 2005, the applicable percentage shall be 20 percent.

(B) For 2006, the applicable percentage shall be 40 percent.

(e) REVOCATION OF ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—If, during the 1-year period beginning on the date of the enactment of this Act, a corporation for which an election is in effect under section 943(e) of the Internal Revenue Code of 1986 revokes such election, no gain or loss shall be recognized with respect to property treated as transferred under clause (ii) of section 943(e)(4)(B) of such Code to the extent such property—

(1) was treated as transferred under clause (i) thereof, or

(2) was acquired during a taxable year to which such election applies and before May 1, 2003, in the ordinary course of its trade or business.

The Secretary of the Treasury (or such Secretary's delegate) may prescribe such regulations as may be necessary to prevent the abuse of the purposes of this subsection.

(f) BINDING CONTRACTS.—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(1) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of such Code, as in effect on the day before the date of the enactment of this Act), and

(2) which is in effect on January 14, 2002, and at all times thereafter.

For purposes of this subsection, a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.

SEC. 102. REDUCED CORPORATE INCOME TAX RATE FOR DOMESTIC PRODUCTION ACTIVITIES INCOME.

(a) LIMITATION ON TAX ON QUALIFIED PRODUCTION ACTIVITIES INCOME.—Section 11 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

''(c) LIMITATION ON TAX ON QUALIFIED PRODUCTION ACTIVITIES INCOME.—

''(1) IN GENERAL.—If a corporation has qualified production activities income for any taxable year, the tax imposed by this section shall not exceed the sum of—

''(A) a tax computed at the rates and in the manner as if this subsection had not been enacted on the taxable income reduced by the amount of qualified production activities income, plus

''(B) a tax equal to 32 percent (34 percent in the case of taxable years beginning before January 1, 2007) of the qualified production activities income (or, if less, taxable income).

''(2) QUALIFIED PRODUCTION ACTIVITIES INCOME.—

''(A) IN GENERAL.—The term 'qualified production activities income' for any taxable year means an amount equal to the excess (if any) of—

''(i) the taxpayer's domestic production gross receipts for such taxable year, over

''(ii) the sum of—

''(I) the cost of goods sold that are allocable to such receipts,

''(II) other deductions, expenses, or losses directly allocable to such receipts, and

''(III) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

''(B) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

''(3) DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this subsection, the term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

''(A) any lease, rental, license, sale, exchange, or other disposition of—

''(i) qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States, or

''(ii) any qualified film produced by the taxpayer, or

''(B) construction, engineering, or architectural services performed in the United States for construction projects in the United States.

''(4) QUALIFYING PRODUCTION PROPERTY.—For purposes of this subsection, the term 'qualifying production property' means—

''(A) tangible personal property,

''(B) any computer software, and

''(C) any property described in section 168(f)(4).

''(5) QUALIFIED FILM.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified film' means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers.

''(B) EXCEPTION.—Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

''(6) RELATED PERSONS.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'domestic production gross receipts' shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

''(B) RELATED PERSON.—For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).''.

(b) SPECIAL RULE RELATING TO ELECTION TO TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.—In the case of a corporation, any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether such taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 103. REDUCED CORPORATE INCOME TAX RATE FOR SMALL CORPORATIONS.

(a) IN GENERAL.—Subsection (b) of section 11 (relating to tax imposed on corporations) is amended by redesignating paragraph (2) as paragraph (6) and by striking paragraph (1) and inserting the following new paragraphs:

''(1) FOR TAXABLE YEARS BEGINNING AFTER 2012.—In the case of taxable years beginning after 2012, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $50,000	15% of taxable income.
Over $50,000 but not over $75,000.	$7,500, plus 25% of the excess over $50,000.
Over $75,000 but not over $20,000,000.	$13,750, plus 32% of the excess over $75,000.
Over $20,000,000	$6,389,750, plus 35% of the excess over $20,000,000.

''(2) FOR TAXABLE YEARS BEGINNING IN 2011 OR 2012.—In the case of taxable years beginning in 2011 or 2012, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $50,000	15% of taxable income.
Over $50,000 but not over $75,000.	$7,500, plus 25% of the excess over $50,000.
Over $75,000 but not over $5,000,000.	$13,750, plus 32% of the excess over $75,000.
Over $5,000,000 but not over $10,000,000.	$1,589,750, plus 34% of the excess over $5,000,000.
Over $10,000,000	$3,289,750, plus 35% of the excess over $10,000,000.

''(3) FOR TAXABLE YEARS BEGINNING IN 2008, 2009, OR 2010.—In the case of taxable years beginning in 2008, 2009, or 2010, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $50,000	15% of taxable income.
Over $50,000 but not over $75,000.	$7,500, plus 25% of the excess over $50,000.
Over $75,000 but not over $1,000,000.	$13,750, plus 32% of the excess over $75,000.
Over $1,000,000 but not over $10,000,000.	$309,750, plus 34% of the excess over $1,000,000.
Over $10,000,000	$3,369,750, plus 35% of the excess over $10,000,000.

''(4) FOR TAXABLE YEARS BEGINNING IN 2005, 2006, OR 2007.—In the case of taxable years beginning in 2005, 2006, or 2007, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $50,000	15% of taxable income.
Over $50,000 but not over $75,000.	$7,500, plus 25% of the excess over $50,000.
Over $75,000 but not over $1,000,000.	$13,750, plus 33% of the excess over $75,000.
Over $1,000,000 but not over $10,000,000.	$319,000, plus 34% of the excess over $1,000,000.
Over $10,000,000	$3,379,000, plus 35% of the excess over $10,000,000.

''(5) PHASEOUT OF LOWER RATES FOR CERTAIN TAXPAYERS.—

''(A) GENERAL RULE FOR YEARS BEFORE 2013.—

''(i) IN GENERAL.—In the case of taxable years beginning before 2013 with respect to a corporation which has taxable income in excess of the applicable amount for any taxable year, the amount of tax determined under paragraph (1), (2), (3) or (4) for such taxable year shall be increased by the lesser of (I) 5 percent of such excess, or (II) the maximum increase amount.

''(ii) MAXIMUM INCREASE AMOUNT.—For purposes of clause (i)—

"In the case of any taxable year beginning during:	The applicable amount is:	The maximum increase amount is:
2005, 2006, or 2007.	$1,000,000	$21,000
2008, 2009, or 2010.	$1,000,000	$30,250
2011 or 2012	$5,000,000	$110,250.

''(B) HIGHER INCOME CORPORATIONS.—In the case of a corporation which has taxable income in excess of $20,000,000 ($15,000,000 in the case of taxable years beginning before 2013), the amount of the tax determined under the foregoing provisions of this subsection shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) $610,250 ($100,000 in the case of taxable years beginning before 2013).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 904(b)(3)(D)(ii) is amended to read as follows:

''(ii) in the case of a corporation, section 1201(a) applies to such taxable year.''.

(2) Section 1201(a) is amended by striking ''the last 2 sentences of section 11(b)(1)'' and inserting ''section 11(b)(5)''.

(3) Section 1561(a) is amended—

(A) by striking ''the last 2 sentences of section 11(b)(1)'' and inserting ''section 11(b)(5)'', and

(B) by striking ''such last 2 sentences'' and inserting ''section 11(b)(5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

TITLE II—JOB CREATION TAX INCENTIVES FOR MANUFACTURERS, SMALL BUSINESSES, AND FARMERS

Subtitle A—Small Business Expensing

SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS.

Subsections (b), (c), and (d) of section 179 are each amended by striking ''2006'' each place it appears and inserting ''2008''.

Subtitle B—Depreciation

SEC. 211. RECOVERY PERIOD FOR DEPRECIATION OF CERTAIN LEASEHOLD IMPROVEMENTS AND RESTAURANT PROPERTY.

(a) 15-YEAR RECOVERY PERIOD.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting a comma, and by adding at the end the following new clauses:

''(iv) any qualified leasehold improvement property placed in service before January 1, 2006, and

''(v) any qualified restaurant property placed in service before January 1, 2006.''

(b) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—Subsection (e) of section 168 is amended by adding at the end the following new paragraph:

''(6) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—The term 'qualified leasehold improvement property' has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

''(A) IMPROVEMENTS MADE BY LESSOR.—In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

''(B) EXCEPTION FOR CHANGES IN FORM OF BUSINESS.—Property shall not cease to be qualified leasehold improvement property under subparagraph (A) by reason of—

''(i) death,

''(ii) a transaction to which section 381(a) applies,

''(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business,

''(iv) the acquisition of such property in an exchange described in section 1031, 1033, or 1038 to the extent that the basis of such property includes an amount representing the adjusted basis of other property owned by the taxpayer or a related person, or

''(v) the acquisition of such property by the taxpayer in a transaction described in section 332, 351, 361, 721, or 731 (or the acquisition of such property by the taxpayer from the transferee or acquiring corporation in a transaction described in such section), to the extent that the basis of the property in the hands of the taxpayer is determined by reference to its basis in the hands of the transferor or distributor.''.

(c) QUALIFIED RESTAURANT PROPERTY.—Subsection (e) of section 168 (as amended by subsection (b)) is further amended by adding at the end the following new paragraph:

''(7) QUALIFIED RESTAURANT PROPERTY.—The term 'qualified restaurant property' means any section 1250 property which is an improvement to a building if—

''(A) such improvement is placed in service more than 3 years after the date such building was first placed in service, and

''(B) more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.''.

(d) REQUIREMENT TO USE STRAIGHT LINE METHOD.—

(1) Paragraph (3) of section 168(b) is amended by adding at the end the following new subparagraphs:

''(G) Qualified leasehold improvement property described in subsection (e)(6).

''(H) Qualified restaurant property described in subsection (e)(7).''.

(2) Subparagraph (A) of section 168(b)(2) is amended by inserting before the comma ''not referred to in paragraph (3)''.

(e) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by adding at the end the following new items:

''(E)(iv)	39
''(E)(v)	39''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 212. MODIFICATION OF DEPRECIATION ALLOWANCE FOR AIRCRAFT.

(a) AIRCRAFT TREATED AS QUALIFIED PROPERTY.—

(1) IN GENERAL.—Paragraph (2) of section 168(k) is amended by redesignating subparagraphs (C) through (F) as subparagraphs (D) through (G), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) CERTAIN AIRCRAFT.—The term 'qualified property' includes property—

''(i) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

''(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

''(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

''(I) 10 percent of the cost, or

''(II) $100,000, and

''(iv) which has—

''(I) an estimated production period exceeding 4 months, and

''(II) a cost exceeding $200,000.''.

(2) PLACED IN SERVICE DATE.—Clause (iv) of section 168(k)(2)(A) is amended by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

(b) CONFORMING AMENDMENTS.—

(1) Section 168(k)(2)(B) is amended by adding at the end the following new clause:

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply to any property which is described in subparagraph (C).''.

(2) Section 168(k)(4)(A)(ii) is amended by striking ''paragraph (2)(C)'' and inserting ''paragraph (2)(D)''.

(3) Section 168(k)(4)(B)(iii) is amended by inserting ''and paragraph (2)(C)'' after ''of this paragraph)''.

(4) Section 168(k)(4)(C) is amended by striking ''subparagraphs (B) and (D)'' and inserting ''subparagraphs (B), (C), and (E)''.

(5) Section 168(k)(4)(D) is amended by striking ''Paragraph (2)(E)'' and inserting ''Paragraph (2)(F)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002.

SEC. 213. MODIFICATION OF PLACED IN SERVICE RULE FOR BONUS DEPRECIATION PROPERTY.

(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)(ii), 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 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale, so long as no previous owner of such property elects the application of this subsection with respect to such property.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002; except that the parenthetical material in section 168(k)(2)(D)(iii)(II) of the Internal Revenue Code of 1986, as added by this section, shall apply to property sold after June 4, 2004.

Subtitle C—S Corporation Reform and Simplification

SEC. 221. MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.

(a) IN GENERAL.—Paragraph (1) of section 1361(c) (relating to special rules for applying subsection (b)) is amended to read as follows:

''(1) MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.—

''(A) IN GENERAL.—For purpose of subsection (b)(1)(A)—

''(i) except as provided in clause (ii), a husband and wife (and their estates) shall be treated as 1 shareholder, and

''(ii) in the case of a family with respect to which an election is in effect under subparagraph (D), all members of the family shall be treated as 1 shareholder.

''(B) MEMBERS OF THE FAMILY.—For purpose of subparagraph (A)(ii)—

''(i) IN GENERAL.—The term 'members of the family' means the common ancestor, lineal descendants of the common ancestor, and the spouses (or former spouses) of such lineal descendants or common ancestor.

''(ii) COMMON ANCESTOR.—For purposes of this paragraph, an individual shall not be considered a common ancestor if, as of the later of the effective date of this paragraph or the time the election under section 1362(a) is made, the individual is more than 3 generations removed from the youngest generation of shareholders who would (but for this clause) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to which such spouse is (or was) married.

''(C) EFFECT OF ADOPTION, ETC.—In determining whether any relationship specified in subparagraph (B) exists, the rules of section 152(b)(2) shall apply.

''(D) ELECTION.—An election under subparagraph (A)(ii)—

''(i) may, except as otherwise provided in regulations prescribed by the Secretary, be made by any member of the family, and

''(ii) shall remain in effect until terminated as provided in regulations prescribed by the Secretary.''.

(b) RELIEF FROM INADVERTENT INVALID ELECTION OR TERMINATION.—Section 1362(f) (relating to inadvertent invalid elections or terminations), as amended by section 229, is amended—

(1) by inserting ''or section 1361(c)(1)(A)(ii)'' after ''section 1361(b)(3)(B)(ii),'' in paragraph (1), and

(2) by inserting ''or section 1361(c)(1)(D)(iii)'' after ''section 1361(b)(3)(C),'' in paragraph (1)(B).

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to elections and terminations made after December 31, 2004.

SEC. 222. INCREASE IN NUMBER OF ELIGIBLE SHAREHOLDERS TO 100.

(a) IN GENERAL.—Section 1361(b)(1)(A) (defining small business corporation) is amended by striking ''75'' and inserting ''100''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 223. EXPANSION OF BANK S CORPORATION ELIGIBLE SHAREHOLDERS TO INCLUDE IRAS.

(a) IN GENERAL.—Section 1361(c)(2)(A) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (v) the following new clause:

''(vi) In the case of a corporation which is a bank (as defined in section 581), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank as of the date of the enactment of this clause.''.

(b) TREATMENT AS SHAREHOLDER.—Section 1361(c)(2)(B) (relating to treatment as shareholders) is amended by adding at the end the following new clause:

''(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.''.

(c) SALE OF BANK STOCK IN IRA RELATING TO S CORPORATION ELECTION EXEMPT FROM PROHIBITED TRANSACTION RULES.—Section 4975(d) (relating to exemptions) is amended by striking ''or'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ''; or'', and by adding at the end the following new paragraph:

''(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

''(A) such stock is in a bank (as defined in section 581),

''(B) such stock is held by such trust as of the date of the enactment of this paragraph,

''(C) such sale is pursuant to an election under section 1362(a) by such bank,

''(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

''(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

''(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made.''.

(d) CONFORMING AMENDMENT.—Section 512(e)(1) is amended by inserting ''1361(c)(2)(A)(vi) or'' before ''1361(c)(6)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 224. DISREGARD OF UNEXERCISED POWERS OF APPOINTMENT IN DETERMINING POTENTIAL CURRENT BENEFICIARIES OF ESBT.

(a) IN GENERAL.—Section 1361(e)(2) (defining potential current beneficiary) is amended—

(1) by inserting ''(determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period)'' after ''of the trust'' in the first sentence, and

(2) by striking ''60-day'' in the second sentence and inserting ''1-year''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 225. TRANSFER OF SUSPENDED LOSSES INCIDENT TO DIVORCE, ETC.

(a) IN GENERAL.—Section 1366(d)(2) (relating to indefinite carryover of disallowed losses and deductions) is amended to read as follows:

''(2) INDEFINITE CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

''(B) TRANSFERS OF STOCK BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 226. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK AMOUNTS BY QUALIFIED SUBCHAPTER S TRUST INCOME BENEFICIARIES.

(a) IN GENERAL.—Section 1361(d)(1) (relating to special rule for qualified subchapter S trust) is amended—

(1) by striking ''and'' at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting '', and'', and

(3) by adding at the end the following new subparagraph:

''(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made after December 31, 2004.

SEC. 227. EXCLUSION OF INVESTMENT SECURITIES INCOME FROM PASSIVE INCOME TEST FOR BANK S CORPORATIONS.

(a) IN GENERAL.—Section 1362(d)(3) (relating to where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits) is amended by adding at the end the following new subparagraph:

''(F) EXCEPTION FOR BANKS; ETC.—In the case of a bank (as defined in section 581), a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act), the term 'passive investment income' shall not include—

''(i) interest income earned by such bank or company, or

''(ii) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 228. TREATMENT OF BANK DIRECTOR SHARES.

(a) IN GENERAL.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

''(f) RESTRICTED BANK DIRECTOR STOCK.—

''(1) IN GENERAL.—Restricted bank director stock shall not be taken into account as outstanding stock of the S corporation in applying this subchapter (other than section 1368(f)).

''(2) RESTRICTED BANK DIRECTOR STOCK.—For purposes of this subsection, the term 'restricted bank director stock' means stock in a bank (as defined in section 581), a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act), registered with the Federal Reserve System if such stock—

''(A) is required to be held by an individual under applicable Federal or State law in order to permit such individual to serve as a director, and

''(B) is subject to an agreement with such bank or company (or a corporation which controls (within the meaning of section 368(c)) such bank or company) pursuant to which the holder is required to sell back such stock (at the same price as the individual acquired such stock) upon ceasing to hold the office of director.

''(3) CROSS REFERENCE.—

''For treatment of certain distributions with respect to restricted bank director stock, see section 1368(f).''.

(b) DISTRIBUTIONS.—Section 1368 (relating to distributions) is amended by adding at the end the following new subsection:

''(f) RESTRICTED BANK DIRECTOR STOCK.—If a director receives a distribution (not in part or full payment in exchange for stock) from an S corporation with respect to any restricted bank director stock (as defined in section 1361(f)), the amount of such distribution—

''(1) shall be includible in gross income of the director, and

''(2) shall be deductible by the corporation for the taxable year of such corporation in which or with which ends the taxable year in which such amount in included in the gross income of the director.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 229. RELIEF FROM INADVERTENTLY INVALID QUALIFIED SUBCHAPTER S SUBSIDIARY ELECTIONS AND TERMINATIONS.

(a) IN GENERAL.—Section 1362(f) (relating to inadvertent invalid elections or terminations) is amended—

(1) by inserting '', section 1361(b)(3)(B)(ii),'' after ''subsection (a)'' in paragraph (1),

(2) by inserting '', section 1361(b)(3)(C),'' after ''subsection (d)'' in paragraph (1)(B),

(3) by amending paragraph (3)(A) to read as follows:

''(A) so that the corporation for which the election was made is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or'',

(4) by amending paragraph (4) to read as follows:

''(4) the corporation for which the election was made, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period,'', and

(5) by inserting ''or a qualified subchapter S subsidiary, as the case may be'' after ''S

corporation'' in the matter following paragraph (4).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 230. INFORMATION RETURNS FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES.

(a) IN GENERAL.—Section 1361(b)(3)(A) (relating to treatment of certain wholly owned subsidiaries) is amended by inserting ''and in the case of information returns required under part III of subchapter A of chapter 61'' after ''Secretary''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 231. REPAYMENT OF LOANS FOR QUALIFYING EMPLOYER SECURITIES.

(a) IN GENERAL.—Subsection (f) of section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) S CORPORATION REPAYMENT OF LOANS FOR QUALIFYING EMPLOYER SECURITIES.—A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7), or as engaging in a prohibited transaction for purposes of subsection (d)(3), merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). 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 employer 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 participant.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions with respect to S corporation stock made after December 31, 2004.

Subtitle D—Alternative Minimum Tax Relief

SEC. 241. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking ''and if section 59(a)(2) did not apply''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 242. EXPANSION OF EXEMPTION FROM ALTERNATIVE MINIMUM TAX FOR SMALL CORPORATIONS.

(a) IN GENERAL.—Subparagraphs (A) and (B) of section 55(e)(1) are each amended by striking ''$7,500,000'' each place it appears and inserting ''$20,000,000''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 243. INCOME AVERAGING FOR FARMERS NOT TO INCREASE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 55 (defining regular tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

''(2) COORDINATION WITH INCOME AVERAGING FOR FARMERS.—Solely for purposes of this section, section 1301 (relating to averaging of farm income) shall not apply in computing the regular tax liability.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

Subtitle E—Restructuring of Incentives for Alcohol Fuels, Etc.

SEC. 251. REDUCED RATES OF TAX ON GASOHOL REPLACED WITH EXCISE TAX CREDIT; REPEAL OF OTHER ALCOHOL-BASED FUEL INCENTIVES; ETC.

(a) EXCISE TAX CREDIT FOR ALCOHOL FUEL MIXTURES.—

(1) IN GENERAL.—Subsection (f) of section 6427 is amended to read as follows:

''(f) ALCOHOL FUEL MIXTURES.—

''(1) IN GENERAL.—The amount of credit which would (but for section 40(c)) be determined under section 40(a)(1) for any period—

''(A) shall, with respect to taxable events occurring during such period, be treated—

''(i) as a payment of the taxpayer's liability for tax imposed by section 4081, and

''(ii) as received at the time of the taxable event, and

''(B) to the extent such amount of credit exceeds such liability for such period, shall (except as provided in subsection (k)) be paid subject to subsection (i)(3) by the Secretary without interest.

''(2) SPECIAL RULES.—

''(A) ONLY CERTAIN ALCOHOL TAKEN INTO ACCOUNT.—For purposes of paragraph (1), section 40 shall be applied—

''(i) by not taking into account alcohol with a proof of less than 190, and

''(ii) by treating as alcohol the alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

''(B) TREATMENT OF REFINERS.—For purposes of paragraph (1), in the case of a mixture—

''(i) the alcohol in which is described in subparagraph (A)(ii), and

''(ii) which is produced by any person at a refinery prior to any taxable event,

section 40 shall be applied by treating such person as having sold such mixture at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

''(3) MIXTURES NOT USED AS FUEL.—Rules similar to the rules of subparagraphs (A) and (D) of section 40(d)(3) shall apply for purposes of this subsection.

''(4) TERMINATION.—This section shall apply only to periods to which section 40 applies, determined by substituting in section 40(e)—

''(A) 'December 31, 2010' for 'December 31, 2007', and

''(B) 'January 1, 2011' for 'January 1, 2008'.''

(2) REVISION OF RULES FOR PAYMENT OF CREDIT.—Paragraph (3) of section 6427(i) is amended to read as follows:

''(3) SPECIAL RULE FOR ALCOHOL MIXTURE CREDIT.—

''(A) IN GENERAL.—A claim may be filed under subsection (f)(1)(B) by any person for any period—

''(i) for which $200 or more is payable under such subsection (f)(1)(B), and

''(ii) which is not less than 1 week.

In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).

''(B) PAYMENT OF CLAIM.—Notwithstanding subsection (f)(1)(B), if the Secretary has not paid pursuant to a claim filed under this section within 45 days of the date of the filing of such claim (20 days in the case of an electronic claim), the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

''(C) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.''

(b) REPEAL OF OTHER INCENTIVES FOR FUEL MIXTURES.—

(1) Subsection (b) of section 4041 is amended to read as follows:

''(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—

''(1) IN GENERAL.—No tax shall be imposed by subsection (a) or (d)(1) on liquids sold for use or used in an off-highway business use.

''(2) TAX WHERE OTHER USE.—If a liquid on which no tax was imposed by reason of paragraph (1) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

''(3) OFF-HIGHWAY BUSINESS USE DEFINED.—For purposes of this subsection, the term 'off-highway business use' has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train.''

(2) Section 4041(k) is hereby repealed.

(3) Section 4081(c) is hereby repealed.

(4) Section 4091(c) is hereby repealed.

(c) TRANSFERS TO HIGHWAY TRUST FUND.—Paragraph (4) of section 9503(b) is amended by adding ''or'' at the end of subparagraph (B), by striking the comma at the end of subparagraph (C) and inserting a period, and by striking subparagraphs (D), (E), and (F).

(d) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended to read as follows:

''(c) COORDINATION WITH EXCISE TAX BENEFITS.—The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account the benefit provided with respect to such alcohol under section 6427(f).''

(2) Subparagraph (B) of section 40(d)(4) is amended by striking ''under section 4041(k) or 4081(c)'' and inserting ''under section 6427(f)''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to fuel sold or used after September 30, 2004.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall apply to taxes imposed after September 30, 2003.

SEC. 252. ALCOHOL FUEL SUBSIDIES BORNE BY GENERAL FUND.

(a) TRANSFERS TO FUND.—Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

''For purposes of this paragraph, the amount of taxes received under section 4081 shall include any amount treated as a payment under section 6427(f)(1)(A) and shall not be reduced by the amount paid under section 6427(f)(1)(B).''.

(b) TRANSFERS FROM FUND.—Subparagraph (A) of section 9503(c)(2) is amended by adding at the end the following new sentence: ''Clauses (i)(III) and (ii) shall not apply to claims under section 6427(f)(1)(B).''

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxes received after September 30, 2004.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to amounts paid after September 30, 2004, and (to the extent related to section 34 of the Internal Revenue Code of 1986) to fuel used after such date.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

SEC. 261. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES.

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(B) Section 209(a) of the Social Security Act is amended by striking ''or'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ''; or'', and by inserting after paragraph (18) the following new paragraph:

''(19) Remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

''(B) any disposition by the individual of such stock.''.

(2) RAILROAD RETIREMENT TAXES.—Subsection (e) of section 3231 is amended by adding at the end the following new paragraph:

''(12) QUALIFIED STOCK OPTIONS.—The term 'compensation' shall not include any remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(3) UNEMPLOYMENT TAXES.—Section 3306(b) (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ''; or'', and by inserting after paragraph (18) the following new paragraph:

''(19) remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(b) WAGE WITHHOLDING NOT REQUIRED ON DISQUALIFYING DISPOSITIONS.—Section 421(b) (relating to effect of disqualifying dispositions) is amended by adding at the end the following new sentence: ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.''.

(c) WAGE WITHHOLDING NOT REQUIRED ON COMPENSATION WHERE OPTION PRICE IS BETWEEN 85 PERCENT AND 100 PERCENT OF VALUE OF STOCK.—Section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock) is amended by adding at the end the following new sentence: ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act.

Subtitle G—Incentives To Reinvest Foreign Earnings in United States

SEC. 271. INCENTIVES TO REINVEST FOREIGN EARNINGS IN UNITED STATES.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 (relating to controlled foreign corporations) is amended by adding at the end the following new section:

''SEC. 965. TEMPORARY DIVIDENDS RECEIVED DEDUCTION.

''(a) DEDUCTION.—

''(1) IN GENERAL.—In the case of a corporation which is a United States shareholder, there shall be allowed as a deduction an amount equal to 85 percent of the dividends which are received by such shareholder from controlled foreign corporations during the election period.

''(2) DIVIDENDS PAID INDIRECTLY FROM CONTROLLED FOREIGN CORPORATIONS.—If, within the election period, a United States shareholder receives a distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any dividend paid during the election period to—

''(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

''(B) any other controlled foreign corporation in such chain of ownership, but only to the extent of distributions described in section 959(b) which are made during the election period to the controlled foreign corporation from which such United States shareholder received such distribution.

''(b) LIMITATIONS.—

''(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

''(A) $500,000,000,

''(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

''(C) in the case of an applicable financial statement which fails to show a specific amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount of such earnings determined in such manner as the Secretary may prescribe.

Except as provided in subparagraph (C), if there is no statement or such statement fails to show a specific amount of such earnings or liability, such amount shall be treated as being zero for purposes of this paragraph.

''(2) DIVIDENDS MUST BE EXTRAORDINARY.—The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

''(A) the dividends received during the taxable year by such shareholder from controlled foreign corporations, over

''(B) the annual average for the base period years of—

''(i) the dividends received during each base period year by such shareholder from such corporations,

''(ii) the amounts includible in such shareholder's gross income for each base period year under section 951(a)(1)(B) with respect to such corporations, and

''(iii) the amounts that would have been included for each base period year but for section 959(a) with respect to such corporations.

The amount taken into account under clause (iii) for any base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year.

''(3) REQUIREMENT TO INVEST IN UNITED STATES.—Subsection (a) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in the United States pursuant to a plan describing the expenditures to be made with such amount—

''(A) which, before the dividend is received, is approved by the president or chief executive officer of such shareholder, and

''(B) which is approved by the Board of Directors (or management committee) of such shareholder no later than its first meeting on or after the date the dividend is received.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELECTION PERIOD.—The term 'election period' means—

''(A) if this section applies to the taxpayer's last taxable year beginning before the date of the enactment of this section, any 6-month or shorter period during such year which is after the date of the enactment of this section and which is selected by the taxpayer, and

''(B) if this section applies to the taxpayer's first taxable year beginning on or after such date, the 1st 6 months of such taxable year.

''(2) APPLICABLE FINANCIAL STATEMENT.—The term 'applicable financial statement' means the most recently audited financial statement (including notes and other documents which accompany such statement)—

''(A) which is certified on or before March 31, 2003, as being prepared in accordance with generally accepted accounting principles, and

''(B) which is used for the purposes of a statement or report—

''(i) to creditors,

''(ii) to shareholders, or

''(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before March 31, 2003.

''(3) BASE PERIOD YEARS.—The base period years are the 3 taxable years—

''(A) which are among the 5 most recent taxable years ending on or before March 31, 2003, and

''(B) which are determined by disregarding—

''(i) 1 taxable year for which the sum of the amounts described in clauses (i), (ii), and (iii) of subsection (b)(2)(B) is the largest, and

''(ii) 1 taxable year for which such sum is the smallest.

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this paragraph.

''(4) COORDINATION WITH DIVIDENDS RECEIVED DEDUCTION.—No deduction shall be allowed under section 243 or 245 for any dividend for which a deduction is allowed under this section.

''(d) DENIAL OF FOREIGN TAX CREDIT.—

''(1) IN GENERAL.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the deductible portion of any dividend or of any amount described in subsection (a)(2). No deduction shall be allowed under this chapter for any tax for which credit is not allowable by reason of the preceding sentence.

''(2) DEDUCTIBLE PORTION.—For purposes of paragraph (1), unless the taxpayer otherwise specifies, the deductible portion of any dividend is the amount which bears the same ratio to the amount of such dividend as the amount allowed as a deduction under subsection (a) for the taxable year bears to the amount described in subsection (b)(2)(A) for such year.

''(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT REDUCED BY CREDITS, ETC.—

''(1) IN GENERAL.—Any tax under this chapter by reason of nondeductible CFC dividends shall not be treated as tax imposed by this chapter for purposes of determining—

''(A) the amount of any credit allowable under this chapter, or

''(B) the amount of the tax imposed by section 55.

Subparagraph (A) shall not apply to the credit under section 53 or to the credit under section 27(a) with respect to taxes attributable to such dividends.

''(2) INCLUSIONS MAY NOT BE OFFSET BY NET OPERATING LOSSES.—

''(A) IN GENERAL.—The taxable income of any United States shareholder for any taxable year shall in no event be less than the amount of nondeductible CFC dividends received during such year.

''(B) COORDINATION WITH SECTION 172.—The nondeductible CFC dividends for any taxable year shall not be taken into account—

''(i) in determining under section 172 the amount of any net operating loss for such taxable year, and

''(ii) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

''(3) NONDEDUCTIBLE CFC DIVIDENDS.—For purposes of this subsection, the term 'nondeductible CFC dividends' means the excess of the amount of dividends taken into account under subsection (a) over the deduction allowed under subsection (a) for such dividends.

''(f) ELECTION.—This section shall apply for the taxpayer's first taxable year beginning on or after the date of the enactment of this section if the taxpayer elects its application for such taxable year. The taxpayer may elect to apply this section to the taxpayer's last taxable year beginning before the date of the enactment of this section in lieu of such first taxable year.''

(b) ALTERNATIVE MINIMUM TAX.—Subparagraph (C) of section 56(g)(4) is amended by adding at the end the following new clause:

''(v) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS FROM CONTROLLED FOREIGN CORPORATIONS.—Clause (i) shall not apply to any deduction allowable under section 965.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

''Sec. 965. Temporary dividends received deduction.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after the date of the enactment of this Act.

Subtitle H—Other Incentive Provisions

SEC. 281. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

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

(1) by striking ''CONDITIONS.—For purposes'' and inserting ''CONDITIONS.—

''(1) IN GENERAL.—For purposes'', and

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

''(2) EXTENSION OF REPLACEMENT PERIOD.—

''(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting '4 years' for '2 years'.

''(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.''.

(b) INCOME INCLUSION RULES.—Subsection (e) of section 451 (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

''(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.

SEC. 282. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following: ''For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization 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.''.

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

SEC. 283. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking ''retains an economic interest in such timber'' and inserting ''either retains an economic interest in such timber or makes an outright sale of such timber''.

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 631(b) is amended by striking ''The date of disposal'' and inserting ''In the case of disposal of timber with a retained economic interest, the date of disposal''.

(2) The heading for section 631(b) is amended by striking ''WITH A RETAINED ECONOMIC INTEREST''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2004.

SEC. 284. DISTRIBUTIONS FROM PUBLICLY TRADED PARTNERSHIPS TREATED AS QUALIFYING INCOME OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (2) of section 851(b) (defining regulated investment company) is amended to read as follows:

''(2) at least 90 percent of its gross income is derived from—

''(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

''(B) distributions or other income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and''.

(b) SOURCE FLOW-THROUGH RULE NOT TO APPLY.—The last sentence of section 851(b) is amended by inserting ''(other than a qualified publicly traded partnership as defined in subsection (h))'' after ''derived from a partnership''.

(c) LIMITATION ON OWNERSHIP.—Subsection (c) of section 851 is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) The term 'outstanding voting securities of such issuer' shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).''.

(d) DEFINITION OF QUALIFIED PUBLICLY TRADED PARTNERSHIP.—Section 851 is amended by adding at the end the following new subsection:

''(h) QUALIFIED PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'qualified publicly traded partnership' means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).''.

(e) DEFINITION OF QUALIFYING INCOME.—Section 7704(d)(4) is amended by striking ''section 851(b)(2)'' and inserting ''section 851(b)(2)(A)''.

(f) LIMITATION ON COMPOSITION OF ASSETS.—Subparagraph (B) of section 851(b)(3) is amended to read as follows:

''(B) not more than 25 percent of the value of its total assets is invested in—

''(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

''(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

''(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).''.

(g) APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE TO REGULATED INVESTMENT COMPANIES.—Subsection (k) of section 469 (relating to separate application of section in case of publicly traded partnerships) is amended by adding at the end the following new paragraph:

''(4) APPLICATION TO REGULATED INVESTMENT COMPANIES.—For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.''.

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

SEC. 285. IMPROVEMENTS RELATED TO REAL ESTATE INVESTMENT TRUSTS.

(a) EXPANSION OF STRAIGHT DEBT SAFE HARBOR.—Section 856 (defining real estate investment trust) is amended—

(1) in subsection (c) by striking paragraph (7), and

(2) by adding at the end the following new subsection:

''(m) SAFE HARBOR IN APPLYING SUBSECTION (c)(4).—

''(1) IN GENERAL.—In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

''(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

''(B) Any loan to an individual or an estate.

''(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

''(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

''(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this subparagraph or payments on any obligation issued by such an entity,

''(F) Any security issued by a real estate investment trust.

''(G) Any other arrangement as determined by the Secretary.

''(2) SPECIAL RULES RELATING TO STRAIGHT DEBT SECURITIES.—

''(A) IN GENERAL.—For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

''(B) SPECIAL RULES RELATING TO CERTAIN CONTINGENCIES.—For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that—

''(i) the time of payment of such interest or principal is subject to a contingency, but only if—

''(I) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which does not exceed the greater of ¼ of 1 percent or 5 percent of the annual yield to maturity, or

''(II) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the trust exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder, or

''(ii) the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, but only if such contingency is consistent with customary commercial practice.

''(C) SPECIAL RULES RELATING TO CORPORATE OR PARTNERSHIP ISSUERS.—In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

''(i) are not described in paragraph (1) (prior to the application of this subparagraph), and

''(ii) have an aggregate value greater than 1 percent of the issuer's outstanding securities determined without regard to paragraph (3)(A)(i).

''(3) LOOK-THROUGH RULE FOR PARTNERSHIP SECURITIES.—

''(A) IN GENERAL.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

''(i) a trust's interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

''(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

''(B) DETERMINATION OF TRUST'S INTEREST IN PARTNERSHIP ASSETS.—For purposes of subparagraph (A), with respect to any taxable year beginning after the date of the enactment of this subparagraph—

''(i) the trust's interest in the partnership assets shall be the trust's proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

''(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

''(4) CERTAIN PARTNERSHIP DEBT INSTRUMENTS NOT TREATED AS A SECURITY.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

''(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust's interest as a partner in the partnership, and

''(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

''(5) SECRETARIAL GUIDANCE.—The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).''.

(b) CLARIFICATION OF APPLICATION OF LIMITED RENTAL EXCEPTION.—Subparagraph (A) of section 856(d)(8) (relating to special rules for taxable REIT subsidiaries) is amended to read as follows:

''(A) LIMITED RENTAL EXCEPTION.—

''(i) IN GENERAL.—The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

''(ii) RENTS MUST BE SUBSTANTIALLY COMPARABLE.—Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust's property for comparable space.

''(iii) TIMES FOR TESTING RENT COMPARABILITY.—The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT subsidiary of the trust if such requirement is met under the terms of the lease—

''(I) at the time such lease is entered into,

''(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

''(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such modification.

With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term 'rents from real property' shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

''(iv) CONTROLLED TAXABLE REIT SUBSIDIARY.—For purposes of clause (iii), the term 'controlled taxable REIT subsidiary' means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

''(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

''(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

''(v) CONTINUING QUALIFICATION BASED ON THIRD PARTY ACTIONS.—If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

''(vi) CORRECTION PERIOD.—If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.''.

(c) DELETION OF CUSTOMARY SERVICES EXCEPTION.—Subparagraph (B) of section 857(b)(7) (relating to redetermined rents) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), (v), (vi), and (vii) as clauses (ii), (iii), (iv), (v), and (vi), respectively.

(d) CONFORMITY WITH GENERAL HEDGING DEFINITION.—Subparagraph (G) of section 856(c)(5) (relating to treatment of certain hedging instruments) is amended to read as follows:

''(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.''.

(e) CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES.—Clause (i) of section 857(b)(5)(A) (relating to imposition of tax in case of failure to meet certain requirements) is amended by striking ''90 percent'' and inserting ''95 percent''.

(f) SAVINGS PROVISIONS.—

(1) RULES OF APPLICATION FOR FAILURE TO SATISFY SECTION 856(c)(4).—Section 856(c) (relating to definition of real estate investment trust) 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)(B)(iii) 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)(I) the corporation, trust, or association, following the identification of such failure, disposes 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 in the manner prescribed by the Secretary, or

''(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

''(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 considered 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 that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

''(iii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect,

''(iv) the corporation, trust, or association pays a tax computed under subparagraph (C), and

''(v)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (ii) 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 in the manner prescribed by the Secretary, or

''(II) 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 elects the application of this subparagraph, there is hereby imposed a tax on the failure described in subparagraph (B) of such corporation, trust, or association. Such tax shall be paid by the corporation, trust, or association.

''(ii) TAX COMPUTED.—The amount of the tax imposed by clause (i) shall be the greater of—

''(I) $50,000, or

''(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in 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) PERIOD.—For purposes of clause (ii)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of such paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

''(iv) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.''.

(2) MODIFICATION OF RULES OF APPLICATION FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR 856(c)(3).—Paragraph (6) of section 856(c) (relating to definition of real estate investment trust) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

''(A) following the corporation, trust, or association's identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and''.

(3) REASONABLE CAUSE EXCEPTION TO LOSS OF REIT STATUS IF FAILURE TO SATISFY REQUIREMENTS.—Subsection (g) of section 856 (relating to termination of election) is amended—

(A) in paragraph (1) by inserting before the period at the end of the first sentence the following: ''unless paragraph (5) applies'', and

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

''(5) ENTITIES TO WHICH PARAGRAPH APPLIES.—This paragraph applies to a corporation, trust, or association—

''(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than subsection (c)(6) or (c)(7) of section 856),

''(B) such failures are due to reasonable cause and not due to willful neglect, and

''(C) if such 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.''.

(4) DEDUCTION OF TAX PAID FROM AMOUNT REQUIRED TO BE DISTRIBUTED.—Subparagraph (E) of section 857(b)(2) is amended by striking ''(7)'' and inserting ''(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).''.

(5) 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 ''; or'', and by adding at the end the following new paragraph:

''(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2000.

(2) SUBPARAGRAPHS (c) THROUGH (f).—The amendments made by subsections (c), (d), (e), and (f) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 286. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) TREATMENT OF CERTAIN DIVIDENDS.—

(1) NONRESIDENT ALIEN INDIVIDUALS.—Section 871 (relating to tax on nonresident alien individuals) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

''(1) INTEREST-RELATED DIVIDENDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company.

''(B) EXCEPTIONS.—Subparagraph (A) shall not apply—

''(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E) (i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

''(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter 3 receives a statement (which meets requirements similar to the requirements of subsection (h)(5)) that the beneficial owner of such stock is not a United States person, and

''(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such foreign country) during any period described in subsection (h)(6) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary's determination under subsection (h)(6).

''(C) INTEREST-RELATED DIVIDEND.—For purposes of this paragraph, an interest-related dividend is any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated.

''(D) QUALIFIED NET INTEREST INCOME.—For purposes of subparagraph (C), the term 'qualified net interest income' means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

''(E) QUALIFIED INTEREST INCOME.—For purposes of subparagraph (D), the term 'qualified interest income' means the sum of the following amounts derived by the regulated investment company from sources within the United States:

''(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

''(ii) Any interest includible in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to—

''(I) any interest on an obligation issued by a corporation or partnership if the regulated investment company is a 10-percent shareholder in such corporation or partnership, and

''(II) any interest which is treated as not being portfolio interest under the rules of subsection (h)(4).

''(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

''(iv) Any interest-related dividend includable in gross income with respect to stock of another regulated investment company.

''(F) 10-PERCENT SHAREHOLDER.—For purposes of this paragraph, the term '10-percent shareholder' has the meaning given such term by subsection (h)(3)(B).

''(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company.

''(B) EXCEPTION FOR ALIENS TAXABLE UNDER SUBSECTION (a)(2).—Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

''(C) SHORT-TERM CAPITAL GAIN DIVIDEND.—For purposes of this paragraph, a short-term capital gain dividend is any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated.

''(D) QUALIFIED SHORT-TERM GAIN.—For purposes of subparagraph (C), the term 'qualified short-term gain' means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph—

''(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

''(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year.

To the extent provided in regulations, clause (ii) shall apply also for purposes of computing the taxable income of the regulated investment company.''

(2) FOREIGN CORPORATIONS.—Section 881 (relating to tax on income of foreign corporations not connected with United States business) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

''(1) INTEREST-RELATED DIVIDENDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

''(B) EXCEPTION.—Subparagraph (A) shall not apply—

''(i) to any dividend referred to in section 871(k)(1)(B), and

''(ii) to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

''(C) TREATMENT OF DIVIDENDS RECEIVED BY CONTROLLED FOREIGN CORPORATIONS.—The rules of subsection (c)(5)(A) shall apply to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

''(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.''.

(3) WITHHOLDING TAXES.—

(A) Section 1441(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(12) CERTAIN DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES.—

''(A) IN GENERAL.—No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

''(B) SPECIAL RULE.—For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B).''.

(B) Section 1442(a) (relating to withholding of tax on foreign corporations) is amended—

(i) by striking ''and the reference in section 1441(c)(10)'' and inserting ''the reference in section 1441(c)(10)'', and

(ii) by inserting before the period at the end the following: '', and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)''.

(b) ESTATE TAX TREATMENT OF INTEREST IN CERTAIN REGULATED INVESTMENT COMPANIES.—Section 2105 (relating to property without the United States for estate tax purposes) is amended by adding at the end the following new subsection:

''(d) STOCK IN A RIC.—

''(1) IN GENERAL.—For purposes of this subchapter, stock in a regulated investment company (as defined in section 851) owned by a nonresident not a citizen of the United States shall not be deemed property within the United States in the proportion that, at the end of the quarter of such investment company's taxable year immediately preceding a decedent's date of death (or at such other time as the Secretary may designate in regulations), the assets of the investment company that were qualifying assets with respect to the decedent bore to the total assets of the investment company.

''(2) QUALIFYING ASSETS.—For purposes of this subsection, qualifying assets with respect to a decedent are assets that, if owned directly by the decedent, would have been—

''(A) amounts, deposits, or debt obligations described in subsection (b) of this section,

''(B) debt obligations described in the last sentence of section 2104(c), or

''(C) other property not within the United States.''

(c) TREATMENT OF REGULATED INVESTMENT COMPANIES UNDER SECTION 897.—

(1) Paragraph (1) of section 897(h) is amended by striking ''REIT'' each place it appears and inserting ''qualified investment entity''.

(2) Paragraphs (2) and (3) of section 897(h) are amended to read as follows:

''(2) SALE OF STOCK IN DOMESTICALLY CONTROLLED ENTITY NOT TAXED.—The term 'United States real property interest' does not include any interest in a domestically controlled qualified investment entity.

''(3) DISTRIBUTIONS BY DOMESTICALLY CONTROLLED QUALIFIED INVESTMENT ENTITIES.—In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.''

(3) Subparagraphs (A) and (B) of section 897(h)(4) are amended to read as follows:

''(A) QUALIFIED INVESTMENT ENTITY.—The term 'qualified investment entity' means any real estate investment trust and any regulated investment company.

''(B) DOMESTICALLY CONTROLLED.—The term 'domestically controlled qualified investment entity' means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.''

(4) Subparagraphs (C) and (D) of section 897(h)(4) are each amended by striking ''REIT'' and inserting ''qualified investment entity''.

(5) The subsection heading for subsection (h) of section 897 is amended by striking ''REITS'' and inserting ''CERTAIN INVESTMENT ENTITIES''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

(2) ESTATE TAX TREATMENT.—The amendment made by subsection (b) shall apply to estates of decedents dying after December 31, 2004.

(3) CERTAIN OTHER PROVISIONS.—The amendments made by subsection (c) (other than paragraph (1) thereof) shall take effect after December 31, 2004.

SEC. 287. TAXATION OF CERTAIN SETTLEMENT FUNDS.

(a) IN GENERAL.—Subsection (g) of section 468B (relating to clarification of taxation of certain funds) is amended to read as follows:

''(g) CLARIFICATION OF TAXATION OF CERTAIN FUNDS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

''(2) EXEMPTION FROM TAX FOR CERTAIN SETTLEMENT FUNDS.—An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if—

''(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,

''(B) it is created for the receipt of settlement payments as directed by a government entity for the sole purpose of resolving or

satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

''(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and

''(D) upon termination, any remaining funds will be disbursed upon instructions by such government entity in accordance with applicable law.

For purposes of this paragraph, the term 'government entity' means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 288. EXPANSION OF HUMAN CLINICAL TRIALS QUALIFYING FOR ORPHAN DRUG CREDIT.

(a) IN GENERAL.—Paragraph (2) of section 45C(b) (relating to qualified clinical testing expenses) is amended by adding at the end the following new subparagraph:

''(C) TREATMENT OF CERTAIN EXPENSES INCURRED BEFORE DESIGNATION.—For purposes of subparagraph (A)(ii)(I), if a drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act not later than the due date (including extensions) for filing the return of tax under this subtitle for the taxable year in which the application for such designation of such drug was filed, such drug shall be treated as having been designated on the date that such application was filed.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 289. SIMPLIFICATION OF EXCISE TAX IMPOSED ON BOWS AND ARROWS.

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

''(1) BOWS.—

''(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, 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—

''(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

''(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.''.

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

''(3) ARROWS.—

''(A) IN GENERAL.—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.

''(B) 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 the tax imposed under 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 (2) to which additional components are attached.''.

(c) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

(1) by inserting ''(other than broadheads)'' after ''point'', and

(2) by striking ''ARROWS.—'' in the heading and inserting ''ARROW COMPONENTS.—''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 290. REPEAL OF EXCISE TAX ON FISHING TACKLE BOXES.

(a) REPEAL.—Paragraph (6) of section 4162(a) (defining sport fishing equipment) is amended by striking subparagraph (C) and by redesignating subparagraphs (D) through (J) as subparagraphs (C) through (I), respectively.

(b) EFFECTIVE DATE.—The amendments made this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 291. SONAR DEVICES SUITABLE FOR FINDING FISH.

(a) NOT TREATED AS SPORT FISHING EQUIPMENT.—Subsection (a) of section 4162 (relating to sport fishing equipment defined) is amended by inserting ''and'' at the end of paragraph (8), by striking '', and'' at the end of paragraph (9) and inserting a period, and by striking paragraph (10).

(b) CONFORMING AMENDMENT.—Section 4162 is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

(c) EFFECTIVE DATE.—The amendments made this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 292. INCOME TAX CREDIT TO DISTILLED SPIRITS WHOLESALERS FOR COST OF CARRYING FEDERAL EXCISE TAXES ON BOTTLED DISTILLED SPIRITS.

(a) IN GENERAL.—Subpart A of part I of subchapter A of chapter 51 (relating to gallonage and occupational taxes) is amended by adding at the end the following new section:

''SEC. 5011. INCOME TAX CREDIT FOR WHOLESALER'S AVERAGE COST OF CARRYING EXCISE TAX.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible wholesaler, the amount of the distilled spirits wholesalers credit for any taxable year is the amount equal to the product of—

''(1) the number of cases of bottled distilled spirits—

''(A) which were bottled in the United States, and

''(B) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, and

''(2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

''(b) ELIGIBLE WHOLESALER.—For purposes of this section, the term 'eligible wholesaler' means any person who holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits.

''(c) AVERAGE TAX-FINANCING COST.—

''(1) IN GENERAL.—For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise per case.

''(2) DEEMED FINANCING RATE.—For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

''(3) DEEMED FEDERAL EXCISE TAX BASED ON CASE.—For purposes of paragraph (1), the deemed Federal excise tax per case of 12 80-proof 750ml bottles is $22.83.

''(4) NUMBER OF CASES IN LOT.—For purposes of this section, the number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.''

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 38 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 new paragraph:

''(16) in the case of an eligible wholesaler (as defined in section 5011(b)), the distilled spirits wholesalers credit determined under section 5011(a).''

(2) Subsection (d) of section 39 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF SECTION 5011 CREDIT BEFORE JANUARY 1, 2005.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 5011(a) may be carried back to a taxable year beginning before January 1, 2005.''.

(3) The table of sections for subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following new item:

''Sec. 5011. Income tax credit for wholesaler's average cost of carrying excise tax.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 293. SUSPENSION OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) IN GENERAL.—Subpart G of part II of subchapter A of chapter 51 is amended by redesignating section 5148 as section 5149 and by inserting after section 5147 the following new section:

''SEC. 5148. SUSPENSION OF OCCUPATIONAL TAX.

''(a) IN GENERAL.—Notwithstanding sections 5081, 5091, 5111, 5121, and 5131, the rate of tax imposed under such sections for the suspension period shall be zero. During such period, persons engaged in or carrying on a trade or business covered by such sections shall register under section 5141 and shall comply with the recordkeeping requirements under this part.

''(b) SUSPENSION PERIOD.—For purposes of subsection (a), the suspension period is the period beginning on July 1, 2004, and ending on June 30, 2007.''.

(b) CONFORMING AMENDMENT.—Section 5117 is amended by adding at the end the following new subsection:

''(d) SPECIAL RULE DURING SUSPENSION PERIOD.—Except as provided by the Secretary, during the suspension period (as defined in section 5148) it shall be unlawful for any dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep records under section 5114.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart G of part II of subchapter A of chapter 51 is amended by striking the last item and inserting the following new items:

''Sec. 5148. Suspension of occupational tax.

''Sec. 5149. Cross references.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE III—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

SEC. 301. INTEREST EXPENSE ALLOCATION RULES.

(a) ELECTION TO ALLOCATE ON WORLDWIDE BASIS.—Section 864 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.—For purposes of this subchapter, at the election of the worldwide affiliated group—

''(1) ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE.—

''(A) IN GENERAL.—The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

''(B) TREATMENT OF WORLDWIDE AFFILIATED GROUP.—The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

''(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

''(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

''(C) WORLDWIDE AFFILIATED GROUP.—For purposes of this paragraph, the term 'worldwide affiliated group' means a group consisting of—

''(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

''(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

''(2) ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.—Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term 'affiliated group' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

''(3) TREATMENT OF TAX-EXEMPT ASSETS; BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS.—The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

''(4) TREATMENT OF CERTAIN FINANCIAL INSTITUTIONS.—

''(A) IN GENERAL.—For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

''(B) DESCRIPTION.—A corporation is described in this subparagraph if—

''(i) such corporation is a financial institution described in section 581 or 591,

''(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

''(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

''(C) TREATMENT OF BANK AND FINANCIAL HOLDING COMPANIES.—To the extent provided in regulations—

''(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

''(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

''(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business, shall be treated as a corporation described in subparagraph (B).

''(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

''(A) IN GENERAL.—If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

''(i) are members of such worldwide affiliated group, but

''(ii) are not corporations described in paragraph (4)(B),

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 904(d)(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—

''(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

''(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 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

''(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2008, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

''(E) DEFINITIONS RELATING TO GROUPS.—For purposes of this paragraph—

''(i) PRE-ELECTION WORLDWIDE AFFILIATED GROUP.—The term 'pre-election worldwide affiliated group' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

''(ii) ELECTING FINANCIAL INSTITUTION GROUP.—The term 'electing financial institution group' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

''(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

''(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

''(ii) preventing assets or interest expense from being taken into account more than once, and

''(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group 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 domestic 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 other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent 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), by redesignating subparagraph (F) as subparagraph (G), and by inserting after

subparagraph (E) 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. 302. RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.

(a) GENERAL RULE.—Section 904 is amended by redesignating subsections (g), (h), (i), (j), and (k) as subsections (h), (i), (j), (k), and (l) respectively, and by inserting after subsection (f) the following new subsection:

''(g) RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.—

''(1) GENERAL RULE.—For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

''(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

''(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

''(2) OVERALL DOMESTIC LOSS DEFINED.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

''(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.

''(3) CHARACTERIZATION OF SUBSEQUENT INCOME.—

''(A) IN GENERAL.—Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

''(B) INCOME CATEGORY.—For purposes of this paragraph, the term 'income category' has the meaning given such term by subsection (f)(5)(E)(i).

''(4) COORDINATION WITH SUBSECTION (f).—The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 535(d)(2) is amended by striking ''section 904(g)(6)'' and inserting ''section 904(h)(6)''.

(2) Subparagraph (A) of section 936(a)(2) is amended by striking ''section 904(f)'' and inserting ''subsections (f) and (g) of section 904''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses for taxable years beginning after December 31, 2006.

SEC. 303. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.

(a) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income) is amended to read as follows:

''(1) IN GENERAL.—The provisions of subsections (a), (b), and (c) and sections 902, 907, and 960 shall be applied separately with respect to—

''(A) passive category income, and

''(B) general category income.''

(b) CATEGORIES.—Paragraph (2) of section 904(d) is amended by striking subparagraph (B), by redesignating subparagraph (A) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

''(A) CATEGORIES.—

''(i) PASSIVE CATEGORY INCOME.—The term 'passive category income' means passive income and specified passive category income.

''(ii) GENERAL CATEGORY INCOME.—The term 'general category income' means income other than passive category income.''

(c) SPECIFIED PASSIVE CATEGORY INCOME.—Subparagraph (B) of section 904(d)(2), as so redesignated, is amended by adding at the end the following new clause:

''(v) SPECIFIED PASSIVE CATEGORY INCOME.—The term 'specified passive category income' means—

''(I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States,

''(II) taxable income attributable to foreign trade income (within the meaning of section 923(b)), and

''(III) distributions from a FSC (or a former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).''

(d) TREATMENT OF FINANCIAL SERVICES.—Paragraph (2) of section 904(d) is amended by striking subparagraph (D), by redesignating subparagraph (C) as subparagraph (D), and by inserting before subparagraph (D) (as so redesignated) the following new subparagraph:

''(C) TREATMENT OF FINANCIAL SERVICES INCOME AND COMPANIES.—

''(i) IN GENERAL.—Financial services income shall be treated as general category income in the case of—

''(I) a member of a financial services group, and

''(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

''(ii) FINANCIAL SERVICES GROUP.—The term 'financial services group' means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

''(I) United States corporations, or

''(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

''(iii) PASS-THRU ENTITIES.—The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.''

(e) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 904(d)(2)(B) (relating to exceptions from passive income), as so redesignated, is amended by striking subclause (I) and by redesignating subclauses (II) and (III) as subclauses (I) and (II), respectively.

(2) Clause (i) of section 904(d)(2)(D) (defining financial services income), as so redesignated, is amended by adding ''or'' at the end of subclause (I) and by striking subclauses (II) and (III) and inserting the following new subclause:

''(II) passive income (determined without regard to subparagraph (B)(iii)(II)).''

(3) Section 904(d)(2)(D) (defining financial services income), as so redesignated, is amended by striking clause (iii).

(4) Paragraph (3) of section 904(d) is amended to read as follows:

''(3) LOOK-THRU IN CASE OF CONTROLLED FOREIGN CORPORATIONS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

''(B) SUBPART F INCLUSIONS.—Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

''(C) INTEREST, RENTS, AND ROYALTIES.—Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

''(D) DIVIDENDS.—Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

''(i) the portion of the earnings and profits attributable to passive category income, to

''(ii) the total amount of earnings and profits.

''(E) LOOK-THRU APPLIES ONLY WHERE SUBPART F APPLIES.—If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

''(F) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—

''(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

''(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

''(G) DIVIDEND.—For purposes of this paragraph, the term 'dividend' includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

''(H) LOOK-THRU APPLIES TO PASSIVE FOREIGN INVESTMENT COMPANY INCLUSION.—If—

''(i) a passive foreign investment company is a controlled foreign corporation, and

''(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.''

(5) TREATMENT OF INCOME TAX BASE DIFFERENCES.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

''(H) TREATMENT OF INCOME TAX BASE DIFFERENCES.—Tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).''

(6) Paragraph (2) of section 904(d) is amended by adding at the end the following new subparagraph:

''(K) TRANSITIONAL RULES FOR 2007 CHANGES.—For purposes of paragraph (1)—

''(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

''(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income to such a taxable year for purposes of allocating such income among the separate categories in effect for such taxable year.''.

(7) Section 904(j)(3)(A)(i) is amended by striking ''subsection (d)(2)(A)'' and inserting ''subsection (d)(2)(B)''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 304. LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) IN GENERAL.—Section 904(d)(4) (relating to look-thru rules apply to dividends from noncontrolled section 902 corporations) is amended to read as follows:

''(4) LOOK-THRU APPLIES 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 the taxpayer shall be treated as income described in a subparagraph 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 the stock to which the distributions relate.

''(ii) INADEQUATE SUBSTANTIATION.—If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

''(iii) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

''(iv) LOOK-THRU WITH RESPECT TO CARRYOVER OF CREDIT.—Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation to such a taxable year for purposes of allocating such dividend among the separate categories in effect for such taxable year.''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 904(d)(1) is hereby repealed.

(2) Section 904(d)(2)(C)(iii) is amended by adding ''and'' at the end of subclause (I), by striking subclause (II), and by redesignating subclause (III) as subclause (II).

(3) The last sentence of section 904(d)(2)(D) is amended to read as follows: ''Such term does not include any financial services income.''.

(4) Section 904(d)(2)(E) is amended—

(A) by inserting ''or (4)'' after ''paragraph (3)'' in clause (i), and

(B) by striking clauses (ii) and (iv) and by redesignating clause (iii) as clause (ii).

(5) Section 904(d)(3)(F) is amended by striking ''(D), or (E)'' and inserting ''or (D)''.

(6) Section 864(d)(5)(A)(i) is amended by striking ''(C)(iii)(III)'' and inserting ''(C)(iii)(II)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 305. ATTRIBUTION OF STOCK OWNERSHIP THROUGH PARTNERSHIPS TO APPLY IN DETERMINING SECTION 902 AND 960 CREDITS.

(a) IN GENERAL.—Subsection (c) of section 902 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) CONSTRUCTIVE OWNERSHIP THROUGH PARTNERSHIPS.—Stock owned, directly or indirectly, by or for a partnership shall be considered as being 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 rules to account for special partnership 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) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act.

SEC. 306. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 367(d)(2) is amended by adding at the end the following new sentence: ''For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.

SEC. 307. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 956(c)(2) (relating to exceptions from property treated as United States property) is amended by striking ''and'' at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting a semicolon, and by adding at the end the following new subparagraphs:

''(L) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

''(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

''(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

''(M) an obligation of a United States person which—

''(i) is not a domestic corporation, and

''(ii) is not—

''(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

''(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.''.

(b) CONFORMING AMENDMENT.—Section 956(c)(2) is amended by striking ''and (K)'' in the last sentence and inserting '', (K), and (L)''.

(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.

SEC. 308. 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 (D) as subparagraph (E) 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 denominated in any 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. 309. REPEAL OF WITHHOLDING TAX ON DIVIDENDS FROM CERTAIN FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (2) of section 871(i) (relating to tax not to apply to certain interest and dividends) is amended by adding at the end the following new subparagraph:

''(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2004.

SEC. 310. PROVIDE EQUAL TREATMENT FOR INTEREST PAID BY 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), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.''.

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

SEC. 311. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY INCOME RULES.

(a) IN GENERAL.—Subsection (c) of section 954, as amended by this Act, is amended by adding after paragraph (4) the following new paragraph:

''(5) LOOK-THRU IN THE CASE OF RELATED CONTROLLED FOREIGN CORPORATIONS.—For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person (as defined in subsection (b)(9)) shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is not subpart F income (as defined in section 952). For purposes of this paragraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph.''.

(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. 312. LOOK-THRU TREATMENT FOR SALES OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 954(c) (defining foreign personal holding company income), as amended by this Act, is amended by adding after paragraph (5) the following new paragraph:

''(6) 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 with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

''(B) 25-PERCENT OWNER.—For purposes of this paragraph, the term '25-percent owner' means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its 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. 313. 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 companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM PERSONAL HOLDING COMPANY RULES.—

(1) IN GENERAL.—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

''(5) a foreign corporation,'',

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting ''and'' at the end of paragraph (7) (as so redesignated), and

(D) by striking ''; and'' at the end of paragraph (8) (as so redesignated) and inserting a period.

(2) TREATMENT OF INCOME FROM PERSONAL SERVICE CONTRACTS.—Paragraph (1) of section 954(c) is amended by adding at the end the following new subparagraph:

''(I) PERSONAL SERVICE CONTRACTS.—

''(i) Amounts received under a contract under which the corporation is to furnish personal services if—

''(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

''(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

''(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1(h) is amended—

(A) in paragraph (10), by inserting ''and'' at the end of subparagraph (F), by striking subparagraph (G), and by redesignating 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'' in paragraph (11)(C)(iii).

(2) Section 163(e)(3)(B), as amended by section 642(a) of 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 controlled foreign corporation (as defined in section 957) or''.

(3) Paragraph (2) of section 171(c) is amended—

(A) by striking '', or by a foreign personal holding company, as defined in section 552'', and

(B) by striking '', or foreign personal 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 section 642(b) of 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 ''to a controlled foreign corporation (as defined in section 957) or''.

(6) Section 312 is amended by striking subsection (j).

(7) Subsection (m) of section 312 is amended by striking '', a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)''.

(8) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(9) Subparagraph (B) of section 465(c)(7) is amended by adding ''or'' at the end of clause (i), 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'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(11) Paragraph (1) 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 redesignating subsection (d) as subsection (c), and

(C) by striking ''subsection (a), (b), or (c)'' in subsection (c) (as so redesignated) and inserting ''subsection (a) or (b)''.

(13) Subsection (d) of section 751 is amended by adding ''and'' at the end of paragraph (2), by striking paragraph (3), by redesignating paragraph (4) as paragraph (3), and by striking ''paragraph (1), (2), or (3)'' in paragraph (3) (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 898(b)(1) is amended to read as follows:

''(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and''.

(B) Subparagraph (B) of section 898(b)(2) is amended by striking ''and sections 551(f) and 554, whichever are applicable,''.

(C) Paragraph (3) of section 898(b) is amended to read as follows:

''(3) UNITED STATES 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 for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).''.

(D) Subsection (c) of section 898 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 (if 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 subsection (b)(2)(B) 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.''.

(16) 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 subparagraph (E)(iii) or paragraph (3)(I), any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).''.

(17)(A) Subparagraph (A) of section 904(h)(1), as redesignated by section 302, is amended by adding ''or'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(B) The paragraph heading of paragraph (2) of section 904(h), as so redesignated, is amended by striking ''FOREIGN PERSONAL HOLDING OR''.

(18) Section 951 is amended by striking subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(19) Paragraph (3) of section 989(b) is amended by striking '', 551(a),''.

(20) Paragraph (5) of section 1014(b) is amended by inserting ''and before January 1, 2005,'' after ''August 26, 1937,''.

(21) Subsection (a) of section 1016 is amended by striking paragraph (13).

(22)(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 851), 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.

(23) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(24) Subsection (d) of section 1248 is amended by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(25) Paragraph (2) of section 1260(c) is amended by striking subparagraphs (H) and (I) and by redesignating subparagraph (J) as subparagraph (H).

(26)(A) 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 inserting ''(as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004)'' after ''section 1246''.

(27) Paragraph (2) of section 1294(a) is amended to read as follows:

''(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDIBLE 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 includible 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 6103(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 done 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 ''6046 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 ''556(b)(2),'' each place it appears.

(33) The table of parts for subchapter G of chapter 1 is amended by striking the item 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 subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6035.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), 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.

(2) SUBSECTION (c)(29).—The amendments made by subsection (c)(29) shall apply to disclosures of return or return information with respect to taxable years beginning after December 31, 2004.

SEC. 314. 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 commodity transactions) are amended to read as follows:

''(i) 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 corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or''.

(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,

''(II) by applying subparagraph (A)(i) thereof by substituting 'ordinary property or property described in section 1231(b)' for 'ordinary property', and

''(III) by substituting 'controlled foreign corporation' for 'taxpayer' each place it appears, 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 computing 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)(ii) to 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.

SEC. 315. MODIFICATIONS TO TREATMENT OF AIRCRAFT LEASING AND SHIPPING INCOME.

(a) ELIMINATION OF FOREIGN BASE COMPANY SHIPPING INCOME.—Section 954 (relating to foreign base company income) is amended—

(1) by striking paragraph (4) of subsection (a) (relating to foreign base company shipping income), and

(2) by striking subsection (f) (relating to foreign base company shipping income).

(b) SAFE HARBOR FOR CERTAIN LEASING ACTIVITIES.—Subparagraph (A) of section 954(c)(2) is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.''

(c) CONFORMING AMENDMENTS.—

(1) Section 952(c)(1)(B)(iii) is amended by striking subclause (I) and redesignating subclauses (II) through (VI) as subclauses (I) through (V), respectively.

(2) Subsection (b) of section 954 is amended—

(A) by striking ''the foreign base company shipping income,'' in paragraph (5),

(B) by striking paragraphs (6) and (7), and

(C) by redesignating paragraph (8) as paragraph (6).

(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. 316. MODIFICATION OF EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING.

(a) IN GENERAL.—Section 954(h)(3) is amended by adding at the end the following:

''(E) DIRECT CONDUCT OF ACTIVITIES.—For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

''(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

''(ii) the activity is performed in the home country of the related person, and

''(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.

TITLE IV—EXTENSION OF CERTAIN EXPIRING PROVISIONS

SEC. 401. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking ''RULE FOR 2000, 2001, 2002, AND 2003.—'' and inserting ''RULE FOR TAXABLE YEARS 2000 THROUGH 2005.—'', and

(2) by striking ''or 2003,'' and inserting ''2003, 2004, or 2005,''.

(b) CONFORMING PROVISIONS.—

(1) Section 904(h) is amended by striking ''or 2003'' and inserting ''2003, 2004, or 2005''.

(2) The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to taxable years beginning during 2004 or 2005.

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

SEC. 402. EXTENSION OF RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Section 41(h)(1)(B) (relating to termination) is amended by striking ''June 30, 2004'' and inserting ''December 31, 2005''.

(2) CONFORMING AMENDMENT.—Section 45C(b)(1)(D) is amended by striking ''June 30, 2004'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 403. EXTENSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraphs (A) and (B) of section 45(c)(3) (defining qualified facility) are both amended by striking ''2004'' and inserting ''2006''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity produced and sold after December 31, 2003.

SEC. 404. INDIAN EMPLOYMENT TAX CREDIT.

Section 45A(f) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 405. WORK OPPORTUNITY CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 51(c)(4) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

SEC. 406. WELFARE-TO-WORK CREDIT.

(a) IN GENERAL.—Subsection (f) of section 51A is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

SEC. 407. CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by striking ''or 2003'' and inserting '', 2003, 2004, or 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 408. EXTENSION OF ACCELERATED DEPRECIATION BENEFIT FOR PROPERTY ON INDIAN RESERVATIONS.

Paragraph (8) of section 168(j) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 409. CHARITABLE CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) IN GENERAL.—Subparagraph (G) of section 170(e)(6) (relating to special rule for contributions of computer technology and equipment for educational purposes) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 410. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) IN GENERAL.—Subsection (h) of section 198 (relating to termination) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to expenditures paid or incurred after December 31, 2003.

SEC. 411. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Paragraphs (2) and (3)(B) of section 220(i) (defining cut-off year) are each amended by striking ''2003'' each place it appears in the text and headings and inserting ''2004''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 220(j)(4) is amended by striking ''and 2002'' and inserting ''2002, and 2004''.

(2) Subparagraph (C) of section 220(j)(2) is amended to read as follows:

''(C) NO LIMITATION FOR 2000 OR 2003.—The numerical limitation shall not apply for 2000 or 2003.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

(d) TIME FOR FILING REPORTS.—The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2004, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act.

SEC. 412. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 413. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking ''and 2003'' and inserting ''2003, 2004, and 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 414. DISTRICT OF COLUMBIA.

(a) DISTRICT OF COLUMBIA ENTERPRISE ZONE.—Subsection (f) of section 1400 is amended by striking ''December 31, 2003'' both places it appears and inserting ''December 31, 2005''.

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—Subsection (b) of section 1400A is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(c) ZERO PERCENT CAPITAL GAINS RATE.—

(1) Section 1400B is amended by striking ''January 1, 2004'' each place it appears and inserting ''January 1, 2006''.

(2) Subsections (e)(2) and (g)(2) of section 1400B are each amended by striking ''2008'' each place it appears in the headings and text and inserting ''2010''.

(3) Subsection (d) of section 1400F is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—The amendment made by subsection (b) shall apply to obligations issued after December 31, 2003.

SEC. 415. EXTENSION OF CERTAIN NEW YORK LIBERTY ZONE BOND FINANCING.

Subparagraph (D) of section 1400L(d)(2) is amended by striking ''2005'' and inserting ''2009''.

SEC. 416. DISCLOSURES RELATING TO TERRORIST ACTIVITIES.

(a) IN GENERAL.—Clause (iv) of section 6103(i)(3)(C) and subparagraph (E) of section 6103(i)(7) are both amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) DISCLOSURE OF TAXPAYER IDENTITY TO LAW ENFORCEMENT AGENCIES INVESTIGATING TERRORISM.—Subparagraph (A) of section 6103(i)(7) is amended by adding at the end the following new clause:

''(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to disclosures on or after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001.

SEC. 417. DISCLOSURE OF RETURN INFORMATION RELATING TO STUDENT LOANS.

Section 6103(l)(13)(D) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 418. COVER OVER OF TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles

brought into the United States after December 31, 2003.

SEC. 419. JOINT REVIEW OF STRATEGIC PLANS AND BUDGET FOR THE INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Paragraph (2) of section 8021(f) (relating to joint reviews) is amended by striking ''2004'' and inserting ''2005''.

(b) REPORT.—Subparagraph (C) of section 8022(3) (regarding reports) is amended—

(1) by striking ''2004'' and inserting ''2005'', and

(2) by striking ''with respect to—'' and all that follows and inserting ''with respect to the matters addressed in the joint review referred to in section 8021(f)(2).''.

(c) TIME FOR JOINT REVIEW.—The joint review required by section 8021(f)(2) of the Internal Revenue Code of 1986 to be made before June 1, 2004, shall be treated as timely if made before June 1, 2005.

SEC. 420. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) IN GENERAL.—Subsection (f) of section 9812 is amended by striking ''and'' at the end of paragraph (1), by striking paragraph (2), and by inserting after paragraph (1) the following new paragraphs:

''(2) on or after January 1, 2004, and before the date of the enactment of American Jobs Creation Act of 2004, and

''(3) after December 31, 2005.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits for services furnished on or after December 31, 2003.

SEC. 421. COMBINED EMPLOYMENT TAX REPORTING PROJECT.

(a) IN GENERAL.—Paragraph (1) of section 976(b) of the Taxpayer Relief Act of 1997 (111 Stat. 898) is amended by striking ''for a period ending with the date which is 5 years after the date of the enactment of this Act'' and inserting ''during the period ending on December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to disclosures on or after the date of the enactment of this Act.

SEC. 422. CLEAN-FUEL VEHICLES.

(a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Paragraph (2) of section 30(b) (relating to phaseout) is amended to read as follows:

''(2) PHASEOUT.—In the case of any qualified electric vehicle placed in service after December 31, 2005, the credit otherwise allowable under subsection (a) (determined after the application of paragraph (1)) shall be reduced by 75 percent.''.

(b) DEDUCTION FOR QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—Subparagraph (B) of section 179A(b)(1) (relating to phaseout) is amended to read as follows:

''(B) PHASEOUT.—In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2005, the limit otherwise applicable under subparagraph (A) shall be reduced by 75 percent.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 (relating to definitions and special rules) is amended by adding at the end the following:

''(5) GENERAL SALES TAXES.—For purposes of subsection (a)—

''(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes, and

''(II) as if State and local general sales taxes were referred to in a paragraph thereof.

''(B) DEFINITION OF GENERAL SALES TAX.—The term 'general sales tax' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

''(C) SPECIAL RULES FOR FOOD, ETC.—In the case of items of food, clothing, medical supplies, and motor vehicles—

''(i) the fact that the tax does not apply with respect to some or all of such items 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 some or all of such items 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) ITEMS TAXED AT DIFFERENT RATES.—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 use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term 'compensating use tax' means, with respect to any item, a tax which—

''(i) is imposed on the use, storage, or consumption of such item, and

''(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

''(F) SPECIAL RULE FOR MOTOR VEHICLES.—In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

''(G) 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, and paid by, such consumer.

''(H) 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)—

''(I) shall reflect the provisions of this paragraph,

''(II) 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 taxation, and

''(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).

''(I) APPLICATION OF PARAGRAPH.—This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2006.''.

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

TITLE VI—REVENUE PROVISIONS

Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation

SEC. 601. TAX TREATMENT OF EXPATRIATED ENTITIES AND THEIR FOREIGN PARENTS.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

''SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES AND THEIR FOREIGN PARENTS.

''(a) TAX ON INVERSION GAIN OF EXPATRIATED ENTITIES.—

''(1) IN GENERAL.—The taxable income of an expatriated entity for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

''(2) EXPATRIATED ENTITY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'expatriated entity' means—

''(i) the domestic corporation or partnership referred to in subparagraph (B)(i) with respect to which a foreign corporation is a surrogate foreign corporation, and

''(ii) any United States person who is related (within the meaning of section 267(b) or 707(b)(1)) to a domestic corporation or partnership described in clause (i).

''(B) SURROGATE FOREIGN CORPORATION.—A foreign corporation shall be treated as a surrogate foreign corporation if, pursuant to a plan (or a series of related transactions)—

''(i) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

''(ii) after the acquisition at least 60 percent of the stock (by vote or value) of the entity is held—

''(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

''(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

''(iii) after the acquisition the expanded affiliated group which includes the entity does not have substantial business activities in the foreign country in which, or under the law of which, the entity is created or organized, when compared to the total business activities of such expanded affiliated group.

An entity otherwise described in clause (i) with respect to any domestic corporation or partnership trade or business shall be treated as not so described if, on or before March 4, 2003, such entity acquired directly or indirectly more than half of the properties held directly or indirectly by such corporation or more than half of the properties constituting such partnership trade or business, as the case may be.

''(b) DEFINITIONS AND SPECIAL RULES.—

''(1) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(2) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership under subsection (a)(2)(B)(ii)—

''(A) stock held by members of the expanded affiliated group which includes the foreign corporation, or

''(B) stock of such foreign corporation which is sold in a public offering related to the acquisition described in subsection (a)(2)(B)(i).

''(3) PLAN DEEMED IN CERTAIN CASES.—If a foreign corporation 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 requirements of subsection (a)(2)(B)(ii) are met, such actions shall be treated as pursuant to a plan.

''(4) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

''(5) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2)(B)(ii) to the acquisition of a trade or business 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.

''(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations—

''(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

''(B) to treat stock as not stock.

''(c) OTHER DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE PERIOD.—The term 'applicable period' means the period—

''(A) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(B)(i), and

''(B) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

''(2) INVERSION GAIN.—The term 'inversion gain' means the income or gain recognized by reason of the transfer during the applicable period of stock or other properties by an expatriated entity, and any income received or accrued during the applicable period by reason of a license of any property by an expatriated entity—

''(A) as part of the acquisition described in subsection (a)(2)(B)(i), or

''(B) after such acquisition if the transfer or license is to a foreign related person.

Subparagraph (B) shall not apply to property described in section 1221(a)(1) in the hands of the expatriated entity.

''(3) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any expatriated entity, a foreign person which—

''(A) is related (within the meaning of section 267(b) or 707(b)(1)) to such entity, or

''(B) is under the same common control (within the meaning of section 482) as such entity.

''(d) SPECIAL RULES.—

''(1) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits (other than the credit allowed by section 901) shall be allowed against the tax imposed by this chapter on an expatriated entity for any taxable year described in subsection (a) only to the extent such tax exceeds the product of—

''(A) the amount of the inversion gain for the taxable year, and

''(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901, inversion gain shall be treated as from sources within the United States.

''(2) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an expatriated entity which is a partnership—

''(A) subsection (a)(1) shall apply at the partner rather than the partnership level,

''(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

''(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

''(ii) gain recognized for the taxable year by the partner by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the surrogate foreign corporation, and

''(C) the highest rate of tax specified in the rate schedule applicable to the partner under this chapter shall be substituted for the rate of tax referred to in paragraph (1).

''(3) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of subsection (a).

''(4) 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 pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(B)(i) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

''(i) any portion of the applicable period is included in such taxable year, and

''(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(B)(i) is completed.

''(e) SPECIAL RULE FOR TREATIES.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

''(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

''(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

''(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.''.

(b) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

''Sec. 7874. Rules relating to expatriated entities and their foreign parents.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 4, 2003.

SEC. 602. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by inserting after chapter 44 end the following new chapter:

''CHAPTER 45—PROVISIONS RELATING TO EXPATRIATED ENTITIES

''Sec. 4985. Stock compensation of insiders in expatriated corporations.

''SEC. 4985. STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS.

''(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any expatriated corporation, there is hereby imposed on such person a tax equal to 15 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the expatriation date.

''(b) VALUE.—For purposes of subsection (a)—

''(1) IN GENERAL.—The value of specified stock compensation shall be—

''(A) in the case of a stock option (or other similar right) or a stock appreciation right, the fair value of such option or right, and

''(B) in any other case, the fair market value of such compensation.

''(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

''(A) in the case of specified stock compensation held on the expatriation date, on such date,

''(B) in the case of such compensation which is canceled during the 6 months before the expatriation date, on the day before such cancellation, and

''(C) in the case of such compensation which is granted after the expatriation date, on the date such compensation is granted.

''(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an expatriated corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(B)(i) with respect to such corporation.

''(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

''(1) any stock option which is exercised on the expatriation date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise, and

''(2) any other specified stock compensation which is exercised, sold, exchanged, distributed, cashed-out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

''(e) DEFINITIONS.—For purposes of this section—

''(1) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the expatriation date—

''(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation or any member of the expanded affiliated group which includes such corporation, or

''(B) would be subject to such requirements if such corporation or member were an issuer of equity securities referred to in such section.

''(2) EXPATRIATED CORPORATION; EXPATRIATION DATE.—

''(A) EXPATRIATED CORPORATION.—The term 'expatriated corporation' means any corporation which is an expatriated entity (as defined in section 7874(a)(2)). Such term includes any predecessor or successor of such a corporation.

''(B) EXPATRIATION DATE.—The term 'expatriation date' means, with respect to a corporation, the date on which the corporation first becomes an expatriated corporation.

''(3) SPECIFIED STOCK COMPENSATION.—

''(A) IN GENERAL.—The term 'specified stock compensation' means payment (or right to payment) granted by the expatriated corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

''(B) EXCEPTIONS.—Such term shall not include—

''(i) any option to which part II of subchapter D of chapter 1 applies, or

''(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

''(4) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

''(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the expatriated corporation or by any member of the expanded affiliated group which includes such corporation—

''(A) shall be treated as specified stock compensation, and

''(B) shall not be allowed as a deduction under any provision of chapter 1.

''(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

''(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

''(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting ''45,'' before ''46,''.

(2) $1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

''(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.''

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period ''or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985''.

(2) The table of chapters for subtitle D is amended by inserting after the item relating to chapter 44 the following new item:

''Chapter 45. Provisions relating to expatriated entities.''

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on March 4, 2003; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 4985 of the Internal Revenue Code of 1986, as added by this section.

SEC. 603. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking ''source and character'' and inserting ''amount, source, or character''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after the date of the enactment of this Act.

SEC. 604. REVISION OF TAX RULES ON EXPATRIATION OF INDIVIDUALS.

(a) EXPATRIATION TO AVOID TAX.—

(1) IN GENERAL.—Subsection (a) of section 877 (relating to treatment of expatriates) is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—

''(1) IN GENERAL.—Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

''(2) INDIVIDUALS SUBJECT TO THIS SECTION.—This section shall apply to any individual if—

''(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $124,000,

''(B) the net worth of the individual as of such date is $2,000,000 or more, or

''(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2004, such $124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '2003' for '1992' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.''.

(2) REVISION OF EXCEPTIONS FROM ALTERNATIVE TAX.—Subsection (c) of section 877 (relating to tax avoidance not presumed in certain cases) is amended to read as follows:

''(c) EXCEPTIONS.—

''(1) IN GENERAL.—Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

''(2) DUAL CITIZENS.—

''(A) IN GENERAL.—An individual is described in this paragraph if—

''(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

''(ii) the individual has had no substantial contacts with the United States.

''(B) SUBSTANTIAL CONTACTS.—An individual shall be treated as having no substantial contacts with the United States only if the individual—

''(i) was never a resident of the United States (as defined in section 7701(b)),

''(ii) has never held a United States passport, and

''(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

''(3) CERTAIN MINORS.—An individual is described in this paragraph if—

''(A) the individual became at birth a citizen of the United States,

''(B) neither parent of such individual was a citizen of the United States at the time of such birth,

''(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

''(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.''.

(3) CONFORMING AMENDMENT.—Section 2107(a) is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).''.

(b) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

''(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

''(2) provides a statement in accordance with section 6039G.''.

(c) PHYSICAL PRESENCE IN THE UNITED STATES FOR MORE THAN 30 DAYS.—Section 877 (relating to expatriation to avoid tax) is amended by adding at the end the following new subsection:

''(g) PHYSICAL PRESENCE.—

''(1) IN GENERAL.—This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

''(2) EXCEPTION.—

''(A) IN GENERAL.—In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—

''(i) such employer is related (within the meaning of section 267 and 707) to such individual, or

''(ii) such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph.

Not more than 30 days during any calendar year may be disregarded under this subparagraph.

''(B) INDIVIDUALS WITH TIES TO OTHER COUNTRIES.—An individual is described in this subparagraph if—

''(i) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—

''(I) such individual was born,

''(II) if such individual is married, such individual's spouse was born, or

''(III) either of such individual's parents were born, and

''(ii) the individual becomes fully liable for income tax in such country.

''(C) MINIMAL PRIOR PHYSICAL PRESENCE IN THE UNITED STATES.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.''.

(d) TRANSFERS SUBJECT TO GIFT TAX.—

(1) IN GENERAL.—Subsection (a) of section 2501 (relating to taxable transfers) is amended by striking paragraph (4), by redesignating paragraph (5) as paragraph (4), and by striking paragraph (3) and inserting the following new paragraph:

''(3) EXCEPTION.—

''(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer.

''(B) CREDIT FOR FOREIGN GIFT TAXES.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.''

(2) TRANSFERS OF CERTAIN STOCK.—Subsection (a) of section 2501 is amended by adding at the end the following new paragraph:

''(5) TRANSFERS OF CERTAIN STOCK.—

''(A) IN GENERAL.—In the case of a transfer of stock in a foreign corporation described in subparagraph (B) by a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer—

''(i) section 2511(a) shall be applied without regard to whether such stock is situated within the United States, and

''(ii) the value of such stock for purposes of this chapter shall be its U.S.-asset value determined under subparagraph (C).

''(B) FOREIGN CORPORATION DESCRIBED.—A foreign corporation is described in this subparagraph with respect to a donor if—

''(i) the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation, and

''(ii) such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

''(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

''(II) the total value of the stock of such corporation.

''(C) U.S.-ASSET VALUE.—For purposes of subparagraph (A), the U.S.-asset value of stock shall be the amount which bears the same ratio to the fair market value of such stock at the time of transfer as—

''(i) the fair market value (at such time) of the assets owned by such foreign corporation and situated in the United States, bears to

''(ii) the total fair market value (at such time) of all assets owned by such foreign corporation.''

(e) ENHANCED INFORMATION REPORTING FROM INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

(1) IN GENERAL.—Subsection (a) of section 6039G is amended to read as follows:

''(a) IN GENERAL.—Notwithstanding any other provision of law, any individual to whom section 877(b) applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).''.

(2) INFORMATION TO BE PROVIDED.—Subsection (b) of section 6039G is amended to read as follows:

''(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

''(1) the taxpayer's TIN,

''(2) the mailing address of such individual's principal foreign residence,

''(3) the foreign country in which such individual is residing,

''(4) the foreign country of which such individual is a citizen,

''(5) information detailing the income, assets, and liabilities of such individual,

''(6) the number of days during any portion of which that the individual was physically present in the United States during the taxable year, and

''(7) such other information as the Secretary may prescribe.''.

(3) INCREASE IN PENALTY.—Subsection (d) of section 6039G is amended to read as follows:

''(d) PENALTY.—If—

''(1) an individual is required to file a statement under subsection (a) for any taxable year, and

''(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of $10,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.''.

(4) CONFORMING AMENDMENT.—Section 6039G is amended by striking subsections (c), (f), and (g) and by redesignating subsections (d) and (e) as subsection (c) and (d), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who expatriate after June 3, 2004.

SEC. 605. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

''SEC. 6043A. RETURNS RELATING TO TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—According to the forms or regulations prescribed by the Secretary, the acquiring corporation in any taxable acquisition shall make a return setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who 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) NOMINEES.—According to the forms or regulations prescribed by the Secretary—

''(1) 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).

''(2) REPORTING TO NOMINEES.—In the case of stock held by any person as a nominee, references in this section (other than in subsection (c)) to a shareholder shall be treated as a reference to the nominee.

''(c) 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.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in 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 shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections 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.

SEC. 606. STUDIES.

(a) TRANSFER PRICING RULES.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study regarding the effectiveness of current transfer pricing rules and compliance efforts in ensuring that cross-border transfers and other related-party transactions, particularly transactions involving intangible assets, service contracts, or leases cannot be used improperly to shift income out of the United States. The study shall include a review of the contemporaneous documentation and penalty rules under section 6662 of the Internal Revenue Code of 1986, a review of the regulatory and administrative guidance implementing the principles of section 482 of such Code to transactions involving intangible property and services and to cost-sharing arrangements, and an examination of whether increased disclosure of cross-border transactions should be required. The study shall set forth specific recommendations to address all abuses identified in the study. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

(b) INCOME TAX TREATIES.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of United States income tax treaties to identify any inappropriate reductions in United States withholding tax that provide opportunities for shifting income out of the United States, and to evaluate whether existing anti-abuse mechanisms are operating properly. The study shall include specific recommendations to address all inappropriate uses of tax treaties. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

(c) IMPACT OF CORPORATE EXPATRIATION PROVISIONS.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of the impact of the provisions of this title on corporate expatriation. The study shall include such recommendations as such Secretary or delegate may have to improve the impact of such provisions in carrying out the purposes of this title. Not later than December 31, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

Subtitle B—Provisions Relating to Tax Shelters

Part I—Taxpayer-Related Provisions

SEC. 611. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN.

"(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement 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—

"(A) $10,000 in the case of a natural person, and

"(B) $50,000 in any other case.

"(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be—

"(A) $100,000 in the case of a natural person, and

"(B) $200,000 in any other case.

"(c) DEFINITIONS.—For purposes of this section—

"(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

"(2) LISTED TRANSACTION.—The term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically 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, and

"(B) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

"(2) NO JUDICIAL APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any judicial proceeding.

"(3) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

"(A) a statement of the facts and circumstances relating to the violation,

"(B) the reasons for the rescission, and

"(C) the amount of the penalty rescinded.

"(e) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty imposed by this title."

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

"Sec. 6707A. Penalty for failure to include reportable transaction information with return."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

(d) REPORT.—The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor.

SEC. 612. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS, OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE, ETC.

(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 any taxable year, there shall be added to the tax an amount 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 1 (section 11 in the case of a taxpayer which is a corporation), and

"(B) the amount of the decrease (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, and any reduction in the amount 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 TRANSACTIONS.—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.

"(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) COORDINATION WITH PENALTIES, ETC., 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 understatements 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) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

"(2) COORDINATION WITH OTHER PENALTIES.—

"(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable 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 6663.

"(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement 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.''

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.''

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A 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 6011,

''(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 6011 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 BELIEF.—For purposes of paragraph (2)(C)—

''(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) relates solely 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)) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly 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, or

''(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), 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, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 6664(c) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(B) The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) REDUCTION IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX SHELTERS.—Subparagraph (C) of section 6662(d)(2) (relating to substantial understatement of income tax) is amended to read as follows:

''(C) REDUCTION NOT TO APPLY TO TAX SHELTERS.—

''(i) IN GENERAL.—Subparagraph (B) shall not apply to any item attributable to a tax shelter.

''(ii) TAX SHELTER.—For purposes of clause (i), 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.''

(e) CONFORMING AMENDMENTS.—

(1) Sections 461(i)(3)(C), 1274(b)(3), and 7525(b) are each amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 6662(d)(2)(C)(ii)''.

(2) The heading for section 6662 is amended to read as follows:

''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''

(3) 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 transactions.''

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

SEC. 613. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 6662(d)(2)(C)(ii)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 614. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year 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, the time 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 so required, or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 615. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) for such advice or assistance.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—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 otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''

(2) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES, ETC.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain (in such manner as the Secretary may by regulations prescribe) a list—

''(1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.''

(3) Section 6112 is amended—

(A) by redesignating subsection (c) as subsection (b),

(B) by inserting ''written'' before ''request'' in subsection (b)(1) (as so redesignated), and

(C) by striking ''shall prescribe'' in subsection (b)(2) (as so redesignated) and inserting ''may prescribe''.

(4) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees, etc.''

(5)(A) The heading for section 6708 is amended to read as follows:

''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''

(c) REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.—Paragraph (1) of section 6112(b), as redesignated by subsection (b), is amended by adding at the end the following new flush sentence:

''For purposes of this section, the identity of any person on such list shall not be privileged.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

(2) NO CLAIM OF CONFIDENTIALITY AGAINST DISCLOSURE.—The amendment made by subsection (c) shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

SEC. 616. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

(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 to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false 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).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

''(d) 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).''

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 617. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

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

SEC. 618. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''

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

SEC. 619. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT 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 substantial understatement of income tax for any taxable year if the amount of the understatement 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), or

''(ii) $10,000,000.''

(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. 620. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''

(2) The table of sections for subchapter A of chapter 76 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 621. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 622. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF THE TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty. Any such penalty imposed on an individual may be in addition to, or in lieu of, any suspension, disbarment, or censure of such individual.''

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''

Part II—Other Provisions

SEC. 631. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) 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 regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''

(b) CROSS REFERENCE.—Subsection (e) of section 305 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, see section 1286(f).''

(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. 632. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

''(1) IN GENERAL.—In no event shall a credit be allowed under 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) such 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) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions 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 to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

''(i) 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

''(ii) 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 subparagraph (A), the term 'dealer' means—

''(i) 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 if such security were stock, and

''(ii) 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 exception provided by 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 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) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

''(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.''

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting ''ON DIVIDENDS'' after ''TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

SEC. 633. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS TRANSFERS.

(a) TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.—Paragraph (1) of section 704(c) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following:

''(C) if any property so contributed has a built-in loss—

''(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

''(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value at the time of contribution.

For purposes of subparagraph (C), the term 'built-in loss' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value at the time of contribution.''

(b) SPECIAL RULES FOR TRANSFERS OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.—

(1) ADJUSTMENT OF PARTNERSHIP BASIS REQUIRED.—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period ''or unless the partnership has a substantial built-in loss immediately after such transfer''.

(2) ADJUSTMENT.—Subsection (b) of section 743 is amended by inserting ''or with respect to which there is a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BUILT-IN LOSS.—Section 743 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BUILT-IN LOSS.—

''(1) IN GENERAL.—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than $250,000 the fair market value of such property.

''(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.''

(4) ALTERNATIVE RULES FOR ELECTING INVESTMENT PARTNERSHIPS.—

(A) IN GENERAL.—Section 743 is amended by adding at the end the following new subsection:

''(e) ALTERNATIVE RULES FOR ELECTING INVESTMENT PARTNERSHIPS.—

''(1) NO ADJUSTMENT OF PARTNERSHIP BASIS.—For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

''(2) LOSS DEFERRAL FOR TRANSFEREE PARTNER.—In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

''(3) NO REDUCTION IN PARTNERSHIP BASIS.—Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.

''(4) EFFECT OF TERMINATION OF PARTNERSHIP.—This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

''(5) CERTAIN BASIS REDUCTIONS TREATED AS LOSSES.—In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

''(6) ELECTING INVESTMENT PARTNERSHIP.—For purposes of this subsection, the term 'electing investment partnership' means any partnership if—

''(A) the partnership makes an election to have this subsection apply,

''(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

''(C) such partnership has never been engaged in a trade or business,

''(D) substantially all of the assets of such partnership are held for investment,

''(E) at least 95 percent of the assets contributed to such partnership consist of money,

''(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

''(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering and during the 24-month period beginning on the date of the first capital contribution to such partnership,

''(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

''(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

''(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.''.

(B) INFORMATION REPORTING.—Section 6031 is amended by adding at the end the following new subsection:

''(f) ELECTING INVESTMENT PARTNERSHIPS.—In the case of any electing investment partnership (as defined in section 743(e)(6)), the information required under subsection (b) to be furnished to any partner to whom section 743(e)(2) applies shall include such information as is necessary to enable the partner to compute the amount of losses disallowed under section 743(e).''.

(5) CLERICAL AMENDMENTS.—

(A) The section heading for section 743 is amended to read as follows:

''SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS.''

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

''Sec. 743. Special rules where section 754 election or substantial built-in loss.''

(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period ''or unless there is a substantial basis reduction''.

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting ''or unless there is a substantial basis reduction'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds $250,000.

''(2) REGULATIONS.—

''For regulations to carry out this subsection, see section 743(d)(2).''

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 734 is amended to read as follows:

''SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION.''

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

''Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.''

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

(2) SUBSECTION (b).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply to transfers after the date of the enactment of this Act.

(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting ''20 years'' for ''15 years''.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to distributions after the date of the enactment of this Act.

SEC. 634. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

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 before the allocation required by paragraph (2).''

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

SEC. 635. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC 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,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''.

(B) The last sentence of section 860G(a)(3) is amended by inserting '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property'' before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''.

(8)(A) Section 860G(a)(3)(A) is amended by striking ''or'' at the end of clause (i), by inserting ''or'' at the end of clause (ii), and by

inserting after clause (ii) the following new clause:

''(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

''(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

''(II) occurs after the startup day, and

''(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.''.

(B) Section 860G(a)(7)(B) is amended to read as follows:

''(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

''(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

''(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.''.

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(10) 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(i)(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 part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 2005.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 636. LIMITATION ON TRANSFER OF BUILT-IN LOSSES ON REMIC RESIDUALS.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATION ON TRANSFER OF BUILT-IN LOSSES ON REMIC RESIDUALS IN SECTION 351 TRANSACTIONS.—If—

''(1) a residual interest (as defined in section 860G(a)(2)) in a REMIC is transferred in any transaction which is described in subsection (a), and

''(2) the transferee's adjusted basis in such residual interest would (but for this paragraph) exceed its fair market value immediately after such transaction,

then, notwithstanding subsection (a), the transferee's adjusted basis in such residual interest shall not exceed its fair market value (whether or not greater than zero) immediately after such transaction.''

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

SEC. 637. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

''(A) obligations of the United States, money, or deposits with persons described in paragraph (4);''.

(b) ELIGIBLE PERSONS.—Section 956(c) (relating to exceptions to definition of United States property) is amended by adding at the end the following new paragraph:

''(4) FINANCIAL SERVICES PROVIDERS.—

''(A) IN GENERAL.—For purposes of paragraph (2)(A), a person is described in this paragraph if at least 80 percent of the person's income is from the active conduct of a banking business which is derived from persons who are not related persons.

''(B) SPECIAL RULES.—For purposes of subparagraph (A) all related persons shall be treated as 1 person in applying the 80-percent test.

''(C) RELATED PERSON.—For purposes of this paragraph, a person is a related person to another person if—

''(i) the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or

''(ii) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 638. ALTERNATIVE TAX FOR CERTAIN SMALL INSURANCE COMPANIES.

(a) IN GENERAL.—Clause (i) of section 831(b)(2)(A) is amended by striking ''$1,200,000'' and inserting ''$1,890,000''.

(b) INFLATION ADJUSTMENT.—Paragraph (2) of section 831(b) is amended by adding at the end the following new subparagraph:

''(C) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2004, the $1,890,000 amount in subparagraph (A) shall be increased by an amount equal to—

''(i) $1,890,000, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

If the amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.''.

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

SEC. 639. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met.''.

(b) 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.

SEC. 640. 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. 641. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

''(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 642. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount (reduced by properly allowable deductions and qualified deficits under 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 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt 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 predominantly engaged.''.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking ''The Secretary'' and inserting:

''(A) IN GENERAL.—The Secretary'', and

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

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any item payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as

defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item (reduced by properly allowable deductions and qualified deficits under 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 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt 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 predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

SEC. 643. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting after section 139A the following new section:

''SEC. 139B. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

''(a) IN GENERAL.—In the case of an individual, gross income shall not include interest paid under section 6611 on any overpayment of tax imposed by this subtitle.

''(b) EXCEPTION.—Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of subsection (a).

''(c) SPECIAL RULE FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME.—For purposes of this title, interest not included in gross income under subsection (a) shall not be treated as interest which is exempt from tax for purposes of sections 32(i)(2)(B) and 6012(d) or any computation in which interest exempt from tax under this title is added to adjusted gross income.''.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139A the following new item:

''Sec. 139B. Exclusion from gross income for interest on overpayments of income tax by individuals.''.

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

SEC. 644. 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 which may be used by the Secretary to pay 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 made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by 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 to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-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 paragraph (2)—

''(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 of such item, and

''(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 taxpayer, 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) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(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 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such 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.

SEC. 645. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 646. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 is amended by adding at the end the following new sentence: ''In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding the amendment made by subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury Regulation §1.1502-20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the factual situation in *Rite Aid Corporation and Subsidiary Corporations v. United States*, 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—This section, and the amendment made by this section, shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

Part III—Leasing

SEC. 647. REFORM OF TAX TREATMENT OF CERTAIN LEASING ARRANGEMENTS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting ''(notwithstanding any other subparagraph of this paragraph)'' after ''shall''.

(b) LIMITATION ON DEPRECIATION PERIOD FOR SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

''(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 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 168(i)(3)).''.

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) the term of a lease shall include the 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''.

(d) EXPANSION OF SHORT-TERM LEASE EXEMPTION FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.—Subparagraph (A) of section 168(h)(3) is amended by adding at the end the following new sentence: ''Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.''

SEC. 648. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS 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 section:

''SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

''(a) LIMITATION ON LOSSES.—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

''(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

''(c) DEFINITIONS.—For purposes of this section—

''(1) TAX-EXEMPT USE LOSS.—The term 'tax-exempt use loss' means, with respect to any taxable year, the amount (if any) by which—

''(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 properly allocable to such property, exceed

''(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) (without regard to paragraphs (1)(C) and (3) thereof and determined as if property described in section 167(f)(1)(B) were tangible property). Such term shall not include property which would (but for this sentence) be tax-exempt use property solely by reason of section 168(h)(6) if any credit is allowable under section 42 or 47 with respect to such property.

''(d) EXCEPTION FOR CERTAIN LEASES.—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

''(1) AVAILABILITY OF FUNDS.—

''(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if (at all times 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 any lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. For purposes of clause (ii), funds shall be treated as set aside or expected to be set aside only if a reasonable person would conclude, based on the facts and circumstances, that such funds are set aside or expected to be set aside.

''(B) ARRANGEMENTS.—The arrangements referred to in this subparagraph include a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, prepaid rent (within the meaning of the regulations under section 467), a sinking fund arrangement, a guaranteed investment contract, financial guaranty insurance, and any similar arrangement (whether or not such arrangement provides credit support).

''(C) ALLOWABLE AMOUNT.—

''(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'allowable amount' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

''(ii) HIGHER AMOUNT 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 of more than 50 percent.

''(iii) OPTION TO PURCHASE OTHER THAN AT FAIR MARKET VALUE.—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 at which such option may be exercised.

''(iv) NO ALLOWABLE AMOUNT FOR CERTAIN ARRANGEMENTS.—The allowable amount shall be zero with respect to any arrangement which involves—

''(I) a loan from the lessee to the lessor or a lender,

''(II) any deposit received, letter of credit issued, or payment undertaking agreement entered into by a lender otherwise involved in the transaction, or

''(III) in the case of a transaction which involves a lender, any credit support made available to the lessor in which any such lender does not have a claim that is senior to the lessor.

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.

''(2) LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.—A lease of property meets the requirements of this paragraph if—

''(A) the lessor—

''(i) has at the time the lease 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

''(ii) maintains such investment throughout the term of the lease, and

''(B) 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)(ii) and (B) shall not apply to any lease with a lease term of 5 years or less. For purposes 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.

''(3) 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 the lessee bears—

''(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, 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.

''(B) EXCEPTION.—The Secretary may by regulations provide that the requirements of this paragraph are not met where the lessee bears more than a minimal risk of loss.

''(C) PARAGRAPH NOT TO APPLY TO SHORT-TERM LEASES.—This paragraph shall not apply to any lease with a lease term of 5 years or less.

''(e) SPECIAL RULES.—

''(1) 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 subsection (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 a deduction allowable 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.

''(4) COORDINATION WITH SECTIONS 1031 AND 1033.—

''(A) IN GENERAL.—Sections 1031(a) and 1033(a) shall not apply if—

''(i) the exchanged or converted property is tax-exempt use property subject to a lease which was entered into before March 13, 2004, and which would not have met the requirements of subsection (d) had such requirements been in effect when the lease was entered into, or

''(ii) the replacement property is tax-exempt use property subject to a lease which does not meet the requirements of subsection (d).

''(B) ADJUSTED BASIS.—In the case of property acquired by the lessor in a transaction to which section 1031 or 1033 applies, the adjusted basis of such property for purposes of this section shall not exceed the lesser of—

''(i) the fair market value of the property as of the beginning of the lease term, or

''(ii) the amount which would be the lessor's adjusted basis if such sections did not apply to such transaction.

''(f) OTHER DEFINITIONS.—For purposes of this section—

''(1) RELATED PARTIES.—The terms 'lessor', 'lessee', and 'lender' each 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 lessor 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 regulations 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.''.

(b) 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. Limitation on deductions allocable to property used by governments or other tax-exempt entities.''.

SEC. 649. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in this section, the amendments made by this part shall apply to leases entered into after March 12, 2004.

(b) EXCEPTION.—

(1) IN GENERAL.—The amendments made by this part shall not apply to qualified transportation property.

(2) QUALIFIED TRANSPORTATION PROPERTY.—For purposes of paragraph (1), the term ''qualified transportation property'' means domestic property subject to a lease with respect to which a formal application—

(A) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004,

(B) is approved by the Federal Transit Administration before January 1, 2005, and

(C) includes a description of such property and the value of such property.

(3) EXCHANGES AND CONVERSION OF TAX-EXEMPT USE PROPERTY.—Section 470(e)(4) of the Internal Revenue Code of 1986, as added by this section, shall apply to property exchanged or converted after the date of the enactment of this Act.

Subtitle C—Reduction of Fuel Tax Evasion

SEC. 651. EXEMPTION FROM CERTAIN EXCISE TAXES FOR MOBILE MACHINERY.

(a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—

(1) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end the following new paragraph:

''(8) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

''(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

''(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

''(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(b) EXEMPTION FROM TAX ON USE OF CERTAIN VEHICLES.—

(1) IN GENERAL.—Section 4483 (relating to exemptions) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) EXEMPTION FOR MOBILE MACHINERY.—No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(c) EXEMPTION FROM TAX ON TIRES.—

(1) IN GENERAL.—Section 4072(b)(2) is amended by adding at the end the following flush sentence: ''Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(d) REFUND OF FUEL TAXES.—

(1) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

''(C) USES IN MOBILE MACHINERY.—

''(i) IN GENERAL.—The term 'off-highway business use' shall include any use in a vehicle which meets the requirements described in clause (ii).

''(ii) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

''(I) the design-based test, and

''(II) the use-based test.

''(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

''(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

''(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

''(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

''(iv) USE-BASED TEST.—For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 7,500 miles during the taxpayer's taxable year.''.

(2) NO TAX-FREE SALES.—Subsection (b) of section 4082, as amended by section 652, is amended by inserting before the period at the end ''and such term shall not include any use described in section 6421(e)(2)(C)''.

(3) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

''(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used solely in any off-highway business use described in section 6421(e)(2)(C).''.

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

SEC. 652. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon.''.

(2) COMMERCIAL AVIATION.—Paragraph (2) of section 4081(a) is amended by adding at the end the following new subparagraph:

''(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.''.

(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

''(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

''(A) IN GENERAL.—In the case of aviation-grade kerosene which is removed from any terminal directly into the fuel tank of an aircraft (determined without regard to any refueler truck, tanker, or tank wagon which meets the requirements of subparagraph (B)), a refueler truck, tanker, or tank wagon shall be treated as part of such terminal if—

''(i) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to an airport, and

''(ii) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with aviation-grade kerosene at such terminal.

''(B) REQUIREMENTS.—A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to an airport if such truck, tanker, or wagon—

''(i) is loaded with aviation-grade kerosene at such terminal located within such airport and delivers such kerosene only into aircraft at such airport,

''(ii) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

''(iii) is not registered for highway use, and

''(iv) is operated by—

''(I) the terminal operator of such terminal, or

''(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

''(C) REPORTING.—The Secretary shall require under section 4101(d) reporting by such terminal operator of—

''(i) any information obtained under subparagraph (B)(iv)(II), and

''(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.''.

(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

''(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—For purposes of paragraph (2)(C), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.''.

(5) NONTAXABLE USES.—

(A) IN GENERAL.—Section 4082 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

''(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero.''.

(B) CONFORMING AMENDMENTS.—

(i) Subsection (b) of section 4082 is amended by adding at the end the following new flush sentence:

''The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft.''.

(ii) Section 4082(d) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(6) NONAIRCRAFT USE OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—Subparagraph (B) of section 4041(a)(1) is amended by adding at the end the following new sentence: ''This subparagraph shall not apply to aviation-grade kerosene.''.

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting ''AND KEROSENE'' after ''DIESEL FUEL''.

(b) COMMERCIAL AVIATION.—Section 4083 is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

''(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term 'commercial aviation' means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).''.

(c) REFUNDS.—

(1) IN GENERAL.—Paragraph (4) of section 6427(l) is amended to read as follows:

''(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

''(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

''(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

''(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

''(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) TIME FOR FILING CLAIMS.—Subparagraph (A) of section 6427(i)(4) is amended—

(A) by striking ''subsection (l)(5)'' both places it appears and inserting ''paragraph (4)(B) or (5) of subsection (l)'', and

(B) by striking ''the preceding sentence'' and inserting ''subsection (l)(5)''.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6427(l)(2) is amended to read as follows:

''(B) in the case of aviation-grade kerosene—

''(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

''(ii) any use in commercial aviation (within the meaning of section 4083(b)).''.

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

''(c) AVIATION-GRADE KEROSENE.—

''(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

''(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

''(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

''(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax specified in section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.''.

(B) Section 4041(d)(2) is amended by striking ''section 4091'' and inserting ''section 4081''.

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (i).

(E) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking '', 4081, or 4091'' and inserting ''or 4081''.

(F) Section 6416(b)(2) is amended by striking ''4091 or''.

(G) Section 6416(b)(3) is amended by striking ''or 4091'' each place it appears.

(H) Section 6416(d) is amended by striking ''or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)''.

(I) Section 6427(j)(1) is amended by striking '', 4081, and 4091'' and inserting ''and 4081''.

(J)(i) Section 6427(l)(1) is amended to read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under paragraph (4)(B).''.

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking ''Paragraph (1)(A) shall not apply to kerosene'' and inserting ''Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)''.

(K) Subparagraph (B) of section 6724(d)(1) is amended by striking clause (xv) and by redesignating the succeeding clauses accordingly.

(L) Paragraph (2) of section 6724(d) is amended by striking subparagraph (W) and by redesignating the succeeding subparagraphs accordingly.

(M) Paragraph (1) of section 9502(b) is amended by adding ''and'' at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

''(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and''.

(N) The last sentence of section 9502(b) is amended to read as follows:

''There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).''.

(O) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(P) Section 9508(c)(2)(A) is amended by striking ''sections 4081 and 4091'' and inserting ''section 4081''.

(Q) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A. Motor and aviation fuels.

''Subpart B. Special provisions applicable to fuels tax.''.

(R) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A—Motor and Aviation Fuels''.

(S) The heading for subpart B of part III of subchapter A of chapter 32, as redesignated by paragraph (1), is amended to read as follows:

''Subpart B—Special Provisions Applicable to Fuels Tax''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after September 30, 2004.

(f) FLOOR STOCKS TAX.—

(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on October 1, 2004, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date under section 4091 of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—The person holding the kerosene on October 1, 2004, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(3) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) to the extent of the remainder.

(4) HELD BY A PERSON.—For purposes of this section, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(5) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable

and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 653. DYE INJECTION EQUIPMENT.

(a) IN GENERAL.—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ''by mechanical injection'' after ''indelibly dyed''.

(b) DYE INJECTOR SECURITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

''SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

''(a) IMPOSITION OF PENALTY—

''(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, such person shall pay a penalty in addition to the tax (if any).

''(2) FAILURE TO MAINTAIN SECURITY REQUIREMENTS.—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) for each violation described in paragraph (1), the greater of—

''(A) $25,000, or

''(B) $10 for each gallon of fuel involved, and

''(2) for each—

''(A) failure to maintain security standards described in paragraph (2), $1,000, and

''(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

''(c) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

''Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the 180th day after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 654. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as previously amended by this Act, is amended by striking ''and'' at the end of clause (i) and by inserting after clause (ii) the following new clause:

''(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 655. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) IN GENERAL.—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting ''by pipeline or vessel'' after ''transferred in bulk'', and

(2) by inserting '', the operator of such pipeline or vessel,'' after ''the taxable fuel''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

(c) PUBLICATION OF REGISTERED PERSONS.—Beginning on July 1, 2004, the Secretary of the Treasury (or the Secretary's delegate) shall periodically publish a current list of persons registered under section 4101 of the Internal Revenue Code of 1986 who are required to register under such section.

SEC. 656. DISPLAY OF REGISTRATION.

(a) IN GENERAL.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking ''Every'' and inserting the following:

''(1) IN GENERAL.—Every'', and

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

''(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an electronic identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.''.

(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6716 the following new section:

''SEC. 6717. FAILURE TO DISPLAY TAX REGISTRATION ON VESSELS.

''(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

''(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the aggregate number of penalties (if any) imposed with respect to prior months by this section on such person (or a related person or any predecessor of such person or related person).

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6716 the following new item:

''Sec. 6717. Failure to display tax registration on vessels.''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall take effect on October 1, 2004.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to penalties imposed after September 30, 2004.

SEC. 657. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting ''($10,000 in the case of a failure to register under section 4101)'' after ''$50''.

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking ''$5,000'' and inserting ''$10,000''.

(c) ASSESSABLE PENALTY FOR FAILURE TO REGISTER.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6717 the following new section:

''SEC. 6718. FAILURE TO REGISTER.

''(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) $10,000 for each initial failure to register, and

''(2) $1,000 for each day thereafter such person fails to register.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6717 the following new item:

''Sec. 6718. Failure to register.''.

(d) ASSESSABLE PENALTY FOR FAILURE TO REPORT.—

(1) IN GENERAL.—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

''SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

''(a) IN GENERAL.—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

''(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

''(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

''(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

''Sec. 6725. Failure to report information under section 4101.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties imposed after September 30, 2004.

SEC. 658. COLLECTION FROM CUSTOMS BOND WHERE IMPORTER NOT REGISTERED.

(a) TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.—Subpart B of part III of subchapter A of chapter 32, as redesignated by section 652(d), is amended by adding after section 4103 the following new section:

"SEC. 4104. COLLECTION FROM CUSTOMS BOND WHERE IMPORTER NOT REGISTERED.

''(a) IN GENERAL.—The importer of record shall be jointly and severally liable for the tax imposed by section 4081(a)(1)(A)(iii) if, under regulations prescribed by the Secretary, any other person that is not a person who is registered under section 4101 is liable for such tax.

''(b) COLLECTION FROM CUSTOMS BOND.—If any tax for which any importer of record is liable under subsection (a), or for which any importer of record that is not a person registered under section 4101 is otherwise liable, is not paid on or before the last date prescribed for payment, the Secretary may collect such tax from the Customs bond posted with respect to the importation of the taxable fuel to which the tax relates. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any action by the Secretary described in the preceding sentence shall be treated as an action to collect the tax from a bond described in section 4101(b)(1) and not as an action to collect from a bond relating to the importation of merchandise.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 32, as redesignated by section 652(d), is amended by adding after the item related to section 4103 the following new item:

''Sec. 4104. Collection from Customs bond where importer not registered.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fuel entered after September 30, 2004.

SEC. 659. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) PRORATION OF TAX WHERE VEHICLE SOLD.—

(1) IN GENERAL.—Subparagraph (A) of section 4481(c)(2) (relating to where vehicle destroyed or stolen) is amended by striking ''destroyed or stolen'' both places it appears and inserting ''sold, destroyed, or stolen''.

(2) CONFORMING AMENDMENT.—The heading for section 4481(c)(2) is amended by striking ''DESTROYED OR STOLEN'' and inserting ''SOLD, DESTROYED, OR STOLEN''.

(b) REPEAL OF INSTALLMENT PAYMENT.—

(1) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(2) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(c) ELECTRONIC FILING.—Section 4481 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.''.

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 is amended by striking subsection (f).

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

SEC. 660. MODIFICATION OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—

(1) REFUNDS.—Section 6427(l) is amended by adding at the end the following new paragraph:

''(6) REGISTERED VENDORS PERMITTED TO ADMINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL FUEL AND KEROSENE SOLD TO FARMERS.—

''(A) IN GENERAL.—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6420(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 250 gallons (as determined under subsection (i)(5)(A)(iii)).

''(B) PAYMENT TO ULTIMATE VENDOR.—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) FILING OF CLAIMS.—Section 6427(i) is amended by inserting at the end the following new paragraph:

''(5) SPECIAL RULE FOR VENDOR REFUNDS WITH RESPECT TO FARMERS.—

''(A) IN GENERAL.—A claim may be filed under subsection (l)(6) by any person with respect to fuel sold by such person for any period—

''(i) for which $200 or more ($100 or more in the case of kerosene) is payable under subsection (l)(6),

''(ii) which is not less than 1 week, and

''(iii) which is for not more than 250 gallons for each farmer for which there is a claim.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

''(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 6427(l)(5)(A) is amended to read as follows:

''(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.''.

(B) The heading for section 6427(l)(5) is amended by striking ''FARMERS AND''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold for nontaxable use after the date of the enactment of this Act.

SEC. 661. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715, 6715A, 6717, 6718, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).''.

(b) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 9503 is amended by inserting ''AND PENALTIES'' after ''TAXES''.

(2) The heading of paragraph (1) of section 9503(b) is amended by striking ''IN GENERAL'' and inserting ''CERTAIN TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after October 1, 2004.

SEC. 662. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

''(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

''(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101. For purposes of this subparagraph, if the sale of gasoline is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

''(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor covered by such claim are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).''.

(b) CREDIT CARD PURCHASES OF DIESEL FUEL OR KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Section 6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, kerosene, and aviation fuel) is amended by adding at the end the following new flush sentence:

''For purposes of this subparagraph, if the sale of diesel fuel or kerosene is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 663. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding after section 4104 the following new section:

"SEC. 4105. TWO-PARTY EXCHANGES.

''(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(ii).

''(b) TWO-PARTY EXCHANGE.—The term 'two-party exchange' means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant fuel to a receiving person who is so registered where all of the following occur:

''(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

''(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

''(3) The terminal operator in its books and records treats the receiving person as the person that removes the taxable fuel across the terminal rack for purposes of reporting the transaction to the Secretary.

''(4) The transaction is the subject of a written contract.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding after the item relating to section 4104 the following new item:

''Sec. 4105. Two-party exchanges.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 664. SIMPLIFICATION OF TAX ON TIRES.

(a) IN GENERAL.—Subsection (a) of section 4071 is amended to read as follows:

''(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed on taxable tires sold by

the manufacturer, producer, or importer thereof a tax at the rate of 9.4 cents (4.7 cents in the case of a biasply tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds.''

(b) TAXABLE TIRE.—Section 4072 is amended by redesignating subsections (a) and (b) as subsections (b) and (c), respectively, and by inserting before subsection (b) (as so redesignated) the following new subsection:

''(a) TAXABLE TIRE.—For purposes of this chapter, the term 'taxable tire' means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use.''

(c) EXEMPTION FOR TIRES SOLD TO DEPARTMENT OF DEFENSE.—Section 4073 is amended to read as follows:

''SEC. 4073. EXEMPTIONS.

''The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.''

(d) CONFORMING AMENDMENTS.—

(1) Section 4071 is amended by striking subsection (c) and by moving subsection (e) after subsection (b) and redesignating subsection (e) as subsection (c).

(2) The item relating to section 4073 in the table of sections for part II of subchapter A of chapter 32 is amended to read as follows:

''Sec. 4073. Exemptions.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales in calendar years beginning more than 30 days after the date of the enactment of this Act.

Subtitle D—Nonqualified Deferred Compensation Plans

SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS.

(a) IN GENERAL.—Subpart A of part I of 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) GROSS INCOME INCLUSION.—In the case of a nonqualified deferred compensation plan, all compensation deferred under the plan for all taxable years (to the extent not subject to a substantial risk of forfeiture and not previously included in gross income) shall be includible in gross income for the taxable year unless at all times during the taxable year the plan meets the requirements of paragraphs (2), (3), and (4) and is operated in accordance with such requirements.

''(B) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO PREVIOUSLY DEFERRED COMPENSATION.—

''(i) IN GENERAL.—If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined under clause (ii).

''(ii) INTEREST.—For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

''(2) DISTRIBUTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

''(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

''(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

''(iii) death,

''(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

''(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

''(vi) the occurrence of an unforeseeable emergency.

''(B) SPECIAL RULES.—

''(i) SPECIFIED EMPLOYEES.—In the case of specified employees, the requirement of subparagraph (A)(i) is met only if distributions may not be made earlier than 6 months after the date of separation from service. For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i)) of a corporation the stock in which is publicly traded on an established securities market or otherwise.

''(ii) UNFORESEEABLE EMERGENCY.—For purposes of subparagraph (A)(vi)—

''(I) IN GENERAL.—The term 'unforeseeable emergency' means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

''(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

''(C) DISABLED.—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

''(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

''(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

''(3) ACCELERATION OF BENEFITS.—The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

''(4) ELECTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

''(B) INITIAL DEFERRAL DECISION.—The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations. In the case of the first year in which a participant becomes eligible to participate in the plan, such election 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) CHANGES IN TIME AND FORM OF DISTRIBUTION.—The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

''(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

''(ii) in the case an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the first payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

''(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

''(b) RULES RELATING TO FUNDING.—

''(1) OFFSHORE PROPERTY IN A TRUST.—In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

''(A) at the time set aside if such assets are located outside of the United States, or

''(B) at the time transferred if such assets are subsequently transferred outside of the United States.

''(2) EMPLOYER'S FINANCIAL HEALTH.—In the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

''(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

''(B) the date on which assets are so restricted.

''(3) INCOME INCLUSION FOR OFFSHORE TRUSTS AND EMPLOYER'S FINANCIAL HEALTH.—For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

''(4) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO TRANSFERRED PROPERTY.—

''(A) IN GENERAL.—If amounts are required to be included in gross income by reason of paragraph (1) or (2) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined under subparagraph (B).

''(B) INTEREST.—The interest determined under this subparagraph for any taxable year

is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1) or (2) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

''(c) NO INFERENCE ON EARLIER INCOME INCLUSION OR REQUIREMENT OF LATER INCLUSION.—Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) NONQUALIFIED DEFERRED COMPENSATION PLAN.—The term 'nonqualified deferred compensation plan' means any plan that provides for the deferral of compensation, other than—

''(A) a qualified employer plan, and

''(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

''(2) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

''(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5), and

''(B) any eligible deferred compensation plan (within the meaning of section 457(b)) of an employer described in section 457(e)(1)(A).

''(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

''(4) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

''(5) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

''(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

''(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

''(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

''(4) defining financial health for purposes of subsection (b)(2), and

''(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.''.

(b) W–2 FORMS.—

(1) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking ''and'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', and'', and by inserting after paragraph (12) the following new paragraph:

''(13) the total amount of deferrals under a nonqualified deferred compensation plan (within the meaning of section 409A(d)).''.

(2) THRESHOLD.—Subsection (a) of section 6051 is amended by adding at the end the following: ''In the case of the amounts required to be shown by paragraph (13), the Secretary (by regulation) may establish a minimum amount of deferrals below which paragraph (13) does not apply and may provide that paragraph (13) does not apply with respect to amounts of deferrals which are not reasonably ascertainable.''.

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 414(b) is amended by inserting ''409A,'' after ''408(p),''.

(2) Section 414(c) is amended by inserting ''409A,'' after ''408(p),''.

(3) The table of sections for such subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new item:

''Sec. 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred after June 3, 2004.

(2) CERTAIN AMOUNTS DEFERRED IN 2004 UNDER CERTAIN IRREVOCABLE ELECTIONS AND BINDING ARRANGEMENTS.—The amendments made by this section shall not apply to amounts deferred after June 3, 2004, and before January 1, 2005, pursuant to an irrevocable election or binding arrangement made before June 4, 2004.

(3) 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.

(e) 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.

(f) GUIDANCE RELATING TO TERMINATION 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 providing a limited period during which an individual participating in a nonqualified deferred compensation plan adopted before June 4, 2004, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(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 June 3, 2004, if such amounts are includible in income as earned.

Subtitle E—Other Revenue Provisions

SEC. 681. 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 of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 5 years, and

''(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 contacts with taxpayers,

''(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.

''(c) FEES.—The Secretary may retain and use an amount not in excess of 25 percent of the amount collected under any qualified tax 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 as paid by any taxpayer shall be determined without regard to this subsection.

''(d) 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.

''(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

''(f) CROSS REFERENCES.—

''(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

''(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting ''6306,'' before ''7651''.

(B) The table of sections for subchapter A of chapter 64 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 QUALIFIED TAX COLLECTION CONTRACTS.—

(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 QUALIFIED TAX COLLECTION CONTRACTS.

''(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 the qualified tax collection contract with the Secretary and shall not be brought against the United States.

''(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

''(3) Such civil action shall not be an exclusive remedy with respect to such person.

''(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

''Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract.''.

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

''(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.''.

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

''(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.''.

(e) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

SEC. 682. TREATMENT OF CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) IN GENERAL.—Subparagraph (B) of section 170(e)(1) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) of any patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property,''.

(b) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—Section 170 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—

''(1) TREATMENT AS ADDITIONAL CONTRIBUTION.—In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

''(2) REDUCTION IN ADDITIONAL DEDUCTIONS TO EXTENT OF INITIAL DEDUCTION.—With respect to any qualified intellectual property contribution, the deduction allowed under subsection (a) shall be increased under paragraph (1) only to the extent that the aggregate amount of such increases with respect to such contribution exceed the amount allowed as a deduction under subsection (a) with respect to such contribution determined without regard to this subsection.

''(3) QUALIFIED DONEE INCOME.—For purposes of this subsection, the term 'qualified donee income' means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

''(4) ALLOCATION OF QUALIFIED DONEE INCOME TO TAXABLE YEARS OF DONOR.—For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

''(5) 10-YEAR LIMITATION.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

''(6) BENEFIT LIMITED TO LIFE OF INTELLECTUAL PROPERTY.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

''(7) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

''Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

''(8) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTION.—For purposes of this subsection, the term 'qualified intellectual property contribution' means any charitable contribution of qualified intellectual property—

''(A) the amount of which taken into account under this section is reduced by reason of subsection (e)(1), and

''(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

''(9) QUALIFIED INTELLECTUAL PROPERTY.—For purposes of this subsection, the term 'qualified intellectual property' means property described in subsection (e)(1)(B)(iii) (other than property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

''(10) OTHER SPECIAL RULES.—

''(A) APPLICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Any increase under this subsection of the deduction provided under subsection (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

''(B) NET INCOME DETERMINED BY DONEE.—The net income taken into account under paragraph (3) shall not exceed the amount of such income reported under section 6050L(b)(1).

''(C) DEDUCTION LIMITED TO 12 TAXABLE YEARS.—Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

''(D) REGULATIONS.—The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

''(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

''(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.''.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6050L (relating to returns relating to certain dispositions of donated property) is amended to read as follows:

''SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED PROPERTY.

''(a) DISPOSITIONS OF DONATED PROPERTY.—

''(1) IN GENERAL.—If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

''(A) the name, address, and TIN of the donor,

''(B) a description of the property,

''(C) the date of the contribution,

''(D) the amount received on the disposition, and

''(E) the date of such disposition.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) CHARITABLE DEDUCTION PROPERTY.—The term 'charitable deduction property' means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds $5,000.

''(B) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

''(b) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTIONS.—

''(1) IN GENERAL.—Each donee with respect to a qualified intellectual property contribution shall make a return (at such time and in such form and manner as the Secretary may by regulations prescribe) with respect to each specified taxable year of the donee showing—

''(A) the name, address, and TIN of the donor,

''(B) a description of the qualified intellectual property contributed,

''(C) the date of the contribution, and

''(D) the amount of net income of the donee for the taxable year which is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section).

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) IN GENERAL.—Terms used in this subsection which are also used in section 170(m) have the respective meanings given such terms in such section.

''(B) SPECIFIED TAXABLE YEAR.—The term 'specified taxable year' means, with respect to any qualified intellectual property contribution, any taxable year of the donee any portion of which is part of the 10-year period beginning on the date of such contribution.

''(c) STATEMENT TO BE FURNISHED TO DONORS.—Every person making a return under subsection (a) or (b) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.''.

(d) COORDINATION WITH APPRAISAL REQUIREMENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as added by section 683, is amended by inserting ''subsection (e)(1)(B)(iii) or'' before ''section 1221(a)(1)''.

(e) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after June 3, 2004.

SEC. 683. INCREASED REPORTING FOR NONCASH CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding after paragraph (10) the following new paragraph:

''(11) QUALIFIED APPRAISAL AND OTHER DOCUMENTATION FOR CERTAIN CONTRIBUTIONS.—

''(A) IN GENERAL.—

''(i) DENIAL OF DEDUCTION.—In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than $500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

''(ii) EXCEPTIONS.—

''(I) READILY VALUED PROPERTY.—Subparagraphs (C) and (D) shall not apply to cash, property described in section 1221(a)(1), and publicly traded securities (as defined in section 6050L(a)(2)(B)).

''(II) REASONABLE CAUSE.—Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

''(B) PROPERTY DESCRIPTION FOR CONTRIBUTIONS OF MORE THAN $500.—In the case of contributions of property for which a deduction of more than $500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

''(C) QUALIFIED APPRAISAL FOR CONTRIBUTIONS OF MORE THAN $5,000.—In the case of contributions of property for which a deduction of more than $5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

''(D) SUBSTANTIATION FOR CONTRIBUTIONS OF MORE THAN $500,000.—In the case of contributions of property for which a deduction of more than $500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

''(E) QUALIFIED APPRAISAL.—For purposes of this paragraph, the term 'qualified appraisal' means, with respect to any property, an appraisal of such property which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.

''(F) AGGREGATION OF SIMILAR ITEMS OF PROPERTY.—For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

''(G) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

''(H) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after June 3, 2004.

SEC. 684. DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRCRAFT.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding after paragraph (11) the following new paragraph:

''(12) CONTRIBUTIONS OF MOTOR VEHICLES, BOATS, AND AIRCRAFT.—

''(A) IN GENERAL.—Except as provided in regulations or other guidance, in the case of a contribution of a specified vehicle to which paragraph (8) applies, no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer obtains a qualified appraisal of the specified vehicle on or before the date of such contribution.

''(B) EXCEPTION FOR INVENTORY PROPERTY.—Subparagraph (A) shall not apply to property which is described in section 1221(a)(1).

''(C) SPECIFIED VEHICLE.—For purposes of this paragraph, the term 'specified vehicle' means any—

''(i) motor vehicle manufactured primarily for use on public streets, roads, and highways,

''(ii) boat, or

''(iii) aircraft.

''(D) QUALIFIED APPRAISAL.—For purposes of this paragraph, the term 'qualified appraisal' means any appraisal which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.

''(E) REGULATIONS OR OTHER GUIDANCE.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after June 3, 2004.

SEC. 685. 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 by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (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 certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (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) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

SEC. 686. MODIFICATION OF CONTINUING LEVY ON PAYMENTS TO FEDERAL VENDERS.

(a) IN GENERAL.—Section 6331(h) (relating to continuing levy on certain payments) is amended by adding at the end the following new paragraph:

''(3) INCREASE IN LEVY FOR CERTAIN PAYMENTS.—Paragraph (1) shall be applied by substituting '100 percent' for '15 percent' in the case of any specified payment due to a vendor of goods or services sold or leased to the Federal Government.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 687. 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—

''(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

''(ii) 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 loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

''(iii) any loss described in clause (ii) 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:

''(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 not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and'', 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), the unrecognized gain with respect 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)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) 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 realization of a loss), then such taxpayer shall be treated as if such taxpayer—

''(A) terminated the position for its fair market value immediately before the settlement, and

''(B) sold the property so delivered by the taxpayer at its fair market value.''.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

''(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'personal property' includes—

''(i) any stock which is a part of a straddle at least 1 of the offsetting positions of which is a position with respect to such stock or substantially similar or related property, or

''(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

''(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.''.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking ''; except that the term 'personal property' shall include stock''.

(d) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—The last sentence of section 246(c) is amended by inserting: '', other than a qualified covered call option to which section 1092(f) applies'' before the period at the end.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 688. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Paragraph (1) of section 4132(a) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by subsection (a) shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(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. 689. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine), as amended by this Act, is amended by adding at the end the following new subparagraph:

''(N) Any trivalent vaccine against influenza.''.

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks 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. 690. 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, 2014''.

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

SEC. 691. COBRA FEES.

(a) USE OF MERCHANDISE PROCESSING FEE.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by aligning subparagraph (B) with subparagraph (A); and

(2) in paragraph (2), by striking ''commercial operations'' and all that follows through ''processing.'' and inserting ''customs revenue functions as defined in section 415 of the Homeland Security Act of 2002 (other than functions performed by the Office of International Affairs referred to in section 415(8) of that Act), and for automation (including the Automation Commercial Environment computer system), and for no other purpose. To the extent that funds in the Customs User Fee Account are insufficient to pay the costs of such customs revenue functions, customs duties in an amount equal to the amount of such insufficiency shall be available, to the extent provided for in appropriations Acts, to pay the costs of such customs revenue functions in the amount of such insufficiency, and shall be available for no other purpose. The provisions of the first and second sentences of this paragraph specifying the purposes for which amounts in the Customs User Fee Account may be made available shall not be superseded except by a provision of law which specifically modifies or supersedes such provisions.''.

(b) REIMBURSEMENT OF APPROPRIATIONS FROM COBRA FEES.—Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended by adding at the end the following:

''(E) Nothing in this paragraph shall be construed to preclude the use of appropriated funds, from sources other than the fees collected under subsection (a), to pay the costs set forth in clauses (i), (ii), and (iii) of subparagraph (A).''.

(c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR COLLECTING FEES; STANDARD FOR SETTING FEES.—

(1) SENSE OF CONGRESS.—The Congress finds that—

(A) the fees set forth in paragraphs (1) through (8) of subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 have been reasonably related to the costs of providing customs services in connection with the activities or items for which the fees have been charged under such paragraphs; and

(B) the fees collected under such paragraphs have not exceeded, in the aggregate, the amounts paid for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activities or items for which the fees were charged under such paragraphs.

(2) EFFECTIVE PERIOD; STANDARD FOR SETTING FEES.—Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended to read as follows:

''(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) after September 30, 2014.

''(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) after September 30, 2014.

''(ii) In fiscal year 2006 and in each succeeding fiscal year for which fees under paragraphs (1) through (8) of subsection (a) are authorized—

''(I) the Secretary of the Treasury shall charge fees under each such paragraph in amounts that are reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged under such paragraph, except that in no case may the fee charged under any such paragraph exceed by more than 10 percent the amount otherwise prescribed by such paragraph;

''(II) the amount of fees collected under such paragraphs may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs described in subsection (f)(3)(A) incurred in providing customs services in

connection with the activity or item for which the fees are charged under such paragraphs;

''(III) a fee may not be collected under any such paragraph except to the extent such fee will be expended to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph; and

''(IV) any fee collected under any such paragraph shall be available for expenditure only to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph.''.

(d) CLERICAL AMENDMENTS.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in subsection (a)(5)(B), by striking ''$1.75'' and inserting ''$1.75.'';

(2) in subsection (b)—

(A) in paragraph (1)(A), by aligning clause (iii) with clause (ii);

(B) in paragraph (7), by striking ''paragraphs'' and inserting ''paragraph''; and

(C) in paragraph (9), by aligning subparagraph (B) with subparagraph (A); and

(3) in subsection (e)(2), by aligning subparagraph (B) with subparagraph (A).

(e) STUDY OF ALL FEES COLLECTED BY DEPARTMENT OF HOMELAND SECURITY.—The Secretary of the Treasury shall conduct a study of all the fees collected by the Department of Homeland Security, and shall submit to the Congress, not later than September 30, 2005, a report containing the recommendations of the Secretary on—

(1) what fees should be eliminated;

(2) what the rate of fees retained should be; and

(3) any other recommendations with respect to the fees that the Secretary considers appropriate.

SEC. 692. SAFE HARBOR FOR CHURCHES.

(a) IN GENERAL.—Section 501 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

''(q) SAFE HARBOR FOR CHURCHES.—

''(1) STATEMENTS BY RELIGIOUS LEADERS AS PRIVATE CITIZENS.—An organization described in section 508(c)(1)(A) (relating to churches) shall not fail to be treated as organized and operated exclusively for a religious purpose, or be treated as having participated in, or intervened in any political campaign on behalf of (or in opposition to) any candidate for public office, for purposes of subsection (c)(3), or section 170(c)(2) (relating to charitable contributions), 4955, or 4956 solely by reason of a statement by a religious leader of such organization which is clearly identified as a statement made as a private citizen and not made on behalf of or in representation of such organization. A statement shall not be treated as clearly identified for purposes of this paragraph if such statement is made in an official publication of such organization, at an official function of such organization, or if such statement is paid for in whole or part by such organization.

''(2) UNINTENTIONAL VIOLATIONS.—An organization described in section 508(c)(1)(A) (relating to churches) shall not fail to be treated as organized and operated exclusively for a religious purpose, or be treated as having participated in, or intervened in any political campaign on behalf of (or in opposition to) any candidate for public office, for purposes of subsection (c)(3), or section 170(c)(2) (relating to charitable contributions) unless such organization or any of its religious leaders so participates or intervenes on more than 3 separate occasions during any calendar year. This paragraph shall not apply with respect to any such participation or intervention which constitutes an intentional disregard by such organization or any of its religious leaders of the prohibition of such activity under subsection (c)(3) or section 170(c)(2).

''(3) CROSS REFERENCE.—

''For tax imposed on churches for impermissible activities, see section 4956.''.

(b) IMPOSITION OF TAX ON IMPERMISSIBLE ACTIVITIES.—

(1) IN GENERAL.—Subchapter C of chapter 42 is amended by inserting after section 4955 the following new section:

''SEC. 4956. TAX ON IMPERMISSIBLE ACTIVITIES BY CHURCHES.

''(a) IMPOSITION OF TAX.—There is hereby imposed on each organization described in section 508(c)(1)(A) which is an organization exempt from tax under section 501(a) by reason of section 501(q)(2), a tax equal to—

''(1) the highest rate of tax specified by section 11(b), multiplied by

''(2) the gross income of such organization for such calendar year.

The tax imposed by this subsection shall be paid by the organization.

''(b) REDUCTION FOR LESS THAN 3 VIOLATIONS.—In the case of an organization described in subsection (a) which committed not more than 2 acts of participation in, or intervention in a political campaign on behalf of (or in opposition to) any candidate for public office during such calendar year, the amount taken into account under subsection (a)(2) shall be the amount which would have been taken into account under subsection (a)(2) (but for this subsection) divided by—

''(1) 52 in the case of one such act during such calendar year, or

''(2) 2 in the case of 2 such acts during such calendar year.

''(c) COORDINATION WITH SECTION 4955.—The tax imposed under this section with respect to any act shall be reduced by the amount of any tax imposed under section 4955 with respect to such act.''.

(2) CLERICAL AMENDMENTS.—

(A) The table of section for subchapter C of chapter 42 is amended by adding at the end the following new item:

''Sec. 4956. Tax on impermissible activities by churches.''.

(B) The heading for subchapter C of chapter 42 is amended by striking ''EXPENDITURES'' and inserting ''ACTIVITIES''.

(c) REPORTING.—

(1) REQUIREMENT.—Subsection (a) of section 6012 is amended by adding at the end the following new paragraph:

''(10) Every organization described in section 508(c)(1)(A) with respect to which tax is imposed under section 4956.''.

(2) FORM AND MANNER.—Section 6033 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

''(h) RETURNS REQUIRED BY CHURCHES PARTICIPATING IN CERTAIN ACTIVITIES.—Any organization on which tax is imposed under section 4956 shall file a return at such time, in such manner, and including such information as the Secretary may prescribe.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acts occurring after the date of the enactment of this Act.

TITLE VII—MARKET REFORM FOR TOBACCO GROWERS

SEC. 701. SHORT TITLE.

This title may be cited as the ''Fair and Equitable Tobacco Reform Act of 2004''.

SEC. 702. EFFECTIVE DATE.

This title and the amendments made by this title shall apply beginning with the 2005 marketing year of each kind of tobacco.

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

SEC. 711. TERMINATION OF TOBACCO QUOTA PROGRAM AND RELATED PROVISIONS.

(a) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(b) PROCESSING.—Section 9(b) of the Agricultural Adjustment Act (7 U.S.C. 609(b)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (2), by striking ''tobacco,''; and

(2) in paragraph (6)(B)(i), by striking '', or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum,''.

(c) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking ''tobacco,''.

(d) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking ''tobacco,'';

(3) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(4) in paragraph (11)(B), by striking ''and tobacco'';

(5) in paragraph (12), by striking ''tobacco,'';

(6) in paragraph (14)—

(A) in subparagraph (A), by striking ''(A)''; and

(B) by striking subparagraphs (B), (C), and (D);

(7) by striking paragraph (15);

(8) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(9) by striking paragraph (17); and

(10) by redesignating paragraph (16) as paragraph (15).

(e) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking ''rice, or tobacco,'' and inserting ''or rice,''.

(f) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking ''tobacco,''.

(g) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking ''rice, or tobacco'' and inserting ''or rice''; and

(2) in the first sentence of subsection (b), by striking ''rice, or tobacco'' and inserting ''or rice''.

(h) REGULATIONS.—Section 375 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

(1) in subsection (a), by striking ''peanuts, or tobacco'' and inserting ''or peanuts''; and

(2) by striking subsection (c).

(i) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking ''cotton, and tobacco'' and inserting ''and cotton''; and

(2) by striking subsections (d), (e), and (f).

(j) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking ''(a)''; and

(B) in paragraph (6), by striking '', but this clause (6) shall not be applicable in the case of burley tobacco''; and

(2) by striking subsections (b) and (c).

(k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

(m) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(n) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking ''tobacco and''.

(o) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) is amended by striking subsection (c).

SEC. 712. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM AND RELATED PROVISIONS.

(a) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1, 1445–2) are repealed.

(b) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking ''tobacco (except as otherwise provided herein), corn,'' and inserting ''corn'';

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking '', except tobacco,''; and

(B) by striking ''and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;''; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking ''tobacco,''.

(d) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting ''(other than tobacco)'' after ''agricultural commodities'' each place it appears.

SEC. 713. LIABILITY.

The amendments made by this subtitle shall not affect the liability of any person under any provision of law so amended with respect to any crop of tobacco planted before the effective date of this Act.

Subtitle B—Transitional Payments to Tobacco Quota Holders and Active Producers of Tobacco

SEC. 721. DEFINITIONS OF ACTIVE TOBACCO PRODUCER AND QUOTA HOLDER.

In this subtitle:

(1) ACTIVE TOBACCO PRODUCER.—The term ''active tobacco producer'' means an owner, operator, landlord, tenant, or sharecropper who—

(A) shared in the risk of producing tobacco on a farm where tobacco was produced or considered planted pursuant to a tobacco farm marketing quota or farm acreage allotment established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) for the 2004 marketing year; and

(B) was actively engaged on that farm.

(2) CONSIDERED PLANTED.—The term ''considered planted'' means tobacco that was planted, but failed to be produced as a result of a natural disaster, as determined by the Secretary.

(3) TOBACCO QUOTA HOLDER.—The term ''tobacco quota holder'' means a person that was an owner of a farm, as of July 1, 2004, for which a basic tobacco farm marketing quota or farm acreage allotment for quota tobacco was established for the 2004 tobacco marketing year.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 722. PAYMENTS TO TOBACCO QUOTA HOLDERS.

(a) PAYMENT REQUIRED.—The Secretary shall make payments to each eligible tobacco quota holder for the termination of tobacco marketing quotas and related price support under subtitle A, which shall constitute full and fair compensation for any losses relating to such termination.

(b) ELIGIBILITY.—To be eligible to receive a payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person satisfies the definition of tobacco quota holder. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) INDIVIDUAL BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall establish a base quota level applicable to each eligible tobacco quota holder identified under subsection (b).

(2) POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which the marketing quota is expressed in pounds, the base quota level for each tobacco quota holder shall be equal to the basic tobacco marketing quota under the Agriculture Adjustment Act of 1938 for the marketing year in effect on the date of the enactment of this Act for quota tobacco on the farm owned by the tobacco quota holder.

(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which there is marketing quota or allotment on an acreage basis, the base quota level for each tobacco quota holder shall be the amount equal to the product obtained by multiplying—

(A) the basic tobacco farm marketing quota or allotment for the marketing year in effect on the date of the enactment of this Act, as established by the Secretary for quota tobacco on the farm owned by the tobacco quota holder; by

(B) the average county production yield per acre for the county in which the farm is located for the kind of tobacco for that marketing year.

(d) TREATMENT OF CERTAIN CONTRACTS AND AGREEMENTS.—

(1) EFFECT OF PURCHASE CONTRACT.—If there was an agreement for the purchase of all or part of a farm described in subsection (c) as of the date of the enactment of this Act, and the parties to the sale are unable to agree to the disposition of eligibility for payments under this section, the Secretary, taking into account any transfer of quota that has been agreed to, shall provide for the equitable division of the payments among the parties by adjusting the determination of who is the tobacco quota holder with respect to particular pounds of the quota.

(2) EFFECT OF AGREEMENT FOR PERMANENT QUOTA TRANSFER.—If the Secretary determines that there was in existence, as of the day before the date of the enactment of this Act, an agreement for the permanent transfer of quota, but that the transfer was not completed by that date, the Secretary shall consider the tobacco quota holder to be the party to the agreement that, as of that date, was the owner of the farm to which the quota was to be transferred.

(e) TOTAL PAYMENT AMOUNTS BASED ON 2002 MARKETING YEAR.—

(1) CALCULATION OF ANNUAL PAYMENT AMOUNT.—During fiscal years 2005 through 2009, the Secretary shall make payments to all eligible tobacco quota holders identified under subsection (b) in an annual amount equal to the product obtained by multiplying, for each kind of tobacco—

(A) $1.40 per pound; by

(B) the total national basic marketing quota established under the Agriculture Adjustment Act of 1938 for the 2002 marketing year for that kind of tobacco.

(2) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which there is a marketing quota or allotment on an acreage basis, the Secretary shall convert the tobacco farm marketing quotas or allotments established under the Agriculture Adjustment Act of 1938 for the 2002 marketing year for that kind of tobacco as the Secretary considers appropriate.

(f) INDIVIDUAL PAYMENT AMOUNTS.—The annual payment amount for each eligible tobacco quota holder with respect to a kind of tobacco under this section shall bear the same ratio to the amount determined by the Secretary under subsection (e) with respect to that kind of tobacco as the individual base quota level of that eligible tobacco quota holder under subsection (c) with respect to that kind of tobacco bears to the total base quota levels of all eligible tobacco quota holders with respect to that kind of tobacco.

(g) DEATH OF TOBACCO QUOTA HOLDER.—If a tobacco quota holder who is entitled to payments under this section dies and is survived by a spouse or one or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the tobacco quota holder.

SEC. 723. TRANSITION PAYMENTS FOR ACTIVE PRODUCERS OF QUOTA TOBACCO.

(a) TRANSITION PAYMENTS REQUIRED.—The Secretary shall make transition payments under this section to eligible active producers of quota tobacco.

(b) ELIGIBILITY.—To be eligible to receive a transition payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person satisfies the definition of active producer of quota tobacco. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) CURRENT PRODUCTION BASE.—The Secretary shall establish a production base applicable to each eligible active producer of quota tobacco identified under subsection (b). A producer's production base shall be equal to the quantity, in pounds, of quota tobacco subject to the basic marketing quota marketed or considered planted by the producer under the Agriculture Adjustment Act of 1938 for the marketing year in effect on the date of the enactment of this Act.

(d) TOTAL PAYMENT AMOUNTS BASED ON 2002 MARKETING YEAR.—

(1) CALCULATION OF ANNUAL PAYMENT AMOUNT.—During fiscal years 2005 through 2009, the Secretary shall make payments to all eligible active producers of quota tobacco identified under subsection (b) in an annual amount equal to the product obtained by multiplying, for each kind of tobacco—

(A) $0.60 per pound; by

(B) the total national effective marketing quota established under the Agriculture Adjustment Act of 1938 for the 2002 marketing year for that kind of tobacco.

(2) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for

which there is a marketing quota or allotment on an acreage basis, the Secretary shall convert the tobacco farm marketing quotas or allotments established under the Agriculture Adjustment Act of 1938 for the 2002 marketing year for that kind of tobacco to a poundage basis before executing the mathematical equation specified in paragraph (1).

(e) INDIVIDUAL PAYMENT AMOUNTS.—The annual payment amount for each eligible active producer of quota tobacco identified under subsection (b) with respect to a kind of tobacco under this section shall bear the same ratio to the amount determined by the Secretary under subsection (d) with respect to that kind of tobacco as the individual production base of that eligible active producer under subsection (c) with respect to that kind of tobacco bears to the total production bases determined under that subsection for all eligible active producers of that kind of tobacco.

(f) DEATH OF TOBACCO PRODUCER.—If a tobacco producer who is entitled to payments under this section dies and is survived by a spouse or one or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the tobacco producer.

SEC. 724. RESOLUTION OF DISPUTES.

Any dispute regarding the eligibility of a person to receive a payment under this subtitle, or the amount of the payment, shall be resolved by the county committee established under section 8 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) for the county or other area in which the farming operation of the person is located.

SEC. 725. SOURCE OF FUNDS FOR PAYMENTS.

There is hereby appropriated to the Secretary, from amounts in the general fund of the Treasury, such amounts as the Secretary needs in order to make the payments required by sections 722 and 723, except that such amounts shall not exceed the lesser of—

(1) amounts received in the Treasury under chapter 52 of the Internal Revenue Code of 1986 (relating to tobacco products and cigarette papers and tubes), or

(2) $9,600,000,000.

The SPEAKER pro tempore. The amendment in the nature of a substitute printed in the bill, modified by the amendment printed in House report 108–549, is adopted.

The text of the amendment in the nature of a substitute, as modified, is as follows:

H.R. 4520

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

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''American Jobs Creation Act of 2004''.

(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.—The table of contents of this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—END SANCTIONS AND REDUCE CORPORATE TAX RATES FOR DOMESTIC MANUFACTURING AND SMALL CORPORATIONS

Sec. 101. Repeal of exclusion for extraterritorial income.

Sec. 102. Reduced corporate income tax rate for domestic production activities income.

Sec. 103. Reduced corporate income tax rate for small corporations.

TITLE II—JOB CREATION TAX INCENTIVES FOR MANUFACTURERS, SMALL BUSINESSES, AND FARMERS

Subtitle A—Small Business Expensing

Sec. 201. 2-year extension of increased expensing for small business.

Subtitle B—Depreciation

Sec. 211. Recovery period for depreciation of certain leasehold improvements and restaurant property.

Sec. 212. Modification of depreciation allowance for aircraft.

Sec. 213. Modification of placed in service rule for bonus depreciation property.

Subtitle C—S Corporation Reform and Simplification

Sec. 221. Members of family treated as 1 shareholder.

Sec. 222. Increase in number of eligible shareholders to 100.

Sec. 223. Expansion of bank S corporation eligible shareholders to include IRAs.

Sec. 224. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.

Sec. 225. Transfer of suspended losses incident to divorce, etc.

Sec. 226. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.

Sec. 227. Exclusion of investment securities income from passive income test for bank S corporations.

Sec. 228. Treatment of bank director shares.

Sec. 229. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.

Sec. 230. Information returns for qualified subchapter S subsidiaries.

Sec. 231. Repayment of loans for qualifying employer securities.

Subtitle D—Alternative Minimum Tax Relief

Sec. 241. Foreign tax credit under alternative minimum tax.

Sec. 242. Expansion of exemption from alternative minimum tax for small corporations.

Sec. 243. Income averaging for farmers not to increase alternative minimum tax.

Subtitle E—Restructuring of Incentives for Alcohol Fuels, Etc.

Sec. 251. Reduced rates of tax on gasohol replaced with excise tax credit; repeal of other alcohol-based fuel incentives; etc.

Sec. 252. Alcohol fuel subsidies borne by general fund.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

Sec. 261. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

Subtitle G—Incentives to Reinvest Foreign Earnings in United States

Sec. 271. Incentives to reinvest foreign earnings in United States.

Subtitle H—Other Incentive Provisions

Sec. 281. Special rules for livestock sold on account of weather-related conditions.

Sec. 282. Payment of dividends on stock of cooperatives without reducing patronage dividends.

Sec. 283. Capital gain treatment under section 631(b) to apply to outright sales by landowners.

Sec. 284. Distributions from publicly traded partnerships treated as qualifying income of regulated investment companies.

Sec. 285. Improvements related to real estate investment trusts.

Sec. 286. Treatment of certain dividends of regulated investment companies.

Sec. 287. Taxation of certain settlement funds.

Sec. 288. Expansion of human clinical trials qualifying for orphan drug credit.

Sec. 289. Simplification of excise tax imposed on bows and arrows.

Sec. 290. Repeal of excise tax on fishing tackle boxes.

Sec. 291. Sonar devices suitable for finding fish.

Sec. 292. Income tax credit to distilled spirits wholesalers for cost of carrying Federal excise taxes on bottled distilled spirits.

Sec. 293. Suspension of occupational taxes relating to distilled spirits, wine, and beer.

Sec. 294. Modification of unrelated business income limitation on investment in certain small business investment companies.

Sec. 295. Election to determine taxable income from certain international shipping activities using per ton rate.

Sec. 296. Charitable contribution deduction for certain expenses incurred in support of Native Alaskan subsistence whaling.

TITLE III—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

Sec. 301. Interest expense allocation rules.

Sec. 302. Recharacterization of overall domestic loss.

Sec. 303. Reduction to 2 foreign tax credit baskets.

Sec. 304. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.

Sec. 305. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.

Sec. 306. Clarification of treatment of certain transfers of intangible property.

Sec. 307. United States property not to include certain assets of controlled foreign corporation.

Sec. 308. Election not to use average exchange rate for foreign tax paid other than in functional currency.

Sec. 309. Repeal of withholding tax on dividends from certain foreign corporations.

Sec. 310. Provide equal treatment for interest paid by foreign partnerships and foreign corporations.

Sec. 311. Look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company income rules.

Sec. 312. Look-thru treatment for sales of partnership interests.

Sec. 313. Repeal of foreign personal holding company rules and foreign investment company rules.

Sec. 314. Determination of foreign personal holding company income with respect to transactions in commodities.

Sec. 315. Modifications to treatment of aircraft leasing and shipping income.

Sec. 316. Modification of exceptions under subpart F for active financing.

TITLE IV—EXTENSION OF CERTAIN EXPIRING PROVISIONS

Sec. 401. Allowance of nonrefundable personal credits against regular and minimum tax liability.

Sec. 402. Extension of research credit.

Sec. 403. Extension of credit for electricity produced from certain renewable resources.

Sec. 404. Indian employment tax credit.

Sec. 405. Work opportunity credit.

Sec. 406. Welfare-to-work credit.

Sec. 407. Certain expenses of elementary and secondary school teachers.

Sec. 408. Extension of accelerated depreciation benefit for property on Indian reservations.
Sec. 409. Charitable contributions of computer technology and equipment used for educational purposes.
Sec. 410. Expensing of environmental remediation costs.
Sec. 411. Availability of medical savings accounts.
Sec. 412. Taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.
Sec. 413. Qualified zone academy bonds.
Sec. 414. District of Columbia.
Sec. 415. Extension of certain New York Liberty Zone bond financing.
Sec. 416. Disclosures relating to terrorist activities.
Sec. 417. Disclosure of return information relating to student loans.
Sec. 418. Cover over of tax on distilled spirits.
Sec. 419. Joint review of strategic plans and budget for the Internal Revenue Service.
Sec. 420. Parity in the application of certain limits to mental health benefits.
Sec. 421. Combined employment tax reporting project.
Sec. 422. Clean-fuel vehicles.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

Sec. 501. Deduction of State and local general sales taxes in lieu of State and local income taxes.

TITLE VI—REVENUE PROVISIONS

Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation

Sec. 601. Tax treatment of expatriated entities and their foreign parents.
Sec. 602. Excise tax on stock compensation of insiders in expatriated corporations.
Sec. 603. Reinsurance of United States risks in foreign jurisdictions.
Sec. 604. Revision of tax rules on expatriation of individuals.
Sec. 605. Reporting of taxable mergers and acquisitions.
Sec. 606. Studies.

Subtitle B—Provisions Relating to Tax Shelters

PART I—TAXPAYER-RELATED PROVISIONS

Sec. 611. Penalty for failing to disclose reportable transactions.
Sec. 612. Accuracy-related penalty for listed transactions, other reportable transactions having a significant tax avoidance purpose, etc.
Sec. 613. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
Sec. 614. Statute of limitations for taxable years for which required listed transactions not reported.
Sec. 615. Disclosure of reportable transactions.
Sec. 616. Failure to furnish information regarding reportable transactions.
Sec. 617. Modification of penalty for failure to maintain lists of investors.
Sec. 618. Penalty on promoters of tax shelters.
Sec. 619. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 620. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.
Sec. 621. Penalty on failure to report interests in foreign financial accounts.
Sec. 622. Regulation of individuals practicing before the Department of the Treasury.

PART II—OTHER PROVISIONS

Sec. 631. Treatment of stripped interests in bond and preferred stock funds, etc.
Sec. 632. Minimum holding period for foreign tax credit on withholding taxes on income other than dividends.
Sec. 633. Disallowance of certain partnership loss transfers.
Sec. 634. No reduction of basis under section 734 in stock held by partnership in corporate partner.
Sec. 635. Repeal of special rules for FASITs.
Sec. 636. Limitation on transfer of built-in losses on REMIC residuals.
Sec. 637. Clarification of banking business for purposes of determining investment of earnings in United States property.
Sec. 638. Alternative tax for certain small insurance companies.
Sec. 639. Denial of deduction for interest on underpayments attributable to nondisclosed reportable transactions.
Sec. 640. Clarification of rules for payment of estimated tax for certain deemed asset sales.
Sec. 641. Recognition of gain from the sale of a principal residence acquired in a like-kind exchange within 5 years of sale.
Sec. 642. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons.
Sec. 643. Exclusion from gross income for interest on overpayments of income tax by individuals.
Sec. 644. Deposits made to suspend running of interest on potential underpayments.
Sec. 645. Partial payment of tax liability in installment agreements.
Sec. 646. Affirmation of consolidated return regulation authority.

PART III—LEASING

Sec. 647. Reform of tax treatment of certain leasing arrangements.
Sec. 648. Limitation on deductions allocable to property used by governments or other tax-exempt entities.
Sec. 649. Effective date.

Subtitle C—Reduction of Fuel Tax Evasion

Sec. 651. Exemption from certain excise taxes for mobile machinery.
Sec. 652. Taxation of aviation-grade kerosene.
Sec. 653. Dye injection equipment.
Sec. 654. Authority to inspect on-site records.
Sec. 655. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries.
Sec. 656. Display of registration.
Sec. 657. Penalties for failure to register and failure to report.
Sec. 658. Collection from customs bond where importer not registered.
Sec. 659. Modifications of tax on use of certain vehicles.
Sec. 660. Modification of ultimate vendor refund claims with respect to farming.
Sec. 661. Dedication of revenues from certain penalties to the Highway Trust Fund.
Sec. 662. Taxable fuel refunds for certain ultimate vendors.
Sec. 663. Two-party exchanges.
Sec. 664. Simplification of tax on tires.

Subtitle D—Nonqualified Deferred Compensation Plans

Sec. 671. Treatment of nonqualified deferred compensation plans.

Subtitle E—Other Revenue Provisions

Sec. 681. Qualified tax collection contracts.
Sec. 682. Treatment of charitable contributions of patents and similar property.
Sec. 683. Increased reporting for noncash charitable contributions.
Sec. 684. Donations of motor vehicles, boats, and aircraft.
Sec. 685. Extension of amortization of intangibles to sports franchises.
Sec. 686. Modification of continuing levy on payments to Federal venders.
Sec. 687. Modification of straddle rules.
Sec. 688. Addition of vaccines against hepatitis A to list of taxable vaccines.
Sec. 689. Addition of vaccines against influenza to list of taxable vaccines.
Sec. 690. Extension of IRS user fees.
Sec. 691. COBRA fees.

TITLE VII—MARKET REFORM FOR TOBACCO GROWERS

Sec. 701. Short title.
Sec. 702. Effective date.

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

Sec. 711. Termination of tobacco quota program and related provisions.
Sec. 712. Termination of tobacco price support program and related provisions.
Sec. 713. Continuation of Liability and No Net Loss Assessments to Prevent Losses on Price Support Loans.

Subtitle B—Transitional Payments to Tobacco Quota Holders and Active Producers of Tobacco

Sec. 721. Definitions of active tobacco producer and quota holder.
Sec. 722. Payments to tobacco quota holders.
Sec. 723. Transition payments for active producers of quota tobacco.
Sec. 724. Resolution of disputes.
Sec. 725. Source of funds for payments.

TITLE VIII—TRADE PROVISIONS

Sec. 801. Ceiling fans.
Sec. 802. Certain steam generators, and certain reactor vessel heads, used in nuclear facilities.

TITLE I—END SANCTIONS AND REDUCE CORPORATE TAX RATES FOR DOMESTIC MANUFACTURING AND SMALL CORPORATIONS

SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

(2) The table of subparts for such part III is amended by striking the item relating to subpart E.

(3) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(4) The second sentence of section 56(g)(4)(B)(i) is amended by striking ''114 or''.

(5) Section 275(a) is amended—

(A) by inserting ''or'' at the end of paragraph (4)(A), by striking ''or'' at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(6) Paragraph (3) of section 864(e) is amended—

(A) by striking:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

''(A) IN GENERAL.—For purposes of''; and inserting:

''(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of'', and

(B) by striking subparagraph (B).

(7) Section 903 is amended by striking ''114, 164(a),'' and inserting ''164(a)''.

(8) Section 999(c)(1) is amended by striking ''941(a)(5),''.

(c) EFFECTIVE DATE.—Except as provided in subsection (d), the amendments made by this section shall apply to transactions after December 31, 2004.

(d) TRANSITIONAL RULE FOR 2005 AND 2006.—

(1) IN GENERAL.—In the case of transactions during 2005 or 2006, the amount includible in gross income by reason of the amendments made by this section shall not exceed the applicable percentage of the amount which would have been so included but for this subsection.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be as follows:

(A) For 2005, the applicable percentage shall be 20 percent.

(B) For 2006, the applicable percentage shall be 40 percent.

(e) REVOCATION OF ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—If, during the 1-year period beginning on the date of the enactment of this Act, a corporation for which an election is in effect under section 943(e) of the Internal Revenue Code of 1986 revokes such election, no gain or loss shall be recognized with respect to property treated as transferred under clause (ii) of section 943(e)(4)(B) of such Code to the extent such property—

(1) was treated as transferred under clause (i) thereof, or

(2) was acquired during a taxable year to which such election applies and before May 1, 2003, in the ordinary course of its trade or business.

The Secretary of the Treasury (or such Secretary's delegate) may prescribe such regulations as may be necessary to prevent the abuse of the purposes of this subsection.

(f) BINDING CONTRACTS.—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(1) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of such Code, as in effect on the day before the date of the enactment of this Act), and

(2) which is in effect on January 14, 2002, and at all times thereafter.

For purposes of this subsection, a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.

SEC. 102. REDUCED CORPORATE INCOME TAX RATE FOR DOMESTIC PRODUCTION ACTIVITIES INCOME.

(a) LIMITATION ON TAX ON QUALIFIED PRODUCTION ACTIVITIES INCOME.—Section 11 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

''(c) LIMITATION ON TAX ON QUALIFIED PRODUCTION ACTIVITIES INCOME.—

''(1) IN GENERAL.—If a corporation has qualified production activities income for any taxable year, the tax imposed by this section shall not exceed the sum of—

''(A) a tax computed at the rates and in the manner as if this subsection had not been enacted on the taxable income reduced by the amount of qualified production activities income, plus

''(B) a tax equal to 32 percent (34 percent in the case of taxable years beginning before January 1, 2007) of the qualified production activities income (or, if less, taxable income).

''(2) QUALIFIED PRODUCTION ACTIVITIES INCOME.—

''(A) IN GENERAL.—The term 'qualified production activities income' for any taxable year means an amount equal to the excess (if any) of—

''(i) the taxpayer's domestic production gross receipts for such taxable year, over

''(ii) the sum of—

''(I) the cost of goods sold that are allocable to such receipts,

''(II) other deductions, expenses, or losses directly allocable to such receipts, and

''(III) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

''(B) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

''(3) DOMESTIC PRODUCTION GROSS RECEIPTS.—For purposes of this subsection, the term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

''(A) any lease, rental, license, sale, exchange, or other disposition of—

''(i) qualifying production property which was manufactured, produced, grown, or extracted in whole or in significant part by the taxpayer within the United States, or

''(ii) any qualified film produced by the taxpayer, or

''(B) construction, engineering, or architectural services performed in the United States for construction projects in the United States.

''(4) QUALIFYING PRODUCTION PROPERTY.—For purposes of this subsection, the term 'qualifying production property' means—

''(A) tangible personal property,

''(B) any computer software, and

''(C) any property described in section 168(f)(4).

''(5) QUALIFIED FILM.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified film' means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers.

''(B) EXCEPTION.—Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

''(6) RELATED PERSONS.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'domestic production gross receipts' shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

''(B) RELATED PERSON.—For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).''.

(b) SPECIAL RULE RELATING TO ELECTION TO TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.—In the case of a corporation, any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether such taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 103. REDUCED CORPORATE INCOME TAX RATE FOR SMALL CORPORATIONS.

(a) IN GENERAL.—Subsection (b) of section 11 (relating to tax imposed on corporations) is amended by redesignating paragraph (2) as paragraph (6) and by striking paragraph (1) and inserting the following new paragraphs:

''(1) FOR TAXABLE YEARS BEGINNING AFTER 2012.—In the case of taxable years beginning after 2012, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

''If taxable income is:	*The tax is:*
Not over $50,000	*15% of taxable income.*
Over $50,000 but not over $75,000.	*$7,500, plus 25% of the excess over $50,000.*
Over $75,000 but not over $20,000,000.	*$13,750, plus 32% of the excess over $75,000.*
Over $20,000,000	*$6,389,750, plus 35% of the excess over $20,000,000.*

''(2) FOR TAXABLE YEARS BEGINNING IN 2011 OR 2012.—In the case of taxable years beginning in 2011 or 2012, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

''If taxable income is:	*The tax is:*
Not over $50,000	*15% of taxable income.*
Over $50,000 but not over $75,000.	*$7,500, plus 25% of the excess over $50,000.*
Over $75,000 but not over $5,000,000.	*$13,750, plus 32% of the excess over $75,000.*
Over $5,000,000 but not over $10,000,000.	*$1,589,750, plus 34% of the excess over $5,000,000.*
Over $10,000,000	*$3,289,750, plus 35% of the excess over $10,000,000.*

''(3) FOR TAXABLE YEARS BEGINNING IN 2008, 2009, OR 2010.—In the case of taxable years beginning in 2008, 2009, or 2010, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

''If taxable income is:	*The tax is:*
Not over $50,000	*15% of taxable income.*
Over $50,000 but not over $75,000.	*$7,500, plus 25% of the excess over $50,000.*
Over $75,000 but not over $1,000,000.	*$13,750, plus 32% of the excess over $75,000.*
Over $1,000,000 but not over $10,000,000.	*$309,750, plus 34% of the excess over $1,000,000.*
Over $10,000,000	*$3,369,750, plus 35% of the excess over $10,000,000.*

''(4) FOR TAXABLE YEARS BEGINNING IN 2005, 2006, OR 2007.—In the case of taxable years beginning in 2005, 2006, or 2007, the amount of the tax imposed by subsection (a) shall be determined in accordance with the following table:

''If taxable income is:	*The tax is:*
Not over $50,000	*15% of taxable income.*
Over $50,000 but not over $75,000.	*$7,500, plus 25% of the excess over $50,000.*
Over $75,000 but not over $1,000,000.	*$13,750, plus 33% of the excess over $75,000.*
Over $1,000,000 but not over $10,000,000.	*$319,000, plus 34% of the excess over $1,000,000.*
Over $10,000,000	*$3,379,000, plus 35% of the excess over $10,000,000.*

''(5) PHASEOUT OF LOWER RATES FOR CERTAIN TAXPAYERS.—

''(A) GENERAL RULE FOR YEARS BEFORE 2013.—

''(i) IN GENERAL.—In the case of taxable years beginning before 2013 with respect to a corporation which has taxable income in excess of the applicable amount for any taxable year, the amount of tax determined under paragraph (1), (2), (3) or (4) for such taxable year shall be increased by the lesser of (I) 5 percent of such excess, or (II) the maximum increase amount.

''(ii) MAXIMUM INCREASE AMOUNT.—For purposes of clause (i)—

''In the case of any taxable year beginning during:	***The applicable amount is:***	***The maximum increase amount is:***
2005, 2006, or 2007	*$1,000,000*	*$21,000*
2008, 2009, or 2010	*$1,000,000*	*$30,250*
2011 or 2012	*$5,000,000*	*$110,250.*

''(B) HIGHER INCOME CORPORATIONS.—In the case of a corporation which has taxable income in excess of $20,000,000 ($15,000,000 in the case of taxable years beginning before 2013), the amount of the tax determined under the foregoing provisions of this subsection shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) $610,250 ($100,000 in the case of taxable years beginning before 2013).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 904(b)(3)(D)(ii) is amended to read as follows:

''(ii) in the case of a corporation, section 1201(a) applies to such taxable year.''.

(2) Section 1201(a) is amended by striking ''the last 2 sentences of section 11(b)(1)'' and inserting ''section 11(b)(5)''.

(3) Section 1561(a) is amended—

(A) by striking ''the last 2 sentences of section 11(b)(1)'' and inserting ''section 11(b)(5)'', and

(B) by striking ''such last 2 sentences'' and inserting ''section 11(b)(5)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

TITLE II—JOB CREATION TAX INCENTIVES FOR MANUFACTURERS, SMALL BUSINESSES, AND FARMERS

Subtitle A—Small Business Expensing

SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS.

Subsections (b), (c), and (d) of section 179 are each amended by striking ''2006'' each place it appears and inserting ''2008''.

Subtitle B—Depreciation

SEC. 211. RECOVERY PERIOD FOR DEPRECIATION OF CERTAIN LEASEHOLD IMPROVEMENTS AND RESTAURANT PROPERTY.

(a) 15-YEAR RECOVERY PERIOD.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting a comma, and by adding at the end the following new clauses:

''(iv) any qualified leasehold improvement property placed in service before January 1, 2006, and

''(v) any qualified restaurant property placed in service before January 1, 2006.''

(b) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—Subsection (e) of section 168 is amended by adding at the end the following new paragraph:

''(6) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—The term 'qualified leasehold improvement property' has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

''(A) IMPROVEMENTS MADE BY LESSOR.—In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

''(B) EXCEPTION FOR CHANGES IN FORM OF BUSINESS.—Property shall not cease to be qualified leasehold improvement property under subparagraph (A) by reason of—

''(i) death,

''(ii) a transaction to which section 381(a) applies,

''(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business,

''(iv) the acquisition of such property in an exchange described in section 1031, 1033, or 1038 to the extent that the basis of such property includes an amount representing the adjusted basis of other property owned by the taxpayer or a related person, or

''(v) the acquisition of such property by the taxpayer in a transaction described in section 332, 351, 361, 721, or 731 (or the acquisition of such property by the taxpayer from the transferee or acquiring corporation in a transaction described in such section), to the extent that the basis of the property in the hands of the taxpayer is determined by reference to its basis in the hands of the transferor or distributor.''.

(c) QUALIFIED RESTAURANT PROPERTY.—Subsection (e) of section 168 (as amended by subsection (b)) is further amended by adding at the end the following new paragraph:

''(7) QUALIFIED RESTAURANT PROPERTY.—The term 'qualified restaurant property' means any section 1250 property which is an improvement to a building if—

''(A) such improvement is placed in service more than 3 years after the date such building was first placed in service, and

''(B) more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.''.

(d) REQUIREMENT TO USE STRAIGHT LINE METHOD.—

(1) Paragraph (3) of section 168(b) is amended by adding at the end the following new subparagraphs:

''(G) Qualified leasehold improvement property described in subsection (e)(6).

''(H) Qualified restaurant property described in subsection (e)(7).''.

(2) Subparagraph (A) of section 168(b)(2) is amended by inserting before the comma ''not referred to in paragraph (3)''.

(e) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by adding at the end the following new items:

''(E)(iv)	*39*
''(E)(v)	*39''.*

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 212. MODIFICATION OF DEPRECIATION ALLOWANCE FOR AIRCRAFT.

(a) AIRCRAFT TREATED AS QUALIFIED PROPERTY.—

(1) IN GENERAL.—Paragraph (2) of section 168(k) is amended by redesignating subparagraphs (C) through (F) as subparagraphs (D) through (G), respectively, and by inserting after subparagraph (B) the following new subparagraph:

''(C) CERTAIN AIRCRAFT.—The term 'qualified property' includes property—

''(i) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

''(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

''(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

''(I) 10 percent of the cost, or

''(II) $100,000, and

''(iv) which has—

''(I) an estimated production period exceeding 4 months, and

''(II) a cost exceeding $200,000.''.

(2) PLACED IN SERVICE DATE.—Clause (iv) of section 168(k)(2)(A) is amended by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''.

(b) CONFORMING AMENDMENTS.—

(1) Section 168(k)(2)(B) is amended by adding at the end the following new clause:

''(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply to any property which is described in subparagraph (C).''.

(2) Section 168(k)(4)(A)(ii) is amended by striking ''paragraph (2)(C)'' and inserting ''paragraph (2)(D)''.

(3) Section 168(k)(4)(B)(iii) is amended by inserting ''and paragraph (2)(C)'' after ''of this paragraph)''.

(4) Section 168(k)(4)(C) is amended by striking ''subparagraphs (B) and (D)'' and inserting ''subparagraphs (B), (C), and (E)''.

(5) Section 168(k)(4)(D) is amended by striking ''Paragraph (2)(E)'' and inserting ''Paragraph (2)(F)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002.

SEC. 213. MODIFICATION OF PLACED IN SERVICE RULE FOR BONUS DEPRECIATION PROPERTY.

(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)(ii), 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 3-month period remains the same as when such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date of such last sale, so long as no previous owner of such property elects the application of this subsection with respect to such property.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002; except that the parenthetical material in section 168(k)(2)(D)(iii)(II) of the Internal Revenue Code of 1986, as added by this section, shall apply to property sold after June 4, 2004.

Subtitle C—S Corporation Reform and Simplification

SEC. 221. MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.

(a) IN GENERAL.—Paragraph (1) of section 1361(c) (relating to special rules for applying subsection (b)) is amended to read as follows:

''(1) MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.—

''(A) IN GENERAL.—For purpose of subsection (b)(1)(A)—

''(i) except as provided in clause (ii), a husband and wife (and their estates) shall be treated as 1 shareholder, and

''(ii) in the case of a family with respect to which an election is in effect under subparagraph (D), all members of the family shall be treated as 1 shareholder.

''(B) MEMBERS OF THE FAMILY.—For purpose of subparagraph (A)(ii)—

''(i) IN GENERAL.—The term 'members of the family' means the common ancestor, lineal descendants of the common ancestor, and the spouses (or former spouses) of such lineal descendants or common ancestor.

''(ii) COMMON ANCESTOR.—For purposes of this paragraph, an individual shall not be considered a common ancestor if, as of the later of the effective date of this paragraph or the time the election under section 1362(a) is made, the individual is more than 3 generations removed from the youngest generation of shareholders who would (but for this clause) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to which such spouse is (or was) married.

''(C) EFFECT OF ADOPTION, ETC.—In determining whether any relationship specified in subparagraph (B) exists, the rules of section 152(b)(2) shall apply.

''(D) ELECTION.—An election under subparagraph (A)(ii)—

''(i) may, except as otherwise provided in regulations prescribed by the Secretary, be made by any member of the family, and

''(ii) shall remain in effect until terminated as provided in regulations prescribed by the Secretary.''.

(b) RELIEF FROM INADVERTENT INVALID ELECTION OR TERMINATION.—Section 1362(f) (relating to inadvertent invalid elections or terminations), as amended by section 229, is amended—

(1) by inserting ''or section 1361(c)(1)(A)(ii)'' after ''section 1361(b)(3)(B)(ii),'' in paragraph (1), and

(2) by inserting ''or section 1361(c)(1)(D)(iii)'' after ''section 1361(b)(3)(C),'' in paragraph (1)(B).

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to elections and terminations made after December 31, 2004.

SEC. 222. INCREASE IN NUMBER OF ELIGIBLE SHAREHOLDERS TO 100.

(a) IN GENERAL.—Section 1361(b)(1)(A) (defining small business corporation) is amended by striking ''75'' and inserting ''100''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 223. EXPANSION OF BANK S CORPORATION ELIGIBLE SHAREHOLDERS TO INCLUDE IRAS.

(a) IN GENERAL.—Section 1361(c)(2)(A) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (v) the following new clause:

''(vi) In the case of a corporation which is a bank (as defined in section 581), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank as of the date of the enactment of this clause.''.

(b) TREATMENT AS SHAREHOLDER.—Section 1361(c)(2)(B) (relating to treatment as shareholders) is amended by adding at the end the following new clause:

''(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.''.

(c) SALE OF BANK STOCK IN IRA RELATING TO S CORPORATION ELECTION EXEMPT FROM PROHIBITED TRANSACTION RULES.—Section 4975(d) (relating to exemptions) is amended by striking ''or'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ''; or'', and by adding at the end the following new paragraph:

''(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

''(A) such stock is in a bank (as defined in section 581),

''(B) such stock is held by such trust as of the date of the enactment of this paragraph,

''(C) such sale is pursuant to an election under section 1362(a) by such bank,

''(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

''(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

''(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made.''.

(d) CONFORMING AMENDMENT.—Section 512(e)(1) is amended by inserting ''1361(c)(2)(A)(vi) or'' before ''1361(c)(6)''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 224. DISREGARD OF UNEXERCISED POWERS OF APPOINTMENT IN DETERMINING POTENTIAL CURRENT BENEFICIARIES OF ESBT.

(a) IN GENERAL.—Section 1361(e)(2) (defining potential current beneficiary) is amended—

(1) by inserting ''(determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period)'' after ''of the trust'' in the first sentence, and

(2) by striking ''60-day'' in the second sentence and inserting ''1-year''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 225. TRANSFER OF SUSPENDED LOSSES INCIDENT TO DIVORCE, ETC.

(a) IN GENERAL.—Section 1366(d)(2) (relating to indefinite carryover of disallowed losses and deductions) is amended to read as follows:

''(2) INDEFINITE CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

''(B) TRANSFERS OF STOCK BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 226. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK AMOUNTS BY QUALIFIED SUBCHAPTER S TRUST INCOME BENEFICIARIES.

(a) IN GENERAL.—Section 1361(d)(1) (relating to special rule for qualified subchapter S trust) is amended—

(1) by striking ''and'' at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting '', and'', and

(3) by adding at the end the following new subparagraph:

''(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made after December 31, 2004.

SEC. 227. EXCLUSION OF INVESTMENT SECURITIES INCOME FROM PASSIVE INCOME TEST FOR BANK S CORPORATIONS.

(a) IN GENERAL.—Section 1362(d)(3) (relating to where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits) is amended by adding at the end the following new subparagraph:

''(F) EXCEPTION FOR BANKS; ETC.—In the case of a bank (as defined in section 581), a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act), the term 'passive investment income' shall not include—

''(i) interest income earned by such bank or company, or

''(ii) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 228. TREATMENT OF BANK DIRECTOR SHARES.

(a) IN GENERAL.—Section 1361 (defining S corporation) is amended by adding at the end the following new subsection:

''(f) RESTRICTED BANK DIRECTOR STOCK.—

''(1) IN GENERAL.—Restricted bank director stock shall not be taken into account as outstanding stock of the S corporation in applying this subchapter (other than section 1368(f)).

''(2) RESTRICTED BANK DIRECTOR STOCK.—For purposes of this subsection, the term 'restricted bank director stock' means stock in a bank (as defined in section 581), a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act), registered with the Federal Reserve System, if such stock—

''(A) is required to be held by an individual under applicable Federal or State law in order to permit such individual to serve as a director, and

''(B) is subject to an agreement with such bank or company (or a corporation which controls (within the meaning of section 368(c)) such bank or company) pursuant to which the holder is required to sell back such stock (at the same price as the individual acquired such stock) upon ceasing to hold the office of director.

''(3) CROSS REFERENCE.—

''For treatment of certain distributions with respect to restricted bank director stock, see section 1368(f).''.

(b) DISTRIBUTIONS.—Section 1368 (relating to distributions) is amended by adding at the end the following new subsection:

''(f) RESTRICTED BANK DIRECTOR STOCK.—If a director receives a distribution (not in part or full payment in exchange for stock) from an S corporation with respect to any restricted bank director stock (as defined in section 1361(f)), the amount of such distribution—

''(1) shall be includible in gross income of the director, and

''(2) shall be deductible by the corporation for the taxable year of such corporation in which or with which ends the taxable year in which such amount is included in the gross income of the director.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 229. RELIEF FROM INADVERTENTLY INVALID QUALIFIED SUBCHAPTER S SUBSIDIARY ELECTIONS AND TERMINATIONS.

(a) IN GENERAL.—Section 1362(f) (relating to inadvertent invalid elections or terminations) is amended—

(1) by inserting '', section 1361(b)(3)(B)(ii),'' after ''subsection (a)'' in paragraph (1),

(2) by inserting '', section 1361(b)(3)(C),'' after ''subsection (d)'' in paragraph (1)(B),

(3) by amending paragraph (3)(A) to read as follows:

''(A) so that the corporation for which the election was made is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or'',

(4) by amending paragraph (4) to read as follows:

''(4) the corporation for which the election was made, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period,'', and

(5) by inserting ''or a qualified subchapter S subsidiary, as the case may be'' after ''S corporation'' in the matter following paragraph (4).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 230. INFORMATION RETURNS FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES.

(a) IN GENERAL.—Section 1361(b)(3)(A) (relating to treatment of certain wholly owned subsidiaries) is amended by inserting ''and in the case of information returns required under part III of subchapter A of chapter 61'' after ''Secretary''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 231. REPAYMENT OF LOANS FOR QUALIFYING EMPLOYER SECURITIES.

(a) IN GENERAL.—Subsection (f) of section 4975 (relating to other definitions and special rules)

is amended by adding at the end the following new paragraph:

''(7) S CORPORATION REPAYMENT OF LOANS FOR QUALIFYING EMPLOYER SECURITIES.—A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7), or as engaging in a prohibited transaction for purposes of subsection (d)(3), merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). 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 employer 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 participant.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions with respect to S corporation stock made after December 31, 2004.

Subtitle D—Alternative Minimum Tax Relief

SEC. 241. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking ''and if section 59(a)(2) did not apply''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 242. EXPANSION OF EXEMPTION FROM ALTERNATIVE MINIMUM TAX FOR SMALL CORPORATIONS.

(a) IN GENERAL.—Subparagraphs (A) and (B) of section 55(e)(1) are each amended by striking ''$7,500,000'' each place it appears and inserting ''$20,000,000''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 243. INCOME AVERAGING FOR FARMERS NOT TO INCREASE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 55 (defining regular tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

''(2) COORDINATION WITH INCOME AVERAGING FOR FARMERS.—Solely for purposes of this section, section 1301 (relating to averaging of farm income) shall not apply in computing the regular tax liability.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

Subtitle E—Restructuring of Incentives for Alcohol Fuels, Etc.

SEC. 251. REDUCED RATES OF TAX ON GASOHOL REPLACED WITH EXCISE TAX CREDIT; REPEAL OF OTHER ALCOHOL-BASED FUEL INCENTIVES; ETC.

(a) EXCISE TAX CREDIT FOR ALCOHOL FUEL MIXTURES.—

(1) IN GENERAL.—Subsection (f) of section 6427 is amended to read as follows:

''(f) ALCOHOL FUEL MIXTURES.—

''(1) IN GENERAL.—The amount of credit which would (but for section 40(c)) be determined under section 40(a)(1) for any period—

''(A) shall, with respect to taxable events occurring during such period, be treated—

''(i) as a payment of the taxpayer's liability for tax imposed by section 4081, and

''(ii) as received at the time of the taxable event, and

''(B) to the extent such amount of credit exceeds such liability for such period, shall (except as provided in subsection (k)) be paid subject to subsection (i)(3) by the Secretary without interest.

''(2) SPECIAL RULES.—

''(A) ONLY CERTAIN ALCOHOL TAKEN INTO ACCOUNT.—For purposes of paragraph (1), section 40 shall be applied—

''(i) by not taking into account alcohol with a proof of less than 190, and

''(ii) by treating as alcohol the alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

''(B) TREATMENT OF REFINERS.—For purposes of paragraph (1), in the case of a mixture—

''(i) the alcohol in which is described in subparagraph (A)(ii), and

''(ii) which is produced by any person at a refinery prior to any taxable event,

section 40 shall be applied by treating such person as having sold such mixture at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

''(3) MIXTURES NOT USED AS FUEL.—Rules similar to the rules of subparagraphs (A) and (D) of section 40(d)(3) shall apply for purposes of this subsection.

''(4) TERMINATION.—This section shall apply only to periods to which section 40 applies, determined by substituting in section 40(e)—

''(A) 'December 31, 2010' for 'December 31, 2007', and

''(B) 'January 1, 2011' for 'January 1, 2008'.''

(2) REVISION OF RULES FOR PAYMENT OF CREDIT.—Paragraph (3) of section 6427(i) is amended to read as follows:

''(3) SPECIAL RULE FOR ALCOHOL MIXTURE CREDIT.—

''(A) IN GENERAL.—A claim may be filed under subsection (f)(1)(B) by any person for any period—

''(i) for which $200 or more is payable under such subsection (f)(1)(B), and

''(ii) which is not less than 1 week.

In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).

''(B) PAYMENT OF CLAIM.—Notwithstanding subsection (f)(1)(B), if the Secretary has not paid pursuant to a claim filed under this section within 45 days of the date of the filing of such claim (20 days in the case of an electronic claim), the claim shall be paid with interest from such date determined by using the overpayment rate and method under section 6621.

''(C) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.''

(b) REPEAL OF OTHER INCENTIVES FOR FUEL MIXTURES.—

(1) Subsection (b) of section 4041 is amended to read as follows:

''(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—

''(1) IN GENERAL.—No tax shall be imposed by subsection (a) or (d)(1) on liquids sold for use or used in an off-highway business use.

''(2) TAX WHERE OTHER USE.—If a liquid on which no tax was imposed by reason of paragraph (1) is used otherwise than in an off-highway business use, a tax shall be imposed by paragraph (1)(B), (2)(B), or (3)(A)(ii) of subsection (a) (whichever is appropriate) and by the corresponding provision of subsection (d)(1) (if any).

''(3) OFF-HIGHWAY BUSINESS USE DEFINED.—For purposes of this subsection, the term 'off-highway business use' has the meaning given to such term by section 6421(e)(2); except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train.''

(2) Section 4041(k) is hereby repealed.

(3) Section 4081(c) is hereby repealed.

(4) Section 4091(c) is hereby repealed.

(c) TRANSFERS TO HIGHWAY TRUST FUND.—(1) Paragraph (4) of section 9503(b) is amended by adding ''or'' at the end of subparagraph (C), by striking the comma at the end of subparagraph (D) and inserting a period, and by striking subparagraphs (E) and (F).

(2) SUBSECTION (c).—

(A) The amendments made by subsection (c)(1) shall apply to taxes imposed after September 30, 2003.

(B) The amendments made by subsection (c)(2) shall apply to taxes imposed after September 30, 2006.

(d) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended to read as follows:

''(c) COORDINATION WITH EXCISE TAX BENEFITS.—The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account the benefit provided with respect to such alcohol under section 6427(f).''

(2) Subparagraph (B) of section 40(d)(4) is amended by striking ''under section 4041(k) or 4081(c)'' and inserting ''under section 6427(f)''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to fuel sold or used after September 30, 2004.

(2) Paragraph (4) of section 9503(b), as amended by paragraph (1), is further amended by adding ''or'' at the end of subparagraph (B), by striking the comma at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

SEC. 252. ALCOHOL FUEL SUBSIDIES BORNE BY GENERAL FUND.

(a) TRANSFERS TO FUND.—Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

''For purposes of this paragraph, the amount of taxes received under section 4081 shall include any amount treated as a payment under section 6427(f)(1)(A) and shall not be reduced by the amount paid under section 6427(f)(1)(B).''.

(b) TRANSFERS FROM FUND.—Subparagraph (A) of section 9503(c)(2) is amended by adding at the end the following new sentence: ''Clauses (i)(III) and (ii) shall not apply to claims under section 6427(f)(1)(B).''

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxes received after September 30, 2004.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to amounts paid after September 30, 2004, and (to the extent related to section 34 of the Internal Revenue Code of 1986) to fuel used after such date.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

SEC. 261. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES.

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(B) Section 209(a) of the Social Security Act is amended by striking ''or'' at the end of paragraph (17), by striking the period at the end of

paragraph (18) and inserting ''; or'', and by inserting after paragraph (18) the following new paragraph:

''(19) Remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

''(B) any disposition by the individual of such stock.''.

(2) RAILROAD RETIREMENT TAXES.—Subsection (e) of section 3231 is amended by adding at the end the following new paragraph:

''(12) QUALIFIED STOCK OPTIONS.—The term 'compensation' shall not include any remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(3) UNEMPLOYMENT TAXES.—Section 3306(b) (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ''; or'', and by inserting after paragraph (18) the following new paragraph:

''(19) remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(b) WAGE WITHHOLDING NOT REQUIRED ON DISQUALIFYING DISPOSITIONS.—Section 421(b) (relating to effect of disqualifying dispositions) is amended by adding at the end the following new sentence: ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.''.

(c) WAGE WITHHOLDING NOT REQUIRED ON COMPENSATION WHERE OPTION PRICE IS BETWEEN 85 PERCENT AND 100 PERCENT OF VALUE OF STOCK.—Section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock) is amended by adding at the end the following new sentence: ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act.

Subtitle G—Incentives to Reinvest Foreign Earnings in United States

SEC. 271. INCENTIVES TO REINVEST FOREIGN EARNINGS IN UNITED STATES.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 (relating to controlled foreign corporations) is amended by adding at the end the following new section:

''SEC. 965. TEMPORARY DIVIDENDS RECEIVED DEDUCTION.

''(a) DEDUCTION.—

''(1) IN GENERAL.—In the case of a corporation which is a United States shareholder, there shall be allowed as a deduction an amount equal to 85 percent of the dividends which are received by such shareholder from controlled foreign corporations during the election period.

''(2) DIVIDENDS PAID INDIRECTLY FROM CONTROLLED FOREIGN CORPORATIONS.—If, within the election period, a United States shareholder receives a distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any dividend paid during the election period to—

''(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

''(B) any other controlled foreign corporation in such chain of ownership, but only to the extent of distributions described in section 959(b) which are made during the election period to the controlled foreign corporation from which such United States shareholder received such distribution.

''(b) LIMITATIONS.—

''(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

''(A) $500,000,000,

''(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

''(C) in the case of an applicable financial statement which fails to show a specific amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount of such earnings determined in such manner as the Secretary may prescribe.

Except as provided in subparagraph (C), if there is no statement or such statement fails to show a specific amount of such earnings or liability, such amount shall be treated as being zero for purposes of this paragraph.

''(2) DIVIDENDS MUST BE EXTRAORDINARY.—The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

''(A) the dividends received during the taxable year by such shareholder from controlled foreign corporations, over

''(B) the annual average for the base period years of—

''(i) the dividends received during each base period year by such shareholder from such corporations,

''(ii) the amounts includible in such shareholder's gross income for each base period year under section 951(a)(1)(B) with respect to such corporations, and

''(iii) the amounts that would have been included for each base period year but for section 959(a) with respect to such corporations.

The amount taken into account under clause (iii) for any base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year.

''(3) REQUIREMENT TO INVEST IN UNITED STATES.—Subsection (a) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in the United States pursuant to a plan describing the expenditures to be made with such amount—

''(A) which, before the dividend is received, is approved by the president or chief executive officer of such shareholder, and

''(B) which is approved by the Board of Directors (or management committee) of such shareholder no later than its first meeting on or after the date the dividend is received.

''(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELECTION PERIOD.—The term 'election period' means—

''(A) if this section applies to the taxpayer's last taxable year beginning before the date of the enactment of this section, any 6-month or shorter period during such year which is after the date of the enactment of this section and which is selected by the taxpayer, and

''(B) if this section applies to the taxpayer's first taxable year beginning on or after such date, the 1st 6 months of such taxable year.

''(2) APPLICABLE FINANCIAL STATEMENT.—The term 'applicable financial statement' means the most recently audited financial statement (including notes and other documents which accompany such statement)—

''(A) which is certified on or before March 31, 2003, as being prepared in accordance with generally accepted accounting principles, and

''(B) which is used for the purposes of a statement or report—

''(i) to creditors,

''(ii) to shareholders, or

''(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before March 31, 2003.

''(3) BASE PERIOD YEARS.—The base period years are the 3 taxable years—

''(A) which are among the 5 most recent taxable years ending on or before March 31, 2003, and

''(B) which are determined by disregarding—

''(i) 1 taxable year for which the sum of the amounts described in clauses (i), (ii), and (iii) of subsection (b)(2)(B) is the largest, and

''(ii) 1 taxable year for which such sum is the smallest.

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this paragraph.

''(4) COORDINATION WITH DIVIDENDS RECEIVED DEDUCTION.—No deduction shall be allowed under section 243 or 245 for any dividend for which a deduction is allowed under this section.

''(d) DENIAL OF FOREIGN TAX CREDIT.—

''(1) IN GENERAL.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the deductible portion of any dividend or of any amount described in subsection (a)(2). No deduction shall be allowed under this chapter for any tax for which credit is not allowable by reason of the preceding sentence.

''(2) DEDUCTIBLE PORTION.—For purposes of paragraph (1), unless the taxpayer otherwise specifies, the deductible portion of any dividend is the amount which bears the same ratio to the amount of such dividend as the amount allowed as a deduction under subsection (a) for the taxable year bears to the amount described in subsection (b)(2)(A) for such year.

''(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT REDUCED BY CREDITS, ETC.—

''(1) IN GENERAL.—Any tax under this chapter by reason of nondeductible CFC dividends shall not be treated as tax imposed by this chapter for purposes of determining—

''(A) the amount of any credit allowable under this chapter, or

''(B) the amount of the tax imposed by section 55.

Subparagraph (A) shall not apply to the credit under section 53 or to the credit under section 27(a) with respect to taxes attributable to such dividends.

''(2) INCLUSIONS MAY NOT BE OFFSET BY NET OPERATING LOSSES.—

''(A) IN GENERAL.—The taxable income of any United States shareholder for any taxable year shall in no event be less than the amount of nondeductible CFC dividends received during such year.

''(B) COORDINATION WITH SECTION 172.—The nondeductible CFC dividends for any taxable year shall not be taken into account—

''(i) in determining under section 172 the amount of any net operating loss for such taxable year, and

''(ii) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

''(3) NONDEDUCTIBLE CFC DIVIDENDS.—For purposes of this subsection, the term 'nondeductible CFC dividends' means the excess of

the amount of dividends taken into account under subsection (a) over the deduction allowed under subsection (a) for such dividends.

''(f) ELECTION.—This section shall apply for the taxpayer's first taxable year beginning on or after the date of the enactment of this section if the taxpayer elects its application for such taxable year. The taxpayer may elect to apply this section to the taxpayer's last taxable year beginning before the date of the enactment of this section in lieu of such first taxable year.''

(b) ALTERNATIVE MINIMUM TAX.—Subparagraph (C) of section 56(g)(4) is amended by adding at the end the following new clause:

''(v) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS FROM CONTROLLED FOREIGN CORPORATIONS.—Clause (i) shall not apply to any deduction allowable under section 965.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

''Sec. 965. Temporary dividends received deduction.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after the date of the enactment of this Act.

Subtitle H—Other Incentive Provisions

SEC. 281. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

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

(1) by striking ''CONDITIONS.—For purposes'' and inserting ''CONDITIONS.—

''(1) IN GENERAL.—For purposes'', and

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

''(2) EXTENSION OF REPLACEMENT PERIOD.—

''(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting '4 years' for '2 years'.

''(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.''.

(b) INCOME INCLUSION RULES.—Subsection (e) of section 451 (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

''(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.

SEC. 282. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following: ''For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization 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.''.

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

SEC. 283. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking ''retains an economic interest in such timber'' and inserting ''either retains an economic interest in such timber or makes an outright sale of such timber''.

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 631(b) is amended by striking ''The date of disposal'' and inserting ''In the case of disposal of timber with a retained economic interest, the date of disposal''.

(2) The heading for section 631(b) is amended by striking ''WITH A RETAINED ECONOMIC INTEREST''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2004.

SEC. 284. DISTRIBUTIONS FROM PUBLICLY TRADED PARTNERSHIPS TREATED AS QUALIFYING INCOME OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (2) of section 851(b) (defining regulated investment company) is amended to read as follows:

''(2) at least 90 percent of its gross income is derived from—

''(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

''(B) distributions or other income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and''.

(b) SOURCE FLOW-THROUGH RULE NOT TO APPLY.—The last sentence of section 851(b) is amended by inserting ''(other than a qualified publicly traded partnership as defined in subsection (h))'' after ''derived from a partnership''.

(c) LIMITATION ON OWNERSHIP.—Subsection (c) of section 851 is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) The term 'outstanding voting securities of such issuer' shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).''.

(d) DEFINITION OF QUALIFIED PUBLICLY TRADED PARTNERSHIP.—Section 851 is amended by adding at the end the following new subsection:

''(h) QUALIFIED PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'qualified publicly traded partnership' means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).''.

(e) DEFINITION OF QUALIFYING INCOME.—Section 7704(d)(4) is amended by striking ''section 851(b)(2)'' and inserting ''section 851(b)(2)(A)''.

(f) LIMITATION ON COMPOSITION OF ASSETS.—Subparagraph (B) of section 851(b)(3) is amended to read as follows:

''(B) not more than 25 percent of the value of its total assets is invested in—

''(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

''(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

''(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).''.

(g) APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE TO REGULATED INVESTMENT COMPANIES.—Subsection (k) of section 469 (relating to separate application of section in case of publicly traded partnerships) is amended by adding at the end the following new paragraph:

''(4) APPLICATION TO REGULATED INVESTMENT COMPANIES.—For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.''.

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

SEC. 285. IMPROVEMENTS RELATED TO REAL ESTATE INVESTMENT TRUSTS.

(a) EXPANSION OF STRAIGHT DEBT SAFE HARBOR.—Section 856 (defining real estate investment trust) is amended—

(1) in subsection (c) by striking paragraph (7), and

(2) by adding at the end the following new subsection:

''(m) SAFE HARBOR IN APPLYING SUBSECTION (c)(4).—

''(1) IN GENERAL.—In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

''(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

''(B) Any loan to an individual or an estate.

''(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

''(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

''(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this subparagraph or payments on any obligation issued by such an entity,

''(F) Any security issued by a real estate investment trust.

''(G) Any other arrangement as determined by the Secretary.

''(2) SPECIAL RULES RELATING TO STRAIGHT DEBT SECURITIES.—

''(A) IN GENERAL.—For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

''(B) SPECIAL RULES RELATING TO CERTAIN CONTINGENCIES.—For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that—

''(i) the time of payment of such interest or principal is subject to a contingency, but only if—

''(I) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which does not exceed the greater of ¼ of 1 percent or 5 percent of the annual yield to maturity, or

''(II) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the trust exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder, or

''(ii) the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, but only if such contingency is consistent with customary commercial practice.

''(C) SPECIAL RULES RELATING TO CORPORATE OR PARTNERSHIP ISSUERS.—In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

''(i) are not described in paragraph (1) (prior to the application of this subparagraph), and

''(ii) have an aggregate value greater than 1 percent of the issuer's outstanding securities determined without regard to paragraph (3)(A)(i).

''(3) LOOK-THROUGH RULE FOR PARTNERSHIP SECURITIES.—

''(A) IN GENERAL.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

''(i) a trust's interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

''(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

''(B) DETERMINATION OF TRUST'S INTEREST IN PARTNERSHIP ASSETS.—For purposes of subparagraph (A), with respect to any taxable year beginning after the date of the enactment of this subparagraph—

''(i) the trust's interest in the partnership assets shall be the trust's proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

''(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

''(4) CERTAIN PARTNERSHIP DEBT INSTRUMENTS NOT TREATED AS A SECURITY.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

''(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust's interest as a partner in the partnership, and

''(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

''(5) SECRETARIAL GUIDANCE.—The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).''.

(b) CLARIFICATION OF APPLICATION OF LIMITED RENTAL EXCEPTION.—Subparagraph (A) of section 856(d)(8) (relating to special rules for taxable REIT subsidiaries) is amended to read as follows:

''(A) LIMITED RENTAL EXCEPTION.—

''(i) IN GENERAL.—The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

''(ii) RENTS MUST BE SUBSTANTIALLY COMPARABLE.—Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust's property for comparable space.

''(iii) TIMES FOR TESTING RENT COMPARABILITY.—The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT subsidiary of the trust if such requirement is met under the terms of the lease—

''(I) at the time such lease is entered into,

''(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

''(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such modification.

With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term 'rents from real property' shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

''(iv) CONTROLLED TAXABLE REIT SUBSIDIARY.—For purposes of clause (iii), the term 'controlled taxable REIT subsidiary' means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

''(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

''(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

''(v) CONTINUING QUALIFICATION BASED ON THIRD PARTY ACTIONS.—If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

''(vi) CORRECTION PERIOD.—If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.''.

(c) DELETION OF CUSTOMARY SERVICES EXCEPTION.—Subparagraph (B) of section 857(b)(7) (relating to redetermined rents) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), (v), (vi), and (vii) as clauses (ii), (iii), (iv), (v), and (vi), respectively.

(d) CONFORMITY WITH GENERAL HEDGING DEFINITION.—Subparagraph (G) of section 856(c)(5) (relating to treatment of certain hedging instruments) is amended to read as follows:

''(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.''.

(e) CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES.—Clause (i) of section 857(b)(5)(A) (relating to imposition of tax in case of failure to meet certain requirements) is amended by striking ''90 percent'' and inserting ''95 percent''.

(f) SAVINGS PROVISIONS.—

(1) RULES OF APPLICATION FOR FAILURE TO SATISFY SECTION 856(c)(4).—Section 856(c) (relating to definition of real estate investment trust) 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)(B)(iii) 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)(I) the corporation, trust, or association, following the identification of such failure, disposes 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 in the manner prescribed by the Secretary, or

''(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

''(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 considered 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 that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

''(iii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect,

''(iv) the corporation, trust, or association pays a tax computed under subparagraph (C), and

''(v)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (ii) 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 in the manner prescribed by the Secretary, or

''(II) 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 elects the application of this subparagraph, there is hereby imposed a tax on the failure described in subparagraph (B) of such corporation, trust, or association. Such tax shall be paid by the corporation, trust, or association.

''(ii) TAX COMPUTED.—The amount of the tax imposed by clause (i) shall be the greater of—

''(I) $50,000, or

''(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in 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) PERIOD.—For purposes of clause (ii)(II), the period described in this clause is the period

beginning on the first date that the failure to satisfy the requirements of such paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

''(iv) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.''.

(2) MODIFICATION OF RULES OF APPLICATION FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR 856(c)(3).—Paragraph (6) of section 856(c) (relating to definition of real estate investment trust) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

''(A) following the corporation, trust, or association's identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and''.

(3) REASONABLE CAUSE EXCEPTION TO LOSS OF REIT STATUS IF FAILURE TO SATISFY REQUIREMENTS.—Subsection (g) of section 856 (relating to termination of election) is amended—

(A) in paragraph (1) by inserting before the period at the end of the first sentence the following: ''unless paragraph (5) applies'', and

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

''(5) ENTITIES TO WHICH PARAGRAPH APPLIES.—This paragraph applies to a corporation, trust, or association—

''(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than subsection (c)(6) or (c)(7) of section 856),

''(B) such failures are due to reasonable cause and not due to willful neglect, and

''(C) if such 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.''.

(4) DEDUCTION OF TAX PAID FROM AMOUNT REQUIRED TO BE DISTRIBUTED.—Subparagraph (E) of section 857(b)(2) is amended by striking ''(7)'' and inserting ''(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).''.

(5) 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 ''; or'', and by adding at the end the following new paragraph:

''(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2000.

(2) SUBSECTIONS (c) THROUGH (f).—The amendments made by subsections (c), (d), (e), and (f) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 286. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) TREATMENT OF CERTAIN DIVIDENDS.—

(1) NONRESIDENT ALIEN INDIVIDUALS.—Section 871 (relating to tax on nonresident alien individuals) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

''(1) INTEREST-RELATED DIVIDENDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company.

''(B) EXCEPTIONS.—Subparagraph (A) shall not apply—

''(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E) (i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

''(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter 3 receives a statement (which meets requirements similar to the requirements of subsection (h)(5)) that the beneficial owner of such stock is not a United States person, and

''(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such foreign country) during any period described in subsection (h)(6) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary's determination under subsection (h)(6).

''(C) INTEREST-RELATED DIVIDEND.—For purposes of this paragraph, an interest-related dividend is any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated.

''(D) QUALIFIED NET INTEREST INCOME.—For purposes of subparagraph (C), the term 'qualified net interest income' means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

''(E) QUALIFIED INTEREST INCOME.—For purposes of subparagraph (D), the term 'qualified interest income' means the sum of the following amounts derived by the regulated investment company from sources within the United States:

''(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

''(ii) Any interest includible in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to—

''(I) any interest on an obligation issued by a corporation or partnership if the regulated investment company is a 10-percent shareholder in such corporation or partnership, and

''(II) any interest which is treated as not being portfolio interest under the rules of subsection (h)(4).

''(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

''(iv) Any interest-related dividend includable in gross income with respect to stock of another regulated investment company.

''(F) 10-PERCENT SHAREHOLDER.—For purposes of this paragraph, the term '10-percent shareholder' has the meaning given such term by subsection (h)(3)(B).

''(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company.

''(B) EXCEPTION FOR ALIENS TAXABLE UNDER SUBSECTION (a)(2).—Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

''(C) SHORT-TERM CAPITAL GAIN DIVIDEND.—For purposes of this paragraph, a short-term capital gain dividend is any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated.

''(D) QUALIFIED SHORT-TERM GAIN.—For purposes of subparagraph (C), the term 'qualified short-term gain' means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph—

''(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

''(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year.

To the extent provided in regulations, clause (ii) shall apply also for purposes of computing the taxable income of the regulated investment company.''

(2) FOREIGN CORPORATIONS.—Section 881 (relating to tax on income of foreign corporations not connected with United States business) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

''(1) INTEREST-RELATED DIVIDENDS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

''(B) EXCEPTION.—Subparagraph (A) shall not apply—

''(i) to any dividend referred to in section 871(k)(1)(B), and

''(ii) to any interest-related dividend received by a controlled foreign corporation (within the

meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

''(C) TREATMENT OF DIVIDENDS RECEIVED BY CONTROLLED FOREIGN CORPORATIONS.—The rules of subsection (c)(5)(A) shall apply to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

''(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.''.

(3) WITHHOLDING TAXES.—

(A) Section 1441(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(12) CERTAIN DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES.—

''(A) IN GENERAL.—No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

''(B) SPECIAL RULE.—For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B).''.

(B) Section 1442(a) (relating to withholding of tax on foreign corporations) is amended—

(i) by striking ''and the reference in section 1441(c)(10)'' and inserting ''the reference in section 1441(c)(10)'', and

(ii) by inserting before the period at the end the following: '', and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)''.

(b) ESTATE TAX TREATMENT OF INTEREST IN CERTAIN REGULATED INVESTMENT COMPANIES.—Section 2105 (relating to property without the United States for estate tax purposes) is amended by adding at the end the following new subsection:

''(d) STOCK IN A RIC.—

''(1) IN GENERAL.—For purposes of this subchapter, stock in a regulated investment company (as defined in section 851) owned by a nonresident not a citizen of the United States shall not be deemed property within the United States in the proportion that, at the end of the quarter of such investment company's taxable year immediately preceding a decedent's date of death (or at such other time as the Secretary may designate in regulations), the assets of the investment company that were qualifying assets with respect to the decedent bore to the total assets of the investment company.

''(2) QUALIFYING ASSETS.—For purposes of this subsection, qualifying assets with respect to a decedent are assets that, if owned directly by the decedent, would have been—

''(A) amounts, deposits, or debt obligations described in subsection (b) of this section,

''(B) debt obligations described in the last sentence of section 2104(c), or

''(C) other property not within the United States.''

(c) TREATMENT OF REGULATED INVESTMENT COMPANIES UNDER SECTION 897.—

(1) Paragraph (1) of section 897(h) is amended by striking ''REIT'' each place it appears and inserting ''qualified investment entity''.

(2) Paragraphs (2) and (3) of section 897(h) are amended to read as follows:

''(2) SALE OF STOCK IN DOMESTICALLY CONTROLLED ENTITY NOT TAXED.—The term 'United States real property interest' does not include any interest in a domestically controlled qualified investment entity.

''(3) DISTRIBUTIONS BY DOMESTICALLY CONTROLLED QUALIFIED INVESTMENT ENTITIES.—In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.''

(3) Subparagraphs (A) and (B) of section 897(h)(4) are amended to read as follows:

''(A) QUALIFIED INVESTMENT ENTITY.—The term 'qualified investment entity' means any real estate investment trust and any regulated investment company.

''(B) DOMESTICALLY CONTROLLED.—The term 'domestically controlled qualified investment entity' means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.''

(4) Subparagraphs (C) and (D) of section 897(h)(4) are each amended by striking ''REIT'' and inserting ''qualified investment entity''.

(5) The subsection heading for subsection (h) of section 897 is amended by striking ''REITS'' and inserting ''CERTAIN INVESTMENT ENTITIES''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

(2) ESTATE TAX TREATMENT.—The amendment made by subsection (b) shall apply to estates of decedents dying after December 31, 2004.

(3) CERTAIN OTHER PROVISIONS.—The amendments made by subsection (c) (other than paragraph (1) thereof) shall take effect after December 31, 2004.

SEC. 287. TAXATION OF CERTAIN SETTLEMENT FUNDS.

(a) IN GENERAL.—Subsection (g) of section 468B (relating to clarification of taxation of certain funds) is amended to read as follows:

''(g) CLARIFICATION OF TAXATION OF CERTAIN FUNDS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

''(2) EXEMPTION FROM TAX FOR CERTAIN SETTLEMENT FUNDS.—An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if—

''(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,

''(B) it is created for the receipt of settlement payments as directed by a government entity for the sole purpose of resolving or satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

''(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and

''(D) upon termination, any remaining funds will be disbursed to such government entity for use in accordance with applicable law.

For purposes of this paragraph, the term 'government entity' means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 288. EXPANSION OF HUMAN CLINICAL TRIALS QUALIFYING FOR ORPHAN DRUG CREDIT.

(a) IN GENERAL.—Paragraph (2) of section 45C(b) (relating to qualified clinical testing expenses) is amended by adding at the end the following new subparagraph:

''(C) TREATMENT OF CERTAIN EXPENSES INCURRED BEFORE DESIGNATION.—For purposes of subparagraph (A)(ii)(I), if a drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act not later than the due date (including extensions) for filing the return of tax under this subtitle for the taxable year in which the application for such designation of such drug was filed, such drug shall be treated as having been designated on the date that such application was filed.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 289. SIMPLIFICATION OF EXCISE TAX IMPOSED ON BOWS AND ARROWS.

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

''(1) BOWS.—

''(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, 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—

''(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

''(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.''.

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

''(3) ARROWS.—

''(A) IN GENERAL.—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.

''(B) 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 the tax imposed under 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 (2) to which additional components are attached.''.

(c) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

(1) by inserting ''(other than broadheads)'' after ''point'', and

(2) by striking ''ARROWS.—'' in the heading and inserting ''ARROW COMPONENTS.—''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 290. REPEAL OF EXCISE TAX ON FISHING TACKLE BOXES.

(a) REPEAL.—Paragraph (6) of section 4162(a) (defining sport fishing equipment) is amended by striking subparagraph (C) and by redesignating subparagraphs (D) through (J) as subparagraphs (C) through (I), respectively.

(b) EFFECTIVE DATE.—The amendments made this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 291. SONAR DEVICES SUITABLE FOR FINDING FISH.

(a) NOT TREATED AS SPORT FISHING EQUIPMENT.—Subsection (a) of section 4162 (relating to sport fishing equipment defined) is amended by inserting ''and'' at the end of paragraph (8), by striking '', and'' at the end of paragraph (9) and inserting a period, and by striking paragraph (10).

(b) CONFORMING AMENDMENT.—Section 4162 is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

(c) EFFECTIVE DATE.—The amendments made this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 292. INCOME TAX CREDIT TO DISTILLED SPIRITS WHOLESALERS FOR COST OF CARRYING FEDERAL EXCISE TAXES ON BOTTLED DISTILLED SPIRITS.

(a) IN GENERAL.—Subpart A of part I of subchapter A of chapter 51 (relating to gallonage and occupational taxes) is amended by adding at the end the following new section:

''SEC. 5011. INCOME TAX CREDIT FOR WHOLESALER'S AVERAGE COST OF CARRYING EXCISE TAX.

''(a) IN GENERAL.—For purposes of section 38, in the case of an eligible wholesaler, the amount of the distilled spirits wholesalers credit for any taxable year is the amount equal to the product of—

''(1) the number of cases of bottled distilled spirits—

''(A) which were bottled in the United States, and

''(B) which are purchased by such wholesaler during the taxable year directly from the bottler of such spirits, and

''(2) the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year.

''(b) ELIGIBLE WHOLESALER.—For purposes of this section, the term 'eligible wholesaler' means any person who holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits.

''(c) AVERAGE TAX-FINANCING COST.—

''(1) IN GENERAL.—For purposes of this section, the average tax-financing cost per case for any calendar year is the amount of interest which would accrue at the deemed financing rate during a 60-day period on an amount equal to the deemed Federal excise per case.

''(2) DEEMED FINANCING RATE.—For purposes of paragraph (1), the deemed financing rate for any calendar year is the average of the corporate overpayment rates under paragraph (1) of section 6621(a) (determined without regard to the last sentence of such paragraph) for calendar quarters of such year.

''(3) DEEMED FEDERAL EXCISE TAX BASED ON CASE.—For purposes of paragraph (1), the deemed Federal excise tax per case of 12 80-proof 750ml bottles is $22.83.

''(4) NUMBER OF CASES IN LOT.—For purposes of this section, the number of cases in any lot of distilled spirits shall be determined by dividing the number of liters in such lot by 9.''

(b) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 38 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 new paragraph:

''(16) in the case of an eligible wholesaler (as defined in section 5011(b)), the distilled spirits wholesalers credit determined under section 5011(a).''

(2) Subsection (d) of section 39 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF SECTION 5011 CREDIT BEFORE JANUARY 1, 2005.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 5011(a) may be carried back to a taxable year beginning before January 1, 2005.''.

(3) The table of sections for subpart A of part I of subchapter A of chapter 51 is amended by adding at the end the following new item:

''Sec. 5011. Income tax credit for wholesaler's average cost of carrying excise tax.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 293. SUSPENSION OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) IN GENERAL.—Subpart G of part II of subchapter A of chapter 51 is amended by redesignating section 5148 as section 5149 and by inserting after section 5147 the following new section:

''SEC. 5148. SUSPENSION OF OCCUPATIONAL TAX.

''(a) IN GENERAL.—Notwithstanding sections 5081, 5091, 5111, 5121, and 5131, the rate of tax imposed under such sections for the suspension period shall be zero. During such period, persons engaged in or carrying on a trade or business covered by such sections shall register under section 5141 and shall comply with the recordkeeping requirements under this part.

''(b) SUSPENSION PERIOD.—For purposes of subsection (a), the suspension period is the period beginning on July 1, 2004, and ending on June 30, 2007.''.

(b) CONFORMING AMENDMENT.—Section 5117 is amended by adding at the end the following new subsection:

''(d) SPECIAL RULE DURING SUSPENSION PERIOD.—Except as provided in subsection (b) or by the Secretary, during the suspension period (as defined in section 5148) it shall be unlawful for any dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep records under section 5114.''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart G of part II of subchapter A of chapter 51 is amended by striking the last item and inserting the following new items:

''Sec. 5148. Suspension of occupational tax.

''Sec. 5149. Cross references.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 294. MODIFICATION OF UNRELATED BUSINESS INCOME LIMITATION ON INVESTMENT IN CERTAIN SMALL BUSINESS INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (6) of section 514(c) (relating to acquisition indebtedness) is amended to read as follows:

''(6) CERTAIN FEDERAL FINANCING.—

''(A) IN GENERAL.—For purposes of this section, the term 'acquisition indebtedness' does not include—

''(i) an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, or

''(ii) indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 and formed after the date of the enactment of the American Jobs Creation Act of 2004, if such indebtedness is evidenced by a debenture—

''(I) issued by such company under section 303(a) of such Act, and

''(II) held or guaranteed by the Small Business Administration.

''(B) LIMITATION.—Subparagraph (A)(ii) shall not apply with respect to any small business investment company during any period that—

''(i) any organization which is exempt from tax under this title (other than a governmental unit) owns more than 25 percent of the capital or profits interest in such company, or

''(ii) organizations which are exempt from tax under this title (including governmental units other than any agency or instrumentality of the United States) own, in the aggregate, 50 percent or more of the capital or profits interest in such company.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to indebtedness incurred by small business investment companies formed after the date of the enactment of the American Jobs Creation Act of 2004.

SEC. 295. ELECTION TO DETERMINE TAXABLE INCOME FROM CERTAIN INTERNATIONAL SHIPPING ACTIVITIES USING PER TON RATE.

(a) IN GENERAL.—Chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after subchapter Q the following new subchapter:

''Subchapter R—Election To Determine Taxable Income From Certain International Shipping Activities Using per Ton Rate

''Sec. 1352. Alternative tax on qualifying shipping activities.

''Sec. 1353. Taxable income from qualifying shipping activities.

''Sec. 1354. Qualifying shipping tax election; revocation; termination.

''Sec. 1355. Definitions and special rules.

''Sec. 1356. Qualifying shipping activities.

''Sec. 1357. Items not subject to regular tax; depreciation; interest.

''Sec. 1358. Allocation of credits, income, and deductions.

''Sec. 1359. Disposition of qualifying shipping assets.

''SEC. 1352. ALTERNATIVE TAX ON QUALIFYING SHIPPING ACTIVITIES.

''(a) IN GENERAL.—The taxable income of an electing corporation from qualifying shipping activities shall be the amount determined under this subchapter, and the corporate percentages of the items of income, gain, loss, deduction, or credit of an electing corporation and of other members of the electing group of such corporation which would otherwise be taken into account by reason of its qualifying shipping activities shall be taken into account to the extent provided in section 1357.

''(b) ALTERNATIVE TAX.—The taxable income of an electing corporation from qualifying shipping activities, if otherwise taxable under section 11, 55, 882, 887, or 1201(a) shall be subject to tax only under this section at the maximum rate specified in section 11(b). The income of a foreign corporation shall not be subject to tax under this subchapter to the extent its income is excludible from gross income under section 883(a)(1).

''SEC. 1353. TAXABLE INCOME FROM QUALIFYING SHIPPING ACTIVITIES.

''(a) IN GENERAL.—For purposes of this subchapter, the taxable income of an electing corporation from qualifying shipping activities shall be its corporate income percentage of the sum of the amounts determined under subsection (b) for each qualifying vessel operated by such electing corporation or other electing entity.

''(b) AMOUNTS.—For purposes of subsection (a), the amount of taxable income of an electing entity for each qualifying vessel shall equal the product of—

''(1) the daily notional taxable income from the operation of the qualifying vessel in United States foreign trade, and

''(2) the number of days during the taxable year that the electing entity operated such vessel as a qualifying vessel in United States foreign trade.

''(c) DAILY NOTIONAL TAXABLE INCOME.—For purposes of subsection (b), the daily notional taxable income from the operation of a qualifying vessel is 40 cents for each 100 tons of the

net tonnage of the vessel, up to 25,000 net tons, and 20 cents for each 100 tons of the net tonnage of the vessel, in excess of 25,000 net tons.

''(d) MULTIPLE OPERATORS OF VESSEL.—If 2 or more persons have a joint interest in a qualifying vessel and are treated as operators of that vessel, the taxable income from the operation of such vessel for that time (as determined under this section) shall be allocated among such persons on the basis of their ownership and charter interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

''(e) NONCORPORATE PERCENTAGE.—Notwithstanding any contrary provision of this subchapter, the noncorporate percentage of any item of income, gain, loss, deduction, or credit of any member of an electing group shall be taken into account for all purposes of this subtitle as if this subchapter were not in effect.

''SEC. 1354. QUALIFYING SHIPPING TAX ELECTION; REVOCATION; TERMINATION.

''(a) IN GENERAL.—Except as provided in subsections (b) and (f), a qualifying shipping tax election may be made in respect of any qualifying entity.

''(b) CONDITION OF ELECTION.—An election may be made by a member of a controlled group under this subsection for any taxable year only if all qualifying entities that are members of the controlled group join in the election.

''(c) WHEN MADE.—An election under subsection (a) may be made by a qualifying entity in such form as prescribed by the Secretary. Such election shall be filed with the qualifying entity's return for the first taxable year to which the election shall apply, by the due date for such return (including any applicable extensions).

''(d) YEARS FOR WHICH EFFECTIVE.—An election under subsection (a) shall be effective for the taxable year of the qualifying entity for which it is made and for all succeeding taxable years of the entity, until such election is terminated under subsection (e).

''(e) TERMINATION.—

''(1) BY REVOCATION.—

''(A) IN GENERAL.—An election under subsection (a) may be terminated by revocation.

''(B) WHEN EFFECTIVE.—Except as provided in subparagraph (C)—

''(i) a revocation made during the taxable year and on or before the 15th day of the 3rd month thereof shall be effective on the 1st day of such taxable year, and

''(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

''(C) REVOCATION MAY SPECIFY PROSPECTIVE DATE.—If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective on and after the date so specified.

''(2) BY ENTITY CEASING TO BE QUALIFYING ENTITY.—

''(A) IN GENERAL.—An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the entity is an electing entity) such entity ceases to be a qualifying entity.

''(B) WHEN EFFECTIVE.—Any termination under this paragraph shall be effective on and after the date of cessation.

''(f) ELECTION AFTER TERMINATION.—If a qualifying entity has made an election under subsection (a) and if such election has been terminated under subsection (e), such entity (and any successor entity) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

''SEC. 1355. DEFINITIONS AND SPECIAL RULES.

''(a) DEFINITIONS.—For purposes of this subchapter:

''(1) The term 'controlled group' means any group of trusts and business entities whose members would be treated as a single employer under the rules of section 52(a) (without regard to paragraphs (1) and (2) thereof) and section 52(b)(1).

''(2) The term 'corporate income percentage' means the least aggregate share, expressed as a percentage, of any item of income or gain of an electing corporation or electing group of which such corporation is a member from qualifying shipping activities that would, but for an election in effect under this subchapter, be required to be reported on the Federal income tax return of an electing corporation during any taxable period. In the case of an electing group which includes two or more electing corporations, the corporate income percentage of each such corporation shall be determined on the basis of such corporations' direct and indirect ownership and charter interests in qualifying vessels of the electing group or on such other basis as the Secretary may prescribe by regulations.

''(3) The term 'corporate loss percentage' means the greatest aggregate share, expressed as a percentage, of any item of loss, deduction or credit of an electing corporation or electing group of which such corporation is a member from qualifying shipping activities that would, but for an election in effect under this subchapter, be required to be reported on the Federal income tax return of an electing corporation during any taxable period.

''(4) The term 'corporate percentages' means the corporate income percentage and the corporate loss percentage.

''(5) The term 'electing corporation' means any C corporation that is an electing entity or that would, but for an election in effect under this subchapter, be required to report any item of income, gain, loss, deduction, or credit of an electing entity on its Federal income tax return.

''(6) The term 'electing entity' means any qualifying entity for which an election is in effect under this subchapter.

''(7) The term 'electing group' means a controlled group of which one or more members is an electing entity.

''(8) The term 'noncorporate percentage' means the difference between one hundred percent and the corporate income percentage or corporate loss percentage, as applicable.

''(9) The term 'qualifying entity' means a trust or business entity that—

''(A) operates one or more qualifying vessels, and

''(B) meets the shipping activity requirement in subsection (c).

''(10) The term 'qualifying shipping assets' means any qualifying vessel and other assets which are used in core qualifying activities as described in section 1356(b).

''(11) The term 'qualifying vessel' means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 10,000 deadweight tons used in the United States foreign trade.

''(12) The term 'United States domestic trade' means the transportation of goods or passengers between places in the United States.

''(13) The term 'United States flag vessel' means any vessel documented under the laws of the United States.

''(14) The term 'United States foreign trade' means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

''(b) OPERATING A VESSEL.—For purposes of this subchapter:

''(1) Except as provided in paragraph (2), an entity is treated as operating any vessel owned by, or chartered (including a time charter) to, the entity.

''(2) An entity is treated as operating a vessel that it has chartered out on bareboat charter terms only if—

''(A) the vessel is temporarily surplus to the entity's requirements and the term of the charter does not exceed three years; or

''(B) the vessel is bareboat chartered to a member of a controlled group which includes such entity or to an unrelated third party that sub-bareboats or time charters the vessel to a member of such controlled group (including the owner).

''(c) SHIPPING ACTIVITY REQUIREMENT.—For purposes of this section, the shipping activity requirement is met for a taxable year only by an entity described in paragraph (1), (2), or (3).

''(1) An entity in the first taxable year of its qualifying shipping tax election if, for the preceding taxable year, the test in paragraph (4) is met.

''(2) An entity in the second or any subsequent taxable year of its qualifying shipping tax election if, for each of the two preceding taxable years, the test in paragraph (4) is met.

''(3) An entity that would be described in paragraph (1) or (2) if the test in paragraph (4) were applied on an aggregate basis to the controlled group of which such entity is a member, and vessel charters between members of the controlled group were disregarded.

''(4) The test in this paragraph is met if on average at least 25 percent of the aggregate tonnage of qualifying vessels operated by the entity were owned by the entity or chartered to the entity on bareboat charter terms. For purposes of the preceding sentence, vessels chartered (including time chartered) to an entity by a member of a controlled group which includes the entity, or by a third party that bareboat charters the vessels from the entity or a member of the entity's controlled group, shall be treated as chartered to the entity on bareboat charter terms.

''(d) EFFECT OF TEMPORARILY CEASING TO OPERATE A QUALIFYING VESSEL.—

''(1) A temporary cessation by an electing entity in operation of a qualifying vessel shall be disregarded for purposes of subsections (b) and (c) if the electing entity gives timely notice to the Secretary stating—

''(A) that it has temporarily ceased to operate the qualifying vessel, and

''(B) its intention to resume operating the qualifying vessel.

''(2) Notice shall be deemed timely if given not later than the due date (including extensions) for the electing entity's tax return (as set forth in section 6072(b)) for the taxable year in which the temporary cessation begins.

''(3) The treatment provided by paragraph (1) shall continue until the earlier of—

''(A) the electing entity abandoning its intention to resume operation of the qualifying vessel, or

''(B) the electing entity resuming operation of the qualifying vessel.

''(e) EFFECT OF TEMPORARILY OPERATING A QUALIFYING VESSEL IN THE UNITED STATES DOMESTIC TRADE.—

''(1) The temporary operation in the United States domestic trade of any qualifying vessel which had been used in the United States foreign trade shall be disregarded for purposes of this subchapter if the electing entity gives timely notice to the Secretary stating—

''(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

''(B) its intention to resume operation of the vessel in the United States foreign trade.

''(2) Notice shall be deemed timely if given not later than the due date (including extensions) for the electing entity's tax return (as set forth in section 6072(b)) for the taxable year in which the temporary cessation begins.

''(3) The treatment provided by paragraph (1) shall continue until the earlier of—

''(A) the electing entity abandoning its intention to resume operations of the vessel in the United States foreign trade, or

''(B) the electing entity resuming operation of the vessel in the United States foreign trade.

''(f) EFFECT OF CHANGE IN USE.—

''(1) Except as provided in subsection (e), a vessel that is used other than for operations in

the United States foreign trade on other than a temporary basis ceases to be a qualifying vessel when such use begins.

''(2) For purposes of this subsection, a change in use of a vessel, other than a commencement of operation in the United States domestic trade, is taken to be permanent unless there are circumstances indicating that it is temporary.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

''SEC. 1356. QUALIFYING SHIPPING ACTIVITIES.

''(a) QUALIFYING SHIPPING ACTIVITIES.—For purposes of this subchapter the 'qualifying shipping activities' of an electing entity consist of—

''(1) core qualifying activities,

''(2) qualifying secondary activities, and

''(3) qualifying incidental activities.

''(b) CORE QUALIFYING ACTIVITIES.—

''(1) The 'core qualifying activities' of an electing entity are—

''(A) its activities in operating qualifying vessels in United States foreign trade, and

''(B) other activities of the electing entity and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade, the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and the provision of terminal, maintenance, repair, logistical, or other vessel, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade.

''(2) 'Core qualifying activities' do not include the provision by an entity of facilities or services to any person, other than—

''(A) another member of such entity's electing group,

''(B) a consignor, consignee, or other customer of such entity's business of operating qualifying vessels in United States foreign trade, or

''(C) a member of an alliance, joint venture, pool, partnership or similar undertaking involving the operation of qualifying vessels in United States foreign trade of which such entity is a member.

''(c) QUALIFYING SECONDARY ACTIVITIES.—For purposes of this subsection—

''(1) the term 'secondary activities' means activities that are not core qualifying activities, and—

''(A) are the active management or operation of vessels in the United States foreign trade,

''(B) the provision of vessel, container, or cargo-related facilities or services to any person, or

''(C) such other activities as may be prescribed by the Secretary pursuant to regulations, and

''(2) the 'qualified secondary activities' of an electing entity are its secondary activities and the secondary activities of other members of its electing group, but only to the extent that, without regard to this subchapter, the aggregate gross income derived by the electing entity and the other members of its electing group from such activities does not exceed 20 percent of the aggregate gross income derived by the electing entity and the other members of its electing group from their core qualifying activities.

''(d) QUALIFYING INCIDENTAL ACTIVITIES.—Shipping-related activities carried on by an electing entity or another member of its electing group are qualified incidental activities of the electing entity if—

''(1) incidental to its core qualifying activities,

''(2) not qualifying secondary activities, and

''(3) without regard to this subchapter, the aggregate gross income derived by the electing entity and other members of its electing group from such activities does not exceed 0.1 percent of such entities' aggregate gross income from their core qualifying activities.

''SEC. 1357. ITEMS NOT SUBJECT TO REGULAR TAX; DEPRECIATION; INTEREST.

''(a) EXCLUSION FROM GROSS INCOME.—Gross income of an electing entity shall not include the corporate income percentage of—

''(1) income from qualifying shipping activities in the United States foreign trade,

''(2) income from money, bank deposits and other temporary investments which are reasonably necessary to meet the working capital requirements of qualifying shipping activities, and

''(3) income from money or other intangible assets accumulated pursuant to a plan to purchase qualifying shipping assets.

''(b) ELECTING GROUP MEMBER.—Gross income of a member of an electing group that is not an electing entity shall not include the corporate income percentage of its income from qualifying shipping activities that are taken into account under this subchapter as qualifying shipping activities of an electing entity.

''(c) DENIAL OF LOSSES, DEDUCTIONS, AND CREDITS.—

''(1) GENERAL RULE.—Subject to paragraph (2), the corporate loss percentage of each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

''(2) DEPRECIATION.—Notwithstanding paragraph (1), the deduction for depreciation of a qualifying shipping asset shall be allowed in determining the adjusted basis of such asset for purposes of determining gain from its disposition.

''(A) Except as provided in subparagraph (B), the straight line method of depreciation shall apply to the corporate income percentage of qualifying shipping assets the income from operation of which is excluded from gross income under this section.

''(B) Subparagraph (A) shall not apply to any qualifying shipping asset which is subject to a charter entered into prior to the effective date of this subchapter.

''(3) INTEREST.—The corporate loss percentage of an electing entity's interest expense shall be disallowed in the ratio that the fair market value of its qualifying vessel assets bears to the fair market value of its total assets.

''(d) SECTION INAPPLICABLE TO UNRELATED PERSONS.—This section shall not apply to a taxpayer that is not a member of an electing group.

''SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DEDUCTIONS.

''(a) QUALIFYING SHIPPING ACTIVITIES.—For purposes of this chapter, the qualifying shipping activities of an electing entity shall be treated as a separate trade or business activity from all other activities conducted by the entity.

''(b) EXCLUSION OF CREDITS OR DEDUCTIONS.—

''(1) No deduction shall be allowed against the taxable income of an electing corporation from qualifying shipping activities, and no credit shall be allowed against the tax imposed by section 1352(b).

''(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of a corporation to the extent that such loss is carried forward by the corporation from a taxable year preceding the first taxable year for which such corporation was an electing corporation.

''(c) TRANSACTIONS NOT AT ARM'S LENGTH.—Section 482 shall apply in accordance with this subsection to a transaction or series of transactions—

''(1) as between an electing entity and another person, or

''(2) as between an entity's qualifying shipping activities and other activities carried on by it.

''SEC. 1359. DISPOSITION OF QUALIFYING SHIPPING ASSETS.

''(a) IN GENERAL.—If an electing entity sells or disposes of qualifying shipping assets (as defined in subsection (c)) in an otherwise taxable transaction, at the election of the entity no gain shall be recognized if replacement qualifying shipping assets are acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying shipping assets.

''(b) PERIOD WITHIN WHICH PROPERTY MUST BE REPLACED.—The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying shipping assets and ending—

''(1) 3 years after the close of the first taxable year in which the gain is realized, or

''(2) subject to such terms and conditions as may be specified by the Secretary, on such later date as the Secretary may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

''(c) TIME FOR ASSESSMENT OF DEFICIENCY ATTRIBUTABLE TO GAIN.—If an electing entity has made the election provided in subsection (a), then—

''(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the entity (in such manner as the Secretary may by regulations prescribe) of the replacement tonnage tax property or of an intention not to replace, and

''(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(d) BASIS OF REPLACEMENT QUALIFYING SHIPPING ASSETS.—In the case of replacement qualifying shipping assets purchased by an electing entity which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of qualifying shipping assets, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

''(e) REPLACEMENT QUALIFYING SHIPPING ASSETS MUST BE ACQUIRED FROM UNRELATED PERSON IN CERTAIN CASES.—

''(1) IN GENERAL.—Subsection (a) shall not apply if the replacement qualifying shipping assets are acquired from a related person except to the extent that the related person acquired the replacement qualifying shipping assets from an unrelated person during the period applicable under subsection (b).

''(2) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).''

(b) TECHNICAL AND CONFORMING AMENDMENT.—The second sentence of section 56(g)(4)(B)(i), as amended by this Act, is further amended by inserting ''or 1357'' after ''section 139A''.

(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. 296. CHARITABLE CONTRIBUTION DEDUCTION FOR CERTAIN EXPENSES INCURRED IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHALING.

(a) IN GENERAL.—Section 170 (relating to charitable, etc., contributions and gifts), as amended by this Act, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) EXPENSES PAID BY CERTAIN WHALING CAPTAINS IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHALING.—

''(1) IN GENERAL.—In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed $10,000 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

''(2) AMOUNT DESCRIBED.—

''(A) IN GENERAL.—The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities.

''(B) WHALING EXPENSES.—For purposes of subparagraph (A), the term 'whaling expenses' includes expenses for—

''(i) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

''(ii) the supplying of food for the crew and other provisions for carrying out such activities, and

''(iii) storage and distribution of the catch from such activities.

''(3) SANCTIONED WHALING ACTIVITIES.—For purposes of this subsection, the term 'sanctioned whaling activities' means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to contributions made after December 31, 2004.

TITLE III—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

SEC. 301. INTEREST EXPENSE ALLOCATION RULES.

(a) ELECTION TO ALLOCATE ON WORLDWIDE BASIS.—Section 864 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.—For purposes of this subchapter, at the election of the worldwide affiliated group—

''(1) ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE.—

''(A) IN GENERAL.—The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

''(B) TREATMENT OF WORLDWIDE AFFILIATED GROUP.—The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

''(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

''(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

''(C) WORLDWIDE AFFILIATED GROUP.—For purposes of this paragraph, the term 'worldwide affiliated group' means a group consisting of—

''(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

''(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

''(2) ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.—Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term 'affiliated group' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

''(3) TREATMENT OF TAX-EXEMPT ASSETS; BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS.—The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

''(4) TREATMENT OF CERTAIN FINANCIAL INSTITUTIONS.—

''(A) IN GENERAL.—For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

''(B) DESCRIPTION.—A corporation is described in this subparagraph if—

''(i) such corporation is a financial institution described in section 581 or 591,

''(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

''(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

''(C) TREATMENT OF BANK AND FINANCIAL HOLDING COMPANIES.—To the extent provided in regulations—

''(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

''(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

''(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

''(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

''(A) IN GENERAL.—If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

''(i) are members of such worldwide affiliated group, but

''(ii) are not corporations described in paragraph (4)(B),

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 904(d)(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—

''(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

''(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 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

''(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2008, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

''(E) DEFINITIONS RELATING TO GROUPS.—For purposes of this paragraph—

''(i) PRE-ELECTION WORLDWIDE AFFILIATED GROUP.—The term 'pre-election worldwide affiliated group' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

''(ii) ELECTING FINANCIAL INSTITUTION GROUP.—The term 'electing financial institution group' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

''(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

''(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

''(ii) preventing assets or interest expense from being taken into account more than once, and

''(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group 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 domestic 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 other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent 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), by redesignating subparagraph (F) as subparagraph (G), and by inserting after subparagraph (E) 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. 302. RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.

(a) GENERAL RULE.—Section 904 is amended by redesignating subsections (g), (h), (i), (j), and (k) as subsections (h), (i), (j), (k), and (l) respectively, and by inserting after subsection (f) the following new subsection:

''(g) RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.—

''(1) GENERAL RULE.—For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

''(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

''(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

''(2) OVERALL DOMESTIC LOSS DEFINED.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

''(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.

''(3) CHARACTERIZATION OF SUBSEQUENT INCOME.—

''(A) IN GENERAL.—Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

''(B) INCOME CATEGORY.—For purposes of this paragraph, the term 'income category' has the meaning given such term by subsection (f)(5)(E)(i).

''(4) COORDINATION WITH SUBSECTION (f).—The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 535(d)(2) is amended by striking ''section 904(g)(6)'' and inserting ''section 904(h)(6)''.

(2) Subparagraph (A) of section 936(a)(2) is amended by striking ''section 904(f)'' and inserting ''subsections (f) and (g) of section 904''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses for taxable years beginning after December 31, 2006.

SEC. 303. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.

(a) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income) is amended to read as follows:

''(1) IN GENERAL.—The provisions of subsections (a), (b), and (c) and sections 902, 907, and 960 shall be applied separately with respect to—

''(A) passive category income, and

''(B) general category income.''

(b) CATEGORIES.—Paragraph (2) of section 904(d) is amended by striking subparagraph (B), by redesignating subparagraph (A) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

''(A) CATEGORIES.—

''(i) PASSIVE CATEGORY INCOME.—The term 'passive category income' means passive income and specified passive category income.

''(ii) GENERAL CATEGORY INCOME.—The term 'general category income' means income other than passive category income.''

(c) SPECIFIED PASSIVE CATEGORY INCOME.—Subparagraph (B) of section 904(d)(2), as so redesignated, is amended by adding at the end the following new clause:

''(v) SPECIFIED PASSIVE CATEGORY INCOME.—The term 'specified passive category income' means—

''(I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States,

''(II) taxable income attributable to foreign trade income (within the meaning of section 923(b)), and

''(III) distributions from a FSC (or a former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).''

(d) TREATMENT OF FINANCIAL SERVICES.—Paragraph (2) of section 904(d) is amended by striking subparagraph (D), by redesignating subparagraph (C) as subparagraph (D), and by inserting before subparagraph (D) (as so redesignated) the following new subparagraph:

''(C) TREATMENT OF FINANCIAL SERVICES INCOME AND COMPANIES.—

''(i) IN GENERAL.—Financial services income shall be treated as general category income in the case of—

''(I) a member of a financial services group, and

''(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

''(ii) FINANCIAL SERVICES GROUP.—The term 'financial services group' means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

''(I) United States corporations, or

''(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

''(iii) PASS-THRU ENTITIES.—The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.''

(e) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 904(d)(2)(B) (relating to exceptions from passive income), as so redesignated, is amended by striking subclause (I) and by redesignating subclauses (II) and (III) as subclauses (I) and (II), respectively.

(2) Clause (i) of section 904(d)(2)(D) (defining financial services income), as so redesignated, is amended by adding ''or'' at the end of subclause (I) and by striking subclauses (II) and (III) and inserting the following new subclause:

''(II) passive income (determined without regard to subparagraph (B)(iii)(II)).''

(3) Section 904(d)(2)(D) (defining financial services income), as so redesignated, is amended by striking clause (iii).

(4) Paragraph (3) of section 904(d) is amended to read as follows:

''(3) LOOK-THRU IN CASE OF CONTROLLED FOREIGN CORPORATIONS.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

''(B) SUBPART F INCLUSIONS.—Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

''(C) INTEREST, RENTS, AND ROYALTIES.—Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

''(D) DIVIDENDS.—Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

''(i) the portion of the earnings and profits attributable to passive category income, to

''(ii) the total amount of earnings and profits.

''(E) LOOK-THRU APPLIES ONLY WHERE SUBPART F APPLIES.—If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

''(F) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—

''(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

''(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

''(G) DIVIDEND.—For purposes of this paragraph, the term 'dividend' includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

''(H) LOOK-THRU APPLIES TO PASSIVE FOREIGN INVESTMENT COMPANY INCLUSION.—If—

''(i) a passive foreign investment company is a controlled foreign corporation, and

''(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.''

(5) TREATMENT OF INCOME TAX BASE DIFFERENCES.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

''(H) TREATMENT OF INCOME TAX BASE DIFFERENCES.—Tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).''

(6) Paragraph (2) of section 904(d) is amended by adding at the end the following new subparagraph:

''(K) TRANSITIONAL RULES FOR 2007 CHANGES.—For purposes of paragraph (1)—

''(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

''(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income to such a taxable year for purposes of allocating such income among the separate categories in effect for such taxable year.''.

(7) Section 904(j)(3)(A)(i) is amended by striking ''subsection (d)(2)(A)'' and inserting ''subsection (d)(2)(B)''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 304. LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) IN GENERAL.—Section 904(d)(4) (relating to look-thru rules apply to dividends from noncontrolled section 902 corporations) is amended to read as follows:

''(4) LOOK-THRU APPLIES 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 the taxpayer shall be treated as income described in a subparagraph 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 the stock to which the distributions relate.

''(ii) INADEQUATE SUBSTANTIATION.—If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

''(iii) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

''(iv) LOOK-THRU WITH RESPECT TO CARRYOVER OF CREDIT.—Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation to such a taxable year for purposes of allocating such dividend among the separate categories in effect for such taxable year.''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 904(d)(1) is hereby repealed.

(2) Section 904(d)(2)(C)(iii) is amended by adding ''and'' at the end of subclause (I), by striking subclause (II), and by redesignating subclause (III) as subclause (II).

(3) The last sentence of section 904(d)(2)(D) is amended to read as follows: ''Such term does not include any financial services income.''.

(4) Section 904(d)(2)(E) is amended—

(A) by inserting ''or (4)'' after ''paragraph (3)'' in clause (i), and

(B) by striking clauses (ii) and (iv) and by redesignating clause (iii) as clause (ii).

(5) Section 904(d)(3)(F) is amended by striking ''(D), or (E)'' and inserting ''or (D)''.

(6) Section 864(d)(5)(A)(i) is amended by striking ''(C)(iii)(III)'' and inserting ''(C)(iii)(II)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 305. ATTRIBUTION OF STOCK OWNERSHIP THROUGH PARTNERSHIPS TO APPLY IN DETERMINING SECTION 902 AND 960 CREDITS.

(a) IN GENERAL.—Subsection (c) of section 902 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(7) CONSTRUCTIVE OWNERSHIP THROUGH PARTNERSHIPS.—Stock owned, directly or indirectly, by or for a partnership shall be considered as being 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 rules to account for special partnership 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) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act.

SEC. 306. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 367(d)(2) is amended by adding at the end the following new sentence: ''For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.

SEC. 307. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 956(c)(2) (relating to exceptions from property treated as United States property) is amended by striking ''and'' at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting a semicolon, and by adding at the end the following new subparagraphs:

''(L) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

''(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

''(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

''(M) an obligation of a United States person which—

''(i) is not a domestic corporation, and

''(ii) is not—

''(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

''(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.''.

(b) CONFORMING AMENDMENT.—Section 956(c)(2) is amended by striking ''and (K)'' in the last sentence and inserting '', (K), and (L)''.

(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.

SEC. 308. 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 (D) as subparagraph (E) 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 denominated in any 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. 309. REPEAL OF WITHHOLDING TAX ON DIVIDENDS FROM CERTAIN FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (2) of section 871(i) (relating to tax not to apply to certain interest and dividends) is amended by adding at the end the following new subparagraph:

''(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2004.

SEC. 310. PROVIDE EQUAL TREATMENT FOR INTEREST PAID BY 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), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following new subparagraph:

''(C) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.''.

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

SEC. 311. LOOK-THRU TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER FOREIGN PERSONAL HOLDING COMPANY INCOME RULES.

(a) IN GENERAL.—Subsection (c) of section 954, as amended by this Act, is amended by adding after paragraph (4) the following new paragraph:

''(5) LOOK-THRU IN THE CASE OF RELATED CONTROLLED FOREIGN CORPORATIONS.—For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person (as defined in subsection (b)(9)) shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is not subpart F income (as defined in section 952). For purposes of this paragraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph.''.

(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. 312. LOOK-THRU TREATMENT FOR SALES OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 954(c) (defining foreign personal holding company income), as amended by this Act, is amended by adding after paragraph (5) the following new paragraph:

''(6) 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 with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

''(B) 25-PERCENT OWNER.—For purposes of this paragraph, the term '25-percent owner' means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its 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. 313. 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 companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM PERSONAL HOLDING COMPANY RULES.—

(1) IN GENERAL.—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

''(5) a foreign corporation,'',

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting ''and'' at the end of paragraph (7) (as so redesignated), and

(D) by striking ''; and'' at the end of paragraph (8) (as so redesignated) and inserting a period.

(2) TREATMENT OF INCOME FROM PERSONAL SERVICE CONTRACTS.—Paragraph (1) of section 954(c) is amended by adding at the end the following new subparagraph:

''(I) PERSONAL SERVICE CONTRACTS.—

''(i) Amounts received under a contract under which the corporation is to furnish personal services if—

''(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

''(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

''(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1(h) is amended—

(A) in paragraph (10), by inserting ''and'' at the end of subparagraph (F), by striking subparagraph (G), and by redesignating 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'' in paragraph (11)(C)(iii).

(2) Section 163(e)(3)(B), as amended by section 642(a) of 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 controlled foreign corporation (as defined in section 957) or''.

(3) Paragraph (2) of section 171(c) is amended—

(A) by striking '', or by a foreign personal holding company, as defined in section 552'', and

(B) by striking '', or foreign personal 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 section 642(b) of 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 ''to a controlled foreign corporation (as defined in section 957) or''.

(6) Section 312 is amended by striking subsection (j).

(7) Subsection (m) of section 312 is amended by striking '', a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)''.

(8) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(9) Subparagraph (B) of section 465(c)(7) is amended by adding ''or'' at the end of clause (i), 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'' at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(11) Paragraph (1) 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 redesignating subsection (d) as subsection (c), and

(C) by striking ''subsection (a), (b), or (c)'' in subsection (c) (as so redesignated) and inserting ''subsection (a) or (b)''.

(13) Subsection (d) of section 751 is amended by adding ''and'' at the end of paragraph (2), by striking paragraph (3), by redesignating paragraph (4) as paragraph (3), and by striking ''paragraph (1), (2), or (3)'' in paragraph (3) (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 898(b)(1) is amended to read as follows:

''(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and''.

(B) Subparagraph (B) of section 898(b)(2) is amended by striking ''and sections 551(f) and 554, whichever are applicable,''.

(C) Paragraph (3) of section 898(b) is amended to read as follows:

''(3) UNITED STATES 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 for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).''.

(D) Subsection (c) of section 898 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 (if 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 subsection (b)(2)(B) 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.''.

(16) 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 subparagraph (E)(iii) or paragraph (3)(I), any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).''.

(17)(A) Subparagraph (A) of section 904(h)(1), as redesignated by section 302, is amended by adding ''or'' at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(B) The paragraph heading of paragraph (2) of section 904(h), as so redesignated, is amended by striking ''FOREIGN PERSONAL HOLDING OR''.

(18) Section 951 is amended by striking subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(19) Paragraph (3) of section 989(b) is amended by striking '', 551(a),''.

(20) Paragraph (5) of section 1014(b) is amended by inserting ''and before January 1, 2005,'' after ''August 26, 1937,''.

(21) Subsection (a) of section 1016 is amended by striking paragraph (13).

(22)(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 851), 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.

(23) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(24) Subsection (d) of section 1248 is amended by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(25) Paragraph (2) of section 1260(c) is amended by striking subparagraphs (H) and (I) and by redesignating subparagraph (J) as subparagraph (H).

(26)(A) 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 inserting ''(as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004)'' after ''section 1246''.

(27) Paragraph (2) of section 1294(a) is amended to read as follows:

''(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDIBLE 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 includible 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 6103(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 done 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 ''6046 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 ''556(b)(2),'' each place it appears.

(33) The table of parts for subchapter G of chapter 1 is amended by striking the item 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 subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6035.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), 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.

(2) SUBSECTION (C)(29).—The amendments made by subsection (c)(29) shall apply to disclosures of return or return information with respect to taxable years beginning after December 31, 2004.

SEC. 314. 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 commodity transactions) are amended to read as follows:

''(i) 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 corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or''.

(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,

''(II) by applying subparagraph (A)(i) thereof by substituting 'ordinary property or property described in section 1231(b)' for 'ordinary property', and

''(III) by substituting 'controlled foreign corporation' for 'taxpayer' each place it appears, 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 computing 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)(ii) to 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.

SEC. 315. MODIFICATIONS TO TREATMENT OF AIRCRAFT LEASING AND SHIPPING INCOME.

(a) ELIMINATION OF FOREIGN BASE COMPANY SHIPPING INCOME.—Section 954 (relating to foreign base company income) is amended—

(1) by striking paragraph (4) of subsection (a) (relating to foreign base company shipping income), and

(2) by striking subsection (f) (relating to foreign base company shipping income).

(b) SAFE HARBOR FOR CERTAIN LEASING ACTIVITIES.—Subparagraph (A) of section 954(c)(2) is amended by adding at the end the following new sentence: ''For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.''

(c) CONFORMING AMENDMENTS.—

(1) Section 952(c)(1)(B)(iii) is amended by striking subclause (I) and redesignating subclauses (II) through (VI) as subclauses (I) through (V), respectively.

(2) Subsection (b) of section 954 is amended—

(A) by striking ''the foreign base company shipping income,'' in paragraph (5),

(B) by striking paragraphs (6) and (7), and

(C) by redesignating paragraph (8) as paragraph (6).

(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. 316. MODIFICATION OF EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING.

(a) IN GENERAL.—Section 954(h)(3) is amended by adding at the end the following:

''(E) DIRECT CONDUCT OF ACTIVITIES.—For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

''(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

''(ii) the activity is performed in the home country of the related person, and

''(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.

TITLE IV—EXTENSION OF CERTAIN EXPIRING PROVISIONS

SEC. 401. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND MINIMUM TAX LIABILITY.

(a) IN GENERAL.—Paragraph (2) of section 26(a) is amended—

(1) by striking ''RULE FOR 2000, 2001, 2002, AND 2003.—'' and inserting ''RULE FOR TAXABLE YEARS 2000 THROUGH 2005.—'', and

(2) by striking ''or 2003,'' and inserting ''2003, 2004, or 2005,''.

(b) CONFORMING PROVISIONS.—

(1) Section 904(h) is amended by striking ''or 2003'' and inserting ''2003, 2004, or 2005''.

(2) The amendments made by sections 201(b), 202(f), and 618(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to taxable years beginning during 2004 or 2005.

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

SEC. 402. EXTENSION OF RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Section 41(h)(1)(B) (relating to termination) is amended by striking ''June 30, 2004'' and inserting ''December 31, 2005''.

(2) CONFORMING AMENDMENT.—Section 45C(b)(1)(D) is amended by striking ''June 30, 2004'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to amounts paid or incurred after June 30, 2004.

SEC. 403. EXTENSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) IN GENERAL.—Subparagraphs (A) and (B) of section 45(c)(3) (defining qualified facility) are both amended by striking ''2004'' and inserting ''2006''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to facilities placed in service after December 31, 2003.

SEC. 404. INDIAN EMPLOYMENT TAX CREDIT.

Section 45A(f) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 405. WORK OPPORTUNITY CREDIT.

(a) IN GENERAL.—Subparagraph (B) of section 51(c)(4) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

SEC. 406. WELFARE-TO-WORK CREDIT.

(a) IN GENERAL.—Subsection (f) of section 51A is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after December 31, 2003.

SEC. 407. CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL.—Subparagraph (D) of section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by striking ''or 2003'' and inserting '', 2003, 2004, or 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 408. EXTENSION OF ACCELERATED DEPRECIATION BENEFIT FOR PROPERTY ON INDIAN RESERVATIONS.

Paragraph (8) of section 168(j) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 409. CHARITABLE CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT USED FOR EDUCATIONAL PURPOSES.

(a) IN GENERAL.—Subparagraph (G) of section 170(e)(6) (relating to special rule for contributions of computer technology and equipment for educational purposes) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 410. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.

(a) IN GENERAL.—Subsection (h) of section 198 (relating to termination) is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to expenditures paid or incurred after December 31, 2003.

SEC. 411. AVAILABILITY OF MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Paragraphs (2) and (3)(B) of section 220(i) (defining cut-off year) are each amended by striking ''2003'' each place it appears in the text and headings and inserting ''2005''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 220(j) is amended—

(A) in the text by striking ''or 2002'' each place it appears and inserting ''2002, or 2004'', and

(B) in the heading by striking ''OR 2002'' and inserting ''2002, OR 2004''.

(2) Subparagraph (A) of section 220(j)(4) is amended by striking ''and 2002'' and inserting ''2002, and 2004''.

(3) Subparagraph (C) of section 220(j)(2) is amended to read as follows:

''(C) NO LIMITATION FOR 2000 OR 2003.—The numerical limitation shall not apply for 2000 or 2003.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

(d) TIME FOR FILING REPORTS, ETC.—

(1) The report required by section 220(j)(4) of the Internal Revenue Code of 1986 to be made on August 1, 2004, shall be treated as timely if made before the close of the 90-day period beginning on the date of the enactment of this Act.

(2) The determination and publication required by section 220(j)(5) of such Code with respect to calendar year 2004 shall be treated as timely if made before the close of the 120-day period beginning on the date of the enactment of this Act. If the determination under the preceding sentence is that 2004 is a cut-off year under section 220(i) of such Code, the cut-off date under such section 220(i) shall be the last day of such 120-day period.

SEC. 412. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 413. QUALIFIED ZONE ACADEMY BONDS.

(a) IN GENERAL.—Paragraph (1) of section 1397E(e) is amended by striking ''and 2003'' and inserting ''2003, 2004, and 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 414. DISTRICT OF COLUMBIA.

(a) DISTRICT OF COLUMBIA ENTERPRISE ZONE.—Subsection (f) of section 1400 is amended by striking ''December 31, 2003'' both places it appears and inserting ''December 31, 2005''.

(b) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—Subsection (b) of section 1400A is amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(c) ZERO PERCENT CAPITAL GAINS RATE.—

(1) Section 1400B is amended by striking ''January 1, 2004'' each place it appears and inserting ''January 1, 2006''.

(2) Subsections (e)(2) and (g)(2) of section 1400B are each amended by striking ''2008'' each place it appears in the headings and text and inserting ''2010''.

(3) Subsection (d) of section 1400F is amended by striking ''December 31, 2008'' and inserting ''December 31, 2010''.

(d) FIRST-TIME HOMEBUYER CREDIT.—Subsection (i) of section 1400C is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) TAX-EXEMPT ECONOMIC DEVELOPMENT BONDS.—The amendment made by subsection (b) shall apply to obligations issued after December 31, 2003.

SEC. 415. EXTENSION OF CERTAIN NEW YORK LIBERTY ZONE BOND FINANCING.

Subparagraph (D) of section 1400L(d)(2) is amended by striking ''2005'' and inserting ''2010''.

SEC. 416. DISCLOSURES RELATING TO TERRORIST ACTIVITIES.

(a) IN GENERAL.—Clause (iv) of section 6103(i)(3)(C) and subparagraph (E) of section 6103(i)(7) are both amended by striking ''December 31, 2003'' and inserting ''December 31, 2005''.

(b) DISCLOSURE OF TAXPAYER IDENTITY TO LAW ENFORCEMENT AGENCIES INVESTIGATING TERRORISM.—Subparagraph (A) of section 6103(i)(7) is amended by adding at the end the following new clause:

''(v) TAXPAYER IDENTITY.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to disclosures on or after the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall take effect as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001.

SEC. 417. DISCLOSURE OF RETURN INFORMATION RELATING TO STUDENT LOANS.

Section 6103(l)(13)(D) (relating to termination) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 418. COVER OVER OF TAX ON DISTILLED SPIRITS.

(a) IN GENERAL.—Paragraph (1) of section 7652(f) is amended by striking ''January 1, 2004'' and inserting ''January 1, 2006''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to articles brought into the United States after December 31, 2003.

SEC. 419. JOINT REVIEW OF STRATEGIC PLANS AND BUDGET FOR THE INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Paragraph (2) of section 8021(f) (relating to joint reviews) is amended by striking ''2004'' and inserting ''2005''.

(b) REPORT.—Subparagraph (C) of section 8022(3) (regarding reports) is amended—

(1) by striking ''2004'' and inserting ''2005'', and

(2) by striking ''with respect to—'' and all that follows and inserting ''with respect to the matters addressed in the joint review referred to in section 8021(f)(2).''.

(c) TIME FOR JOINT REVIEW.—The joint review required by section 8021(f)(2) of the Internal Revenue Code of 1986 to be made before June 1, 2004, shall be treated as timely if made before June 1, 2005.

SEC. 420. PARITY IN THE APPLICATION OF CERTAIN LIMITS TO MENTAL HEALTH BENEFITS.

(a) IN GENERAL.—Subsection (f) of section 9812 is amended by striking ''and'' at the end of paragraph (1), by striking paragraph (2), and by inserting after paragraph (1) the following new paragraphs:

''(2) on or after January 1, 2004, and before the date of the enactment of American Jobs Creation Act of 2004, and

''(3) after December 31, 2005.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits for services furnished on or after December 31, 2003.

SEC. 421. COMBINED EMPLOYMENT TAX REPORTING PROJECT.

(a) IN GENERAL.—Paragraph (1) of section 976(b) of the Taxpayer Relief Act of 1997 (111

Stat. 898) is amended by striking ''for a period ending with the date which is 5 years after the date of the enactment of this Act'' and inserting ''during the period ending on December 31, 2005''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to disclosures on or after the date of the enactment of this Act.

SEC. 422. CLEAN-FUEL VEHICLES.

(a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Paragraph (2) of section 30(b) (relating to phaseout) is amended to read as follows:

''(2) PHASEOUT.—In the case of any qualified electric vehicle placed in service after December 31, 2005, the credit otherwise allowable under subsection (a) (determined after the application of paragraph (1)) shall be reduced by 75 percent.''.

(b) DEDUCTION FOR QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—Subparagraph (B) of section 179A(b)(1) (relating to phaseout) is amended to read as follows:

''(B) PHASEOUT.—In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2005, the limit otherwise applicable under subparagraph (A) shall be reduced by 75 percent.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 (relating to definitions and special rules) is amended by adding at the end the following:

''(5) GENERAL SALES TAXES.—For purposes of subsection (a)—

''(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes, and

''(II) as if State and local general sales taxes were referred to in a paragraph thereof.

''(B) DEFINITION OF GENERAL SALES TAX.—The term 'general sales tax' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

''(C) SPECIAL RULES FOR FOOD, ETC.—In the case of items of food, clothing, medical supplies, and motor vehicles—

''(i) the fact that the tax does not apply with respect to some or all of such items 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 some or all of such items 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) ITEMS TAXED AT DIFFERENT RATES.—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 use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term 'compensating use tax' means, with respect to any item, a tax which—

''(i) is imposed on the use, storage, or consumption of such item, and

''(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

''(F) SPECIAL RULE FOR MOTOR VEHICLES.—In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

''(G) 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, and paid by, such consumer.

''(H) 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)—

''(I) shall reflect the provisions of this paragraph,

''(II) 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 taxation, and

''(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).

''(I) APPLICATION OF PARAGRAPH.—This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2006.''.

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

TITLE VI—REVENUE PROVISIONS

Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation

SEC. 601. TAX TREATMENT OF EXPATRIATED ENTITIES AND THEIR FOREIGN PARENTS.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

''SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES AND THEIR FOREIGN PARENTS.

''(a) TAX ON INVERSION GAIN OF EXPATRIATED ENTITIES.—

''(1) IN GENERAL.—The taxable income of an expatriated entity for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

''(2) EXPATRIATED ENTITY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'expatriated entity' means—

''(i) the domestic corporation or partnership referred to in subparagraph (B)(i) with respect to which a foreign corporation is a surrogate foreign corporation, and

''(ii) any United States person who is related (within the meaning of section 267(b) or 707(b)(1)) to a domestic corporation or partnership described in clause (i).

''(B) SURROGATE FOREIGN CORPORATION.—A foreign corporation shall be treated as a surrogate foreign corporation if, pursuant to a plan (or a series of related transactions)—

''(i) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

''(ii) after the acquisition at least 60 percent of the stock (by vote or value) of the entity is held—

''(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

''(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

''(iii) after the acquisition the expanded affiliated group which includes the entity does not have substantial business activities in the foreign country in which, or under the law of which, the entity is created or organized, when compared to the total business activities of such expanded affiliated group.

An entity otherwise described in clause (i) with respect to any domestic corporation or partnership trade or business shall be treated as not so described if, on or before March 4, 2003, such entity acquired directly or indirectly more than half of the properties held directly or indirectly by such corporation or more than half of the properties constituting such partnership trade or business, as the case may be.

''(b) DEFINITIONS AND SPECIAL RULES.—

''(1) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(2) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership under subsection (a)(2)(B)(ii)—

''(A) stock held by members of the expanded affiliated group which includes the foreign corporation, or

''(B) stock of such foreign corporation which is sold in a public offering related to the acquisition described in subsection (a)(2)(B)(i).

''(3) PLAN DEEMED IN CERTAIN CASES.—If a foreign corporation 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 requirements of subsection (a)(2)(B)(ii) are met, such actions shall be treated as pursuant to a plan.

''(4) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

''(5) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2)(B)(ii) to the acquisition of a trade or business 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.

''(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations—

''(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

''(B) to treat stock as not stock.

''(c) OTHER DEFINITIONS.—For purposes of this section—

''(1) APPLICABLE PERIOD.—The term 'applicable period' means the period—

''(A) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(B)(i), and

''(B) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

''(2) INVERSION GAIN.—The term 'inversion gain' means the income or gain recognized by reason of the transfer during the applicable period of stock or other properties by an expatriated entity, and any income received or accrued during the applicable period by reason of a license of any property by an expatriated entity—

''(A) as part of the acquisition described in subsection (a)(2)(B)(i), or

''(B) after such acquisition if the transfer or license is to a foreign related person.

Subparagraph (B) shall not apply to property described in section 1221(a)(1) in the hands of the expatriated entity.

''(3) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any expatriated entity, a foreign person which—

''(A) is related (within the meaning of section 267(b) or 707(b)(1)) to such entity, or

''(B) is under the same common control (within the meaning of section 482) as such entity.

''(d) SPECIAL RULES.—

''(1) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits (other than the credit allowed by section 901) shall be allowed against the tax imposed by this chapter on an expatriated entity for any taxable year described in subsection (a) only to the extent such tax exceeds the product of—

''(A) the amount of the inversion gain for the taxable year, and

''(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901, inversion gain shall be treated as from sources within the United States.

''(2) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an expatriated entity which is a partnership—

''(A) subsection (a)(1) shall apply at the partner rather than the partnership level,

''(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

''(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

''(ii) gain recognized for the taxable year by the partner by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the surrogate foreign corporation, and

''(C) the highest rate of tax specified in the rate schedule applicable to the partner under this chapter shall be substituted for the rate of tax referred to in paragraph (1).

''(3) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of subsection (a).

''(4) 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 pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(B)(i) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

''(i) any portion of the applicable period is included in such taxable year, and

''(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(B)(i) is completed.

''(e) SPECIAL RULE FOR TREATIES.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

''(f) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

''(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

''(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.''.

(b) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

''Sec. 7874. Rules relating to expatriated entities and their foreign parents.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 4, 2003.

SEC. 602. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by inserting after chapter 44 end the following new chapter:

''CHAPTER 45—PROVISIONS RELATING TO EXPATRIATED ENTITIES

''Sec. 4985. Stock compensation of insiders in expatriated corporations.

''SEC. 4985. STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS.

''(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any expatriated corporation, there is hereby imposed on such person a tax equal to 15 percent of the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the expatriation date.

''(b) VALUE.—For purposes of subsection (a)—

''(1) IN GENERAL.—The value of specified stock compensation shall be—

''(A) in the case of a stock option (or other similar right) or a stock appreciation right, the fair value of such option or right, and

''(B) in any other case, the fair market value of such compensation.

''(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

''(A) in the case of specified stock compensation held on the expatriation date, on such date,

''(B) in the case of such compensation which is canceled during the 6 months before the expatriation date, on the day before such cancellation, and

''(C) in the case of such compensation which is granted after the expatriation date, on the date such compensation is granted.

''(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an expatriated corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(B)(i) with respect to such corporation.

''(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

''(1) any stock option which is exercised on the expatriation date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise, and

''(2) any other specified stock compensation which is exercised, sold, exchanged, distributed, cashed-out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

''(e) DEFINITIONS.—For purposes of this section—

''(1) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the expatriation date—

''(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation or any member of the expanded affiliated group which includes such corporation, or

''(B) would be subject to such requirements if such corporation or member were an issuer of equity securities referred to in such section.

''(2) EXPATRIATED CORPORATION; EXPATRIATION DATE.—

''(A) EXPATRIATED CORPORATION.—The term 'expatriated corporation' means any corporation which is an expatriated entity (as defined in section 7874(a)(2)). Such term includes any predecessor or successor of such a corporation.

''(B) EXPATRIATION DATE.—The term 'expatriation date' means, with respect to a corporation, the date on which the corporation first becomes an expatriated corporation.

''(3) SPECIFIED STOCK COMPENSATION.—

''(A) IN GENERAL.—The term 'specified stock compensation' means payment (or right to payment) granted by the expatriated corporation (or by any member of the expanded affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

''(B) EXCEPTIONS.—Such term shall not include—

''(i) any option to which part II of subchapter D of chapter 1 applies, or

''(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

''(4) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

''(f) SPECIAL RULES.—For purposes of this section—

''(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

''(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the expatriated corporation or by any member of the expanded affiliated group which includes such corporation—

''(A) shall be treated as specified stock compensation, and

''(B) shall not be allowed as a deduction under any provision of chapter 1.

''(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

''(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

''(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting ''45,'' before ''46,''.

(2) $1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

''(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to

any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.''

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period ''or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985''.

(2) The table of chapters for subtitle D is amended by inserting after the item relating to chapter 44 the following new item:

''Chapter 45. Provisions relating to expatriated entities.''

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on March 4, 2003; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 4985 of the Internal Revenue Code of 1986, as added by this section.

SEC. 603. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking ''source and character'' and inserting ''amount, source, or character''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after the date of the enactment of this Act.

SEC. 604. REVISION OF TAX RULES ON EXPATRIATION OF INDIVIDUALS.

(a) EXPATRIATION TO AVOID TAX.—

(1) IN GENERAL.—Subsection (a) of section 877 (relating to treatment of expatriates) is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—

''(1) IN GENERAL.—Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

''(2) INDIVIDUALS SUBJECT TO THIS SECTION.—This section shall apply to any individual if—

''(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $124,000,

''(B) the net worth of the individual as of such date is $2,000,000 or more, or

''(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2004, such $124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '2003' for '1992' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.''.

(2) REVISION OF EXCEPTIONS FROM ALTERNATIVE TAX.—Subsection (c) of section 877 (relating to tax avoidance not presumed in certain cases) is amended to read as follows:

''(c) EXCEPTIONS.—

''(1) IN GENERAL.—Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

''(2) DUAL CITIZENS.—

''(A) IN GENERAL.—An individual is described in this paragraph if—

''(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

''(ii) the individual has had no substantial contacts with the United States.

''(B) SUBSTANTIAL CONTACTS.—An individual shall be treated as having no substantial contacts with the United States only if the individual—

''(i) was never a resident of the United States (as defined in section 7701(b)),

''(ii) has never held a United States passport, and

''(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

''(3) CERTAIN MINORS.—An individual is described in this paragraph if—

''(A) the individual became at birth a citizen of the United States,

''(B) neither parent of such individual was a citizen of the United States at the time of such birth,

''(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

''(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.''.

(3) CONFORMING AMENDMENT.—Section 2107(a) is amended to read as follows:

''(a) TREATMENT OF EXPATRIATES.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).''.

(b) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

''(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

''(2) provides a statement in accordance with section 6039G.''.

(c) PHYSICAL PRESENCE IN THE UNITED STATES FOR MORE THAN 30 DAYS.—Section 877 (relating to expatriation to avoid tax) is amended by adding at the end the following new subsection:

''(g) PHYSICAL PRESENCE.—

''(1) IN GENERAL.—This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

''(2) EXCEPTION.—

''(A) IN GENERAL.—In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—

''(i) such employer is related (within the meaning of section 267 and 707) to such individual, or

''(ii) such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph.

Not more than 30 days during any calendar year may be disregarded under this subparagraph.

''(B) INDIVIDUALS WITH TIES TO OTHER COUNTRIES.—An individual is described in this subparagraph if—

''(i) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—

''(I) such individual was born,

''(II) if such individual is married, such individual's spouse was born, or

''(III) either of such individual's parents were born, and

''(ii) the individual becomes fully liable for income tax in such country.

''(C) MINIMAL PRIOR PHYSICAL PRESENCE IN THE UNITED STATES.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.''.

(d) TRANSFERS SUBJECT TO GIFT TAX.—

(1) IN GENERAL.—Subsection (a) of section 2501 (relating to taxable transfers) is amended by striking paragraph (4), by redesignating paragraph (5) as paragraph (4), and by striking paragraph (3) and inserting the following new paragraph:

''(3) EXCEPTION.—

''(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer.

''(B) CREDIT FOR FOREIGN GIFT TAXES.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.''

(2) TRANSFERS OF CERTAIN STOCK.—Subsection (a) of section 2501 is amended by adding at the end the following new paragraph:

''(5) TRANSFERS OF CERTAIN STOCK.—

''(A) IN GENERAL.—In the case of a transfer of stock in a foreign corporation described in subparagraph (B) by a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer—

''(i) section 2511(a) shall be applied without regard to whether such stock is situated within the United States, and

''(ii) the value of such stock for purposes of this chapter shall be its U.S.-asset value determined under subparagraph (C).

''(B) FOREIGN CORPORATION DESCRIBED.—A foreign corporation is described in this subparagraph with respect to a donor if—

''(i) the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation, and

''(ii) such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

''(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

''(II) the total value of the stock of such corporation.

''(C) U.S.-ASSET VALUE.—For purposes of subparagraph (A), the U.S.-asset value of stock shall be the amount which bears the same ratio to the fair market value of such stock at the time of transfer as—

''(i) the fair market value (at such time) of the assets owned by such foreign corporation and situated in the United States, bears to

''(ii) the total fair market value (at such time) of all assets owned by such foreign corporation.''

(e) ENHANCED INFORMATION REPORTING FROM INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

(1) IN GENERAL.—Subsection (a) of section 6039G is amended to read as follows:

''(a) IN GENERAL.—Notwithstanding any other provision of law, any individual to whom section 877(b) applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).''.

(2) INFORMATION TO BE PROVIDED.—Subsection (b) of section 6039G is amended to read as follows:

''(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

''(1) the taxpayer's TIN,

''(2) the mailing address of such individual's principal foreign residence,

''(3) the foreign country in which such individual is residing,

''(4) the foreign country of which such individual is a citizen,

''(5) information detailing the income, assets, and liabilities of such individual,

''(6) the number of days during any portion of which that the individual was physically present in the United States during the taxable year, and

''(7) such other information as the Secretary may prescribe.''.

(3) INCREASE IN PENALTY.—Subsection (d) of section 6039G is amended to read as follows:

''(d) PENALTY.—If—

''(1) an individual is required to file a statement under subsection (a) for any taxable year, and

''(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of $10,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.''.

(4) CONFORMING AMENDMENT.—Section 6039G is amended by striking subsections (c), (f), and (g) and by redesignating subsections (d) and (e) as subsection (c) and (d), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who expatriate after June 3, 2004.

SEC. 605. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

''SEC. 6043A. RETURNS RELATING TO TAXABLE MERGERS AND ACQUISITIONS.

''(a) IN GENERAL.—According to the forms or regulations prescribed by the Secretary, the acquiring corporation in any taxable acquisition shall make a return setting forth—

''(1) a description of the acquisition,

''(2) the name and address of each shareholder of the acquired corporation who 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) NOMINEES.—According to the forms or regulations prescribed by the Secretary—

''(1) 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).

''(2) REPORTING TO NOMINEES.—In the case of stock held by any person as a nominee, references in this section (other than in subsection (c)) to a shareholder shall be treated as a reference to the nominee.

''(c) 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.

''(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in 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 shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.''

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

''(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),''.

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

''(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).''.

(c) CLERICAL AMENDMENT.—The table of sections 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.

SEC. 606. STUDIES.

(a) TRANSFER PRICING RULES.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study regarding the effectiveness of current transfer pricing rules and compliance efforts in ensuring that cross-border transfers and other related-party transactions, particularly transactions involving intangible assets, service contracts, or leases cannot be used improperly to shift income out of the United States. The study shall include a review of the contemporaneous documentation and penalty rules under section 6662 of the Internal Revenue Code of 1986, a review of the regulatory and administrative guidance implementing the principles of section 482 of such Code to transactions involving intangible property and services and to cost-sharing arrangements, and an examination of whether increased disclosure of cross-border transactions should be required. The study shall set forth specific recommendations to address all abuses identified in the study. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

(b) INCOME TAX TREATIES.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of United States income tax treaties to identify any inappropriate reductions in United States withholding tax that provide opportunities for shifting income out of the United States, and to evaluate whether existing anti-abuse mechanisms are operating properly. The study shall include specific recommendations to address all inappropriate uses of tax treaties. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

(c) IMPACT OF CORPORATE EXPATRIATION PROVISIONS.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of the impact of the provisions of this title on corporate expatriation. The study shall include such recommendations as such Secretary or delegate may have to improve the impact of such provisions in carrying out the purposes of this title. Not later than December 31, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

Subtitle B—Provisions Relating to Tax Shelters

Part I—Taxpayer-Related Provisions

SEC. 611. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN.

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement 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—

''(A) $10,000 in the case of a natural person, and

''(B) $50,000 in any other case.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be—

''(A) $100,000 in the case of a natural person, and

''(B) $200,000 in any other case.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—The term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically 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, and

''(B) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) NO JUDICIAL APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any judicial proceeding.

''(3) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) a statement of the facts and circumstances relating to the violation,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(e) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty imposed by this title.''

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

(d) REPORT.—The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor.

SEC. 612. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS, OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE, ETC.

(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 any taxable year, there shall be added to the tax an amount 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 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (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, and any reduction in the amount 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 TRANSACTIONS.—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.

''(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) COORDINATION WITH PENALTIES, ETC., 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 understatements 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) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable 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 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement 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.''

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.''

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A 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 6011,

''(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 6011 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 BELIEF.—For purposes of paragraph (2)(C)—

''(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) relates solely 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)) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly 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, or

''(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), 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, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 6664(c) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(B) The heading for subsection (c) of section 6664 is amended by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) REDUCTION IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX SHELTERS.—Subparagraph (C) of section 6662(d)(2) (relating to substantial understatement of income tax) is amended to read as follows:

''(C) REDUCTION NOT TO APPLY TO TAX SHELTERS.—

''(i) IN GENERAL.—Subparagraph (B) shall not apply to any item attributable to a tax shelter.

''(ii) TAX SHELTER.—For purposes of clause (i), 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.''

(e) CONFORMING AMENDMENTS.—

(1) Sections 461(i)(3)(C), 1274(b)(3), and 7525(b) are each amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 6662(d)(2)(C)(ii)''.

(2) The heading for section 6662 is amended to read as follows:

"SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS."

(3) 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 transactions.''

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

SEC. 613. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 6662(d)(2)(C)(ii)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 614. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

''(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year 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, the time 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 so required, or

''(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 615. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

"SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) for such advice or assistance.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—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 otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''

(2) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

"SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES, ETC.

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain (in such manner as the Secretary may by regulations prescribe) a list—

''(1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.''

(3) Section 6112 is amended—

(A) by redesignating subsection (c) as subsection (b),

(B) by inserting ''written'' before ''request'' in subsection (b)(1) (as so redesignated), and

(C) by striking ''shall prescribe'' in subsection (b)(2) (as so redesignated) and inserting ''may prescribe''.

(4) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees, etc.''

(5)(A) The heading for section 6708 is amended to read as follows:

"SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS."

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

SEC. 616. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

(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 to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false 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).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

''(d) 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).''

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 617. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''.

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

SEC. 618. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity

with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''

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

SEC. 619. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT 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 substantial understatement of income tax for any taxable year if the amount of the understatement 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), or

''(ii) $10,000,000.''

(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. 620. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''

(2) The table of sections for subchapter A of chapter 76 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 621. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 622. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF THE TREASURY.

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty. Any such penalty imposed on an individual may be in addition to, or in lieu of, any suspension, disbarment, or censure of such individual.''

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''

Part II—Other Provisions

SEC. 631. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) IN GENERAL.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) 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 regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.''

(b) CROSS REFERENCE.—Subsection (e) of section 305 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, see section 1286(f).''

(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. 632. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) IN GENERAL.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) MINIMUM HOLDING PERIOD FOR WITHHOLDING TAXES ON GAIN AND INCOME OTHER THAN DIVIDENDS ETC.—

''(1) IN GENERAL.—In no event shall a credit be allowed under 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) such 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) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions 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 to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

''(i) 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

''(ii) 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 subparagraph (A), the term 'dealer' means—

''(i) 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 if such security were stock, and

''(ii) 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 exception provided by 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 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) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

''(5) DETERMINATION OF HOLDING PERIOD.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.''

(b) CONFORMING AMENDMENT.—The heading of subsection (k) of section 901 is amended by inserting ''ON DIVIDENDS'' after ''TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

SEC. 633. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS TRANSFERS.

(a) TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.—Paragraph (1) of section 704(c) is amended by striking ''and'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', and'', and by adding at the end the following:

''(C) if any property so contributed has a built-in loss—

''(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

''(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value at the time of contribution.

For purposes of subparagraph (C), the term 'built-in loss' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value at the time of contribution.''

(b) SPECIAL RULES FOR TRANSFERS OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.—

(1) ADJUSTMENT OF PARTNERSHIP BASIS REQUIRED.—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period ''or unless the partnership has a substantial built-in loss immediately after such transfer''.

(2) ADJUSTMENT.—Subsection (b) of section 743 is amended by inserting ''or which has a substantial built-in loss immediately after such transfer'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BUILT-IN LOSS.—Section 743 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BUILT-IN LOSS.—

''(1) IN GENERAL.—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than $250,000 the fair market value of such property.

''(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.''

(4) ALTERNATIVE RULES FOR ELECTING INVESTMENT PARTNERSHIPS.—

(A) IN GENERAL.—Section 743 is amended by adding at the end the following new subsection:

''(e) ALTERNATIVE RULES FOR ELECTING INVESTMENT PARTNERSHIPS.—

''(1) NO ADJUSTMENT OF PARTNERSHIP BASIS.—For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

''(2) LOSS DEFERRAL FOR TRANSFEREE PARTNER.—In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

''(3) NO REDUCTION IN PARTNERSHIP BASIS.—Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.

''(4) EFFECT OF TERMINATION OF PARTNERSHIP.—This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

''(5) CERTAIN BASIS REDUCTIONS TREATED AS LOSSES.—In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

''(6) ELECTING INVESTMENT PARTNERSHIP.—For purposes of this subsection, the term 'electing investment partnership' means any partnership if—

''(A) the partnership makes an election to have this subsection apply,

''(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

''(C) such partnership has never been engaged in a trade or business,

''(D) substantially all of the assets of such partnership are held for investment,

''(E) at least 95 percent of the assets contributed to such partnership consist of money,

''(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

''(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering and during the 24-month period beginning on the date of the first capital contribution to such partnership,

''(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

''(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

''(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.''.

(B) INFORMATION REPORTING.—Section 6031 is amended by adding at the end the following new subsection:

''(f) ELECTING INVESTMENT PARTNERSHIPS.—In the case of any electing investment partnership (as defined in section 743(e)(6)), the information required under subsection (b) to be furnished to any partner to whom section 743(e)(2) applies shall include such information as is necessary to enable the partner to compute the amount of losses disallowed under section 743(e).''.

(5) CLERICAL AMENDMENTS.—

(A) The section heading for section 743 is amended to read as follows:

"SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS."

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

''Sec. 743. Special rules where section 754 election or substantial built-in loss.''

(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period ''or unless there is a substantial basis reduction''.

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting ''or unless there is a substantial basis reduction'' after ''section 754 is in effect''.

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

''(d) SUBSTANTIAL BASIS REDUCTION.—

''(1) IN GENERAL.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds $250,000.

''(2) REGULATIONS.—

"For regulations to carry out this subsection, see section 743(d)(2)."

(4) CLERICAL AMENDMENTS.—

(A) The section heading for section 734 is amended to read as follows:

"SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION."

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

''Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.''

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

(2) SUBSECTION (b).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply to transfers after the date of the enactment of this Act.

(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting ''20 years'' for ''15 years''.

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to distributions after the date of the enactment of this Act.

SEC. 634. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

''(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

''(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

''(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

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 before the allocation required by paragraph (2).''

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

SEC. 635. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking ''a REMIC 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,''.

(3) Paragraph (1) of section 582(c) is amended by striking '', and any regular interest in a FASIT,''.

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: ''An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.''.

(B) The last sentence of section 860G(a)(3) is amended by inserting '', and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property'' before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding ''and'' at the end of subparagraph (B), by striking '', and'' at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: ''For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.''.

(8)(A) Section 860G(a)(3)(A) is amended by striking ''or'' at the end of clause (i), by inserting ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

''(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

''(II) occurs after the startup day, and

''(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.''.

(B) Section 860G(a)(7)(B) is amended to read as follows:

''(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

''(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

''(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.''.

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking ''REMIC, or FASIT'' and inserting ''or REMIC''.

(10) 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(i)(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 part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 2005.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 636. LIMITATION ON TRANSFER OF BUILT-IN LOSSES ON REMIC RESIDUALS.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

''(e) LIMITATION ON TRANSFER OF BUILT-IN LOSSES ON REMIC RESIDUALS IN SECTION 351 TRANSACTIONS.—If—

''(1) a residual interest (as defined in section 860G(a)(2)) in a REMIC is transferred in any transaction which is described in subsection (a), and

''(2) the transferee's adjusted basis in such residual interest would (but for this paragraph) exceed its fair market value immediately after such transaction,

then, notwithstanding subsection (a), the transferee's adjusted basis in such residual interest shall not exceed its fair market value (whether or not greater than zero) immediately after such transaction.''

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

SEC. 637. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

''(A) obligations of the United States, money, or deposits with persons described in paragraph (4);''.

(b) ELIGIBLE PERSONS.—Section 956(c) (relating to exceptions to definition of United States property) is amended by adding at the end the following new paragraph:

''(4) FINANCIAL SERVICES PROVIDERS.—

''(A) IN GENERAL.—For purposes of paragraph (2)(A), a person is described in this paragraph if at least 80 percent of the person's income is from the active conduct of a banking business which is derived from persons who are not related persons.

''(B) SPECIAL RULES.—For purposes of subparagraph (A) all related persons shall be treated as 1 person in applying the 80-percent test.

''(C) RELATED PERSON.—For purposes of this paragraph, a person is a related person to another person if—

''(i) the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or

''(ii) such persons are members of the same controlled group of corporations (as defined in section 1563(a), except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears therein).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 638. ALTERNATIVE TAX FOR CERTAIN SMALL INSURANCE COMPANIES.

(a) IN GENERAL.—Clause (i) of section 831(b)(2)(A) is amended by striking ''$1,200,000'' and inserting ''$1,890,000''.

(b) INFLATION ADJUSTMENT.—Paragraph (2) of section 831(b) is amended by adding at the end the following new subparagraph:

''(C) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2004, the $1,890,000 amount in subparagraph (A) shall be increased by an amount equal to—

''(i) $1,890,000, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

If the amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.''.

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

SEC. 639. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met.''.

(b) 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.

SEC. 640. 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. 641. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

''(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 642. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount (reduced by properly allowable deductions and qualified deficits under 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 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt 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 predominantly engaged.''.

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking ''The Secretary'' and inserting:

''(A) IN GENERAL.—The Secretary'', and

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

''(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any item payable to a foreign personal holding company (as defined in section 552), a controlled foreign corporation (as defined in section 957), or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item (reduced by properly allowable deductions and qualified deficits under 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 958(a)) stock in such corporation.

''(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt 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 predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

SEC. 643. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by inserting after section 139A the following new section:

''SEC. 139B. EXCLUSION FROM GROSS INCOME FOR INTEREST ON OVERPAYMENTS OF INCOME TAX BY INDIVIDUALS.

''(a) IN GENERAL.—In the case of an individual, gross income shall not include interest paid under section 6611 on any overpayment of tax imposed by this subtitle.

''(b) EXCEPTION.—Subsection (a) shall not apply in the case of a failure to claim items resulting in the overpayment on the original return if the Secretary determines that the principal purpose of such failure is to take advantage of subsection (a).

''(c) SPECIAL RULE FOR DETERMINING MODIFIED ADJUSTED GROSS INCOME.—For purposes of this title, interest not included in gross income under subsection (a) shall not be treated as interest which is exempt from tax for purposes of sections 32(i)(2)(B) and 6012(d) or any computation in which interest exempt from tax under this title is added to adjusted gross income.''.

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 139A the following new item:

''Sec. 139B. Exclusion from gross income for interest on overpayments of income tax by individuals.''.

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

SEC. 644. 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 which may be used by the Secretary to pay 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 made in such manner as the Secretary shall prescribe.

''(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by 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 to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

''(2) DISPUTABLE TAX.—

''(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

''(B) SAFE HARBOR BASED ON 30-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 paragraph (2)—

''(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 of such item, and

''(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 taxpayer, 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) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

''Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.''.

(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 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such 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.

SEC. 645. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking ''satisfy liability for payment of'' and inserting ''make payment on'', and

(B) by inserting ''full or partial'' after ''facilitate''.

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting ''full'' before ''payment''.

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

''(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 646. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 is amended by adding at the end the following new sentence: ''In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.''.

(b) RESULT NOT OVERTURNED.—Notwithstanding the amendment made by subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury Regulation §1.1502-20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the factual situation in Rite Aid Corporation and Subsidiary Corporations v. United States, 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—This section, and the amendment made by this section, shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

Part III—Leasing

SEC. 647. REFORM OF TAX TREATMENT OF CERTAIN LEASING ARRANGEMENTS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting ''(notwithstanding any other subparagraph of this paragraph)'' after ''shall''.

(b) LIMITATION ON DEPRECIATION PERIOD FOR SOFTWARE LEASED TO TAX-EXEMPT ENTITY.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

''(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 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 168(i)(3)).''.

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking ''and'' at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

''(ii) the term of a lease shall include the 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''.

(d) EXPANSION OF SHORT-TERM LEASE EXEMPTION FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.—Subparagraph (A) of section 168(h)(3) is amended by adding at the end the following new sentence: ''Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.''

SEC. 648. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS 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 section:

''SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

''(a) LIMITATION ON LOSSES.—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

''(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

''(c) DEFINITIONS.—For purposes of this section—

''(1) TAX-EXEMPT USE LOSS.—The term 'tax-exempt use loss' means, with respect to any taxable year, the amount (if any) by which—

''(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 properly allocable to such property, exceed

''(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) (without regard to paragraphs (1)(C) and (3) thereof and determined as if property described in section 167(f)(1)(B) were tangible property). Such term shall not include property which would (but for this sentence) be tax-exempt use property solely by reason of section 168(h)(6) if any credit is allowable under section 42 or 47 with respect to such property.

''(d) EXCEPTION FOR CERTAIN LEASES.—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

''(1) 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 any lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. For purposes of clause (ii), funds shall be treated as set aside or expected to be set aside only if a reasonable person would conclude, based on the facts and circumstances, that such funds are set aside or expected to be set aside.

''(B) ARRANGEMENTS.—The arrangements referred to in this subparagraph include a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, prepaid rent (within the meaning of the regulations under section 467), a sinking fund arrangement, a guaranteed investment contract, financial guaranty insurance, and any similar arrangement (whether or not such arrangement provides credit support).

''(C) ALLOWABLE AMOUNT.—

''(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'allowable amount' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

''(ii) HIGHER AMOUNT PERMITTED IN CERTAIN CASES.—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the creditworthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

''(iii) OPTION TO PURCHASE OTHER THAN AT FAIR MARKET VALUE.—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 at which such option may be exercised.

''(iv) NO ALLOWABLE AMOUNT FOR CERTAIN ARRANGEMENTS.—The allowable amount shall be zero with respect to any arrangement which involves—

''(I) a loan from the lessee to the lessor or a lender,

''(II) any deposit received, letter of credit issued, or payment undertaking agreement entered into by a lender otherwise involved in the transaction, or

''(III) in the case of a transaction which involves a lender, any credit support made available to the lessor in which any such lender does not have a claim that is senior to the lessor.

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.

''(2) LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.—

''(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if—

''(i) the lessor—

''(I) has at the time the lease 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

''(II) maintains such investment throughout the term of the lease, and

''(ii) 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.

''(B) RISK OF LOSS.—For purposes of clause (ii), 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.

''(C) PARAGRAPH NOT TO APPLY TO SHORT-TERM LEASES.—This paragraph shall not apply to any lease with a lease term of 5 years or less.

''(3) 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 the lessee bears—

''(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, 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.

''(B) EXCEPTION.—The Secretary may by regulations provide that the requirements of this paragraph are not met where the lessee bears more than a minimal risk of loss.

''(C) PARAGRAPH NOT TO APPLY TO SHORT-TERM LEASES.—This paragraph shall not apply to any lease with a lease term of 5 years or less.

''(e) SPECIAL RULES.—

''(1) 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 subsection (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 a deduction allowable 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.

''(4) COORDINATION WITH SECTIONS 1031 AND 1033.—

''(A) IN GENERAL.—Sections 1031(a) and 1033(a) shall not apply if—

''(i) the exchanged or converted property is tax-exempt use property subject to a lease which was entered into before March 13, 2004, and which would not have met the requirements of subsection (d) had such requirements been in effect when the lease was entered into, or

''(ii) the replacement property is tax-exempt use property subject to a lease which does not meet the requirements of subsection (d).

''(B) ADJUSTED BASIS.—In the case of property acquired by the lessor in a transaction to which section 1031 or 1033 applies, the adjusted basis of

such property for purposes of this section shall be equal to the lesser of—

''(i) the fair market value of the property as of the beginning of the lease term, or

''(ii) the amount which would be the lessor's adjusted basis if such sections did not apply to such transaction.

''(f) OTHER DEFINITIONS.—For purposes of this section—

''(1) RELATED PARTIES.—The terms 'lessor', 'lessee', and 'lender' each 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 lessor 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 regulations 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.''.

(b) 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. Limitation on deductions allocable to property used by governments or other tax-exempt entities.''.

SEC. 649. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in this section, the amendments made by this part shall apply to leases entered into after March 12, 2004.

(b) EXCEPTION.—

(1) IN GENERAL.—The amendments made by this part shall not apply to qualified transportation property.

(2) QUALIFIED TRANSPORTATION PROPERTY.—For purposes of paragraph (1), the term ''qualified transportation property'' means domestic property subject to a lease with respect to which a formal application—

(A) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004,

(B) is approved by the Federal Transit Administration before January 1, 2005, and

(C) includes a description of such property and the value of such property.

(3) EXCHANGES AND CONVERSION OF TAX-EXEMPT USE PROPERTY.—Section 470(e)(4) of the Internal Revenue Code of 1986, as added by this section, shall apply to property exchanged or converted after the date of the enactment of this Act.

Subtitle C—Reduction of Fuel Tax Evasion

SEC. 651. EXEMPTION FROM CERTAIN EXCISE TAXES FOR MOBILE MACHINERY.

(a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—

(1) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end the following new paragraph:

''(8) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

''(A) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

''(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

''(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(b) EXEMPTION FROM TAX ON USE OF CERTAIN VEHICLES.—

(1) IN GENERAL.—Section 4483 (relating to exemptions) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) EXEMPTION FOR MOBILE MACHINERY.—No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).''.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(c) EXEMPTION FROM TAX ON TIRES.—

(1) IN GENERAL.—Section 4072(b)(2) is amended by adding at the end the following flush sentence: ''Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(d) REFUND OF FUEL TAXES.—

(1) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

''(C) USES IN MOBILE MACHINERY.—

''(i) IN GENERAL.—The term 'off-highway business use' shall include any use in a vehicle which meets the requirements described in clause (ii).

''(ii) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

''(I) the design-based test, and

''(II) the use-based test.

''(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

''(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

''(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

''(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

''(iv) USE-BASED TEST.—For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 7,500 miles during the taxpayer's taxable year.''.

(2) NO TAX-FREE SALES.—Subsection (b) of section 4082, as amended by section 652, is amended by inserting before the period at the end ''and such term shall not include any use described in section 6421(e)(2)(C)''.

(3) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

''(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used solely in any off-highway business use described in section 6421(e)(2)(C).''.

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

SEC. 652. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking ''and'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', and'', and by adding at the end the following new clause:

''(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon.''.

(2) COMMERCIAL AVIATION.—Paragraph (2) of section 4081(a) is amended by adding at the end the following new subparagraph:

''(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.''.

(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

''(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

''(A) IN GENERAL.—In the case of aviation-grade kerosene which is removed from any terminal directly into the fuel tank of an aircraft (determined without regard to any refueler truck, tanker, or tank wagon which meets the requirements of subparagraph (B)), a refueler truck, tanker, or tank wagon shall be treated as part of such terminal if—

''(i) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to an airport, and

''(ii) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with aviation-grade kerosene at such terminal.

''(B) REQUIREMENTS.—A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to an airport if such truck, tanker, or wagon—

''(i) is loaded with aviation-grade kerosene at such terminal located within such airport and delivers such kerosene only into aircraft at such airport,

''(ii) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

''(iii) is not registered for highway use, and

''(iv) is operated by—

''(I) the terminal operator of such terminal, or

''(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

''(C) REPORTING.—The Secretary shall require under section 4101(d) reporting by such terminal operator of—

''(i) any information obtained under subparagraph (B)(iv)(II), and

''(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.''.

(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

''(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—For purposes of paragraph (2)(C), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.''.

(5) NONTAXABLE USES.—

(A) IN GENERAL.—Section 4082 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

''(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero.''.

(B) CONFORMING AMENDMENTS.—

(i) Subsection (b) of section 4082 is amended by adding at the end the following new flush sentence:

''The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft.''.

(ii) Section 4082(d) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(6) NONAIRCRAFT USE OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—Subparagraph (B) of section 4041(a)(1) is amended by adding at the end the following new sentence: ''This subparagraph shall not apply to aviation-grade kerosene.''.

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting ''AND KEROSENE'' after ''DIESEL FUEL''.

(b) COMMERCIAL AVIATION.—Section 4083 is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

''(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term 'commercial aviation' means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).''.

(c) REFUNDS.—

(1) IN GENERAL.—Paragraph (4) of section 6427(l) is amended to read as follows:

''(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

''(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

''(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

''(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

''(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) TIME FOR FILING CLAIMS.—Subparagraph (A) of section 6427(i)(4) is amended—

(A) by striking ''subsection (l)(5)'' both places it appears and inserting ''paragraph (4)(B) or (5) of subsection (l)'', and

(B) by striking ''the preceding sentence'' and inserting ''subsection (l)(5)''.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6427(l)(2) is amended to read as follows:

''(B) in the case of aviation-grade kerosene—

''(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

''(ii) any use in commercial aviation (within the meaning of section 4083(b)).''.

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

''(c) AVIATION-GRADE KEROSENE.—

''(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

''(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

''(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

''(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax specified in section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.''.

(B) Section 4041(d)(2) is amended by striking ''section 4091'' and inserting ''section 4081''.

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (i).

(E) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking '', 4081, or 4091'' and inserting ''or 4081''.

(F) Section 6416(b)(2) is amended by striking ''4091 or''.

(G) Section 6416(b)(3) is amended by striking ''or 4091'' each place it appears.

(H) Section 6416(d) is amended by striking ''or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)''.

(I) Section 6427(j)(1) is amended by striking '', 4081, and 4091'' and inserting ''and 4081''.

(J)(i) Section 6427(l)(1) is amended to read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under paragraph (4)(B).''.

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking ''Paragraph (1)(A) shall not apply to kerosene'' and inserting ''Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)''.

(K) Subparagraph (B) of section 6724(d)(1) is amended by striking clause (xv) and by redesignating the succeeding clauses accordingly.

(L) Paragraph (2) of section 6724(d) is amended by striking subparagraph (W) and by redesignating the succeeding subparagraphs accordingly.

(M) Paragraph (1) of section 9502(b) is amended by adding ''and'' at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

''(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and''.

(N) The last sentence of section 9502(b) is amended to read as follows:

''There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).''.

(O) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(P) Section 9508(c)(2)(A) is amended by striking ''sections 4081 and 4091'' and inserting ''section 4081''.

(Q) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A. Motor and aviation fuels.

''Subpart B. Special provisions applicable to fuels tax.''.

(R) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

"Subpart A—Motor and Aviation Fuels".

(S) The heading for subpart B of part III of subchapter A of chapter 32, as redesignated by paragraph (1), is amended to read as follows:

"Subpart B—Special Provisions Applicable to Fuels Tax".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after September 30, 2004.

(f) FLOOR STOCKS TAX.—

(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on October 1, 2004, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the tax imposed before such date under section 4091 of the Internal Revenue Code of 1986, as in effect on the day before the date of the enactment of this Act.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—The person holding the kerosene on October 1, 2004, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(3) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) to the extent of the remainder.

(4) HELD BY A PERSON.—For purposes of this section, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(5) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 653. DYE INJECTION EQUIPMENT.

(a) IN GENERAL.—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting ''by mechanical injection'' after ''indelibly dyed''.

(b) DYE INJECTOR SECURITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

"SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

''(a) IMPOSITION OF PENALTY—

''(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, such person shall pay a penalty in addition to the tax (if any).

''(2) FAILURE TO MAINTAIN SECURITY REQUIREMENTS.—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) for each violation described in paragraph (1), the greater of—

''(A) $25,000, or

''(B) $10 for each gallon of fuel involved, and

''(2) for each—

''(A) failure to maintain security standards described in paragraph (2), $1,000, and

''(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

''(c) JOINT AND SEVERAL LIABILITY.—

''(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

''(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

''Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.''.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the 180th day after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 654. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as previously amended by this Act, is amended by striking ''and'' at the end of clause (i) and by inserting after clause (ii) the following new clause:

''(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 655. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) IN GENERAL.—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting ''by pipeline or vessel'' after ''transferred in bulk'', and

(2) by inserting '', the operator of such pipeline or vessel,'' after ''the taxable fuel''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

(c) PUBLICATION OF REGISTERED PERSONS.—Beginning on July 1, 2004, the Secretary of the Treasury (or the Secretary's delegate) shall periodically publish a current list of persons registered under section 4101 of the Internal Revenue Code of 1986 who are required to register under such section.

SEC. 656. DISPLAY OF REGISTRATION.

(a) IN GENERAL.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking ''Every'' and inserting the following:

''(1) IN GENERAL.—Every'', and

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

''(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an electronic identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.''.

(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6716 the following new section:

"SEC. 6717. FAILURE TO DISPLAY TAX REGISTRATION ON VESSELS.

''(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

''(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the aggregate number of penalties (if any) imposed with respect to prior months by this section on such person (or a related person or any predecessor of such person or related person).

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6716 the following new item:

''Sec. 6717. Failure to display tax registration on vessels.''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall take effect on October 1, 2004.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to penalties imposed after September 30, 2004.

SEC. 657. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting ''($10,000 in the case of a failure to register under section 4101)'' after ''$50''.

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking ''$5,000'' and inserting ''$10,000''.

(c) ASSESSABLE PENALTY FOR FAILURE TO REGISTER.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6717 the following new section:

"SEC. 6718. FAILURE TO REGISTER.

''(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

''(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

''(1) $10,000 for each initial failure to register, and

''(2) $1,000 for each day thereafter such person fails to register.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6717 the following new item:

''Sec. 6718. Failure to register.''.

(d) ASSESSABLE PENALTY FOR FAILURE TO REPORT.—

(1) IN GENERAL.—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

"SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

''(a) IN GENERAL.—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

''(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

''(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

''(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

''(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.''.

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

''Sec. 6725. Failure to report information under section 4101.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties imposed after September 30, 2004.

SEC. 658. COLLECTION FROM CUSTOMS BOND WHERE IMPORTER NOT REGISTERED.

(a) TAX AT POINT OF ENTRY WHERE IMPORTER NOT REGISTERED.—Subpart B of part III of subchapter A of chapter 32, as redesignated by section 652(d), is amended by adding after section 4103 the following new section:

"SEC. 4104. COLLECTION FROM CUSTOMS BOND WHERE IMPORTER NOT REGISTERED.

''(a) IN GENERAL.—The importer of record shall be jointly and severally liable for the tax imposed by section 4081(a)(1)(A)(iii) if, under regulations prescribed by the Secretary, any other person that is not a person who is registered under section 4101 is liable for such tax.

''(b) COLLECTION FROM CUSTOMS BOND.—If any tax for which any importer of record is liable under subsection (a), or for which any importer of record that is not a person registered under section 4101 is otherwise liable, is not paid on or before the last date prescribed for payment, the Secretary may collect such tax from the Customs bond posted with respect to the importation of the taxable fuel to which the tax relates. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any action by the Secretary described in the preceding sentence shall be treated as an action to collect the tax

from a bond described in section 4101(b)(1) and not as an action to collect from a bond relating to the importation of merchandise.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 32, as redesignated by section 652(d), is amended by adding after the item related to section 4103 the following new item:

''Sec. 4104. Collection from Customs bond where importer not registered.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to fuel entered after September 30, 2004.

SEC. 659. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) PRORATION OF TAX WHERE VEHICLE SOLD.—

(1) IN GENERAL.—Subparagraph (A) of section 4481(c)(2) (relating to where vehicle destroyed or stolen) is amended by striking ''destroyed or stolen'' both places it appears and inserting ''sold, destroyed, or stolen''.

(2) CONFORMING AMENDMENT.—The heading for section 4481(c)(2) is amended by striking ''DESTROYED OR STOLEN'' and inserting ''SOLD, DESTROYED, OR STOLEN''.

(b) REPEAL OF INSTALLMENT PAYMENT.—

(1) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(2) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(c) ELECTRONIC FILING.—Section 4481 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

''(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.''.

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 is amended by striking subsection (f).

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

SEC. 660. MODIFICATION OF ULTIMATE VENDOR REFUND CLAIMS WITH RESPECT TO FARMING.

(a) IN GENERAL.—

(1) REFUNDS.—Section 6427(l) is amended by adding at the end the following new paragraph:

''(6) REGISTERED VENDORS PERMITTED TO ADMINISTER CERTAIN CLAIMS FOR REFUND OF DIESEL FUEL AND KEROSENE SOLD TO FARMERS.—

''(A) IN GENERAL.—In the case of diesel fuel or kerosene used on a farm for farming purposes (within the meaning of section 6420(c)), paragraph (1) shall not apply to the aggregate amount of such diesel fuel or kerosene if such amount does not exceed 250 gallons (as determined under subsection (i)(5)(A)(iii)).

''(B) PAYMENT TO ULTIMATE VENDOR.—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) FILING OF CLAIMS.—Section 6427(i) is amended by inserting at the end the following new paragraph:

''(5) SPECIAL RULE FOR VENDOR REFUNDS WITH RESPECT TO FARMERS.—

''(A) IN GENERAL.—A claim may be filed under subsection (l)(6) by any person with respect to fuel sold by such person for any period—

''(i) for which $200 or more ($100 or more in the case of kerosene) is payable under subsection (l)(6),

''(ii) which is not less than 1 week, and

''(iii) which is for not more than 250 gallons for each farmer for which there is a claim.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

''(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim.''.

(3) CONFORMING AMENDMENTS.—

(A) Section 6427(l)(5)(A) is amended to read as follows:

''(A) IN GENERAL.—Paragraph (1) shall not apply to diesel fuel or kerosene used by a State or local government.''.

(B) The heading for section 6427(l)(5) is amended by striking ''FARMERS AND''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuels sold for nontaxable use after the date of the enactment of this Act.

SEC. 661. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

''(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715, 6715A, 6717, 6718, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).''.

(b) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 9503 is amended by inserting ''AND PENALTIES'' after ''TAXES''.

(2) The heading of paragraph (1) of section 9503(b) is amended by striking ''IN GENERAL'' and inserting ''CERTAIN TAXES''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed after October 1, 2004.

SEC. 662. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

''(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

''(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101. For purposes of this subparagraph, if the sale of gasoline is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.

''(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor covered by such claim are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).''.

(b) CREDIT CARD PURCHASES OF DIESEL FUEL OR KEROSENE BY STATE AND LOCAL GOVERNMENTS.—Section 6427(l)(5)(C) (relating to nontaxable uses of diesel fuel, kerosene, and aviation fuel) is amended by adding at the end the following new flush sentence: ''For purposes of this subparagraph, if the sale of diesel fuel or kerosene is made by means of a credit card, the person extending the credit to the ultimate purchaser shall be deemed to be the ultimate vendor.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 663. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding after section 4104 the following new section:

''SEC. 4105. TWO-PARTY EXCHANGES.

''(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under section 4081(a)(1)(A)(ii).

''(b) TWO-PARTY EXCHANGE.—The term 'two-party exchange' means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant fuel to a receiving person who is so registered where all of the following occur:

''(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

''(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

''(3) The terminal operator in its books and records treats the receiving person as the person that removes the taxable fuel across the terminal rack for purposes of reporting the transaction to the Secretary.

''(4) The transaction is the subject of a written contract.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 32, as amended by this Act, is amended by adding after the item relating to section 4104 the following new item:

''Sec. 4105. Two-party exchanges.''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 664. SIMPLIFICATION OF TAX ON TIRES.

(a) IN GENERAL.—Subsection (a) of section 4071 is amended to read as follows:

''(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed on taxable tires sold by the manufacturer, producer, or importer thereof a tax at the rate of 9.4 cents (4.7 cents in the case of a biasply tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds.''

(b) TAXABLE TIRE.—Section 4072 is amended by redesignating subsections (a) and (b) as subsections (b) and (c), respectively, and by inserting before subsection (b) (as so redesignated) the following new subsection:

''(a) TAXABLE TIRE.—For purposes of this chapter, the term 'taxable tire' means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use.''

(c) EXEMPTION FOR TIRES SOLD TO DEPARTMENT OF DEFENSE.—Section 4073 is amended to read as follows:

''SEC. 4073. EXEMPTIONS.

''The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.''

(d) CONFORMING AMENDMENTS.—

(1) Section 4071 is amended by striking subsection (c) and by moving subsection (e) after subsection (b) and redesignating subsection (e) as subsection (c).

(2) The item relating to section 4073 in the table of sections for part II of subchapter A of chapter 32 is amended to read as follows:

''Sec. 4073. Exemptions.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales in calendar years beginning more than 30 days after the date of the enactment of this Act.

Subtitle D—Nonqualified Deferred Compensation Plans

SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS.

(a) IN GENERAL.—Subpart A of part I of 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) GROSS INCOME INCLUSION.—In the case of a nonqualified deferred compensation plan, all compensation deferred under the plan for all taxable years (to the extent not subject to a substantial risk of forfeiture and not previously included in gross income) shall be includible in gross income for the taxable year unless at all times during the taxable year the plan meets the requirements of paragraphs (2), (3), and (4) and is operated in accordance with such requirements.

''(B) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO PREVIOUSLY DEFERRED COMPENSATION.—

''(i) IN GENERAL.—If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined under clause (ii).

''(ii) INTEREST.—For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

''(2) DISTRIBUTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

''(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

''(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

''(iii) death,

''(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

''(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

''(vi) the occurrence of an unforeseeable emergency.

''(B) SPECIAL RULES.—

''(i) SPECIFIED EMPLOYEES.—In the case of specified employees, the requirement of subparagraph (A)(i) is met only if distributions may not be made earlier than 6 months after the date of separation from service. For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i)) of a corporation the stock in which is publicly traded on an established securities market or otherwise.

''(ii) UNFORESEEABLE EMERGENCY.—For purposes of subparagraph (A)(vi)—

''(I) IN GENERAL.—The term 'unforeseeable emergency' means a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

''(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

''(C) DISABLED.—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

''(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

''(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

''(3) ACCELERATION OF BENEFITS.—The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

''(4) ELECTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

''(B) INITIAL DEFERRAL DECISION.—The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations. In the case of the first year in which a participant becomes eligible to participate in the plan, such election 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) CHANGES IN TIME AND FORM OF DISTRIBUTION.—The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

''(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

''(ii) in the case an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the first payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

''(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

''(b) RULES RELATING TO FUNDING.—

''(1) OFFSHORE PROPERTY IN A TRUST.—In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

''(A) at the time set aside if such assets are located outside of the United States, or

''(B) at the time transferred if such assets are subsequently transferred outside of the United States.

''(2) EMPLOYER'S FINANCIAL HEALTH.—In the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

''(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

''(B) the date on which assets are so restricted.

''(3) INCOME INCLUSION FOR OFFSHORE TRUSTS AND EMPLOYER'S FINANCIAL HEALTH.—For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

''(4) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO TRANSFERRED PROPERTY.—

''(A) IN GENERAL.—If amounts are required to be included in gross income by reason of paragraph (1) or (2) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined under subparagraph (B).

''(B) INTEREST.—The interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1) or (2) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

''(c) NO INFERENCE ON EARLIER INCOME INCLUSION OR REQUIREMENT OF LATER INCLUSION.—Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) NONQUALIFIED DEFERRED COMPENSATION PLAN.—The term 'nonqualified deferred compensation plan' means any plan that provides for the deferral of compensation, other than—

''(A) a qualified employer plan, and

''(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

''(2) QUALIFIED EMPLOYER PLAN.—The term 'qualified employer plan' means—

''(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5), and

''(B) any eligible deferred compensation plan (within the meaning of section 457(b)) of an employer described in section 457(e)(1)(A).

''(3) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

''(4) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

''(5) TREATMENT OF EARNINGS.—References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

''(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or

appropriate to carry out the purposes of this section, including regulations—

''(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

''(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

''(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

''(4) defining financial health for purposes of subsection (b)(2), and

''(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.''.

(b) W–2 FORMS.—

(1) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking ''and'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', and'', and by inserting after paragraph (12) the following new paragraph:

''(13) the total amount of deferrals under a nonqualified deferred compensation plan (within the meaning of section 409A(d)).''.

(2) THRESHOLD.—Subsection (a) of section 6051 is amended by adding at the end the following: ''In the case of the amounts required to be shown by paragraph (13), the Secretary (by regulation) may establish a minimum amount of deferrals below which paragraph (13) does not apply and may provide that paragraph (13) does not apply with respect to amounts of deferrals which are not reasonably ascertainable.''.

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 414(b) is amended by inserting ''409A,'' after ''408(p),''.

(2) Section 414(c) is amended by inserting ''409A,'' after ''408(p),''.

(3) The table of sections for such subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new item:

''Sec. 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred after June 3, 2004.

(2) CERTAIN AMOUNTS DEFERRED IN 2004 UNDER CERTAIN IRREVOCABLE ELECTIONS AND BINDING ARRANGEMENTS.—The amendments made by this section shall not apply to amounts deferred after June 3, 2004, and before January 1, 2005, pursuant to an irrevocable election or binding arrangement made before June 4, 2004.

(3) 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.

(e) 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.

(f) GUIDANCE RELATING TO TERMINATION 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 providing a limited period during which an individual participating in a nonqualified deferred compensation plan adopted before June 4, 2004, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(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 June 3, 2004, if such amounts are includible in income as earned.

Subtitle E—Other Revenue Provisions

SEC. 681. 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 of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 5 years, and

''(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 contacts with taxpayers,

''(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.

''(c) FEES.—The Secretary may retain and use an amount not in excess of 25 percent of the amount collected under any qualified tax 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 as paid by any taxpayer shall be determined without regard to this subsection.

''(d) 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.

''(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

''(f) CROSS REFERENCES.—

''(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

''(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(a)(4).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting ''6306,'' before ''7651''.

(B) The table of sections for subchapter A of chapter 64 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 QUALIFIED TAX COLLECTION CONTRACTS.—

(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 QUALIFIED TAX COLLECTION CONTRACTS.

''(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 the qualified tax collection contract with the Secretary and shall not be brought against the United States.

''(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

''(3) Such civil action shall not be an exclusive remedy with respect to such person.

''(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

''Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts.''.

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

''(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.''.

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

''(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.''.

(e) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

SEC. 682. TREATMENT OF CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) IN GENERAL.—Subparagraph (B) of section 170(e)(1) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) of any patent, copyright (other than a copyright described in section 1221(a)(3) or

1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property,''.

(b) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—Section 170 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—

''(1) TREATMENT AS ADDITIONAL CONTRIBUTION.—In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

''(2) REDUCTION IN ADDITIONAL DEDUCTIONS TO EXTENT OF INITIAL DEDUCTION.—With respect to any qualified intellectual property contribution, the deduction allowed under subsection (a) shall be increased under paragraph (1) only to the extent that the aggregate amount of such increases with respect to such contribution exceed the amount allowed as a deduction under subsection (a) with respect to such contribution determined without regard to this subsection.

''(3) QUALIFIED DONEE INCOME.—For purposes of this subsection, the term 'qualified donee income' means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

''(4) ALLOCATION OF QUALIFIED DONEE INCOME TO TAXABLE YEARS OF DONOR.—For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

''(5) 10-YEAR LIMITATION.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

''(6) BENEFIT LIMITED TO LIFE OF INTELLECTUAL PROPERTY.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

''(7) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

''Taxable Year of Donor Ending on or After Date of Contribution:	Applicable Percentage:
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

''(8) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTION.—For purposes of this subsection, the term 'qualified intellectual property contribution' means any charitable contribution of qualified intellectual property—

''(A) the amount of which taken into account under this section is reduced by reason of subsection (e)(1), and

''(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

''(9) QUALIFIED INTELLECTUAL PROPERTY.—For purposes of this subsection, the term 'qualified intellectual property' means property described in subsection (e)(1)(B)(iii) (other than property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

''(10) OTHER SPECIAL RULES.—

''(A) APPLICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Any increase under this subsection of the deduction provided under subsection (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

''(B) NET INCOME DETERMINED BY DONEE.—The net income taken into account under paragraph (3) shall not exceed the amount of such income reported under section 6050L(b)(1).

''(C) DEDUCTION LIMITED TO 12 TAXABLE YEARS.—Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

''(D) REGULATIONS.—The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

''(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

''(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.''.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6050L (relating to returns relating to certain dispositions of donated property) is amended to read as follows:

''SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED PROPERTY.

''(a) DISPOSITIONS OF DONATED PROPERTY.—

''(1) IN GENERAL.—If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

''(A) the name, address, and TIN of the donor,

''(B) a description of the property,

''(C) the date of the contribution,

''(D) the amount received on the disposition, and

''(E) the date of such disposition.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) CHARITABLE DEDUCTION PROPERTY.—The term 'charitable deduction property' means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds $5,000.

''(B) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

''(b) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTIONS.—

''(1) IN GENERAL.—Each donee with respect to a qualified intellectual property contribution shall make a return (at such time and in such form and manner as the Secretary may by regulations prescribe) with respect to each specified taxable year of the donee showing—

''(A) the name, address, and TIN of the donor,

''(B) a description of the qualified intellectual property contributed,

''(C) the date of the contribution, and

''(D) the amount of net income of the donee for the taxable year which is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section).

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) IN GENERAL.—Terms used in this subsection which are also used in section 170(m) have the respective meanings given such terms in such section.

''(B) SPECIFIED TAXABLE YEAR.—The term 'specified taxable year' means, with respect to any qualified intellectual property contribution, any taxable year of the donee any portion of which is part of the 10-year period beginning on the date of such contribution.

''(c) STATEMENT TO BE FURNISHED TO DONORS.—Every person making a return under subsection (a) or (b) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.''.

(2) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter A of chapter 61 is amended by striking the item relating to section 6050L and inserting the following new item:

''Sec. 6050L. Returns relating to certain donated property.''.

(d) COORDINATION WITH APPRAISAL REQUIREMENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as added by section 683, is amended by inserting ''subsection (e)(1)(B)(iii) or'' before ''section 1221(a)(1)''.

(e) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after June 3, 2004.

SEC. 683. INCREASED REPORTING FOR NONCASH CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding after paragraph (10) the following new paragraph:

''(11) QUALIFIED APPRAISAL AND OTHER DOCUMENTATION FOR CERTAIN CONTRIBUTIONS.—

''(A) IN GENERAL.—

''(i) DENIAL OF DEDUCTION.—In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than $500 is claimed unless such

person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

''(ii) EXCEPTIONS.—

''(I) READILY VALUED PROPERTY.—Subparagraphs (C) and (D) shall not apply to cash, property described in section 1221(a)(1), and publicly traded securities (as defined in section 6050L(a)(2)(B)).

''(II) REASONABLE CAUSE.—Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

''(B) PROPERTY DESCRIPTION FOR CONTRIBUTIONS OF MORE THAN $500.—In the case of contributions of property for which a deduction of more than $500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

''(C) QUALIFIED APPRAISAL FOR CONTRIBUTIONS OF MORE THAN $5,000.—In the case of contributions of property for which a deduction of more than $5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

''(D) SUBSTANTIATION FOR CONTRIBUTIONS OF MORE THAN $500,000.—In the case of contributions of property for which a deduction of more than $500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

''(E) QUALIFIED APPRAISAL.—For purposes of this paragraph, the term 'qualified appraisal' means, with respect to any property, an appraisal of such property which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.

''(F) AGGREGATION OF SIMILAR ITEMS OF PROPERTY.—For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

''(G) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

''(H) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after June 3, 2004.

SEC. 684. DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRCRAFT.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding after paragraph (11) the following new paragraph:

''(12) CONTRIBUTIONS OF MOTOR VEHICLES, BOATS, AND AIRCRAFT.—

''(A) IN GENERAL.—Except as provided in regulations or other guidance, in the case of a contribution of a specified vehicle to which paragraph (8) applies, no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer obtains a qualified appraisal of the specified vehicle on or before the date of such contribution.

''(B) EXCEPTION FOR INVENTORY PROPERTY.—Subparagraph (A) shall not apply to property which is described in section 1221(a)(1).

''(C) SPECIFIED VEHICLE.—For purposes of this paragraph, the term 'specified vehicle' means any—

''(i) motor vehicle manufactured primarily for use on public streets, roads, and highways,

''(ii) boat, or

''(iii) aircraft.

''(D) QUALIFIED APPRAISAL.—For purposes of this paragraph, the term 'qualified appraisal' means any appraisal which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.

''(E) REGULATIONS OR OTHER GUIDANCE.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after June 3, 2004.

SEC. 685. 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 by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (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 certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (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) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

SEC. 686. MODIFICATION OF CONTINUING LEVY ON PAYMENTS TO FEDERAL VENDERS.

(a) IN GENERAL.—Section 6331(h) (relating to continuing levy on certain payments) is amended by adding at the end the following new paragraph:

''(3) INCREASE IN LEVY FOR CERTAIN PAYMENTS.—Paragraph (1) shall be applied by substituting '100 percent' for '15 percent' in the case of any specified payment due to a vendor of goods or services sold or leased to the Federal Government.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 687. 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—

''(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

''(ii) 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 loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

''(iii) any loss described in clause (ii) 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:

''(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 not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and'', 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), the unrecognized gain with respect 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)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) 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 realization of a loss), then such taxpayer shall be treated as if such taxpayer—

''(A) terminated the position for its fair market value immediately before the settlement, and

''(B) sold the property so delivered by the taxpayer at its fair market value.''.

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

''(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The term 'personal property' includes—

''(i) any stock which is a part of a straddle at least 1 of the offsetting positions of which is a position with respect to such stock or substantially similar or related property, or

''(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

''(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.''.

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking ''; except that

the term 'personal property' shall include stock''.

(d) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—The last sentence of section 246(c) is amended by inserting: '', other than a qualified covered call option to which section 1092(f) applies'' before the period at the end.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 688. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Paragraph (1) of section 4132(a) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

''(I) Any vaccine against hepatitis A.''

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by subsection (a) shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(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. 689. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine), as amended by this Act, is amended by adding at the end the following new subparagraph:

''(N) Any trivalent vaccine against influenza.''.

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks 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. 690. 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, 2014''.

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

SEC. 691. COBRA FEES.

(a) USE OF MERCHANDISE PROCESSING FEE.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by aligning subparagraph (B) with subparagraph (A); and

(2) in paragraph (2), by striking ''commercial operations'' and all that follows through ''processing.'' and inserting ''customs revenue functions as defined in section 415 of the Homeland Security Act of 2002 (other than functions performed by the Office of International Affairs referred to in section 415(8) of that Act), and for automation (including the Automation Commercial Environment computer system), and for no other purpose. To the extent that funds in the Customs User Fee Account are insufficient to pay the costs of such customs revenue functions, customs duties in an amount equal to the amount of such insufficiency shall be available, to the extent provided for in appropriations Acts, to pay the costs of such customs revenue functions in the amount of such insufficiency, and shall be available for no other purpose. The provisions of the first and second sentences of this paragraph specifying the purposes for which amounts in the Customs User Fee Account may be made available shall not be superseded except by a provision of law which specifically modifies or supersedes such provisions.''.

(b) REIMBURSEMENT OF APPROPRIATIONS FROM COBRA FEES.—Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended by adding at the end the following:

''(E) Nothing in this paragraph shall be construed to preclude the use of appropriated funds, from sources other than the fees collected under subsection (a), to pay the costs set forth in clauses (i), (ii), and (iii) of subparagraph (A).''.

(c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR COLLECTING FEES; STANDARD FOR SETTING FEES.—

(1) SENSE OF CONGRESS.—The Congress finds that—

(A) the fees set forth in paragraphs (1) through (8) of subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 have been reasonably related to the costs of providing customs services in connection with the activities or items for which the fees have been charged under such paragraphs; and

(B) the fees collected under such paragraphs have not exceeded, in the aggregate, the amounts paid for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activities or items for which the fees were charged under such paragraphs.

(2) EFFECTIVE PERIOD; STANDARD FOR SETTING FEES.—Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended to read as follows:

''(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) after September 30, 2014.

''(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) after September 30, 2014.

''(ii) In fiscal year 2006 and in each succeeding fiscal year for which fees under paragraphs (1) through (8) of subsection (a) are authorized—

''(I) the Secretary of the Treasury shall charge fees under each such paragraph in amounts that are reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged under such paragraph, except that in no case may the fee charged under any such paragraph exceed by more than 10 percent the amount otherwise prescribed by such paragraph;

''(II) the amount of fees collected under such paragraphs may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fees are charged under such paragraphs;

''(III) a fee may not be collected under any such paragraph except to the extent such fee will be expended to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph; and

''(IV) any fee collected under any such paragraph shall be available for expenditure only to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph.''.

(d) CLERICAL AMENDMENTS.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in subsection (a)(5)(B), by striking ''$1.75'' and inserting ''$1.75.'';

(2) in subsection (b)—

(A) in paragraph (1)(A), by aligning clause (iii) with clause (ii);

(B) in paragraph (7), by striking ''paragraphs'' and inserting ''paragraph''; and

(C) in paragraph (9), by aligning subparagraph (B) with subparagraph (A); and

(3) in subsection (e)(2), by aligning subparagraph (B) with subparagraph (A).

(e) STUDY OF ALL FEES COLLECTED BY DEPARTMENT OF HOMELAND SECURITY.—The Secretary of the Treasury shall conduct a study of all the fees collected by the Department of Homeland Security, and shall submit to the Congress, not later than September 30, 2005, a report containing the recommendations of the Secretary on—

(1) what fees should be eliminated;

(2) what the rate of fees retained should be; and

(3) any other recommendations with respect to the fees that the Secretary considers appropriate.

TITLE VII—MARKET REFORM FOR TOBACCO GROWERS

SEC. 701. SHORT TITLE.

This title may be cited as the ''Fair and Equitable Tobacco Reform Act of 2004''.

SEC. 702. EFFECTIVE DATE.

This title and the amendments made by this title shall apply beginning with the 2005 marketing year of each kind of tobacco.

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

SEC. 711. TERMINATION OF TOBACCO QUOTA PROGRAM AND RELATED PROVISIONS.

(a) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(b) PROCESSING.—Section 9(b) of the Agricultural Adjustment Act (7 U.S.C. 609(b)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (2), by striking ''tobacco,''; and

(2) in paragraph (6)(B)(i), by striking '', or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum,''.

(c) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking ''tobacco,''.

(d) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking ''tobacco,'';

(3) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(4) in paragraph (11)(B), by striking ''and tobacco'';

(5) in paragraph (12), by striking ''tobacco,'';

(6) in paragraph (14)—

(A) in subparagraph (A), by striking ''(A)''; and

(B) by striking subparagraphs (B), (C), and (D);

(7) by striking paragraph (15);

(8) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(9) by striking paragraph (17); and

(10) by redesignating paragraph (16) as paragraph (15).

(e) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking ''rice, or tobacco,'' and inserting ''or rice,''.

(f) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking ''tobacco,''.

(g) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking ''rice, or tobacco'' and inserting ''or rice''; and

(2) in the first sentence of subsection (b), by striking ''rice, or tobacco'' and inserting ''or rice''.

(h) REGULATIONS.—Section 375 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

(1) in subsection (a), by striking ''peanuts, or tobacco'' and inserting ''or peanuts''; and

(2) by striking subsection (c).

(i) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking ''cotton, and tobacco'' and inserting ''and cotton''; and

(2) by striking subsections (d), (e), and (f).

(j) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking ''(a)''; and

(B) in paragraph (6), by striking '', but this clause (6) shall not be applicable in the case of burley tobacco''; and

(2) by striking subsections (b) and (c).

(k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

(m) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(n) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking ''tobacco and''.

(o) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) is amended by striking subsection (c).

SEC. 712. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM AND RELATED PROVISIONS.

(a) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1, 1445–2) are repealed.

(b) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking ''tobacco (except as otherwise provided herein), corn,'' and inserting ''corn'';

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking '', except tobacco,''; and

(B) by striking ''and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers,''; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking ''tobacco,''.

(d) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting ''(other than tobacco)'' after ''agricultural commodities'' each place it appears.

SEC. 713. CONTINUATION OF LIABILITY AND NO NET LOSS ASSESSMENTS TO PREVENT LOSSES ON PRICE SUPPORT LOANS.

(a) LIABILITY.—The amendments made by this subtitle shall not affect the liability of any person under any provision of law so amended with respect to any crop of tobacco planted before the effective date applicable to that kind of tobacco under section 702.

(b) ASSESSMENT AUTHORITY.—

(1) ASSESSMENTS TO COVER OUTSTANDING LOAN COSTS.—The Commodity Credit Corporation shall impose and collect an assessment on the sale of 2005 and subsequent crops of each kind of tobacco and on the importation of tobacco in such amounts as may be necessary to obtain funds sufficient to cover any losses incurred by the Corporation with respect to price support loans that—

(A) were made for that kind of tobacco under section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445), before the repeal of such section by section 712 of this Act; and

(B) remain outstanding on or after the date of the enactment of this Act.

(2) ADMINISTRATION.—Assessments under paragraph (1) shall be administered in the manner provided for in section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2), as in effect the day before the date of the enactment of this Act. To cover the costs of administering such assessments, the Commodity Credit Corporation shall use funds remaining in the No Net Cost Tobacco Funds and No Net Cost Tobacco Accounts established pursuant to sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2).

Subtitle B—Transitional Payments to Tobacco Quota Holders and Active Producers of Tobacco

SEC. 721. DEFINITIONS OF ACTIVE TOBACCO PRODUCER AND QUOTA HOLDER.

In this subtitle:

(1) ACTIVE TOBACCO PRODUCER.—The term ''active tobacco producer'' means an owner, operator, landlord, tenant, or sharecropper who—

(A) shared in the risk of producing tobacco on a farm where tobacco was produced or considered planted pursuant to a tobacco farm marketing quota or farm acreage allotment established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) for the 2004 marketing year; and

(B) was actively engaged on that farm.

(2) CONSIDERED PLANTED.—The term ''considered planted'' means tobacco that was planted, but failed to be produced as a result of a natural disaster, as determined by the Secretary.

(3) TOBACCO QUOTA HOLDER.—The term ''tobacco quota holder'' means a person that was an owner of a farm, as of July 1, 2004, for which a basic tobacco farm marketing quota or farm acreage allotment for quota tobacco was established for the 2004 tobacco marketing year.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

SEC. 722. PAYMENTS TO TOBACCO QUOTA HOLDERS.

(a) PAYMENT REQUIRED.—The Secretary shall make payments to each eligible tobacco quota holder for the termination of tobacco marketing quotas and related price support under subtitle A, which shall constitute full and fair compensation for any losses relating to such termination.

(b) ELIGIBILITY.—To be eligible to receive a payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person satisfies the definition of tobacco quota holder. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) INDIVIDUAL BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall establish a base quota level applicable to each eligible tobacco quota holder identified under subsection (b).

(2) POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which the marketing quota is expressed in pounds, the base quota level for each tobacco quota holder shall be equal to the basic tobacco marketing quota under the Agriculture Adjustment Act of 1938 for the marketing year in effect on the date of the enactment of this Act for quota tobacco on the farm owned by the tobacco quota holder.

(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which there is marketing quota or allotment on an acreage basis, the base quota level for each tobacco quota holder shall be the amount equal to the product obtained by multiplying—

(A) the basic tobacco farm marketing quota or allotment for the marketing year in effect on the date of the enactment of this Act, as established by the Secretary for quota tobacco on the farm owned by the tobacco quota holder; by

(B) the average county production yield per acre for the county in which the farm is located for the kind of tobacco for that marketing year.

(d) TREATMENT OF CERTAIN CONTRACTS AND AGREEMENTS.—

(1) EFFECT OF PURCHASE CONTRACT.—If there was an agreement for the purchase of all or part of a farm described in subsection (c) as of the date of the enactment of this Act, and the parties to the sale are unable to agree to the disposition of eligibility for payments under this section, the Secretary, taking into account any transfer of quota that has been agreed to, shall provide for the equitable division of the payments among the parties by adjusting the determination of who is the tobacco quota holder with respect to particular pounds of the quota.

(2) EFFECT OF AGREEMENT FOR PERMANENT QUOTA TRANSFER.—If the Secretary determines that there was in existence, as of the day before the date of the enactment of this Act, an agreement for the permanent transfer of quota, but that the transfer was not completed by that date, the Secretary shall consider the tobacco quota holder to be the party to the agreement that, as of that date, was the owner of the farm to which the quota was to be transferred.

(e) TOTAL PAYMENT AMOUNTS BASED ON 2002 MARKETING YEAR.—

(1) CALCULATION OF ANNUAL PAYMENT AMOUNT.—During fiscal years 2005 through 2009, the Secretary shall make payments to all eligible tobacco quota holders identified under subsection (b) in an annual amount equal to the product obtained by multiplying, for each kind of tobacco—

(A) $1.40 per pound; by

(B) the total national basic marketing quota established under the Agriculture Adjustment Act of 1938 for the 2002 marketing year for that kind of tobacco.

(2) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which there is a marketing quota or allotment on an acreage basis, the Secretary shall convert the tobacco farm marketing quotas or allotments established under the Agriculture Adjustment Act of 1938 for the 2002 marketing year for that kind of tobacco as the Secretary considers appropriate.

(f) INDIVIDUAL PAYMENT AMOUNTS.—The annual payment amount for each eligible tobacco quota holder with respect to a kind of tobacco under this section shall bear the same ratio to the amount determined by the Secretary under subsection (e) with respect to that kind of tobacco as the individual base quota level of that eligible tobacco quota holder under subsection (c) with respect to that kind of tobacco bears to the total base quota levels of all eligible tobacco quota holders with respect to that kind of tobacco.

(g) DEATH OF TOBACCO QUOTA HOLDER.—If a tobacco quota holder who is entitled to payments under this section dies and is survived by

a spouse or one or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the tobacco quota holder.

SEC. 723. TRANSITION PAYMENTS FOR ACTIVE PRODUCERS OF QUOTA TOBACCO.

(a) TRANSITION PAYMENTS REQUIRED.—The Secretary shall make transition payments under this section to eligible active producers of quota tobacco.

(b) ELIGIBILITY.—To be eligible to receive a transition payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person satisfies the definition of active producer of quota tobacco. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) CURRENT PRODUCTION BASE.—The Secretary shall establish a production base applicable to each eligible active producer of quota tobacco identified under subsection (b). A producer's production base shall be equal to the quantity, in pounds, of quota tobacco subject to the basic marketing quota marketed or considered planted by the producer under the Agriculture Adjustment Act of 1938 for the marketing year in effect on the date of the enactment of this Act.

(d) TOTAL PAYMENT AMOUNTS BASED ON 2002 MARKETING YEAR.—

(1) CALCULATION OF ANNUAL PAYMENT AMOUNT.—During fiscal years 2005 through 2009, the Secretary shall make payments to all eligible active producers of quota tobacco identified under subsection (b) in an annual amount equal to the product obtained by multiplying, for each kind of tobacco—

(A) $0.60 per pound; by

(B) the total national effective marketing quota established under the Agriculture Adjustment Act of 1938 for the 2002 marketing year for that kind of tobacco.

(2) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which there is a marketing quota or allotment on an acreage basis, the Secretary shall convert the tobacco farm marketing quotas or allotments established under the Agriculture Adjustment Act of 1938 for the 2002 marketing year for that kind of tobacco to a poundage basis before executing the mathematical equation specified in paragraph (1).

(e) INDIVIDUAL PAYMENT AMOUNTS.—The annual payment amount for each eligible active producer of quota tobacco identified under subsection (b) with respect to a kind of tobacco under this section shall bear the same ratio to the amount determined by the Secretary under subsection (d) with respect to that kind of tobacco as the individual production base of that eligible active producer under subsection (c) with respect to that kind of tobacco bears to the total production bases determined under that subsection for all eligible active producers of that kind of tobacco.

(f) DEATH OF TOBACCO PRODUCER.—If a tobacco producer who is entitled to payments under this section dies and is survived by a spouse or one or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the tobacco producer.

SEC. 724. RESOLUTION OF DISPUTES.

Any dispute regarding the eligibility of a person to receive a payment under this subtitle, or the amount of the payment, shall be resolved by the county committee established under section 8 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) for the county or other area in which the farming operation of the person is located.

SEC. 725. SOURCE OF FUNDS FOR PAYMENTS.

There is hereby appropriated to the Secretary, from amounts in the general fund of the Treasury, such amounts as the Secretary needs in order to make the payments required by sections 722 and 723, except that such amounts shall not exceed the lesser of—

(1) amounts received in the Treasury under chapter 52 of the Internal Revenue Code of 1986 (relating to tobacco products and cigarette papers and tubes) during the period beginning on October 1, 2004, and ending on September 30, 2009, or

(2) $9,600,000,000.

TITLE VIII—TRADE PROVISIONS

SEC. 801. CEILING FANS.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.84.14	Ceiling fans for permanent installation (provided for in subheading 8414.51.00)	Free	No change	No change	On or before 12/31/2006 ".

(b) EFFECTIVE DATE.—The amendment made by this section applies to goods entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of enactment of this Act.

SEC. 802. CERTAIN STEAM GENERATORS, AND CERTAIN REACTOR VESSEL HEADS, USED IN NUCLEAR FACILITIES.

(a) CERTAIN STEAM GENERATORS.—Heading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/2006" and inserting "12/31/2008".

(b) CERTAIN REACTOR VESSEL HEADS.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.84.03	Reactor vessel heads for nuclear reactors (provided for in subheading 8401.40.00)	Free	No change	No change	On or before 12/31/2008 ".

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to goods entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of the enactment of this Act.

N O T I C E

Incomplete record of House proceedings. Except for concluding business which follows, today's House proceedings will be continued in the next issue of the Record.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. KILPATRICK (at the request of Ms. PELOSI) for today on account of personal reasons.

Mr. REYES (at the request of Ms. PELOSI) for today after 5:30 p.m. and the balance of the week on account of a family health matter.

Mr. BEREUTER (at the request of Mr. DELAY) for today after 6:00 p.m. on account of personal business.

BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House reports that on June 16, 2004 he presented to the President of the United States, for his approval, the following bills.

H.R. 1822. To designate the facility of the United States Postal Service located at 3751 West 6th Street in Los Angeles, California, as the "Dosan Ahn Chang Ho Post Office".

H.R. 2130. To redesignate the facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, as the "New Bridge Landing Post Office".

H.R. 2438. To designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the "Major Henry A. Commiskey, Sr. Post Office Building".

H.R. 3029. To designate the facility of the United States Postal Service located at 255 North Main Street in Jonesboro, Georgia, as the "S. Truett Cathy Post Office Building".

H.R. 3059. To designate the facility of the United States Postal Service located at 304 West Michigan Street in Stuttgart, Arkansas, as the "Lloyd L. Burke Post Office".

H.R. 3068. To designate the facility of the United States Postal Service located at 2055 Siesta Drive in Sarasota, Florida, as the "Brigadier General (AUS-Ret.) John H. McLain Post Office".

H.R. 3234. To designate the facility of the United States Postal Service located at 14 Chestnut Street in Liberty, New York, as the "Ben R. Gerow Post Office Building".

H.R. 3300. To designate the facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, as the "Walter F. Ehrnfelt, Jr. Post Office Building".

H.R. 3353. To designate the facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, as the "George Henry White Post Office Building".

H.R. 3536. To designate the facility of the United States Postal Service located at 210 Main Street in Malden, Illinois, as the "Army Staff Sgt. Lincoln Hollinsaid Malden Post Office".

H.R. 3537. To designate the facility of the United States Postal Service located at 185 State Street in Manhattan, Illinois, as the "Army Pvt. Shawn Pahnke Manhattan Post Office".

H.R. 3538. To designate the facility of the United States Postal Service located at 201 South Chicago Avenue in Saint Anne, Illinois, as the ''Marine Capt. Ryan Beaupre Saint Anne Post Office''.

H.R. 3690. To designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the ''Barber Conable Post Office Building''.

H.R. 3733. To designate the facility of the United States Postal Service located at 410 Huston Street in Altamount, Kansas, as the ''Myron V. George Post Office Building''.

H.R. 3740. To designate the facility of the United States Postal Service located at 223 South Main Street in Roxboro, North Carolina, as the ''Oscar Scott Woody Post Office Building''.

H.R. 3769. To designate the facility of the United States Postal Service located at 137 East Young High Pike in Knoxville, Tennessee, as the ''Ben Atchley Post Office Building''.

H.R. 3855. To designate the facility of the United States Postal Service located at 607 Pershing Drive in Laclede, Missouri, as the ''General John J. Pershing Post Office Building''.

H.R. 3917. To designate the facility of the United States Postal Service located at 695 Marconi Boulevard in Copiague, New York, as the ''Maxine S. Postal United States Post Office''.

H.R. 3939. To redesignate the facility of the United States Postal Service located at 14–24 Abbott Road in Fair Lawn, New Jersey, as the ''Mary Ann Collura Post Office Building''.

H.R. 3942. To redesignate the facility of the United States Postal Service located at 7 Commercial Boulevard in Middletown, Rhode Island, as the ''Rhode Island Veterans Post Office Building''.

H.R. 4037. To designate the facility of the United States Postal Service located at 475 Kell Farm Drive in Cape Girardeau, Missouri, as the ''Richard G. Wilson Processing and Distribution Facility''.

H.R. 4176. To designate the facility of the United States Postal Service located at 122 West Elwood Avenue in Raeford, North Carolina, as the ''Bobby Marshall Gentry Post Office Building''.

H.R. 4299. To designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the ''Dr. Miguel A. Nevarez Post Office Building''.

ADJOURNMENT

Mrs. BONO. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 33 minutes a.m.), the House adjourned until today, Friday, June 18, 2004, at 9 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

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

8570. A letter from the Register Liaison Officer, Department of Defense, transmitting the Department's final rule — TRICARE Program; Inclusion of Anesthesiologist Assistants as Authorized Providers; Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabilitation Facilities. (RIN: 0720-AA76) received May 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

8571. A letter from the Register Liaison Officer, Department of Defense, transmitting the Department's final rule — TRICARE Program; Inclusion of Anesthesiologist Assistants as Authorized Providers; Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabiliation Facilites. (RIN: 0720-AA76) received May 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

8572. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Multiyear Procurement Authority for Environmental Services for Military Installations [DFARS Case 2003-D004] received May 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

8573. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Berry Amendment Changes [DFARS Case 2003-D099] received May 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

8574. A letter from the Under Secretary for Personnel and Readiness, Department of Defense, transmitting a letter on the approved retirement of Lieutenant General Timothy A. Kinnan, United States Air Force, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

8575. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of the enclosed list of officers of the United States Air Force to wear the insignia of the next higher grade in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

8576. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization for Major General Roger A. Brady and Brigadier General Michael A. Collings of the United States Air Force to wear the insignia of the next higher grade in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

8577. A letter from the Attorney Advisor, Maritime Administration, Department of Transportation, transmitting the Department's final rule — Merchant Marine Training [Docket Number: MARAD-2004-17760] (RIN: 2133-AB60) received May 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

8578. A letter from the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, transmitting the Department's final rule — Government Securities Act Regulations; Protection of Customer Securities and Balances (RIN: 1505-AA94) received June 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8579. A letter from the Acting General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers; Extension of Term of Arrangement (RIN: 1660-AA29) received May 19, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8580. A letter from the Acting General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Suspension of Community Eligibility [Docket No. FEMA-7829] received May 19, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8581. A letter from the General Counsel, National Credit Union Administration, transmitting the Administration's final rule — Organization and Operations of Federal Credit Unions; Description of NCUA — received May 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8582. A letter from the General Counsel, National Credit Union Administration, transmitting the Administration's final rule — OMB Control Numbers — received May 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8583. A letter from the Assistant Secretary, Securities and Exchange Commission, transmitting the Commission's final rule — Disclosure of Breakpoint Discounts by Mutual Funds [Release Nos. 33-8427; 34-49817; IC-264641 File No. S7-28-03] (RIN: 3235-AI95) received June 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8584. A letter from the Assistant Secretary, Securities and Exchange Commission, transmitting the Commission's final rule — Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities [Release No. 34-49830; File No. S7-21-03] (RIN: 3235-AI96) received June 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8585. A letter from the Assistant Secretary, Securities and Exchange Commission, transmitting the Commission's final rule — Supervised Investment Bank Holding Companies [Release No. 34-49831; File No. S7-22-03] (RIN: 3235-AI97) received June 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

8586. A letter from the Assistant Secretary, Office of Special Education and Rehabilitative Service, Department of Education, transmitting the Department's final rule — National Institute on Disability and Rehabilitation Research — Disability and Rehabilitation Research Projects and Centers Program — Rehabilitation Engineering Research Centers (RIN: 1820-ZA33) received June 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

8587. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad with Belgium, Greece, Turkey, Israel, Poland, and the Republic of Korea (Transmittal No. DDTC 024-04), pursuant to 22 U.S.C. 2776(d); to the Committee on International Relations.

8588. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad with Germany (Transmittal No. DTC 004-04), pursuant to 22 U.S.C. 2776(d); to the Committee on International Relations.

8589. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Sweden (Transmittal No. DDTC 045-04), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8590. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract with Japan (Transmittal No. DDTC 053-03), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8591. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment sold commercially to South Korea

(Transmittal No. DDTC-043-04), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

8592. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

8593. A letter from the Chair, Commission on International Religious Freedom, transmitting the Commission's 2004 Annual Report, pursuant to 22 U.S.C. 6412 Public Law 105—292 section 102; to the Committee on International Relations.

8594. A letter from the Director, Defense Security Cooperation Agency, transmitting in accordance with Section 21(c)(2) of the Arms Export Control Act, Executive Order 11598 and Department of Defense Directive 5105.65, a report on the death of an employee of Vinnell Arabia; to the Committee on International Relations.

8595. A letter from the Chairman of the Board, Pension Benefit Guaranty Corporation, transmitting the semiannual report on activities of the Inspector General of the Pension Benefit Guaranty Corporation for the period October 1, 2003 through March 31, 2004, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 8G(h)(2); to the Committee on Government Reform.

8596. A letter from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8597. A letter from the Assistant Director, Executive and Political Personnel, Department of Defense, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8598. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8599. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8600. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8601. A letter from the White House Liaison, Department of Education, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8602. A letter from the Secretary, Department of Energy, transmitting in response to the annual Competitive Sourcing reporting requirement contained in section 647(b) of Division F of the Consolidated Appropriations Act, for FY 2004, Pub. L. 108-199, a report on the Department's Competitive Sourcing program for FY 2003; to the Committee on Government Reform.

8603. A letter from the Attorney Advisor, Department of Transportation, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8604. A letter from the Chair, Equal Employment Opportunity Commission, transmitting the semiannual report on the activities of the Inspector General and management's report for the period ending March 31, 2004, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

8605. A letter from the Chairman, Federal Energy Regulatory Commission, transmitting Pursuant to Section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552(b)(j), the Commission's annual report for calendar year 2003; to the Committee on Government Reform.

8606. A letter from the Chairman and General Counsel, National Labor Relations Board, transmitting the semiannual report on the activities of the Office of Inspector General of the National Labor Relations Board for the period October 1, 2003 through March 31, 2004, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 8G(h)(2); to the Committee on Government Reform.

8607. A letter from the Acting Director, National Science Foundation, transmitting as required by Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108-199, the Foundation's report on its competitive sourcing efforts for FY 2003; to the Committee on Government Reform.

8608. A letter from the Commissioner, Social Security Administration, transmitting the Adminstration's annual inventory as required by Public Law 105-270, the Federal Activites Inventory Reform (FAIR) Act of 1998; to the Committee on Government Reform.

8609. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting a draft bill ''To modify the boundary of the Wilson's Creek National Battlefield in the State of Missouri, and for other purposes''; to the Committee on Resources.

8610. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule — Iowa Regulatory Program [IA-013-FOR] received May 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8611. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule — West Virginia Regulatory Program [WV-101-FOR] received June 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8612. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule — Maryland Regulatory Program [MD-053-FOR] received June 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8613. A letter from the Assistant Secretary, National Park Service, Department of the Interior, transmitting the Department's final rule — Canyonlands National Park — Salt Crrek Canyon (RIN: 1024-AD23) received June 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8614. A letter from the Director, National Oceanic and Atmospheric Administration, transmitting the 2003 report on the Status of Fisheries of the United States, pursuant to Section 304 of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act on October 11, 1996; to the Committee on Resources.

8615. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries Off West Coast States and in the Western Pacific; Highly Migratory Species Fisheries [Docket No. 031125294-4091-02; I.D. 102903C] (RIN: 0648-AP42) received May 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8616. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries Off West Coast States and in the Westerm Pacific; Pacific Coast Groundfish Fishery; Temporary Closure for the Shore-based Whiting Sector [Docket No. 031216314-4118-03; I.D. 052004B] (RIN: 0648-AR54) received June 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8617. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2004 Management Measures [Docket No. 040429135-4135-01; I.D. 042204G] (RIN: 0648-AS03) received May 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8618. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Sea Turtle Conservation: Additional Exception to Sea Turtle Take Prohibitions [Docket No. 040127028-4130-02; I.D. 012104B] (RIN: 0648-AR69) received June 2, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8619. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Designation of the AT1 Group of Transient Killer Whales as a Depleted Stock Under the Marine Mammal Protection Act (MMPA) [Docket No. 031003245-4160-02; I.D. 122702A] (RIN: 0648-AR14) received June 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8620. A letter from the Deputy Assistant Administrator for Operations, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Dolphin and Wahoo Fishery off the Atlantic States [Docket No. 031007250-4079-02; I.D. 091503E] (RIN: 0648-AO63) received May 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8621. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole in the Bering Sea and Aleutian Islands Area [Docket No. 031124287-4060-02; I.D. 051804B] received June 4, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

8622. A letter from the Assistant Attorney General for Administration, Department of Justice, transmitting in accordance with the Federal Activities Inventory Reform Act of 1998, the Department's FY 2003 inventory of commercial and inherently governmental activities; to the Committee on the Judiciary.

8623. A letter from the Secretaries, Departments of Defense and Veterans Affairs, transmitting a report for FY 2003 regarding the implementation of the health coordination and sharing activities portion of the National Defense Authorization Act of 2003 (Pub. L. 107-314) and an estimate of the cost to prepare this report, as required by Title 38, Chapter 1, Section 116, pursuant to 38 U.S.C. 8111(f); jointly to the Committees on Armed Services and Veterans' Affairs.

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:

Mr. OXLEY: Committee on Financial Services. H.R. 4471. A bill to clarify the loan

guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (Rept. 108–550). Referred to the Committee of the Whole House on the State of the Union.

Mr. TOM DAVIS of Virginia: Committee on Government Reform. H.R. 3797. A bill to authorize improvements in the operations of the government of the District of Columbia, and for other purposes (Rept. 108–551 Pt. 1).

Mr. TOM DAVIS of Virginia: Committee on Government Reform. H.R. 3751. A bill to require that the Office of Personnel Management study and present options under which dental and vision benefits could be made available to Federal employees and retirees and other appropriate classes of individuals; with amendments (Rept. 108–552). Referred to the Committee of the Whole House on the State of the Union.

DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XII the Committees on Education and the Workforce and Financial Services discharged from further consideration. H.R. 3797 referred to the Committee of the Whole House on the State of the Union and ordered to be printed.

TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H.R. 3797. Referral to the Committees on Education and the Workforce and Financial Services extended for a period ending not later than June 17, 2004.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. FILNER:

H.R. 4603. A bill to amend the Internal Revenue Code of 1986 to provide for the nonrecognition of gain on real property held by individuals or small businesses which is involuntarily converted as the result of the exercise of eminent domain, without regard to whether such property is replaced; to the Committee on Ways and Means.

By Mr. YOUNG of Alaska (for himself, Mr. QUINN, and Mr. PORTER):

H.R. 4604. A bill to improve railroad security and to authorize railroad security funding, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. GEORGE MILLER of California (for himself, Ms. PELOSI, Mr. KILDEE, Mr. HOYER, Mr. OWENS, Mr. PAYNE, Mr. ANDREWS, Mr. CLYBURN, Mr. MENENDEZ, Ms. WOOLSEY, Mr. HINOJOSA, Mrs. MCCARTHY of New York, Mr. TIERNEY, Mr. KIND, Mr. KUCINICH, Mr. WU, Mr. HOLT, Mr. DAVIS of Illinois, Mr. GRIJALVA, Ms. MAJETTE, Mr. RYAN of Ohio, and Mr. BISHOP of New York):

H.R. 4605. A bill to provide for review of determinations on whether schools and local educational agencies made adequate yearly progress for the 2002-2003 school year taking into consideration subsequent regulations and guidance applicable to those determinations, and for other purposes; to the Committee on Education and the Workforce.

By Mr. BACA (for himself, Mrs. NAPOLITANO, Mr. CALVERT, Ms. MILLENDER-MCDONALD, Ms. LINDA T. SANCHEZ of California, and Mr. GARY G. MILLER of California):

H.R. 4606. A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation and in coordination with other Federal, State, and local government agencies, to participate in the funding and implementation of a balanced, long-term groundwater remediation program in California, and for other purposes; to the Committee on Resources.

By Mr. EHLERS (for himself and Mr. GILCHREST) (both by request):

H.R. 4607. A bill to establish the National Oceanic and Atmospheric Administration (NOAA), to amend the organization and functions of the NOAA Advisory Committee on Oceans and Atmosphere, and for other purposes; to the Committee on Resources, and in addition to the Committee on Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LAHOOD (for himself, Mr. HASTERT, Mr. JOHNSON of Illinois, Mr. DAVIS of Illinois, Mr. RUSH, Mr. HYDE, Mr. EVANS, Mr. MANZULLO, Mr. KIRK, Mr. JACKSON of Illinois, Mr. LIPINSKI, Mr. SHIMKUS, Mr. EMANUEL, Ms. SCHAKOWSKY, Mr. CRANE, Mrs. BIGGERT, Mr. WELLER, Mr. GUTIERREZ, Mr. COSTELLO, Mr. LEWIS of California, Mr. SANDLIN, Mr. WOLF, Mr. MILLER of Florida, Mr. PORTMAN, Mr. UPTON, Mr. FROST, Mr. PETRI, and Mr. BILIRAKIS):

H.R. 4608. A bill to name the Department of Veterans Affairs outpatient clinic located in Peoria, Illinois, as the ''Bob Michel Department of Veterans Affairs Outpatient Clinic''; to the Committee on Veterans' Affairs.

By Mr. MEEHAN:

H.R. 4609. A bill to amend title 18, United States Code, to modify the definition of the United States for the purposes of the prohibition against torture; to the Committee on the Judiciary.

By Mr. PICKERING (for himself and Ms. ESHOO):

H.R. 4610. A bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes; to the Committee on Energy and Commerce.

By Mr. VITTER:

H.R. 4611. A bill to enable increased gasoline supplies and otherwise ensure lower gasoline prices in the United States; to the Committee on Energy and Commerce, and in addition to the Committees on Resources, Agriculture, Transportation and Infrastructure, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GARRETT of New Jersey:

H. Con. Res. 453. Concurrent resolution celebrating the establishment of democracy in Iraq and urging the people of the United States and of other countries in all communities and congregations to ring bells on June 30, 2004, to commemorate the restoration of freedom to the people of Iraq; to the Committee on International Relations, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MCINNIS:

H. Con. Res. 454. Concurrent resolution commemorating over half a century of adjudication under the McCarran Amendment of rights to the use of water; to the Committee on the Judiciary.

By Mr. PALLONE:

H. Con. Res. 455. Concurrent resolution expressing the sense of the Congress that a commemorative postage stamp should be issued to promote public awareness of, and increased research relating to, Chrohn's Disease; to the Committee on Government Reform.

By Mr. UDALL of Colorado (for himself, Mrs. CHRISTENSEN, Mr. GRIJALVA, Mr. OLVER, Mr. MCNULTY, Mr. ACEVEDO-VILA, Ms. BORDALLO, Ms. LINDA T. SANCHEZ of California, Mr. STENHOLM, Ms. ROYBAL-ALLARD, and Mr. GORDON):

H. Con. Res. 456. Concurrent resolution recognizing that prevention of suicide is a compelling national priority; to the Committee on Energy and Commerce.

ADDITIONAL SPONSORS

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

H.R. 99: Mr. SMITH of New Jersey, Mr. GORDON, and Mr. DEAL of Georgia.

H.R. 111: Mr. BILIRAKIS.

H.R. 112: Mr. SMITH of Texas.

H.R. 290: Mr. DOGGETT, Ms. ROS-LEHTINEN, Mr. STRICKLAND, and Mr. NORWOOD.

H.R. 716: Mr. REYES.

H.R. 1083: Mr. EMANUEL and Mrs. JO ANN DAVIS of Virginia.

H.R. 1359: Mr. VITTER and Mr. PRICE of North Carolina.

H.R. 1477: Mr. BERMAN.

H.R. 1639: Mr. LANTOS.

H.R. 1684: Mr. MARKEY and Mr. RAHALL.

H.R. 1688: Ms. ESHOO and Mr. PRICE of North Carolina.

H.R. 1693: Mr. GREEN of Wisconsin.

H.R. 1716: Mr. CHANDLER.

H.R. 2023: Mr. PASCRELL, Mr. RANGEL, Mrs. BONO, and Mr. PAYNE.

H.R. 2032: Mr. KANJORSKI.

H.R. 2037: Mr. WATT.

H.R. 2173: Mr. RANGEL and Mr. MCNULTY.

H.R. 2305: Mr. GRIJALVA.

H.R. 2491: Mr. STRICKLAND.

H.R. 2505: Mr. OLVER.

H.R. 2585: Mr. KENNEDY of Rhode Island.

H.R. 2727: Mr. SIMMONS.

H.R. 2863: Ms. CORRINE BROWN of Florida and Mr. SHUSTER.

H.R. 2890: Mr. OTTER.

H.R. 2966: Mr. MCCOTTER.

H.R. 3015: Mr. GONZALEZ.

H.R. 3069: Mr. HYDE, Mr. PEARCE, Mr. GARY G. MILLER of California, and Mr. TIAHRT.

H.R. 3085: Mr. MCGOVERN.

H.R. 3111: Mr. DEAL of Georgia, Mrs. CAPPS, Mr. VAN HOLLEN, Mr. PETERSON of Minnesota, Mr. MILLER of North Carolina, Mr. CUMMINGS, Mr. GREENWOOD, Mr. EMANUEL, Mr. DUNCAN, Mr. STENHOLM, and Mr. WELDON of Florida.

H.R. 3142: Mr. BEREUTER, Mr. STARK, and Mr. GILCHREST.

H.R. 3148: Mr. COOPER, Mr. RUPPERSBERGER, Ms. LINDA T. SANCHEZ of California, Mr. VAN HOLLEN, Mr. TIERNEY, Mr. KUCINICH, Mr. CLAY, Mr. LYNCH, Mrs. MALONEY, Ms. MCCOLLUM, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. CORRINE BROWN of Florida, Mr. SHIMKUS, Mr. WYNN, Mr. SCOTT of Georgia, Mrs. JONES of Ohio, Ms. KILPATRICK, Mr. THOMPSON of Mississippi, Mr. STARK, Mr. HILL, Mr. HONDA, Mr. EMANUEL, Ms. SCHAKOWSKY, Mr. CLYBURN, Mr. GUTIERREZ, Mr. WATT, Mr. ANDREWS, Mr. ROTHMAN, Mr. RUSH, Mr. GRIJALVA, Mr. EVANS, Mr. OWENS, Mr. BACA, Mr. ETHERIDGE, Mr. BOSWELL, Mrs. TAUSCHER, Ms. JACKSON-LEE of Texas, Mr. BROWN of Ohio, Mr. DINGELL, Mr. MCGOVERN, Mr. KENNEDY of Minnesota, Mr. RENZI, Ms. CARSON of Indiana, Mrs. BONO, Mr. PLATTS, Mr. FOSSELLA, and Mr. RAMSTAD.

H.R. 3193: Mr. LINDER, Mr. BOEHNER, Mr. SWEENEY, Ms. GRANGER, Mr. TIBERI, Mr. KANJORSKI, Mr. ROYCE, Mr. CRENSHAW, Mr. CARDOZA, and Mr. BOSWELL.
H.R. 3242: Mr. MILLER of North Carolina.
H.R. 3281: Ms. DEGETTE, Mr. HOLT, and Mr. STARK.
H.R. 3307: Mr. ISAKSON.
H.R. 3446: Mr. SPRATT.
H.R. 3595: Mr. GREEN of Texas.
H.R. 3602: Mr. PAYNE, Mr. OWENS, Mr. SERRANO, and Mr. REYES.
H.R. 3684: Mr. ALLEN.
H.R. 3707: Mr. TIERNEY, Mr. GEORGE MILLER of California, Mr. MEEK of Florida, Mr. NADLER, Mr. GRIJALVA, Mr. STUPAK, and Mr. SYNDER.
H.R. 3765: Mr. FARR, Mr. MCKEON, Mr. COX, Mr. LANTOS, Mr. GIBBONS, Mr. SAXTON, Mr. GARY G. MILLER of California, Mr. BONO, Mrs. NAPOLITANO, Mr. BACA, and Mr. SYNDER.
H.R. 3796: Mr. CARSON of Oklahoma.
H.R. 3810: Mr. HINCHEY.
H.R. 3820: Mr. SHERMAN.
H.R. 3847: Mr. ESHOO.
H.R. 3889: Mr. BARRETT of South Carolina.
H.R. 3927: Mr. KIRK.
H.R. 4026: Mr. ROGERS of Michigan, Mr. SANDLIN, Mr. FROST, Mr. ALEXANDER, and Mr. BOSWELL.
H.R. 4039: Mr. CALVERT.
H.R. 4067: Mr. MORAN of Virginia, Mrs. LOWEY, Mr. GUTIERREZ, and Mr. HOEFFEL.
H.R. 4082: Mr. SNYDER and Mr. STARK.
H.R. 4110: Mr. SHAYS, Mr. SHERMAN, Ms. HARRIS, Mr. OSE, Mr. BEREUTER, Mr. RANGEL, Mr. OWENS, and Mr. MCDERMOTT.
H.R. 4131: Mr. KING of Iowa.
H.R. 4154: Ms. BERKLEY.
H.R. 4169: Mr. WALSH.
H.R. 4177: Mr. MILLER of North Carolina.
H.R. 4188: Mr. SOUDER and Mr. RANGEL.
H.R. 4214: Mr. OWENS.
H.R. 4287: Ms. SCHAKOWSKY.
H.R. 4316: Mr. DAVIS of Tennessee, Ms. KAPTUR, Mr. GORDON, Mr. KUCINICH, Mr. HINCHEY, and Ms. BALDWIN.
H.R. 4334: Mr. WEXLER.
H.R. 4342: Mr. GREEN of Texas.
H.R. 4346: Mr. SNYDER.
H.R. 4347: Mr. CONYERS.
H.R. 4356: Mr. PAYNE.
H.R. 4358: Mr. MCGOVERN.
H.R. 4370: Mr. GARRETT of New Jersey and Mr. WEXLER.
H.R. 4377: Mr. BAIRD.
H.R. 4391: Mr. BILIRAKIS and Mr. FILNER.
H.R. 4399: Mr. ENGEL.
H.R. 4430: Mr. OTTER, Mr. EVERETT, Mr. THORNBERRY, and Mr. TURNER of Ohio.
H.R. 4440: Mr. GARRETT of New Jersey.
H.R. 4530: Mr. TANCREDO.
H.R. 4571: Mr. FEENEY.
H.R. 4575: Ms. WATSON and Mr. HONDA.
H.R. 4600: Mr. EHLERS.
H.J. Res. 28: Mr. GUTIERREZ and Mr. KENNEDY of Rhode Island.
H.J. Res. 29: Mr. GUTIERREZ and Mr. KENNEDY of Rhode Island.
H.J. Res. 30: Mr. GUTIERREZ and Mr. KENNEDY of Rhode Island.
H.J. Res. 72: Ms. SOLIS.
H. Con. Res. 319: Mr. WOLF, Mr. SMITH of Washington, Mr. WAXMAN, Mr. LEVIN, Mr. MARSHALL, Mr. FROST, Mr. GALLEGLY, and Mr. KIRK.
H. Con. Res. 425: Ms. MCCARTHY of Missouri.
H. Con. Res. 435: Mr. OWENS.
H. Con. Res. 442: Mr. MCDERMOTT and Mr. POMEROY.
H. Res. 466: Mr. CONYERS.
H. Res. 615: Mrs. MUSGRAVE, Mr. SCHIFF, Mr. FRANK of Massachusetts, Mr. KENNEDY of Minnesota, Mr. WILSON of South Carolina, Mr. SOUDER, Mr. BARRETT of South Carolina, Mr. HOEFFEL, Mrs. LOWEY, Mr. MATSUI, Ms. SCHAKOWSKY, Mr. GARRETT of New Jersey, Mr. FEENEY, Mr. WAXMAN, and Mr. LINCOLN DIAZ-BALART of Florida.
H. Res. 617: Ms. SCHAKOWSKY, Mr. SOUDER, Mr. GARRETT of New Jersey, Mr. WAXMAN, and Mrs. MUSGRAVE.
H. Res. 667: Mr. DEUTSCH.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

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

H.R. 3308: Mr. BEAUPREZ.

AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 4567

OFFERED BY: MR. TANCREDO

AMENDMENT NO. 24: At the end of the bill (before the short title), insert the following: SECTION ____. None of the funds made available in this Act may be used to provide assistance to any State that has enacted a law, subsequent to the passage of this act, authorizing aliens who are not lawfully present in the United States to obtain a driver's license, or other comparable identification document, issued by the State.

H.R. 4567

OFFERED BY: MR. WELDON OF PENNSYLVANIA

AMENDMENT NO. 25: Page 2, line 16, insert after the dollar amount the following: ''(reduced by $50,000,000)''.

Page 25, line 24, insert after the dollar amount the following: ''(increased by $50,000,000, which increase is available for grants under section 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a))''.

H.R. 4567

OFFERED BY: MR. WELDON OF PENNSYLVANIA

AMENDMENT NO. 26: Page 2, line 16, insert after the dollar amount the following: ''(reduced by $50,000,000)''.

Page 25, line 24, insert after the dollar amount the following: ''(increased by $50,000,000)''.

H.R. 4567

OFFERED BY: MR. KING OF IOWA

AMENDMENT NO. 27: At the end of the bill (before the short title) add the following:

SEC. ____. Appropriations made in this Act are hereby reduced in the amount of $896,000,000.

H.R. 4567

OFFERED BY: MR. WEINER

AMENDMENT NO. 28: At the end of the bill add the following:

SEC. ____. In making any threat assessment in conjunction with the Urban Area Security Initiative, the Department of Homeland Security shall weigh credible threat more heavily than population concentration, critical infrastructure, or any other consideration.

H.R. 4568

OFFERED BY: MR. WEINER

AMENDMENT NO. 21: At the end of the bill (before the short title), add the following new title:

TITLE V—ADDITIONAL GENERAL PROVISIONS

SEC. 501. Not later than July 31st, 2004, the Secretary of the Interior shall provide public access to the Statue of Liberty and its interior that is substantially equivalent to the access provided before September 11th, 2001.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, SECOND SESSION

Vol. 150 WASHINGTON, THURSDAY, JUNE 17, 2004 No. 84

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

O God, who is the strength of our lives. Let us live to tell of Your wondrous works. How magnificent are Your acts, O Lord. How deep are all Your thoughts. You will not give Your glory to another, for You are omnipotent. Help us to endure the discipline of Your loving correction. Empower us to decrease, so that Your spirit may increase in our lives.

Bless our lawmakers today. Give them an eternal perspective on the myriad issues they face. Renew their minds with truth and sharpen their skills in each important area of living. Bless the members of their staffs who labor into the evenings for freedom's cause.

Bring healing to the sick and comfort to those who mourn. Inspire us all to sow bountifully that we may reap bountifully. Blessed be Your Name forever and ever, for wisdom and power belong to You. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, 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.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 17, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, this morning we will resume consideration of the Defense authorization bill. Under the order, Senator BOND will offer an amendment relating to energy employees, and I understand there may be a modification to the amendment. Therefore, the amendment may be accepted without a recorded vote.

The chairman and ranking member also discussed the possibility last night of considering several missile defense amendments this morning, and I defer to the chairman as to what debate times will be necessary on these amendments after discussion with the ranking member. I do anticipate roll-call votes will be required in relation to these amendments.

We will have a very busy session today as we continue to make progress on the Defense authorization bill. I am pleased with the progress that is being made, though last night I did file cloture on the bill as a necessary tool, in my mind, to facilitate and help bring the bill to closure.

We will continue to discuss the issue of how best to bring the bill to closure. I am in constant discussion with the Democratic leadership and with the ranking member and the chairman as to how we can best finish this important bill. We will be updating the Senate over the course of the day as to our progress.

Once again, I remind our colleagues that we will continue to schedule votes on judges throughout each day's session. We will set votes on those judicial nominations as we set votes on the defense amendments over the course of the day. I do want to thank Chairman WARNER and Senator LEVIN for their tremendous work on the bill thus far, and I look forward to another very full and very complete day.

I will defer for a minute as far as the schedule goes.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

VOTING

Mr. REID. If I could ask, through the Chair, to the distinguished majority leader, it is obvious we have a number of amendments to dispose of. As we talked publicly last night with the two managers, we have four missile defense amendments over here. There will be at least two second degrees, maybe more, that will be offered on those amendments. As we have said, as soon as we see them, I am sure we can set out a reasonable period of time to debate them and vote on them, and we should get rid of these with—I do not mean that in a negative sense but move on past these in a fairly short period of time.

We also have indicated that Senator BIDEN wishes to offer the amendment that has been no secret around here to take some of the higher bracket tax cuts and use those moneys for what is going on in Iraq.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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Anyway, all of this stuff is fairly known now, what we have to do. I believe we can move through these at a fairly decent rate.

Senator LEVIN mentioned last night that people have been waiting for several days to offer amendments, and we have to make sure they have that opportunity. The main reason for rising now is to say I hope that—I should not say I hope; I guess it should be in the form of a question—on Monday that we are going to have some votes on some substantive defense-related amendments, and I do not know what time the distinguished majority leader wants to do that. If it is going to be at the regular time, 5:30, we should know that. If it is going to be earlier, we should alert our folks to that now. Because of certain things that also are quite known around here, we will not have votes tomorrow, unless the majority leader decides to have a cloture vote. Other than that, there will not be any other votes, I am very confident of that.

Does the majority leader have an idea whether he is going to move things up on Monday?

Mr. FRIST. It is absolutely critical that we make today a productive day, and I think we have a good plan for today. Tomorrow needs to be a productive day. The scheduled cloture vote for tomorrow would likely be the only vote tomorrow, and again I think we need to discuss that over the course of the day and then see what the plan would be for Friday and Monday. We will be voting Monday absolutely. We will probably do it later in the day. Again, we will defer to the managers about that.

We need to make Monday a very full and productive day if we are going to finish this bill.

Mr. REID. Mr. President, I want to make sure everyone understands that tomorrow will be a tremendously good day to offer amendments. There would be time to debate whatever they want to lay down, and even though there would not be votes scheduled on them tomorrow that would sure be a good way to get things done. Some Members have already expressed to me that they would be willing to lay down their amendments tomorrow. So tomorrow, in addition to Monday, should be a productive day on this legislation.

Mr. FRIST. I agree, tomorrow would be a great day to lay down amendments if they are absolutely necessary and important amendments, but for amendments we do not need to consider or that can be considered later, we do not need to lay down too many amendments tomorrow because I want to be able to finish this bill. But tomorrow is going to be a productive day.

MEDICAL LITIGATION REFORM

Mr. FRIST. Mr. President, I know we are going to go straight to the bill, but first I want to make a few comments on another very important issue, and now during leader time is the most appropriate time for me to comment. It is an issue that is very close to my heart and an issue that has tremendous impact on people in every State.

I will speak to one State, that is Massachusetts, on the issue of medical liability.

It was just this week that the American Medical Association added another State—Massachusetts—to its growing list of States that can be classified as being in medical crisis because of out-of-control medical litigation system.

For several months, as we brought a series of bills to the floor to try to bring this issue to debate and to focus the attention of this body on it, we have been using the number of 19 States. Now it is 20 States in this great country of ours that are in medical crisis because of this single issue.

According to the AMA, access to quality health care is increasingly endangered. What this means is decreased access to doctors. If you need a doctor, if you are in an automobile accident or if you are a mom or future mom and you need an obstetrician, access to care is increasingly endangered due to a broken medical litigation system. It is a problem in all States and in at least 20 it is a crisis. It is spreading across the country and that is why I take this opportunity to at least mention it and shine a light on it once again. It is a problem, it is a growing problem, and we have a responsibility to address it.

Three weeks ago, I had a wonderful opportunity to present what is called the Shattuck lecture before the Massachusetts Medical Society. I had done my training in Massachusetts and I have tremendous respect for that organization. They report that the litigation crisis has become so severe in Massachusetts that numerous high-risk specialists, such as obstetricians, neurosurgeons or trauma surgeons, have reduced their scope of practice. This applies to 29 percent of general surgeons,—a general surgeon is the one who might come to the emergency room to sew up your child if they have a laceration—36 percent of obstetricians, 41 percent of orthopedic surgeons, and greater than 50 percent of all neurosurgeons. If you are in an accident and you are going to a hospital, you want a neurosurgeon there to evaluate and appropriately treat.

Those are the percentages of those who have said they are reducing their scope of practice. In other words, if you are a neurosurgeon, you might do elective cases but you might not put your name on the list to show up in the middle of the night to treat somebody. Why? Because your insurance would go from $100,000 to $300,000, just so you could have the opportunity to come in late at night to treat somebody. That is about as simple as I can say it. The problem is quality of care is being affected.

The facts in Massachusetts reflect a growing trend. I gestured going up. It should be going down, because it is almost like a downward spiral that is occurring over the last several weeks and months and years. We have heard it again and again on the floor with anecdotes reinforcing what the medical societies are telling us, what hospitals are telling us, and what physicians are telling us, and that is that doctors are leaving and narrowing the scope of their practice. They are leaving the opportunity to deliver babies, maybe just to do the medical aspects of gynecologic care, or no longer taking calls in trauma centers, or they are moving to less litigious States.

I was in Pennsylvania a few months ago. I believe 1,400 doctors in the last 2 years have left the Philadelphia area and they cite the high medical liability rates they are paying as the No. 1 reason they are forced to leave. Many doctors are retiring from practice altogether.

Neurosurgeons and obstetricians are being hurt the most. If you talk to people in the emergency room or if you have friends, nurses, or technicians there, just ask them because emergency rooms are having an increasingly difficult time getting the high-risk specialists, and those are the people you want if an injury occurs. If driving home tonight you are in an accident, you want somebody there or someone who can get there very quickly. That is what is at risk.

I keep mentioning the doctors. It is not just the doctors; it is the patients who are ultimately hurt. The doctors probably will be OK. They will move and incomes can sort of adjust. It is ultimately the patients who are being hurt when health care is being threatened.

The good news is we know how to address the crisis. It is not just a problem that is getting worse that cannot be fixed. We actually know how to address the crisis. Commonsense comprehensive medical litigation reform, which has taken place in some States, has been proven to be overwhelmingly successful. It strengthens our system by addressing the abuses in the system. We want a strong tort system. We want to make sure medical malpractice is aggressively addressed. What we don't want are frivolous, unnecessary lawsuits that drive up the cost of health insurance for the physician, but ultimately the cost of health care throughout the system, and destroy the quality of the great health care that we do have in this country.

Being a physician, obviously this is close to my heart because I see it and I happen to be around physicians a lot and I happen to be around patients a lot. I am not going to give up on this issue. We are going to keep bringing it back again and again until we make headway on this increasing problem.

I don't know how many more States it will take. Massachusetts was added this week. I don't know how many more States we are going to have to add to this medical crisis before we act.

How many women are going to have to put up with their obstetricians leaving halfway through the pregnancy, either moving or dropping obstetrics, and having to find another obstetrician, or in rural areas not being able to find an obstetrician at all?

So I do call on my colleagues to stand with America's patients, the American people, and resist the powerful special interests—we know they are out there today—that want no change whatsoever.

I am determined to press forward. We will try once again at some point in the future to address this on the floor of the Senate. This is not a partisan issue. It goes way beyond that. People say we have these partisan votes, but it is not a partisan issue. This should not be and cannot be a partisan issue. So let's make Massachusetts the last State added to this list. Let's reduce that list. The only way we can do that is by acting on the floor of the Senate. Let's act now to stop the crisis from spreading and let's work together to put America's patients first.

I yield the floor.

RESERVATION OF LEADER TIME

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

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2400, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2400) to authorize appropriations for fiscal year 2005 for military activities for the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, and for other purposes.

Pending:

Reed amendment No. 3352, to increase the end strength for Active-Duty personnel of the Army for fiscal year 2005 by 20,000 to 502,400.

Warner amendment No. 3450 (to amendment No. 3352), to provide for funding the increased number of Army Active-Duty personnel out of fiscal year 2005 supplemental funding.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Missouri, Mr. BOND, will be recognized to call up the Bond-Harkin amendment.

AMENDMENT NO. 3384

Mr. WARNER. I wonder if the Senator will yield for a minute? The Senator from Missouri, perhaps the Senator from Iowa, could they advise the Senate with regard to your desire to make a change to the amendment? Has that been completed yet?

Mr. BOND. Mr. President, I would advise the distinguished chairman of the committee that we have made a modification on this to change the offset to an across-the-board reduction in the DOE appropriations. Discussions are continuing with you. We would like to have the same treatment for these workers as the other workers who were described in the Bunning amendment.

This is a work in progress. We do have an across-the-board offset in authorization for all DOE programs in this bill, but, obviously, we are going to have to continue to work with you and work in conference to make sure this is an effective, agreeable offset.

Mr. WARNER. Fine. I would say we will continue to work. At the moment, from the managers' perspective, at least this manager would have to take a close look at this.

I hope in a short time we could establish a time agreement so we could move on with other matters.

Mr. HARKIN. Will the Senator yield for a question?

Mr. BOND. Mr. President, I yield to the distinguished Senator from Iowa.

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized to offer his amendment under the previous order.

Mr. REID. Will the Senator from Missouri yield for a question?

Mr. BOND. I am happy to yield to the distinguished minority whip.

Mr. REID. I am wondering if the two proponents of this legislation, the Senator from Iowa and the Senator from Missouri, would give us a general idea of how long they will speak on this?

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BOND. Mr. President, I believe we can have the discussions on the substance of amendment No. 3384 as we work with the managers on both sides and perhaps the Finance Committee to make sure we have the appropriate offset.

The amendment I wish to address, and I know Senator HARKIN and Senator TALENT will address it, is the Energy Workers Special Exposure Cohort Designation Act of 2004, which I will be offering on behalf of myself, Senator HARKIN, and Senator TALENT.

It will designate former nuclear production facilities in Missouri and Iowa as special exposure cohorts under the Energy Employees Occupational Illness Compensation Program Act of 2000. This was a very compassionate act designed to provide lump sum payments of $150,000 to people who had worked in the nuclear weapons production program from 1942 to 1967—way before we understood the dangers of radiation—and who suffered very high levels of radiation and have now been diagnosed, suffered, and many have died from multiple cases of cancer.

This problem was brought to my attention by Denise Brock, whose father had died while waiting for the bureaucracy to work through the steps set up under the program to qualify for that particular $150,000 compensation.

There are a very convoluted set of steps that have to be followed unless you are in a special cohort. There were four States that were designated as having needs that automatically qualified these workers.

We have found upon research that the exposure to the workers in Missouri was in many instances the highest exposure in any place. My colleague and I have met with those workers. Eight workers came into my office with Ms. Brock last spring, in May. Since then, three of them have died. They had multiple cancers. A brave fellow that I met when I met with the group in St. Charles County several months ago, Jim Mitalski, wheelchair-bound because cancer was in his right foot, had at least three other cancers. I am sad to say he slipped into a coma yesterday. His doctors suggest this may be his final coma. He has not been compensated.

The Mallinkrodt workers, who worked at the St. Louis downtown site from 1942 to 1958 and moved out to the Weldon Springs facility in St. Charles County, which operated until 1967, were exposed to levels of radionuclides and radioactive materials that were much greater than the current maximum allowable Federal standards. Many workers were exposed to 200 times the recommended levels of maximum exposure.

The chief safety officer for the Atomic Energy Commission during the Mallinkrodt St. Louis operations described that as one of the two worst plants with respect to worker exposures. Workers were excreting in excess of a milligram of uranium per day, which caused kidney damage.

A recent epidemiological survey found excess levels of nephritis kidney cancer from inhalation of uranium dust.

The Department of Energy has admitted that those Mallinkrodt workers were subjected to risks and had their health endangered as a result of working with these highly radioactive materials.

The Department of Energy reported that workers at the Weldon Springs feed materials plant handled plutonium and recycled uranium which were highly radioactive. NIOSH admits that the operation at the St. Louis downtown site consisted of intense periods of processing extremely high levels of radionuclides. The institute has virtually no personnel monitoring data for Mallinkrodt workers which would be necessary for them to reconstruct the dosages to make them qualify under the act. Under these circumstances, I believe simple justice and equity demands that we provide assistance for these severely ill workers and for their surviving families.

This amendment would add the Mallinkrodt facilities, along with the Iowa Army Ammunition Plant, to the four existing special exposure cohort sites. These are sites where a group of employees with specific cancers who worked at specific nuclear facilities or participated under certain nuclear weapons tests and met other requirements are eligible for expedited compensation. This special exposure cohort designation would make the workers at these Missouri and Iowa sites eligible for the expedited compensation as opposed to requiring them to participate in the long, complex, and cumbersome bureaucratic process known as ''dose reconstruction.'' They are faced with a situation where the bureaucrats are asking them to go back and help them reconstruct the dosages over 50 years ago—or more. They have no records. They are very sick people. They are dying of multiple cancers, the kinds of cancers and other problems caused by exposure to radioactivity. It is not feasible for them to go back and reconstruct. Without the records, we know that these people are seriously ill and are afflicted with all kinds of cancers. We, therefore, ask our colleagues if they will accept the amendment as we work to modify the offset.

The total cost over 10 years for the people who worked in the Missouri and Iowa sites is expected to be $180 million. That is over 10 years. Given the fact that these people are suffering from very serious cancers, I hope my colleagues will join Senator HARKIN, Senator TALENT, and me in saying these people badly need the assistance this designation will provide them.

I will withhold submitting the amendment until we have further discussions with the managers to ascertain their desires and the appropriate offset. But offset or no, let me reemphasize to my colleagues that $180 million for people who are suffering mightily from multiple cancers is the least we can do to take care of the brave atomic workers who helped us develop the weapons that ended World War II and who are now paying every day with the suffering from the exposure to that radioactivity.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Missouri.

Mr. TALENT. Madam President, I rise today in support of the Bond-Harkin amendment. I am going to be brief because I think my colleague from Missouri has covered the ground. I imagine the Senator from Iowa will wish to speak further.

I want to begin by recognizing the work they have both put into this amendment. My friend from Missouri has been a tiger in support of compensation for these employees. He was moved—as I was moved and as the Senator from Iowa was moved—by the unique claim these individuals have on justice. This is not some kind of giveaway, but it is just compensation that is owed to them for the sacrifices they made on behalf of this country. That is really what this amounts to.

I was pleased to cosponsor this amendment. I am grateful to the Senator from Virginia and the Senator from Michigan for their attempts to work this out. I hope we can do that. I know they want to. I know they recognize the justice of the claims.

We certainly understand the importance of doing this the right way. I just hope we can do this. At the end of the day, if we have to put it in without all of the t's crossed and the i's dotted and work on it in conference, I hope we can do that because we will have other opportunities further down the road in the Defense bill to tie up any loose ends which may exist. Certainly the Senators from Missouri and Iowa have worked in good faith, as I have, in trying to make this acceptable to the managers of the bill.

In Missouri, an estimated 3,500 people worked at sites which handled and processed highly radioactive material. These workers were exposed—and in most instances unknowingly—to dangerous levels of radiation. It is not necessarily important to blame people for that. Those were in many cases the early years of nuclear work and people just didn't know, and it was necessary to do this work. That is why, without trying to point fingers, Congress created the Energy Employees Occupational Illness Compensation Program Act—EEOICPA—of 2000, which was designed to provide these employees with the compensation they deserve.

Unfortunately, the process, as any of us know who sit on the Armed Services Committee or on the Energy Committee—both of which I sit on—is complex, it is disjointed, and in many cases outright mishandled. As a result, in Missouri, hundreds of claims have been filed by surviving individuals who have received not only no compensation but no progress in the processing of their claims. In many cases those individuals faced 200 times the dosage of radiation that would be considered acceptable today. We know that happened because we know the nature of the processes in which they were working, and we can see the illnesses they now have.

That doesn't mean they can go back and reconstruct from worksheets that no longer exist—and which they wouldn't have access to anyway—exactly what happened on a given day 50 or 60 years ago, which is the reason Senator BOND explained so lucidly we need a special exposure cohort, or an SEC, to expedite compensation for these employees. The amendment would simply allow these employees to be included in an SEC. They already exist for employees in other States.

An SEC is a group of employees with specific cancers who worked at specific nuclear facilities or who meet other requirements under the act. The designation would provide former employees at the site with expedited compensation for going through the lengthy and oftentimes impossible process of dose reconstruction.

I could go on. I know the bill handlers want to get the bill finished. The program so far has one of the most abysmal records of performance which I have witnessed in my now 10 years in the Congress on one side of the Capitol or the other. As the Department of Energy and the Department of Labor create bureaucratic paperwork burdens for sick former employees, this amendment, which would remove the barrier of dose reconstruction for those cases, is a small step forward toward giving them the justice which they so clearly deserve.

I believe workers in Missouri and Iowa ought to qualify for inclusion in the SEC.

It is a pleasure for me to cosponsor this amendment. I hope we can work out the issues that remain surrounding it and get it included in the bill.

I yield the floor.

Mr. LEVIN. Madam President, 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, my colleague, Senator BOND from Missouri, and I are on the floor today to basically work with the committee to do the right thing. We are here to simply add former atomic workers, nuclear workers, who worked in our ammunition plants in Missouri and Iowa, to a group of workers who are already eligible for special compensation.

This category is already in effect for workers from Kentucky, Ohio, Alaska, and Tennessee. But since the original legislation was passed in 2000, we have learned a great deal more about the facilities in Iowa and Missouri which makes it necessary to include these workers as well.

I spoke at length on this issue yesterday on the floor. I will not go over those again. I want to make a couple of brief points today.

In Iowa, between 1947 and 1975, almost 4,000 people were employed handling nuclear weapons. So great was the secrecy that 5 and a half years later we still don't know exactly to what the workers were exposed.

At the time the bill passed in 2000, Congress recognized that there were likely to be more situations where it was simply not feasible to reconstruct workers' doses because the records don't exist, or they are inadequate, because it might take so long to reconstruct a dose for a group of workers that they would all be dead before we would have an answer to determine their eligibility. That is precisely the situation we find ourselves in in Iowa, and the workers also find themselves in in Missouri.

Speaking just about the Iowa facility, the Army ammunition facility in

Burlington was in operation from 1947 to 1975. The people who worked there and who are still alive today are elderly. Many are sick and many have cancers. They are ill and they are dying. Yet almost 4 years into this program, only 38 Iowans have received compensation. That is because after 3 years of hard work by researchers at the University of Iowa, and at the same time by the National Institute of Occupational Safety and Health, we have learned that Iowa has the worst records documenting worker exposure to radioactivity of any facility in the country. Without good documents, you simply cannot do good dose reconstruction.

When Congress passed this law, they explicitly said workers could be added to a cohort when the records didn't exist to make it feasible to do dose reconstruction. Now, NIOSH has concluded that there are no records anywhere that document the level of internal radiation exposures to which workers at the Iowa Army Ammunition Plant were exposed. None, no records.

With regard to external doses, up until 1968, the highest percent of the DOE employees who were monitored was 7 percent, or 23 workers out of a workforce of 800.

It is time to admit that both in Iowa and Missouri we have two sites where it simply is not possible to perform dose reconstruction. The Government simply doesn't know what went on at these facilities and to what the workers were exposed. That makes it impossible to do timely dose reconstruction.

Some may say the law provides for people to be added to a cohort administratively. Well, 10 days ago, after 3½ years of waiting, the Department of Health and Human Services issued a rule setting out the procedure. This only occurred as a result of congressional pressure. The process set out under the rule is likely to take several more years because there are no statutory deadlines that must be met.

So the workers who worked there, who had high exposure to radioactive materials, who are sick and many have had multiple cancers, quite frankly, cannot wait any longer.

We took an important step in fixing about half of this program yesterday with the Bunning amendment. Now it is time to finish the job and give the workers in Iowa and Missouri the same ability to be compensated as those workers in Kentucky, Ohio, Alaska, and Tennessee.

Again, my colleague from Missouri has an amendment now that is being worked out. We hope it is going to be accepted once all of the T's are crossed and I's are dotted. Basically, it is an equity argument to make sure these workers will be treated fairly and in the same manner as workers who were exposed in other places.

I have met with these workers, as Senator BOND has, and it just tears your heart out. These were patriotic individuals. I have talked to some of them who told me they were told what they did was top secret and they could not discuss it with anybody, not even their doctors. So years later, because they were patriotic, hard-working Americans, they never told anyone about the kind of work they did. In fact, I had to work with some of my colleagues a few years ago to get the Department of Defense to get them a written document that said it is OK for them now to talk about what they did. So, as a result of that, we are now getting a clearer picture of the kind of work these individuals did. They handled highly radioactive materials. Many times, they did not even wear dose badges. They had no idea what they were handling. When you listen to workers talk about how, when they worked, certain things would happen to them, such as the hairs on their arms and legs would stand up when they were getting near this material, they had no idea what it was.

Sadly, many of them have already died. Sadly, many of them died at an early age and they left young children. Some of their kids who are alive today tell me about how their father died and how they had all these illnesses and sores and cancers. Many died when they were in their forties or early fifties. They had no idea it was because of the radiation exposure they had when they worked in those plants.

I think it is time for us to do this, acknowledge their patriotic service, the work they did, the dangers they were exposed to and were never really told about. What Senator BOND and I are seeking to do is simply make this equitable. There is no reason why his workers in Missouri, or mine in Iowa, should be treated any differently than those in the four States I mentioned. I believe those in the four States should be compensated, too, and they have been. We thought ours were going to be compensated, but in the intervening 4 years, we found out that no records exist. So they cannot do the dose reconstruction. They have tried to get around it, but they cannot. So we are left on the floor of the Senate to make this equity argument in the hope the Senate will concur and allow us to move ahead in a way that, hopefully, before the year is out, we will be able to include these workers in this special cohort that will allow them to be compensated out of a fund that was established 4 years ago to compensate these workers. The fund still has, as I am told, plenty of money in it. So we are not actually spending any new money. We are simply adding some people to the fund to be compensated.

I am hopeful we can get this all worked out and that we can accept this amendment and move ahead to adequately compensate and acknowledge the work these people did, at least in Iowa and Missouri. I thank my colleague, Senator BOND, for his leadership on this issue. I thank Senator TALENT for his comments earlier.

Madam President, I yield the floor, and I will be back when we have the amendment fully ready.

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

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

The Senator from Washington.

AMENDMENT NO. 3427, AS MODIFIED

Mrs. MURRAY. Madam President, I call up amendment No. 3427 and ask unanimous consent to have the amendment, which is at the desk, modified.

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

Mr. WARNER. Reserving the right to object, and I do not intend to object, I think the managers are doing our very best to move along this morning. We have had a number of unexpected switches by a number of Senators who start amendments and stop them for various reasons. We are prepared now to go ahead with the amendment of the Senator from Washington. But I say to our colleagues, when they have informed the managers they are prepared to go ahead, and then abruptly have to stop, it makes it increasingly difficult for us to work on this bill.

I thank the Democratic whip. He has been most helpful. We have lost a lot of time this morning due to unexpected decisions.

Mr. REID. Madam President, if the Senator will yield, we on this side certainly understand the travails of the managers of this bill. Several days ago, we had written on our sheet "voice vote." We thought the amendment of the Senator from Washington had been accepted. There were miscommunications and, of course, that happens. It is certainly no fault of the Senator from Washington. She was ready several days ago, and we told her not to push it because we thought it would be accepted.

Mr. WARNER. We will proceed with the amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from Washington [Mrs. MURRAY] proposes an amendment numbered 3427, as modified.

Mrs. MURRAY. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To facilitate the availability of child care for the children of members of the Armed Forces on active duty in connection with Operation Enduring Freedom or Operation Iraqi Freedom)

At the end of subtitle E of title VI, add the following:

SEC. 653. CHILD CARE FOR CHILDREN OF MEMBERS OF ARMED FORCES ON ACTIVE DUTY FOR OPERATION ENDURING FREEDOM OR OPERATION IRAQI FREEDOM.

(a) CHILD CARE FOR CHILDREN WITHOUT ACCESS TO MILITARY CHILD CARE.—(1) In any case where the children of a covered member of the Armed Forces are geographically dispersed and do not have practical access to a military child development center, the Secretary of Defense may, to the extent funds are available for such purpose, provide such funds as are necessary permit the member's family to secure access for such children to State licensed child care and development programs and activities in the private sector that are similar in scope and quality to the child care and development programs and activities the Secretary would otherwise provide access to under subchapter II of chapter 88 of title 10, United States Code, and other applicable provisions of law.

(2) Funds may be provided under paragraph (1) in accordance with the provisions of section 1798 of title 10, United States Code, or by such other mechanism as the Secretary considers appropriate.

(3) The Secretary shall prescribe in regulations priorities for the allocation of funds for the provision of access to child care under paragraph (1) in circumstances where funds are inadequate to provide all children described in that paragraph with access to child care as described in that paragraph.

(b) PRESERVATION OF SERVICES AND PROGRAMS.—The Secretary shall provide for the attendance and participation of children in military child development centers and child care and development programs and activities under subsection (a) in a manner that preserves the scope and quality of child care and development programs and activities otherwise provided by the Secretary.

(c) FUNDING.—Amounts otherwise available to the Department of Defense and the military departments under this Act may be available for purposes of providing access to child care under subsection (a).

(d) DEFINITIONS.—In this section:

(1) The term ''covered members of the Armed Forces'' means members of the Armed Forces on active duty, including members of the Reserves who are called or ordered to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, for Operation Enduring Freedom or Operation Iraqi Freedom.

(2) The term ''military child development center'' has the meaning given such term in section 1800(1) of title 10, United States Code.

Mrs. MURRAY. Madam President, as my colleagues know, I have been working for several months on proposals to help ease the burden on Guard and Reserve families who have a loved one serving our country. Today, I am offering an amendment to help families get childcare so a parent can go back to work while their spouse is deployed overseas.

This amendment applies to activated only, and it is discretionary. I want to make sure that is clear. I think there was a misunderstanding with regard to that issue. It is for activated soldiers, and it is discretionary. This will help relieve the childcare squeeze that is hurting so many families who are silently sacrificing for all of us.

Hopefully, with the success of this amendment, the Senate will then have adopted several proposals to help our Guard and Reserve families get health care through TRICARE, pay for their equipment, help them stay on their payrolls through employer tax credits, and, today, with a critical piece on childcare.

Each one of these steps is part of the much larger effort to help ease the burden on families who are trying so hard to make ends meet while their spouse serves our country overseas.

Six months ago, on January 9, I sat down with members of the Guard's 81st Armored Brigade and their families at Camp Murray in Fort Lewis, WA, and at that meeting Guard and Reserve members told me about the tremendous challenges their spouse and their children would face once they were deployed.

I could see how worried and concerned they were that they would not have time to get their families on sound footing with a job, with childcare, and with health care before they deployed to Iraq. I listened closely to all of their concerns, and I spent several weeks crafting a bill to address a number of those issues.

On February 12, I introduced S. 2068, the Guard and Reserve Enhanced Benefit Act. That is a comprehensive bill that will minimize the challenges at home when these brave men and women leave their jobs, leave their schools, and leave their families to protect our homeland and fight terrorism.

Since that meeting back in January, many of the Guard and Reserve members with whom I met have now been deployed to Iraq. Currently, more than 5,400 brave Washington National Guard and Reserve soldiers have been activated, including 3,200 members of the 81st Armored Brigade who are serving in Iraq today. They are part of the more than 168,000 Guard and Reserve troops who have been called to active duty from States around the country.

Our Washington Guard and Reserve troops are among the more than 22,000 total troops from Washington State who are supporting Operation Iraqi Freedom and Operation Enduring Freedom.

As I have talked with family members since the deployment, I have learned a lot about the tremendous challenges they are facing. Today, I want to report back to them on the steps we have taken in the Senate to help ease their burden.

I am proud that in the past month, the Senate has delivered on three of those challenges I outlined in my bill back in February. The first one we delivered on was health care. My bill proposed providing access to TRICARE for all members of the Guard and Reserve, and their families, regardless of their employment or insurance status. That is an issue that Senators DASCHLE, REID, GRAHAM, and others have been working very hard on over the years. I was a cosponsor of that TRICARE amendment. I voted for it on June 2, and I am very pleased that it passed the full Senate.

Now we need the House of Representatives to agree that our citizen soldiers and their families deserve health care.

Secondly, we made progress on another challenge: the strains facing those who employ Guard and Reserve members. My bill offered tax credits to employers to encourage their support of activated Guard and Reserve. It is something that Senator KERRY and Senator LANDRIEU have worked on. I was the original cosponsor of an amendment to provide a tax credit to employers who continue to pay active Reserve and Guard employees, and that passed the Senate with my support on May 11.

Third, we have provided help for soldiers and families who had to provide equipment because the military did not provide it to them in a timely fashion. Back on October 17, on the Senate floor, I told the story of SPL Ian Willet, who was deployed to Iraq on his 21st birthday last September. His father David wrote to me and told me that Ian and his family will have to buy equipment that the military should have provided.

This week in the Senate we did the right thing for soldiers such as SPL Ian Willet and his family. On Monday, I voted for an amendment directing the Secretary of Defense to provide reimbursement to soldiers who face this hardship. I was proud to be a cosponsor of the Dodd amendment that passed this body by an overwhelming margin.

Today, the Senate has the opportunity to pass the Murray childcare amendment, and that will be another important and critical step forward for families who are sacrificing for all of us.

I have raised these issues time and again on the Senate floor because I believe if the American people are told about the silent sacrifices that so many families are making, they will demand that we do more.

President Bush is visiting Fort Lewis in my State tomorrow, and I hope during his visit he shines a bright light on the sacrifices that families are making while their loved ones serve our country overseas. I think it is critical that he hears directly from these families, as I have, about the burdens our Guard and Reserve are facing today. It is important that he support the steps we have taken in the Senate to help those families with health care, payroll, equipment, and, today, childcare. I hope the President will make it clear to those in the House of Representatives that the support we provided in the Senate cannot be removed from the Defense bill in the dark of night.

One critical support we need to take care of is this amendment on childcare that I am offering today. I offer this amendment in honor of all the Guard and Reserve troops who are sacrificing for us overseas, and I offer this amendment in honor of their spouses and their children who are sacrificing so much for us at home.

Let me explain why childcare is such a challenge for many of our military families. Often when a member of the Guard or Reserve is deployed overseas,

the remaining spouse has to go to work to support the family and to make up for the income their spouse has given up because of their military service. Unfortunately today, as we all know, high-quality childcare is very expensive and often out of reach of a single parent.

In addition, many Guard and Reserve families do not live anywhere near a military installation, so they cannot use the services that are available.

I will tell my colleagues about a Washington wife and a mother whose life was turned upside down when her husband was called to active duty. Danielle and Jack Lucas have three children. They worked opposite shifts to avoid the cost of daycare. In February, Jack was told to report to the 81st Armored Brigade at Fort Lewis. Danielle scrambled to figure out how to keep her job and care for her children, including a newborn. Unfortunately, as so many of us find, the cost of daycare was prohibitive and she was forced to quit her job, after 10 years of work, when her husband was deployed.

Jack's monthly military pay was $1,000 less than his civilian job. So when it became impossible to make ends meet, Danielle moved to another part of my State where rent was less expensive. She has now gone back to work, but the cost of daycare is still not affordable. She juggles today with help from her family and her friends to watch her three children, and she often has as many as three different people watching her children in one 8-hour period.

While SPL Jack Lucas is taking the same risks as all Active-Duty soldiers in Iraq, his family has faced emotional and financial turmoil that will be alleviated with the Murray amendment. We cannot continue to ignore the needs of our Guard and Reserve families.

Unfortunately, Danielle's situation is not an isolated case. When MAJ Jake Callahan was called back to duty, his wife Kathleen and two small children were suddenly faced with a childcare dilemma. Kathleen's job requires her to travel and attend work events on weekends and evenings, but her son has special needs, and the cost of childcare is financially out of the question. Kathleen struggles with the stress of abandoning her career now or continuing to rely heavily on her family for childcare.

Kathleen is not alone. Lisa Palmer made the difficult decision to quit her job as a registered nurse when her husband was deployed to Iraq with the 81st Armored Brigade. After her husband was deployed, her two sons began experiencing severe emotional problems due to their father's departure. Lisa believed it was important for one parent to be at home to help her sons through these challenges. Her son's depression, his nightmares, his overwhelming sadness require constant assurance and support by her. Lisa has now started to work part time at the hospital to help lessen the tremendous financial strain of their greatly reduced family income. However, like Danielle and Kathleen, Lisa is only able to do so by leaning heavily on her family and friends to provide childcare.

All three of these women tell me they honestly do not know how they are going to make it through until their husbands return home. The current support system for our deployed and activated Guard and Reserve families is broken. We need a fix to keep our families strong while their spouses serve our Nation. Unless we soften the tremendous burdens they face, we may have trouble retaining the soldiers we have and recruiting the new soldiers we need.

This amendment is about easing the burden on those who serve us today, recognizing that we ask more of them so we need to provide them with more support, ensuring that we can recruit and retain our Guard and Reserve members for our future security.

I have heard some of my colleagues argue that some of these Guard and Reserve proposals are too expensive. We may hear that claim again today. But I think we need to look at the costs of abandoning these families who are serving. We need to look at how much pain it causes them. I have talked with these families. They are trying to serve our country honorably, but they cannot do it when they are so worried about how they are going to keep their children safe and secure while they work to keep their families financially capable. We need to look at how this issue threatens our ability to recruit and retain the voluntary military we need to protect us.

We are spending $5 billion a month on the war in Iraq, and virtually all of this spending goes right to the deficit that our grandchildren are going to inherit. Supporting our Guard and Reserve families is not cheap but we need to do it if we still want to have a Guard and Reserve system after all of these long, extended deployments. These families are part of our war effort. They are part of the war on terrorism. They are part of the war in Iraq. They are part of our homeland security efforts.

All of our military families are sacrificing today. Our Guard and Reserve troops are doing the right thing. They are meeting their obligations. They are protecting our people and they are serving our country with honor.

We have to acknowledge that our unprecedented deployment of Guard and Reserve Forces is creating tremendous new hardships that we have not had to deal with before. The amendment before the Senate now gives us the opportunity to do the right thing for these families and for the loved ones who are serving. We are asking so much of our Guard and Reserve members and their families. We have an obligation to make it easier for their spouses and their children during these long deployments.

The Murray childcare amendment and the other steps we have taken tell our Guard and Reserve soldiers that they can serve our country overseas, even on long deployments, and know their families will be financially secure and they will be able to get childcare and health care.

So my message to our Guard and Reserve families is: We gave you access to health care through TRICARE. We made sure you were reimbursed if you had to buy protective equipment. We made sure employers can continue to keep your loved ones on the payroll by providing employer tax credits. Today, this body will assure you that you have an ease of mind when it comes to your children that you left behind, that they have the childcare that is so critical to the well-being of your family.

We made progress. We have much more to do. We need to keep the pressure on to make sure when we get to conference behind closed doors these measures are not lost.

There are several other elements of my original comprehensive bill that have not been addressed yet, but today I think it is extremely important that we adopt this amendment.

The DOD is supportive of this amendment. It is for our activated soldiers. I urge the Senate to adopt this amendment today. I hope we can do it efficiently and quickly because I think we will send a strong message to those who are serving us so honorably overseas today.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Virginia.

Mr. WARNER. Mr. President, I commend our colleague. This is a subject that certainly will be approached in a very bipartisan way.

I am wondering, do we have any procedural requirement on that family who needs childcare, to express some sort of need for it before it is automatically granted? Would the Secretary adopt regulations? I just ask the distinguished Presiding Officer if I may enter into a colloquy with our distinguished colleague on that.

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

Mrs. MURRAY. Mr. President, this would allow the DOD Secretary of Defense to promulgate the process for the families to go through. It would be discretionary for him.

Mr. WARNER. That is very helpful.

Mr. LEVIN. Will the Senator yield for a question on that point?

Mr. WARNER. Yes, of course.

Mr. LEVIN. In the form of a question to the Senator from Washington, whose amendment fills in such a gap and really meets such an incredibly important need for childcare, but is it not true that in section (a)(3), the bottom of page 2, you do provide specifically:

> The Secretary shall prescribe in regulations priorities for the allocation of funds for provision of access to child care. . . .

So the amendment itself does provide for those regulations to be adopted by the Secretary of Defense?

Mrs. MURRAY. The Senator is absolutely correct. I think it is also important to point out there is no direct

spending. It simply authorizes the Secretary of Defense to help geographically dispersed Active-Duty military families.

Mr. WARNER. I thank our colleague. I asked the question so as to make it a part of the record of the proceedings today. So often when Congress acts on an amendment such as this, which is so important to so many families, they suddenly hear from Washington, ''You got childcare.'' But I think we better put in a caution: Yes, childcare hopefully will be made available, but there has to be some showing of a requirement. Because it is my understanding the Department of Defense now has a number of childcare centers here in the Greater Washington area. Frankly, the adequacy is questionable. Some families do not have access to them. But those families, I point out, might not be able to meet the criteria in the opening section 1:

In any case where the children of a covered member of the Armed Forces are geographically dispersed. . . .

Those families theoretically are not geographically dispersed, but they are caught in between the class that you are establishing and those who are near a major military installation here in Washington, yet there are inadequate childcare facilities.

Those are the types of things that are going to have to be worked out should this become law.

Mrs. MURRAY. Mr. President, there is no doubt the childcare is an issue that is very difficult for many families, and to provide all this support for every family is something that will be extremely difficult. We all acknowledge that. But there is a specific group of families serving us overseas today in Iraq and Afghanistan who are absolutely excluded from any help whatsoever. My amendment assures that they are not excluded.

Mr. WARNER. Fine. We definitely want to care for those. Those families who are not serving overseas yet have been pulled up abruptly from Reserve or Guard status, yet where the husband or the wife—whichever the case the uniform may be worn—is not deployed overseas, they may have a critical problem, too.

Mrs. MURRAY. The amendment before us is in support of all activated personnel.

Mr. WARNER. You make reference to those families overseas repeatedly. I just want to make sure about some of those at home.

Mrs. MURRAY. The Senator is correct.

Mr. WARNER. Fine. On the basis of that, we are prepared to accept the amendment on this side.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, let me first commend the Senator from Washington. She has been tenacious, absolutely determined to provide childcare for military personnel. She has devised this amendment to take care of the ones who are currently employed in Iraq and Afghanistan, because their families surely are the ones who, first and foremost, we have to try to take care of, where they have no other alternative on base because they are geographically dispersed.

This amendment provides funds for childcare for members of the Armed Forces who do not have access to military childcare programs because they are geographically dispersed and there is no military childcare program available to them. These will mainly be Guard and Reserve people but not exclusively. There may be families of Active-Duty people who are normally on active duty, who because their loved one is now in Iraq or Afghanistan, for instance, take the family back home and who also will have access to childcare because of this amendment.

It is discretionary spending. I note the Department of Defense supports this amendment. It seems to me the fact that the Senator from Washington was able to work with the Department of Defense to actually obtain their support for her amendment is a notable success for which she is entitled to the commendation of this body and the thanks of this Nation.

I hope this amendment will be adopted by the Senate. I do not know if a rollcall is necessary. If it is, I hope we strongly support this amendment, and I commend Senator MURRAY for her tenacity and for the sensitivity which she shows in so many issues, but in this case on the childcare needs of this country.

Mr. WARNER. Mr. President, I have indicated that colleagues on this side of the aisle are very anxious to work to make this childcare available subject to the availability of funds, as the amendment states. We are prepared to move on, make it totally bipartisan, and voice-vote this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, without objection the amendment is agreed to.

The amendment (No. 3427) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, we are prepared to proceed with the amendment on important aspects of missile defense by our colleague from California.

The PRESIDING OFFICER. The Senator from California is recognized.

AMENDMENT NO. 3368

Mrs. BOXER. Mr. President, I call up amendment No. 3368.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 3368.

Mrs. BOXER. 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 allow deployment of the ground-based midcourse defense element of the national ballistic missile defense system only after the mission-related capabilities of the system have been confirmed by operationally realistic testing)

On page 33, after line 25, insert the following:

SEC. 224. LIMITATION ON DEPLOYMENT OF GROUND-BASED MIDCOURSE DEFENSE ELEMENT OF THE NATIONAL BALLISTIC MISSILE DEFENSE SYSTEM.

The ground-based midcourse defense element of the national ballistic missile defense system may not be deployed for initial defensive operations before the Secretary of Defense certifies to Congress that the capabilities of the system to perform its national ballistic missile defense missions have been confirmed by operationally realistic testing of the system.

Mrs. BOXER. Mr. President, we are going to face a series of amendments on the missile defense system, and I believe I have an amendment which I am surprised we even have to have a long debate about because it is so straightforward. It says let us not spend the money to deploy the system until it has been tested and until it has been certified as passing those tests by the one office that has the capability of doing it, which is the Office of Director of Operational Test and Evaluation.

We want to ensure that the ballistic missile defense system the President plans to deploy later this year has passed these tests.

In 1983, Congress created the Office of the Director of Operational Test and Evaluation—DOT&E. It is now headed by Mr. Thomas Christie.

The Office of DOT&E was created under the ''fly before you buy'' law. ''Fly before you buy'' makes a lot of sense for our taxpayers. Frankly, when it comes to defending our country, my goodness, how much more important can it be before we tell our people they are protected that we actually know they are protected and that the tests which have been done have been signed off on by the very office that has been created for that purpose?

The office oversees the operational testing programs of all major military systems. Operational testing is intended to be as realistic as possible. This includes testing at night, testing in bad weather, using soldiers rather than contractors who have a special interest in the outcome of the test, and using expected enemy countermeasures.

Let me repeat that. In order to have operational tests that you can trust, the testing has to be done under realistic circumstances. We don't know if our enemy is going to attack us on a beautiful, clear day with the wind blowing at a certain rate. The fact is, we need to test under the harshest conditions so that we know what we are deploying works. It must be a realistic test. Most importantly, the tests must be conducted by the Office of DOT&E—

the program that is developing the weapons system.

I am sure you are going to hear people stand up and fight against this amendment.

I have to tell you that if you really look at the facts, they do not have them on this side. If I were to ask one of my constituents, who knew nothing about this at all, who they would rather have testing our military systems to make sure they work, the contractor, who has an economic interest in it; the program director, who has an economic interest in getting the program funded; or basically an independent office that was set up by Congress, the Office of Director of Operational Test and Evaluation, I think the answer would be clear. People would want an objective test.

My amendment requires that the Secretary of Defense confirm that the ground-based, midcourse missile defense system has passed these operational tests prior to deployment for initial defensive operations. It is very simple—fly before you buy, test before you deploy, common sense, following the wishes of Congress that knew this was a problem when we set up that office.

Here is why it is important. This amendment is important because the current plan of the Missile Defense Agency does not include any operational testing at any time in the foreseeable future.

Let me say that again. The current plan of the Missile Defense Agency does not include any operational testing at any time in the foreseeable future. And this statement I just made has been confirmed by the Office of Director of Operational Test and Evaluation.

Imagine: We are about to spend $10 billion on this program. It is the biggest program in the defense budget, as I understand it, and we are going to deploy without operational testing.

On December 17, 2002, President Bush announced that the United States will declare a midcourse ballistic missile defense system ready for defense operations at the end of the year. That is interesting. He declared and announced that we would be ready to deploy before the system was tested. He should say: Assuming it passes the tests by the appropriate evaluation agency, which is DOT&E. But he didn't say that. The Pentagon's current plan is to deploy the first interceptor missile in late July, and before the system becomes operational by the end of September when five interceptors are in place at Fort Greeley, AK. The Missile Defense Agency hopes to have a total of 10 interceptor missiles in place by the end of January 5 at both Fort Greeley and Vandenberg Air Force Base in California.

They are moving ahead without any operational testing done by the office that was created to do this.

This plan that I described to you, known as Block 2004, will eventually result in the deployment of 20 missile interceptors by the end of next year.

There is a serious problem here. We have no way of knowing that these interceptor missiles will actually be able to protect us from an incoming ballistic missile attack. The system President Bush is deploying has been tested eight times—not by the Director of the Office of Operational Test and Evaluation, it has been tested by the DOD. The contractor was involved in those tests, and the program director was involved in those tests of the Missile Defense Agency, but not the office that has been created to be the objective tester. The tests were conducted, again, by the Pentagon's Missile Defense Agency in cooperation with the contractor—not the DOT&E.

These tests were highly scripted. They occurred in an unrealistic test environment, and only five of the eight were successful.

Here is the GAO report.

The date is April of 2004. This is a relatively new report. In this report, the GAO criticizes the administration's plan, saying:

> as a result of testing shortfalls and the limited time available to test the BMDS [Ballistic Missile Defense System] being fielded, system effectiveness will be largely unproven when the initial capability goes on alert at the end of September 2004.

That is when the initial five missiles will be deployed.

This report from the General Accounting Office, which is the investigative arm of the Congress, goes on to say:

> the Missile Defense Agency predicts with confidence that the September 2004 defensive capability will provide protection of the United States against limited attacks from Northeast Asia. However, testing in 2003 did little to demonstrate the predicted effectiveness of the system's capability to defeat ballistic missiles as an integrated system.

And from the GAO, who we pay a lot of money to, to advise us, they go on to say:

> None of the components of the defensive capability have yet to be flight tested in their fielded configuration (i.e., using production-representative hardware).

My friends, the GAO has essentially exposed the fact that the President plans a ''Wizard of Oz'' defense. We have seen the Wizard of Oz. That Wizard of Oz was scary, but when you pull back the curtain, it was just some little guy.

I want to see a successful missile defense system. I want to see it work. Ever since I have been in Congress, I have been voting continually for research, research, so we have one system in place that works. It would be the greatest to have. We may eventually have it. I hope to God we do. I am from California. I want a missile defense system. I am worried. I am just as worried, however, that if we tell our people they are defended and we do not have objective testing behind it, it will be a very hard blow to people and a waste of money that, God knows, we need in other areas of the military and in other ways to defend our people from the suitcase bomb or an attack on a nuclear power plant, which we know the terrorists are looking at.

The President's decision, in my view, before the testing is done, is a waste of our resources. The total amount requested for missile defense in 2005 is $10.2 billion, more than any other defense system in one year ever.

To put this $10.2 billion in perspective, let me read the budgets of some of the programs in agencies critical to protecting us from the threat of terrorism. I have a chart listing what we spend in other areas that are key in our fight against terrorism.

The entire missile defense system is $10.2 billion. That includes everything, research and everything else. I am talking about the deployment costs, which are about $3.7 billion of the $10 billion. This chart shows the $10.2 billion, which is the entire missile defense cost. The money we are talking about spending is $3.7 billion to deploy these 20 missiles.

Look what we have spent on the other areas to protect our people. The customs and border protection is $6.2 billion. My colleague, Senator MCCAIN, right now is holding a hearing—unfortunately I could not do it because I had to be here—on our problems at the border, protecting our borders from terrorism. The fact is, we need to spend more in high-tech equipment to better protect our people from terrorists crossing the border. The total is $6.2 billion, compared to $10.2 billion on missile defense; Transportation security, $5.3 billion; Coast Guard, $7.4 billion; FEMA, $4.8 billion; Office of Domestic Preparedness, $3.5 billion. This is what we are talking about spending on this deployment—$3.7 billion of the $10 billion—before it is operationally tested by the office that is supposed to do that.

We know the customs and border protection is the front line in protecting the American public against terrorism. Transportation Security Administration—we all know what happened on 9/11; they are responsible for keeping our airlines safe but also our railroads and our ports secure—$5.3 billion, and we are going to spend $3.7 billion on an untested deployment? Coast Guard, $7.4 billion. Imagine that is what we spend on the Coast Guard, and they are right in the line of fire. I visit my Coast Guard ports all the time. They are the lead Federal agency in maritime safety. They are so important. We spend $7.4 billion. And we are spending $10.2 billion on the entire missile defense and ready to toss out $3.7 billion of that in this initial deployment.

All of FEMA, the lead agency for preparing us to respond to all domestic disasters, including acts of terrorism, $4.8 billion. We are about to spend $3.7 billion on an untested system, and we are spending $4.8 billion on FEMA.

Office of Domestic Preparedness, $3.5 billion, which is less than we will spend on an untested system. They are the

lead agency responsible for preparing the Nation against terrorism by assisting States and local governments in preparing for terrorists acts.

The Presiding Officer must hear the same things I hear at home from the police officers, from nurses, from the first responders, the firefighters. They are hurting. They need our help. Would it not be better at the moment now not to waste $3.7 billion on this initial deployment, if we have that extra funding, but to put it into the fight on terrorism?

My amendment does not cut any money from this program. My amendment does not cut one dollar from the program. However, it says, do not spend the money until the system is operationally tested. We will have other attempts because other people will be taking out some funding. I do not touch the funding. All I say is, test it before you deploy it. If the Office of Operational Test and Evaluation comes back with a good report, then I say please deploy but not until that time.

We are at war with al-Qaida and with terrorism. The only four nations that have ever successfully tested a nuclear capable intercontinental missile are Russia, France, Britain, and China. We are not at war with them.

We will talk about Korea and Iran. There are fears, and I share the fears, that this technology could get into the hands of the wrong countries or somehow a terrorist could get his or her hands on one of these missiles. That is why I want to protect our country against the potential of this kind of a strike. However, I do not want a make-believe system. I do not want a Wizard of Oz system.

I want a system I can look my people in the eye and say: We spent $3.7 billion deploying the first aspects of this system, and we know it works. I think my people deserve to know that.

When I was in the House, I was on the Armed Services Committee, and I worked very hard on procurement reforms. I enjoyed so much being on the Armed Services Committee in the House. I was there for years. We had some wonderful debates. What we found is: ''Fly before you buy'' is essential. And that is all we are saying. We want to know the system works. We want to be able to tell the people the system works. And, clearly, we should look at the threat we face.

Now, the reason I am for this program, the reason I have voted for this program many times for research, is because I want to have a system that works. Why? North Korea. I am very fearful of North Korea. Although I believe we can try our best and do more to negotiate with them, there is no question I am worried about a potential missile system in North Korea.

But here is the issue. We have a capability that is not talked about that much here, but the Pentagon's former Director of DOT&E, Philip Coyle, has said: We would never wait until North Korea has launched a missile attack. ''We'd blow it up on the ground.'' We have the capability to know when these missiles are being moved into place. Let me repeat what Philip Coyle said, the Pentagon's former Director of DOT&E:

> We would never wait until the thing was launched. We'd blow it up on the ground.

Now, I subscribe to that theory. I want to blow it up on the ground. I think Philip Coyle is right. With our capabilities, we could see any movement, and we would know. But wouldn't it be great to intercept a missile once it is in the air? Absolutely. If we could not destroy it before it was launched, definitely. But let's operationally test the system first, with the people who are hired to do this for the taxpayers.

Now, let's hear what the Union of Concerned Scientists is saying. They are an independent nongovernmental organization. They released an analysis of the President's plan to deploy a missile defense system. Let me read you two of their findings:

> The Block 2004 missile defense will have no demonstrated capability to defend against a real attack since all flight intercept tests have been conducted under highly scripted conditions with the defense given advance information about the attack details.

Now, do we think our enemies are going to place a call to us and say here is what we are going to do; here is what time we are going to do it; here is the weather we are going to do it in; here is the day? No. The fact is, we have not realistically tested this system.

This is what the Union of Concerned Scientists says:

> Unsophisticated countermeasures that could readily be implemented by countries such as North Korea remain an unsolved problem for mid-course defenses against long-range missiles.

So they are calling our countermeasures that we are using unsophisticated. It is a problem. This means that any country able to launch an ICBM is also capable of using countermeasures to fool our interceptors.

The Union of Concerned Scientists report ends with their recommendation that the Pentagon's Missile Defense Agency should:

> [H]alt its deployment of the Block 20O4 Ground-based Mid-course Defense system and Congress should require MDA to conduct operationally realistic testing of the system before it is deployed.

I thank the Union of Concerned Scientists because it was their very clear writing that led me to this amendment. In addition, common sense led me to this amendment. In addition, many former generals who have spoken out on this led me to this amendment. I agree with the scientists. That is why my amendment says that before we declare the system operational, we should know that it has been tested in a realistic manner.

I want to show you the list of 49 generals who have written on this issue. I say to the Presiding Officer, I think you would find this very interesting. This is a list of 49 generals and admirals who call for missile defense postponement because they do not believe the testing is adequate.

In a recent statement these 49 generals and admirals have written to President Bush asking that the deployment of a ground-based midcourse missile defense system be postponed. Their letter points out that the Pentagon has waived the operational testing requirements that are essential to determining whether this highly complex system of systems is effective and suitable.

The last paragraph of their letter sums up the concerns of these generals and admirals:

> As you have said, Mr. President, our highest priority is to prevent terrorists from acquiring and deploying weapons of mass destruction. We agree. We therefore recommend, as the militarily responsible course of action—

The militarily responsible course of action—

> that you postpone operational deployment of the expensive and untested GMD system and transfer the associated funding to accelerated programs to secure the multitude of facilities containing nuclear weapons and materials and to protect our ports and borders against terrorists who may attempt to smuggle weapons of mass destruction into the United States.

Mr. President, I ask unanimous consent to have printed in the RECORD this letter signed by 49 retired generals and admirals.

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

MARCH 26, 2004.

President GEORGE W. BUSH,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: In December 2002, you ordered the deployment of a ground-based strategic mid-course ballistic missile defense (GMD) capability, now scheduled to become operational before the end of September 2004. You explained that its purpose is to defend our nation against rogue states that may attack us with a single or a limited number of ballistic missiles armed with weapons of mass destruction.

To meet this deployment deadline, the Pentagon has waived the operational testing requirements that are essential to determining whether or not this highly complex system of systems is effective and suitable. The Defense Department's Director of Operational Test and Evaluation stated on March 11, 2004, that operational testing is not in the plan ''for the foreseeable future.'' Moreover, the General Accounting Office pointed out in a recent report that only two of 10 critical technologies of the GMD system components have been verified as workable by adequate developmental testing.

Another important consideration is balancing the high costs of missile defense with funding allocated to other national security programs. Since President Reagan's strategic defense initiative speech in March 1983, a conservative estimate of about $130 billion, not adjusted upward for inflation, has been spent on missile defense, much of it on GMD. Your Fiscal Year 2005 budget for missile defense is $10.2 billion, with $3.7 billion allocated to GMD. Some $53 billion is programmed for missile defense over the next five years, with much more to follow. Deploying a highly complex weapons system

prior to testing it adequately can increase costs significantly.

U.S. technology, already deployed, can pinpoint the source of a ballistic missile launch. It is, therefore, highly unlikely that any state would dare to attack the U.S. or allow a terrorist to do so from its territory with a missile armed with a weapon of mass destruction, thereby risking annihilation from a devastating U.S. retaliatory strike.

As you have said, Mr. President, our highest priority is to prevent terrorists from acquiring and employing weapons of mass destruction. We agree. We therefore recommend, as the militarily responsible course of action, that you postpone operational deployment of the expensive and untested GMD system and transfer the associated funding to accelerated programs to secure the multitude of facilities containing nuclear weapons and materials and to protect our ports and borders against terrorists who may attempt to smuggle weapons of mass destruction into the United States.

Mrs. BOXER. Mr. President, the admirals and generals are essentially asking to take that money, that $3.7 billion, out of the $10 billion, and divert it to other programs. I am not doing that. I am simply fencing the money and saying: You can spend it when the tests pass. So they are really asking more than I am doing.

The people who wrote this letter are some of our most distinguished military men and women. I am going to read the names of these generals and admirals:

ADM William J. Crowe, United States Navy, Retired; GEN Alfred G. Hansen, United States Air Force, Retired; GEN Joseph Hoar, U.S. Marine Corps, Retired; LTG Henry E. Emerson, Army, Retired; LTG Robert Gard, Jr., Army, Retired; VADM Carl Hanson, Navy, Retired; LTG James Hollingsworth, Army, Retired; LTG Arlen Jameson, Air Force, Retired; LTG Robert Kelley, Air Force, Retired; LTG John Kjellstrom, Army, Retired; LTG Dennis McAuliffe, Army, retired;—they are all retired, so I will not continue to say that—LTG Charles P. Otstott, Army; LTG Thomas Rienzi, Army; VADM John Shanahan, Navy; LTG Dewitt Smith, Jr., Army; LTG Horace G. Taylor, Army; LTG James Thompson, Army; LTG Alexander Weyand, Army; MG Robert Appleby, Army.

Mr. REID. Will the Senator from California yield for a question?

Mrs. BOXER. Yes.

Mr. REID. I have spoken to the two managers. Senator LEVIN wants to speak in support of your amendment for 5 minutes. They want 25 minutes to respond to your statement.

Mrs. BOXER. Sure.

Mr. REID. We would like to set a vote for around 12:30.

Mrs. BOXER. OK.

Mr. REID. Which is 40 minutes from now.

Mr. WARNER. Mr. President, and no second degrees prior to the vote.

Mr. REID. Yes.

Mrs. BOXER. I am happy to take another 7, 8 minutes and then finish.

Mr. WARNER. That runs us into about 35 minutes on your time.

Mrs. BOXER. I will finish in 5 minutes.

Mr. REID. Yes. Senator BOXER will speak for 5 minutes. He will speak for 5 minutes. That will give you 40 minutes and will be about evenly balanced.

I ask unanimous consent that on the pending Boxer amendment, there be 10 minutes left on the proponents' side, 5 minutes for Senator BOXER, and 5 minutes for Senator LEVIN, and the remaining time be under the control of Senator WARNER, and that there be a vote at 12:30 with no second-degree amendments prior to the vote.

Mr. WARNER. Reserving the right to object, could we state no later than 12:30? We may be yielding back time.

The PRESIDING OFFICER. Does the Senator so modify his request.

Mr. REID. Yes, and that Senator BOXER could have 1 minute prior to the vote.

Mr. WARNER. We will take on this side equal time with 1 minute prior to the vote.

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

Mrs. BOXER. May I ask the Senator, I do get a vote on this?

Mr. REID. Yes, at 12:30.

Mrs. BOXER. The reason I am reading these names is because these are names we know. These are our heroes: Major General Appleby, Major General Boatner, Major General Bradshaw, Major General Brady, Major General Burns, Rear Admiral Center, Major General Crawford, Major General Edmonds, Rear Admiral Elliot, Major General Faith, Rear Admiral Gormley, Major General Griffitts, Rear Admiral Grojean, Major General Haddock, Major General Holbein, Major General Hyman, Major General Jackson, Major General Lawson, Major General Luchsinger, Major General LeCleir, Major General Willoughby, Brigadier General Cannon, Brigadier General Costa, Brigadier General Cowan, Brigadier General Foote, Brigadier General Forney, Brigadier General Grubbs, Brigadier General Hastings, Brigadier General Johns, Brigadier General Roush.

This is not easy for these people to come out here now and do this. They believe, as I do, and as I hope colleagues on both sides of the aisle feel—and I don't know what will happen with this—that with all of the threats we face today, we have to take care of everything. But for goodness' sake, before we make a $3.7 billion deployment decision, let us test the system with the agency that was set up to do it, not with the program that is kind of fighting for its life always because that is what happens around here, whether it is in the military or any service. You can't rest with that and with the contractors that have the economic stake. This separate objective office is the one.

I stand with the scientists who say we need the realistic test. I stand with the 49 former generals and admirals who say the militarily responsible course is not to spend this money until these tests pass. The Pentagon's current Director of the DOT&E, Thomas Christie, says we can't be sure the system will work against a real North Korean missile. So why wouldn't we fly before we buy? Why wouldn't we be sure that we are spending the money for the taxpayers in a wise way?

I want this as much as anybody else. I want this very much to work. But I don't want to spend the money until we know we have tested the system realistically, and that is common sense.

Again, I named the names of these admirals. They want to go even further. They want to postpone this. I am saying let's not take away the money. Keep the money in place. Let's just make sure the appropriate agency does the testing. That appropriate agency is the Director of Operational Test and Evaluation. It is very simple. I hope my colleagues will support this. We are being told by the people who know that it is not ready yet for deployment.

I thank my colleagues for their patience. I yield the floor. I look forward to a good vote.

Mr. WARNER. Mr. President, I yield myself such time as I may require. I would like to enter into a brief colloquy with our colleague from California. If we can keep the answers short, I want to frame, for those Members following this debate, my perception of what your amendment does. I start by pointing out that last year, this body, this Congress, in a conference report, approved 20 ground-based interceptors—they have been authorized—16 of which will be based at Fort Greely, AK, and four of which will be placed at Vandenberg, CA. They are being fielded as part of a missile defense test bed. This test bed is required for operational realistic testing and provides some measure of operational capability which serves as a basis for the IDO.

Is that basically a correct statement of what we did last year?

Mrs. BOXER. I am sorry. My staff was pointing out something. You are asking me if what?

Mr. WARNER. What we did last year, this body authorized moving ahead on 20 test bed sites, 16 in Alaska and the balance in your State. Am I correct?

Mrs. BOXER. Yes.

Mr. WARNER. Is not the purpose of your amendment to stop that process?

Mrs. BOXER. Absolutely not.

Mr. WARNER. Then how do you proceed to do any testing if you stop the test bed?

Mrs. BOXER. We want operational testing. We want the tests to be done by the appropriate office. That is the purpose of the amendment. That is exactly what the generals are saying. That is what the admirals are saying.

Mr. WARNER. I thank my colleague.

Mrs. BOXER. Sure.

Mr. WARNER. I interpret it quite differently. The amendment would prohibit deployment of the ground-based midcourse missile defense system until

the Secretary certifies to Congress that the capabilities of the system to perform its national missile defense missions have been demonstrated in operationally realistic testing.

We authorized precisely what was to be done last year. We are proceeding on that basis right now. And as I look at this amendment, it would be in effect to reverse what we did last year and start off in an entirely different direction. The test bed capabilities will include space, ground, sea-based sensors, missile defense interceptors, battle management facilities, software, command and control, and communications facilities. To provide additional realism, military operators participate in the tests, and the warfighter is developing a concept of operations.

So, basically, what we are doing, if we were to adopt this amendment, is to put a halt on this system.

As I said, I rise in strong opposition to the Boxer amendment. This amendment would prohibit deployment of the ground-based midcourse missile defense system until the Secretary certifies to Congress that the capabilities of the system to perform its national missile defense missions have been demonstrated in operationally realistic testing.

This amendment, however, is flawed.

Let me start by noting that the Missile Defense Agency, with the strong support of the Pentagon's Director of Operational Test and Evaluation, is fielding an extensive missile defense test bed. This test bed is key to operationally realistic testing.

The test bed capabilities will include space, ground, and sea-based sensors; missile defense interceptors; battle management facilities and software; and command, control, and communications facilities and software. To provide additional realism, military operators participate in the tests, and the warfighter is developing a concept of operations.

The test bed facilities, the participation of military operators, and a good concept of operations provide MDA the ability to test realistically but also provide the initial defensive capability of the BMD System. This initial capability is based on the operational capabilities inherent in the test bed. We are, in fact, on track to field an initial, limited defensive capability later this year. That is what a number of Senators have described as a missile defense deployment.

Indeed, the Commander of U.S. Strategic Command strongly supports the early operational exploitation of test bed capabilities. He is the individual charged with assessing the military utility of the BMD system. He testified forcefully to our committee that the BMD system provides a useful military capability, contributes to deterrence, and provides a useful option to military commanders and national command authorities, even in the early phases of testing. He testified that he intends to ''take full and early operational advantage of the system's antimissile capabilities under development.'' He also wrote in a recent letter, ''U.S. STRATCOM supports the continued appropriate development of missile defense capabilities . . . under the evolutionary approach of concurrent test and operation.''

The amendment does not recognize the connection between the test bed and the fielding of operational capability. If you prohibit this ''deployment,'' you prohibit operationally realistic testing—and prevent the very basis for the certification that the amendment requires.

The BMD system is already being rigorously tested. I would argue that it is one of the most thoroughly tested systems—at this point in its development—that we have. It has gone through thousands of hours of ground testing. The ground-based midcourse missile defense element that we are discussing has achieved successful intercepts in five of eight tests and proven the basic soundness of the hit-to-kill technology. The operational test community is deeply involved in the test program, each test includes operational test goals in addition to developmental test goals.

Each test already includes a measure of operational realism. That testing will continue and will become progressively more realistic and challenging as the system matures. Testing successes will provide greater confidence that the system is performing as we expect it will.

I would further note that the fielding of BMD systems is threat driven. Serious ballistic missile threats exist today and will increase in the future. Congress addressed this issue years ago in the National Missile Defense Act of 1999, which states that it is the policy of the United States to deploy a national missile defense as soon as technologically possible. The Senate passed that act by a vote of 97–3. We need to proceed expeditiously with fielding.

This is entirely consistent with past practice. Our nation has often fielded military systems without completion of operational testing in response to an urgent military need. These systems include the Joint STARS system in the first Persian Gulf War, and the Global Hawk and Predator UAVs in the war on terror. Deployment of these systems—which had not completed testing—greatly increased the security of our nation. The same will be true when we have fielded the missile defense system.

I urge my colleagues to oppose this amendment.

I ask the chairman of the subcommittee to address the Senate and allocate the time on this side.

Mr. ALLARD. Mr. President, I thank the chairman for yielding to me. Senator KYL was on the Senate floor. I thought I would go ahead and give him an opportunity to make some comments. I would like to make some comments following his remarks.

Mr. WARNER. Does the Senator from Colorado agree with me as to what this amendment does?

Mr. ALLARD. I do. If you take down the test bed, you in effect are going to stop the progress of the missile defense program. The real issue is, if you take down any part of it, it is so intertwined and interconnected, you slow down and stop the whole system. Your comments are very pertinent. They are very much in order. I have tremendous concern that this in effect is going to undo what the Congress has worked so hard to do.

If you remember, initially the legislation directed that we move forward on missile defense as soon as technologically feasible. We are ready to move ahead, and we need to.

I yield 10 minutes to the Senator from Arizona.

Mr. KYL. Mr. President, with regard to the amendment before us, the chairman of the committee and of the subcommittee have made precisely the right point. Congress has passed a law to get us to this point today, to begin the kind of operational testing that everybody agrees we need to do, that even critics of the missile defense program want us to do. Yet now they say let's stop building the missiles that would be used for the operational testing.

The essence of this is captured in one of the first comments of the Senator from California.

She talked about the concept of ''fly before you buy,'' which ordinarily is the way we buy military equipment but not always. She noted that is one of the reasons why the Office of Test and Evaluation was created, and she noted there had been problems as a result of the fact that not all of the operational testing had been done on this program.

Let me quote from the person who heads that office, the Director for Operational Test and Evaluation, Thomas Christie, on this precise issue in his recent testimony before the Senate Armed Services Committee:

> . . . I think the issue we're talking about here is the building of missiles that will be put into silos that are part of the test bed, and we have to have this test bed in order to do some of the testing that will become more realistic engagements, geometrics, for example, than we've been able to do before. And some of these attributes of this test bed are in response to criticism that came from my office and my predecessor in previous administrations. . . .

Mr. President, that is the precise point. The criticism has been that not all of the testing has been under the kind of realistic conditions that would be the real battlefield we need to be able to test against. It has been done by contractors, and, of course, that is the way you have to start out to test the components and make sure they work. Eventually, you have to build the missiles, put them into the ground, and test them in real conditions. What better way to do that than to put them in the actual silos in which they will have to be located in Alaska?

By the way, when Thomas Christie speaks of this, he talks about the places for the best chance of intercepting missiles, where we think they might come in. Where is that? Alaska. Weather conditions in Alaska are not necessarily the best. We have to test these missiles under conditions where there would be several feet of snow or ice on top of the missile silo, the lid that has to be blown off for the ground-based missile interceptor to be shot off. That is why we have to have missiles precisely in the place where they can be tested under these operational conditions. That is precisely why we have to, A, authorize and, B, fund this group of 10 missiles which will be part of the test bed.

Now, the fact that they may also have the capability in an extreme emergency of actually shooting down a hostile missile should not be a bad thing. If, God forbid, a hostile country should challenge us and either mistakenly launch a missile at us or intentionally do so against us, wouldn't it be nice to have the missile in the silo to shoot it down with? I fear some opponents—certainly not anybody on the Senate floor—would say you cannot do that because we have not certified yet that it is an operational system.

In the 1991 gulf war, for example, when we had an air defense system called Patriot and Saddam Hussein began sending Scud missiles at our troops in Saudi Arabia and Kuwait, we actually sent that air defense system to Saudi Arabia, doing some fixes to it on the way over, and we put it on the ground. As the Scuds were launched, we fired Patriot missiles at them. We didn't hit them all, but I think we hit something like about a third of the Scud missiles.

That system wasn't designed to shoot down missiles. It had never been operationally tested and hadn't been certified for deployment, but in an emergency we needed it. We have done that with other systems, such as JSTARS and some of our unmanned aerial vehicles. There are some other programs we can talk about that we didn't ''fly before we buy'' with those systems. We had them in a developmental process, and all of a sudden we needed them and we used them. Thank God, they were there to be used.

So even if we had to use one of these missiles in an emergency, God forbid, would anybody object to us doing that? Would we have to say, wait a minute, we don't have the certification called for in the Boxer amendment yet? Sorry, we cannot defend ourselves.

I think not. It is an unrealistic requirement. More importantly, it is a requirement that even the head of the group that we have set up, the Director of the Operational Test and Evaluation Office, has said is unnecessary.

We need to move forward in building these missiles so we can put them in the silos and conduct the operational tests that we all agree need to be conducted.

I note that our colleague from California said she has always voted for research. I accept her word on that. But part of the problem for missile defense is that a lot of us vote for research, but when it comes to bending the metal, actually building the system and putting it into the ground, that is when people say we need to slow up, we have not done enough testing, we are not sure it will work against everything. So we have spent an awful lot of money on missile defense and, frankly, a lot of research, but we have not been able to put something into the ground.

President Bush said, when he came into office, we are going to put something into the ground that will work. We may have to let it evolve as it moves forward, and we will make changes as we learn more and more. But that is all right. At least we have an initial capability that might work, God forbid, should somebody accidentally launch something against us, or even do so intentionally. I look at our weapons systems, such as the F–16s that are tested at Luke Air Force Base in Arizona. I am not sure which version of the F–16 we are flying now, but it is not the A, B, C, or D. We build systems and we keep improving them. We evolve in our technology and keep putting that new technology into the systems.

That is precisely what we have decided to do with missile defense, rather than trying to come up with the perfect system that will defeat any kind of offensive system against us. We understand we need to start with something that will be rudimentary and at least will deal with a threat coming from a country like—let's say North Korea, and it may not work against one of the old Soviet systems, for example. But as we get better, we will include those new technologies into these systems, improve them; so as our adversaries develop systems, we will be one step ahead of them.

Finally, part of the purpose of this is deterrence. It is not just to be able to defeat a missile that might be thrown against us. The message we want to send to North Korea, Iran, and other countries is the same one we sent to Soviet Union, which it heard loudly and clearly. It was the message President Reagan sent: We have the economy to outspend you, out-research you, out-build you, and we are going to build a missile defense that will defeat you. Why go to the trouble, since you cannot afford to do it, of trying to build an offensive system that we can defeat? That is the message we want to send to these potential enemies. We can deploy a system and we will always be able to have a system that will defeat what you throw against us. Why take the time and trouble to develop that kind of system? It has a deterrent effect as well.

We need to move forward with this system and defeat the Boxer amendment. Both Chairman WARNER and the Senator from Colorado, Senator ALLARD, are precisely correct in their opposition to this amendment.

Mr. ALLARD. I thank the Senator for his statement. I recognize in a public way his great work on this particular issue, and his comments are very enlightening.

I will yield myself 6 minutes.

I rise in strong opposition to the Boxer amendment. Today, we face a clear threat from long-range missiles in North Korea. Iran has made no secret of its intent to develop long-range missiles. We may have to deal with that threat in the not-too-distant future. That is the truth.

Consequently, I have great concern about this amendment, which seems relatively straightforward but it is potentially devastating to the effort to defend our Nation from long-range missile threats. I say ''seems straightforward'' because I can actually read this amendment three different ways. None of these readings seem useful to the defense of this country.

If I focus on mission, I would note that Admiral James Ellis, Commander of Strategic Command, has testified to our committee that the ground-based midcourse element of the ballistic missile defense system enhances deterrence and provides him a militarily useful capability. On that basis, perhaps the Secretary could provide the certification required by the amendment, even at this stage of the testing. I don't believe that is what the Senator from California has in mind.

If I focus on operations, I might read this amendment to say we can deploy all we want, but we cannot use what we deployed operationally. Taken literally, that would mean if North Korea or some other nation would launch a missile at us, we would be forbidden by law from trying to defend ourselves. I don't believe that is what the Senator has in mind either. Of course, to be able to try to intercept such a missile, the ground-based midcourse element would have to be on alert and operationally ready. This is precisely why Admiral Ellis strongly supports taking advantage of the operational capabilities of the missile defense test bed.

That brings us to the third reading focusing on deployment. If I read the amendment correctly, it would impose a prohibition on any deployment of defenses against long-range ballistic missiles. Any additional deployment would be prohibited until the Secretary of Defense certifies that operationally realistic testing has demonstrated that the ground-based midcourse defense element can perform its mission.

If that is the Senator's intent, as I read this, if this amendment were to become law at the beginning of the new fiscal year, no further fielding of ground-based midcourse interceptors, radars, battle management facilities, command and control facilities, or communications assets would be permitted. These are the components of the BMD test bed on which the initial defense capability of the GMD element are based.

This has the potential to cause extraordinary harm to the GMD effort by disrupting ongoing efforts to acquire assets for the BMD test bed, including all of the assets I just mentioned. Recovering from this disruption, depending on how long fielding of capabilities were to be suspended, could take years and cost hundreds of millions of dollars. But beyond that, as a consequence of this disruption, and the consequent harm to the BMD test bed, it is not clear to me at all how the Missile Defense Agency could achieve the operationally realistic testing that all of us support.

Furthermore, I believe this amendment fails to grasp the essentials of how the Department of Defense and the Missile Defense Agency are attempting to field missile defenses as effectively and expeditiously as possible.

The ballistic missile defense program is a spiral development effort. That means, in essence, develop missile defenses and field those defenses if the warfighter believes the capability has military utility without necessarily waiting for the 100-percent solution. Further development then allows those defenses to be improved in subsequent spirals.

This amendment does not seem to take account of this spiral development, that the ground midcourse defense system element will be able to perform at a certain level early in its fielding and will improve in its capabilities over time or that continued testing will demonstrate new capabilities as they are developed. Testing, which already incorporates operational goals and some measure of operational realism, gets more realistic and more rigorous with time.

This method of development, testing, and fielding does not seem to me to be compatible with the one-time certification by the Secretary. We all support operationally realistic testing, but banning deployment until a certification appears to me to be self-defeating.

I urge my colleagues to join me in opposing this amendment.

I would like to bring to the attention of my colleagues a quote by Christie, who is the Director of the Operational Test and Evaluation Program:

> I continue to strongly support the construction and integration of the BMDS test bed. This test bed will provide the elements that make up the initial defense operations or. . . .

the architecture of the missile defense system.

Who is this director? He is the chief tester. This is what the chief tester himself is saying about how important it is that we move forward with spiral development where we can operationally show in a test bed the dual capability.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator has used 6 minutes.

Mr. ALLARD. Mr. President, I yield the floor and yield—how much time does the Senator from Alabama wish?

Mr. SESSIONS. Five minutes.

Mr. ALLARD. I yield 5 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. SESSIONS. Mr. President, I thank Senator ALLARD for his great leadership on the issue of national missile defense, space technology, and all the related issues. We are fortunate to have him as chairman of the Strategic Forces Subcommittee. He understands the issue. He has been dealing with it for many years. He studied it and brought his scientific background to the issue. I agree with him, and I also very much agree with the comments of our distinguished Senator JON KYL from Arizona, who also has studied this issue for many years.

We voted back when President Clinton was President, and he signed the bill to deploy a national missile defense system as soon as technologically feasible. It was an amendment, I recall, by Senator THAD COCHRAN and Senator JOE LIEBERMAN. It passed by a very large vote, and we made a commitment to do that. There was a lot of debate about it then.

I think some people still are somewhat motivated by their criticism of President Reagan's Star Wars maybe; that this would not work; it could not work. They just did not like it. But we voted on it after a national commission had reported unanimously that we needed to have this defense. Overwhelmingly the Senators voted for it. Since then, there has been a steadfast effort to slow, delay, and undermine the actual deployment of this system.

We are now on the move to deploy this system in September in Alaska, to put, I believe, five missiles in the ground, and this will give us the ability to conduct realistic testing, the kind of testing that can actually deal with the realistic conditions around the world, our radar systems, our interceptor systems, the nature of the launch facilities in Alaska, which is the perfect place, people have convinced us, to deploy a system and cover all the United States. It will protect us now. It has military capability to protect this country when deployed.

It also could, in addition to perhaps a threat from a nation such as North Korea that actually rattled its missiles a number of times and are working steadfastly to improve their missile system, help us deal with an accidental launch from a country that has a missile defense program. It would give us the ability to have protection today for the entire United States. That is what we committed to do.

We voted to begin this deployment in September, and General Kadish and his entire team, General Holly and others, have worked so hard to prove the feasibility of this system. A bullet can meet a bullet. We have done it. We know it will work. Now we need to set up an operational system, a very realistic system, deploy these missiles, and continue to test them. We will learn to make them even better to deal with some of the problems we have not anticipated today from this deployment and the testing that can occur there.

We are doing this as part of the spiral development, the idea that when you are developing a new system such as this, it is not possible to anticipate everything that may occur, every challenge that may be out there, and as we learn, we continue to improve the system.

We in Congress in the past have made mistakes sometimes about mandating a new weapon system, a new production, and then demand it meet 10 characteristics, when we may find, as we go along in the development of it, if we drop off 1 of those characteristics and keep 9 of them, we have even more capability and a better system. We are giving them some freedom to deploy and test as they go.

I believe we are well on the way under Senator ALLARD's leadership and Senator WARNER, the chairman of our committee, to deal with any scientific difficulties that have come up in the past.

I thank the Chair for recognizing me to speak on this issue. I join with Chairman WARNER and Chairman ALLARD in urging defeat of the amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the pending amendment would prevent deployment of the missile defense system before that missile defense system is shown to be workable by operationally realistic testing. That is what we are supposed to do around here. This is nothing new. What is new is the deployment of a system before it has been realistically tested and operationally tested with no plans to ever test the system.

There are a couple of examples where we have deployed systems, but we have never deployed a system without a plan to at least operationally test at some point. There are no such plans here. It violates the spirit and, in one case, the letter of the law relative to testing and relative to ''fly before you buy.''

These laws are intended to prevent the purchase and deployment to the field of billions of dollars in military equipment prior to it being adequately tested. What we have heard on the floor is a giant rationalization for deploying a system which may or may not work. We have been told this morning that we have to deploy in Alaska because that is where the operational testing is going to take place. How can there be operational testing unless these missiles are put in the ground?

The problem is, that is not accurate. There is not going to be flight testing of these missiles from Alaska. That is not just me saying that; this is what the Department of Defense has told us. I will quote from the DOT&E fiscal year 2003 annual report:

> Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

I am going to repeat it:

Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

So these missiles are not going to be put in Alaska in order to have some place from which to operationally test a missile. It is not going to happen.

Mrs. BOXER. Will the Senator yield for a question on that point?

Mr. LEVIN. I would be happy to yield.

Mrs. BOXER. So when Senator WARNER says essentially we need to go ahead because we are going to test this once they are deployed, what I hear my colleague saying the Pentagon told him, and they put it in writing, is because of safety concerns there will be no operational testing at those sites; is that correct?

Mr. LEVIN. At these sites, they are not going to be fired. So you want to deploy before you test. Do not deploy because you think that is where you are going to be testing from. We are not. That is according to the Department of Defense.

Now another reason we are given is that will work against the real North Korean missile threat. That is what we are told. Yet on March 11, the Pentagon's own chief tester, Tom Christie, testified in front of the Armed Services Committee and Senator JACK REED asked him whether it was true that at this time we cannot be sure the actual missile defense system would work against a real North Korean missile threat, to which Mr. Christie replied, ''I would say that's true.''

Now, there are good arguments to test a missile defense system which will work. It seems to me to say that a missile defense system which may or may not work, which we have not tested operationally or realistically, is a deterrent against some potential threat, is totally inaccurate as well. It is wishful thinking. Something is not deterred with a system which may not work. There is testing to get a system which does work and then deterrence may be possible, because if there is going to be a missile attack against us, we always have to remember that the people who would shoot at us, No. 1, would destroy themselves, not us. They may or may not destroy us depending on how accurate the missile is, but they would destroy themselves because the retaliation would be swift, clear, certain, and massive. That is the deterrent that works and has always worked in the area of missiles.

Nonetheless, if one wants a defense against such an attack, if they do not think they can deter an attack by the certainty of massive retaliation, if they think some country is going to shoot a missile at us even though it will lead to their own destruction, then the value of that system would be ''if it works.'' But no operational testing here.

Senator BOXER's amendment would prevent deployment of the administration's national missile defense before the capabilities of the system have been confirmed by operationally realistic testing. This amendment does exactly the right thing. The administration currently plans to deploy a national missile defense before the capabilities of the system have been confirmed by operationally realistic testing. This violates the entire spirit, if not the letter, of the ''fly-before-you-buy'' laws, because these laws are intended to prevent the purchase and deployment to the field of billions of dollars of military equipment prior to it being adequately tested to show that it would work in actual combat.

Sometime in September of this year, the Bush administration will declare a national missile defense system deployed and operational, probably with much fanfare. However, the system has never been realistically tested, against targets that actually look like an enemy missile. Instead, the targets have had beacons on them, telling the national missile defense where they are, instead of using the national missile defense radars to do that. An enemy missile will not have a beacon on it. Yet, the DoD has never yet tested this system without the target having one. Nor has the system been tested against targets that look like a threat missile might look, with the simple countermeasures that any ICBM-capable country would almost certainly have.

The Pentagon's chief test official, who is required by law to independently oversee and approve all operational testing of major weapon systems, has not been given any authority over the missile defense test plans. This chief test official is the only true independent judge of the Pentagon's weapon system. The law established his position to ensure that political or other pressures did not result in a weapon system being deployed before it was ready. But the Bush administration has consistently tried to marginalize the role of the Pentagon's test official in missile defense.

The result is that the testing for the national missile defense system has remained unrealistically simple. The tests have been designed to ensure test success, and ''rack up the score,'' not to ensure the system actually works in wartime. Despite the artificial simplicity of the tests, the last major test of the system was a failure. That was back in December of 2002, and the DoD has not conducted another such test in the 18 months since then. This long delay has been due to a number of developmental problems with the system's interceptors. The Pentagon still has not fixed the developmental problems with the system, which is why the next test, originally scheduled for March, has been delayed by 4 months. Yet despite these continuing problems, test failures, and the substantial delays, the administration still plans to deploy the system in September, as it has for more than a year. This is putting perceived political advantages of a Presidential election-year before technical reality, and fiscal responsibility.

Senator BOXER's amendment would require realistic operational tests, under the control of the Pentagon's chief tester, prior to deployment of a national missile defense. I support Senator BOXER's amendment, which would put common sense ahead of missile defense politics, and would reinforce the intent of existing ''fly-before-you-buy'' laws which protect men and women in uniform, the taxpayer, and our national security. I urge others to support this amendment as well.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. ALLARD. My colleague said all we have to have is mutually assured deterrence. That is a policy out of the cold war: Blow me up and I am going to blow you up. We are past that in this day and age. We are dealing with leaders in other countries who do not care, and that is where our threat is coming from, it is coming from countries such as Iran and North Korea. We need to figure out a new system, and we need to get it in place as quickly as we possibly can to make sure we can continue to provide the security to this country that the American people expect. The missile defense system is the answer.

We are talking about a test bed that is overlapping with an operational capability, and anything we do to delay the operational capability, we delay testing. When testing is delayed, the cost of the program is run up and the program is delayed out. Then pretty soon there are cost overruns and then the opposition says, well, we cannot move forward because of all of these delays and cost overruns.

The fact is, we are on schedule. We expect to get these missiles in the ground this fall, and we are going to begin to have a system in place where we can defend this country from an unexpected missile attack that may occur out of North Korea or Iran.

Mr. Christie, who I had quoted earlier, in simple terms, was our chief tester, and he states that the test bed is necessary for evolution improvement to the ballistic missile defense system, and that the challenge is to do testing in a manner that will improve the system while supporting an operational system.

Stating something Mr. Christie said from his recent testimony to the full committee, he says that fielding the test bed provides an opportunity to gather operational data on system performance, safety, survivability, availability, and maintainability. We should expect these data to drive system enhancements. The challenge will be in achieving a defensive posture that is flexible enough to accommodate the necessary changes to hardware, software, and processes that will be necessary to maintain a highly available

ballistic missile defense system, while supporting a comprehensive testing program that is designed to mature, improve, and demonstrate mission capabilities through continued development.

Mr. Christie believes the Missile Defense Agency test program is a strong one, and that it is working. Unnecessary delays are unnecessary. We simply cannot tolerate those. This issue is too important to the security of this country. So I am asking that my colleagues join me in opposing the Boxer amendment. This is a devastating amendment. It is creating all sorts of problems as far as the defense of this country is concerned, and it is going to severely hinder what we are trying to do with ballistic missile defense.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mrs. BOXER. Mr. President, is there any time for me to rebut some of what was said?

The PRESIDING OFFICER. The Senator from California has 1 minute 20 seconds remaining; the Senator from Colorado has 8 minutes 20 seconds remaining.

Mrs. BOXER. Mr. President, I will take this time to rebut some of what has been said.

The amendment I am offering with Senator LEVIN does not cut one slim dime from the National Missile Defense Program. All it says is, let us make sure the system works before we expend $3.7 billion to deploy it. How people can say that is devastating is beyond belief.

If one wants to talk about devastating, devastating is investing money in something that will not work when it is needed. Devastating is something where the people of this country are told they are protected when they are not because the agency that was set up to test this is not in charge of the operational testing.

The opponents to this amendment also say something else over and over again: It is important we deploy these. Then we will test.

The fact is, the Pentagon themselves—and I ask unanimous consent to have printed in the RECORD this Pentagon report in which they say:

Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

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

[From the Director, Operational Test and Evaluation]

FY 2003 ANNUAL REPORT

DOD PROGRAMS, ARMY PROGRAMS, NAVY AND MARINE CORPS PROGRAMS, AND AIR FORCE PROGRAMS

Ground-Based Midcourse Defense (GMD)

The Ground-based Midcourse Defense (GMD) element is an integrated collection of components that perform dedicated functions during an ICBM engagement. As planned, the GMD element includes the following components:

GMD Fire Control and Communications. The communications network links the entire element architecture via fiber optic links and satellite communications. For IDO, all fire control will be conducted within the GMD element.

Long-range sensors, including the Upgraded Early Warning Radar, the COBRADANE radar, and the Ground-Based Radar Prototype. In December 2005, a sea-based X-band (SBX) radar is to be incorporated.

Ground Based Interceptors and emplacements, consisting of a silo-based ICBM-class booster motor stack and the Exoatmospheric Kill Vehicle (EKV). The plan for the 2004 Test Bed plan places six Ground Based Interceptors at Fort Greely, Alaska, and four at Vandenberg Air Force Base, California. In 2005, plans are to place ten more at Fort Greely.

GMD soon plans to interface with other BMDS elements and existing operational systems through external system interfaces. Through FY06, these plans include GMD interfacing with the Aegis SPY–1B radars and satellite-based sensors and communications.

To date, the GMD program has demonstrated the technical feasibility of hit-to-kill negation of simple target complexes in a limited set of engagement conditions. The GMD test program in FY03 was hindered by a lack of production representative test articles and from test infrastructure limitations. Delays in production and testing of the two objective booster designs have put tremendous pressure on the test schedule immediately prior to fielding. The most significant test and infrastructure limitations and mitigation plans are described in the table below.

MAJOR GMD TEST LIMITATIONS AND MDA MITIGATION PLANS

Limitation	Comments	MDA mitigation plan
Lack of a deployable boost vehicle	The Orbital booster has been tested in developmental flight tests without attempted intercepts. The Lockheed booster testing has slipped such that it may not be available for IDO.	MDA is proceeding with deployment plans emphasizing the Orbital booster. Testing will continue with both designs as Lockheed booster production resumes.
Lack of a realistically placed midcourse sensor	The GMD test radar is collected at the interceptor launch site. The FPQ–14 radar, a non-deployable asset that tracks a transmitter attached to the test target, currently accomplishes the midcourse tracking and discrimination functions.	GMD is developing a mobile, sea-based radar. The scheduled employment of this radar in the GMD Test Bed occurs in the post-2005 time frame.
Fixed intercept point	All of the flight tests to date have had similar flyout and engagement parameters. This limitation includes range constraints and a requirement not to create space debris.	The 2004 Test Bed expands the flyout range and engagement conditions. Space debris creation remains a problem.[a] Transitioning between testing and operations is a concern.

[a] These factors constrain test engagements to relatively low target intercept altitudes and downward directed velocities for both the target and interceptor.

Intercept Flight Test–9 (IFT–9) took place on October 14, 2002, resulting in a successful intercept. The target suite consisted of a mock warhead and a number of decoys launched from the Vandenberg Air Force Base, California, towards the Reagan Test Site. IFT–9 (largely a replay of IFT–8) was designed to increase confidence in the GMD capability to execute hit-to-kill intercepts. Overall, the test execution was nominal although the EKV experienced the track gate anomaly previously observed in IFT–7 and IFT–8. The software changes incorporated in IFT–9 to mitigate this problem were not successful. Further changes were made prior to IFT–10.

In December 2002, GMD attempted a night intercept in IFT–10. In this test, the EKV failed to separate from the surrogate boost vehicle and therefore the ability to intercept the target could not be tested. The failure to separate was attributed to a quality control failure combined with shock and vibration loads on the EKV. As a result, corrective measures taken to fix the track gate anomaly found in previous tests could not be used.

GMD suspended intercept flight testing after the EKV failed to separate from the surrogate booster in IFT–10. IFT–11 and IFT–12 that employed the problematic surrogate booster were eliminated from the schedule. This decision was reasonable given the increased risk of surrogate boost vehicle failure, the resources that would have to be diverted from tactical booster development to fix the problems, and the limited amount of additional information to be gained in IFT–11 and IFT–12 over that available from previous flight tests. It does, however, leave very limited time for demonstration of boost vehicle performance, integration of the boost vehicle to the new, upgraded EKV, and demonstration of integrated boost vehicle/interceptor performance. IFT–13A and IFT–13B remain in the schedule as non-intercept flight tests to confirm booster integration and performance. IFT–13C was added to the schedule and represents a significant exercise of the Test Bed infrastructure. It will be the first system-level flight test to use the Kodiak, Alaska, facility to launch a target missile. While it is not a planned intercept attempt, it will fully exercise the system and may result in an intercept. IFT–13C also addresses a long-standing concern over target presentation that has not yet been tested. IFT–14 and IFT–15 are the next official intercept attempts and are scheduled for May 2004 and July 2004, respectively.

The Orbital Sciences Corporation booster was successfully tested with a mock EKV on August 16, 2003. Shock and vibration environments were measured and compared to previous test levels. Preliminary analyses suggest that the new booster produces lower than expected vibrations at the EKV. Performance of the real EKV mated with the Orbital booster will be demonstrated in IFT–14 prior to IDO. Similar demonstration flights for the Lockheed Martin booster design are slipping due to technical difficulties and several explosions at the missile propellant mixing facility. Silos and related construction projects at Fort Greely, Alaska; Kodiak, Alaska; and Vandenberg Air Force Base, California, are proceeding on schedule. Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

To date, EKV discrimination and homing have been demonstrated against simple target complexes in a limited set of engagement conditions. Demonstrations of EKV performance are needed at higher closing velocities and against targets with signatures, countermeasures, and flight dynamics more closely matching the projected threat. In addition, system discrimination performance against target suites for which there is imperfect a

prior knowledge remains uncertain. GMD is developing a SBX radar mounted on a semi-submersible platform. The SBX radar, scheduled for incorporation into the GMD element in December 2005, is designed to be a more capable and flexible midcourse sensor for supporting GMD engagements. This radar will improve the operational realism of the flight test program by providing a moveable mid-course sensor.

A flight demonstration of the BMDS capability using Aegis SPY–1B data (particularly for defense of Hawaii) is planned for IFT–15 in FY04. A flight demonstration of COBRADANE is currently not planned, and its capability will need to be demonstrated by other means until an air-launched target is developed. IFT–14 and IFT–15, scheduled for FY04, are intended to provide demonstrations of integrated boost vehicle/EKV performance. Even with successful intercepts in both of these attempts, the small number of tests would limit confidence in the integrated interceptor performance.

Mrs. BOXER. Here we have a situation where you have an amendment that does not cut any money from this, that just says fly before you buy. I hope my colleagues will approve it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I know we are under a time agreement. I ask unanimous consent for a couple of minutes to report on what is happening with the bill so far. I was asked this morning to give a report on this. I would like to do that.

Mr. ALLARD. Would you repeat your request?

Mr. REID. I would like a couple of minutes to give the Senate a report on what we have done on the bill so far, the number of amendments and such.

Mr. ALLARD. On the Defense authorization bill? We have no objection.

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

Mr. REID. Mr. President, we have been on this bill 12 days counting today, but 4 of those days are our famous—or infamous, however you look at it—Mondays and Fridays. So actually we spent 8 days on this bill. When we dispose of this amendment, the Boxer amendment, we will have disposed of 79 amendments. During this period of time, counting the Boxer amendment, we will have had 12 roll-call votes.

For a Defense authorization bill, we have not spent an inordinate amount of time on it. We have not spent very much time at all. There have been very few quorum calls. The quorum calls we had this week have been most productive. We have been able to work out the problem dealing with the South Carolina situation, as the Presiding Officer knows. We were able to work out various other problems with the quorum calls we had. Even having had quorum calls, they were very short. So I think we have accomplished quite a bit in a very short period of time on this bill.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I would like to call on the Senator from Mississippi and yield him 3 minutes to comment on the Boxer amendment. I want to recognize, in a public way, that he is the one who carried the initial amendments on the missile defense system that said we move forward when technologically feasible and he has been a real leader in the defense of this country.

The PRESIDING OFFICER. The Senator is recognized.

Mr. COCHRAN. I thank the distinguished Senator from Colorado for yielding to me. I also thank him for his leadership on this issue in the Armed Services Committee. He has been a key proponent and a very persuasive supporter of the National Missile Defense Program and missile defense generally.

This amendment would undermine the ability of our Department of Defense to go forward in the deployment and protection of our country through the use of ballistic missile technology and capabilities. These capabilities have been developed in response to legislation that was approved by the Congress and signed by the Chief Executive to develop a missile defense capability that could defend the United States against missile attack.

We have made great progress since those initial authorizations were approved by the Congress. We are now in a position of actually deploying a system that is workable. The testimony of General Kadish before our Appropriations Committee and before the Armed Services Committee has clearly indicated the successful progress of this program to date. We should continue to support it and we should defeat this Boxer amendment.

Mr. ALLARD. Mr. President, I would like to know what time remains on the Boxer amendment.

The PRESIDING OFFICER. There is 6 minutes 50 seconds.

Mr. ALLARD. On our side. How about the other side?

The PRESIDING OFFICER. All time has expired, other than the 2 minutes preceding the vote.

Mr. ALLARD. Mr. President, I would like to yield myself 2 minutes. I would like to make a couple of summary comments.

First, technologically we are ready to move ahead. The various components of this missile defense system have been shown to be functional and scientifically can happen. What needs to be established is all the communications systems that run from California to Alaska to Colorado, to some of our space satellites, to some of our ships at sea, to the Hawaiian Islands, to the Kwajalein Islands, over thousands and thousands of miles, that they can communicate with one another.

There is only one way to do that. You have to put together a large test bed. This test bed happens to also be the same thing we would use to operationally defend ourselves. To not continue on a dual pathway does not make any sense at all. That is why it is so very important that we defeat this Boxer amendment.

Mr. Christie, who is the tester, is the one who has been following this. It has been stated time and time again that he is satisfied with the progress, the way we are moving forward. He is the expert. He says: You are doing a good job. Keep it up. I am satisfied. I am responsible and accountable for how this program has gone ahead. He has been before the committee and made that statement.

It is very important that we defeat this Boxer amendment. I ask my colleagues to join me.

I think the chairman has a concern or two he wants to raise. I yield the floor.

Mr. WARNER. Mr. President, I wish to advise Senators, Senator LEVIN and I have conferred. We have the next amendment following this vote to be provided by the Senator from Rhode Island, Mr. REED, No. 3354. I reserve the right to put on a second-degree amendment. As soon as we provide the second-degree amendment to the other side, it is my expectation, during the course of the deliberations, we will be able to work out a time agreement.

Mr. LEVIN. Hopefully, we can work out a time agreement after we see the second-degree amendment.

Mr. WARNER. That is correct. There is no restriction. Offer the amendment.

Mr. LEVIN. And the second-degree amendment is not available at this point?

Mr. WARNER. It momentarily will be available. I think we can yield back all time. I didn't know whether the Senator wanted another minute to speak to the amendment. Did she ask for it?

The PRESIDING OFFICER. The Senator from California is recognized for 1 minute.

Mrs. BOXER. I thank the Senator.

I think we have had a good debate. I am just saying to colleagues, these are the names of retired admirals and generals you all admire. They are saying we have to delay this deployment because we have no idea that this system works.

To my colleagues who said let's deploy it and then test it, the Pentagon in its own words has said they can't do it. It is not safe. Here it is. They say:

Due to safety considerations, no tests are currently planned to launch interceptors from the operational missile fields.

So the Pentagon has said very clearly—and good for them because it would be too dangerous—they are not going to operationally test from the missile fields. So what are we doing? We are investing $3.7 billion out of the $10 billion to move forward with a system that is untested.

For those people who say this is a devastating amendment, why do they support ''fly before you buy,'' which is the way we do things around here? This is a way to get around realistic testing. That doesn't make us any safer; it makes us weaker. It makes us vulnerable.

So I hope you will stand with these 49 generals and admirals and Senator

LEVIN and me and vote for the Boxer-Levin amendment.

The PRESIDING OFFICER. There is 1 minute remaining.

Mr. WARNER. I say to our colleagues, this issue was acted upon last year. Money was authorized and appropriated. The program is underway. The effect of this amendment is to cancel what the Congress did last year.

I yield the remainder of our time. I think a vote is now in order.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The clerk will call the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER (Mr. TALENT). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 124 Leg.]

YEAS—42

Akaka	Dorgan	Leahy
Baucus	Durbin	Levin
Biden	Edwards	Lincoln
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Breaux	Graham (FL)	Pryor
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carper	Inouye	Rockefeller
Conrad	Jeffords	Sarbanes
Corzine	Johnson	Schumer
Daschle	Kennedy	Snowe
Dayton	Kohl	Stabenow
Dodd	Lautenberg	Wyden

NAYS—57

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Brownback	Frist	Nickles
Bunning	Graham (SC)	Roberts
Burns	Grassley	Santorum
Campbell	Gregg	Sessions
Chafee	Hagel	Shelby
Chambliss	Hatch	Smith
Clinton	Hutchison	Specter
Cochran	Inhofe	Stevens
Coleman	Kyl	Sununu
Collins	Landrieu	Talent
Cornyn	Lieberman	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner

NOT VOTING—1

Kerry

The amendment (No. 3368) was rejected.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. ALLARD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we have advised the Senate that the Senator from Rhode Island, Mr. REED, will have an amendment.

Mr. President, if the Senator is ready to send his amendment to the desk, then I would like to send up a second-degree amendment, and we will proceed.

Mr. REED addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Virginia yield the floor?

Mr. WARNER. Yes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

AMENDMENT NO. 3354

Mr. REED. Mr. President, I call up amendment No. 3354.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED] proposes an amendment numbered 3354.

Mr. REED. 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 require baselines for and testing of block configurations of the Ballistic Missile Defense System)

On page 33, after line 25, insert the following:

SEC. 224. BASELINES AND OPERATIONAL TEST AND EVALUATION FOR BALLISTIC MISSILE DEFENSE SYSTEM.

(a) OPERATIONAL TESTS.—(1) The Director of the Missile Defense Agency shall prepare for and conduct, on an independent basis, operationally realistic tests of each block configuration of the Ballistic Missile Defense System being fielded.

(2) The tests shall be designed to permit the evaluation of each block configuration of the Ballistic Missile Defense System being fielded by the Director of Operational Test and Evaluation.

(3) The Director of the Missile Defense Agency shall carry out tests under paragraph (1) through an independent agent, assigned by the Director for such purpose, who shall plan and manage such tests.

(b) APPROVAL OF PLANS FOR TESTS.—The Secretary of Defense shall assign the Director of Operational Test and Evaluation the responsibility for approving each plan for tests developed under subsection (a).

(c) EVALUATION.—(1) The Director of Operational Test and Evaluation shall evaluate the results of each test conducted under subsection (a) as soon as practicable after the completion of such test.

(2) The Director shall submit to the Secretary of Defense and the congressional defense committees a report on the evaluation of each test conducted under subsection (a) upon completion of the evaluation of such test under paragraph (1).

(d) COST, SCHEDULE, AND PERFORMANCE BASELINES.—(1) The Director of the Missile Defense Agency shall establish cost, schedule, and performance baselines for each block configuration of the Ballistic Missile Defense System being fielded. The cost baseline for a block configuration shall include full life cycle costs for the block configuration.

(2) The Director shall include the baselines established under paragraph (1) in the first Selected Acquisition Report for the Ballistic Missile Defense System that is submitted to Congress under section 2432 of title 10, United States Code, after the establishment of such baselines.

(3) The Director shall also include in the Selected Acquisition Report submitted to Congress under paragraph (2) the significant assumptions used in determining the performance baseline under paragraph (1), including any assumptions regarding threat missile countermeasures and decoys.

(e) VARIATIONS AGAINST BASELINES.—In the event the cost, schedule, or performance of any block configuration of the Ballistic Missile Defense System varies significantly (as determined by the Director of the Ballistic Missile Defense Agency) from the applicable baseline established under subsection (d), the Director shall include such variation, and the reasons for such variation, in the Selected Acquisition Report submitted to Congress under section 2432 of title 10, United States Code.

(f) MODIFICATIONS OF BASELINES.—In the event the Director of the Missile Defense Agency elects to undertake any modification of a baseline established under subsection (d), the Director shall submit to the congressional defense committees a report setting forth the reasons for such modification.

The PRESIDING OFFICER. The Senator from Virginia.

AMENDMENT NO. 3453 TO AMENDMENT NO. 3354

Mr. WARNER. Mr. President, at this time I send an amendment to the desk in the second degree to the pending amendment.

The PRESIDING OFFICER. The clerk will report the second-degree amendment.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 3453 to amendment No. 3354.

The amendment is as follows:

(Purpose: To require the Secretary of Defense to prescribe and apply criteria for operationally realistic testing of fieldable prototypes developed under ballistic missile defense program)

In the matter proposed to be inserted, strike subsections (a) and (b) and insert the following:

(a) TESTING CRITERIA.—Not later than February 1, 2005, the Secretary of Defense, in consultation with the Director of Operational Test and Evaluation, shall prescribe appropriate criteria for operationally realistic testing of fieldable prototypes developed under the ballistic missile defense spiral development program. The Secretary shall submit a copy of the prescribed criteria to the congressional defense committees.

(b) USE OF CRITERIA.—(1) The Secretary of Defense shall ensure that, not later than October 1, 2005, a test of the ballistic missile defense system is conducted consistent with the criteria prescribed under subsection (a).

(2) The Secretary of Defense shall ensure that each block configuration of the ballistic missile defense system is tested consistent with the criteria prescribed under subsection (a).

(c) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to exempt any spiral development program of the Department of Defense, after completion of the spiral development, from the applicability of any provision of chapter 144 of title 10, United States Code, or section 139, 181, 2366, 2399, or 2400 of such title in accordance with the terms and conditions of such provision.

Mr. WARNER. Mr. President, we would be happy, on this side, to work out a time agreement as soon as the Senator from Rhode Island is able to indicate to us the amount of time he desires. We will quickly respond as to the amount of time we would desire.

Mr. REED. Mr. President, I think if I could have an hour on my side.

Mr. WARNER. I say to the Senator, an entire hour on your side?

Mr. REED. I would not attempt to simply fill the hour. I would yield back time if we have reached a point where we have sufficiently discussed it.

Mr. WARNER. Mr. President, I would request we have an hour on this side, with the expectation we will be able to yield time back.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia has the floor and makes a unanimous consent request.

Mr. WARNER. Mr. President, I am happy to yield to the Senator for purposes of a statement.

The PRESIDING OFFICER. Does the Senator from Michigan wish to be recognized?

Mr. LEVIN. I thank the Chair.

Mr. President, the suggestion of an hour on this side relative to the Reed amendment, would that include the proposed time for the second-degree amendment to be offered by Senator WARNER? Does the hour that you have estimated you would need include time for debate on the Warner second degree?

The next question is this: If the Warner second-degree amendment prevails, which is a substitute, then the question is, Would the hour that you are referring to, then—without seeing, knowing exactly what would be in the second-degree amendment that would be offered—cover the debate time for your second-degree amendment to the substitute?

Mr. REED. If I may respond, it would be appropriate if we took an hour debating both the Reed first degree and the Warner second degree. At the conclusion of a vote on the Warner second-degree amendment, then there would be no time agreement entered into. It would be my intention to offer——

Mr. LEVIN. If that substitute were adopted——

Mr. REID. Could I be recognized? Would anybody be insulted if I asked for a quorum call?

Mr. WARNER. No.

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

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

Mr. WARNER. Mr. President, we are moving along in a very cooperative spirit. We are going to ask for a time agreement on the Reed amendment and the Warner second-degree amendment as a package. They will be considered in the course of 2 hours, hopefully less. At the conclusion of the debate on these two amendments, we will then proceed to a record vote on the Warner amendment. In the event the Warner amendment prevails, then the Chair would recognize the Senator from Rhode Island for the purpose of a perfecting amendment, which he has a right to do under the rules, but in order to keep the sequence moving, I would like to advise the Senate that it would be done in that way. At this time, until we see the perfecting amendment, we cannot set a time agreement on that. But it would be my hope that we can move along expeditiously, first by crunching the 2 hours to less, moving to a vote, and then the perfecting amendment and concluding, hopefully, a brief colloquy, debate on that, and vote, if that becomes necessary. Have I correctly stated it?

Mr. REID. Mr. President, of course, there would be no amendments in order to either of the amendments, the one of Senator REED or your second degree.

Mr. WARNER. That is correct. But there would be in order an amendment to the perfecting amendment.

Mr. REID. I understand that. I have no objection to that. We have no objection to that.

The PRESIDING OFFICER. So the Chair gets it straight, if the Senator from Virginia could clarify, this is a request for a 2-hour time agreement on the second-degree amendment?

Mr. WARNER. Let me try that again. We have before the Senate at this time the underlying Reed amendment. We have the Warner amendment in the second degree. We ask for an hour on each. At the conclusion of that period of time, which I hope will be less than 2 hours, the Senate would proceed to a record vote on the Warner amendment. I am asking for the yeas and nays incorporated in this. After that is taken, the Chair would then recognize the Senator from Rhode Island for the purpose presumably of offering a perfecting amendment.

Mr. REID. Mr. President, however, if the Warner amendment does not pass, then we would vote on the underlying Reed amendment.

Mr. WARNER. The Senator is correct.

Mr. LEVIN. Immediately.

Mr. WARNER. Immediately.

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

The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that following the votes or vote, whatever the case may be, there will be probably a number of judges we might be called to vote on. My point is at around 3 or thereabouts, there could be a series of as many as four or five votes.

Mr. WARNER. That is a leadership request, I so advise the Democratic whip.

Mr. REID. It is not a unanimous consent request.

Mr. WARNER. It is just an advisory for Senators. But I understand that my leader will be making that request.

The PRESIDING OFFICER. The Senator from Virginia asked for the yeas and nays on the second-degree amendment; is that correct?

Mr. WARNER. That is correct.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. WARNER. Are the yeas and nays ordered on the underlying amendment of the Senator from Rhode Island? If not, I so ask.

The PRESIDING OFFICER. The Chair informs the Senator, it is not in order to request the yeas and nays on the first-degree amendment at this time without consent.

Does the Senator from Virginia yield the floor?

Mr. WARNER. I yield the floor.

The PRESIDING OFFICER. Who yields time under the unanimous consent agreement?

Mr. REED. Mr. President, I yield myself such time as I may consume.

I rise to offer an amendment which would implement the recommendations of the General Accounting Office for missile defense testing and base alignment. Last month the GAO issued a report on missile defense entitled ''Missile Defense Actions Are Needed To Enhance Testing And Accountability.'' In its report, the GAO makes some commonsense recommendations to improve the testing of missile defense and to increase accountability of Congress for missile defense programming.

The principal recommendation is that at some point there is developed and executed a plan for operational testing. That is a very critical point. As the GAO pointed out, they would recommend to the Missile Defense Agency that they prepare for and conduct, on an independent basis, not within the purview of the Missile Defense Agency but on an independent basis, operationally realistic tests of those missile defenses. This is the way we develop and deploy major weapons systems in the United States. We do initial testing. We prove out the technologies. But before we field them, we go ahead and do a test on their operational capacities. That is the basic approach. It is a good approach, a sound approach. The GAO recommendations would make the missile defense programs consistent in this regard with all other programs.

The second aspect of the proposed amendment would be to require the Missile Defense Agency to require course baselines so that we know how much we are spending with respect to missile defense. We know what the course goals are. We know when they are exceeded or when they are constrained by good planning and good management. These are two fundamental aspects of any sound military procurement program.

Missile defense is one of the most complicated programs we will ever attempt to field in the history of this country.

I believe it is appropriate at this juncture to take a look at this missile defense system as it exists today. I think you will hopefully concur with

me that we do need some realistic operational testing.

First, this is the basic architecture of the system. The system we are deploying in Alaska is designed principally, if not exclusively, to counter one potential threat—the threat of a missile coming from North Korea. Now, the system is composed of several major elements. I will review them.

First is the DSP early warning satellite. This is a defense system that has been flying since the 1970s. It is well proven, but essentially all this system does is spot the lift-off of an enemy missile, or potential adversary missile, coming out of North Korea or anyplace else. It was put up in the 1970s as part of the cold war to identify a Russian missile or Chinese missile being ignited. That is a rather established technology. It provides just the cue that an enemy missile has been launched.

The next part of the proposed system is the Aegis ships. They have radar, but it was designed not to track ICBMs. Rather, it is to track cruise missiles and close-in aircraft. They are being essentially pushed into the role of trying to acquire the target after it lifts off and track it as far as it can. It really cannot track that far because of built-in limitations. Again, this version was not designed to track long-range ICBMs. Their radar doesn't seem to be powerful enough to protect and track accurately to places such as Hawaii. Also, these Aegis ships have never guided an interceptor to its target in a single intercept test. They have done preliminary activities but have not guided an interceptor to a target in a test. The operational tracking software of Aegis has never been tested in an integrated test. So you have one element that is still not quite up to the speed we would like it to be in terms of the Aegis system.

The next part is the Cobra Dane radar system in Alaska. Cobra Dane is another 1970s version. It has been updated, but it has no real discrimination capability in terms of determining what a missile warhead would be or what a decoy would be. It is incapable of tracking a North Korean missile bound for Hawaii. So, again, we have a problem in terms of providing coverage. It has never been used in an intercept test, and there are no plans to do so because we do not have an ICBM target that can fly in Cobra Dane's field of view. Then we were going to have to replace Cobra Dane and x-band radar on Shemya Island. We don't have the x-based, land-based system. We are working on a sea-based x-band radar, not primarily for operational use but for test use, to be ready in fiscal year 2005.

The final one is the interceptor with the kill vehicle on top. Both the interceptor and kill vehicle are brand-new, and neither have been tested together in an intercept test. The new version of the kill vehicle hasn't been flight tested at all. It is coming off of production. There are new systems within the kill vehicle. It is an improvement, we hope, over the previous prototypes but has not yet been flight tested. Problems with the kill vehicle are seen as delaying the next scheduled test. That is the IFT–13c. That test is being touted by the Missile Defense Agency as a fly-by. So the next test—the one before this system is declared deployable and deployed—is not designed to knock the missile down but to simply fly by it. If it does knock it down, I am sure the Missile Defense Agency will take great pleasure in it, with great claim. By declaring it just a fly-by, they will have wiggle room for saying the test succeeded and saying we didn't intend to knock it down either. Ask yourself, if we are deploying a missile system in a most recent test to fly by the missile, is that going to protect the U.S.? I don't think that is the case.

My amendment would require that we do operational testing, which is something done on every major system. It is under the purview of Dr. Tom Christie in the Office of Test and Evaluation at the Department of Defense. He is charged by Congress with independently evaluating these systems on behalf of the Defense Department.

Some argue that we need to go ahead and deploy this system right away, that we have done it before, and that is fine. It turns out that we have deployed systems before in emergencies, such as the Predator in Kosovo in 1999. That system had already on the books operational testing plans. Indeed, when this emergency deployment was completed, that operational test was carried out the following year, 2000. This system is a rudimentary system with huge gaps in technology, which has never been fully tested on an integrated basis. None of these parts have been put together in one intercept test yet. This system has no plans for operational testing, which denies the obvious point of the custom and practice and the law in many cases.

The JSTAR surveillance system is another one which individuals will say was put into the fray before it was operationally tested. That is also true. In 1991, JSTARs were deployed in Desert Storm. Following the deployment, even though the Senate Armed Services Committee was so impressed that they wanted to deploy it without testing, the Air Force insisted upon operational testing. They found defects because of the testing. They completed the operational testing in 1995, and this testing revealed problems with respect to the inability to operate at the right altitude and inadequate mission reliability. These were corrected, so the JSTAR system is much more reliable today than it would have been without operational testing.

Once again, this system is untested in a systematic way, and it is not even scheduled for operational testing. The point of my amendment is not to delay or defer this deployment; it is simply to say at some point in time—some point when the Missile Defense Agency feels they are ready for operational testing—we should at least have operational testing. I believe that is absolutely critical.

There are examples now, too, of the tests that have been conducted. These suggest that the tests are not up to the level of operational testing. For example, for the tests conducted so far on this system, all of the targets have had beacons on them, telling the National Missile Defense Agency and the shooters, if you will, the exact location of the missiles coming in. I don't think anybody believes that an adversary would put a beacon on the missile to warn us. Those are the types of rudimentary tests taking place today. They are important tests but not operational tests. Indeed, I asked the Director of the MDA in March when we would stop using beacons on our target vehicles. He simply said he didn't know. That is not exactly the kind of realistic testing the General Accounting Office called for.

I mentioned Cobra Dane, which is the radar that is a critical piece. It will track this target for a long way, and it would hopefully be able to discriminate between decoys and the actual warheads. But we have, as I mentioned before, no plans to test this radar because we lack an appropriate testing vehicle, ICBM.

The other point, which is very important—and it goes to the heart of realistic testing—is that every intelligence analyst who looks at this problem has suggested that if a nation is capable of putting a nuclear device on a long-range missile, and particularly if they are so motivated to use it against us, they are likely to be just as capable of having sophisticated decoys or even rudimentary decoys on the missile.

We have never conducted tests against very sophisticated or even realistic decoys. As a result, we are prepared to deploy a system that has not been adequately tested. But more importantly, there are no plans to adequately test it.

My amendment would simply ask the Department of Defense, through the normal procedures, through the Office of Test and Evaluation, to prepare such plans and conduct those tests when appropriate.

These are just some of the examples I have given with respect to this particular system. There is a whole laundry list of what should be done to ensure that this system, when deployed, is appropriately ready for the challenge. This chart shows yes and no in terms of obvious parameters for a system that is about to be fielded. Most of the parameters have not been accomplished. In fact, the vast majority have not been accomplished.

There is no full system operational test. There are no tests, to my mind, that have integrated every part of this system, from Cobra Dane, the Aegis warships, to the interceptor with the new-kill vehicle with the new booster

attached and flying out and engaging a target.

There is no full system operational test scheduled. We are not talking about a situation where we have to wait a few months or a year and there is an operational test planned for. By the way, these operational tests are not something that can be done on 2 or 3 days' notice. These takes months and months to prepare and plan and are extremely costly.

I do not really know, because it is hard to figure out the budget for MDA, whether they have put aside money for operational testing. It is hard to tell. We are not even scheduling these tests.

It has not been tested in bad weather. It has not been tested at night. Experts in the field indicate that is a very important aspect of ensuring the system will work.

Again, I do not think there is any American who does not want to see a workable system in place, but we have to raise questions when we have not done the testing to assure the American public that this system will work and will work as it is designed to work.

Tested three-stage booster and intercept test: This new package of the booster and kill vehicle has not been tested yet.

Tested without interceptor knowing in advance warheads infrared and radar signature, I mentioned that before. All of the data of the enemy warhead is essentially given to the forces that are trying to engage it. That is not a realistic test.

It has not been tested against a tumbling warhead, when the warhead detaches from the boost vehicle and spinning. That has not been tested.

Tested against realistic decoys and countermeasures: Realistic decoys would be something that looked like a warhead; just one other body that looks like a warhead. We have not done that. The decoys that have been used to date have been large spheres that look completely unlike the warhead.

It has not been tested against complex decoys. These are much more sophisticated decoys. We certainly have not done that. We have not reached the realistic level, let alone the complex level.

It has not been tested against more than one warhead on a missile. Again, if there is a nation out there that is capable of producing a nuclear warhead and putting it on a missile, they are probably capable—it may take a little longer—of producing multiple warheads and putting them on a missile.

It has not been tested against more than one incoming missile. If North Korea is going to attack us, why would they do something that would spell doom, first because of our overwhelming power to deter them, but second, what makes us think they will fire just one missile at us? I would assume they would fire multiple missiles, and we have not tested against that.

Again I mention this, we have not tested this without a GPS system, a beacon on the adversary missile and warhead.

Tests have been conducted by the contractors and managers. That is the first ''yes'' accomplished.

Tests overseen by Pentagon's independent test office: No, and that is the core of our debate today, because looking at the chairman's amendment to my amendment, what they are essentially saying is: Listen, we do not want the independent tester to look at this; we want the Secretary of Defense to prescribe this. That is not the way to do this because it just invites all of the problems with individuals testing themselves.

This is not as much a technical problem as a problem of human nature. You tend to pass every test you give yourself, particularly if it is important you pass the test. That is why we set up, in the eighties, this Office of Test and Evaluation with an individual who is appointed by the President, not the Secretary of Defense, to conduct these tests.

SBIRS high early warning satellites: This will be the follow-on to the DSP satellites. SBIRS is not yet flying. The original plan was to have SBIRS in this system instead of the old DSP system.

SSTS space tracking and surveillance system: This is another system not in place.

Cobra Dane radar upgraded: Yes, it has been upgraded, but not the x-band radar contemplated for this system. It does not have the power of the x-band. Even with this upgrade, it is still not capable of the discrimination that you need to separate decoys from the warheads.

The ground-based x-band radar I mentioned is not deployed. It has been essentially canceled.

Sea-based x-band radar is being developed. It is not yet deployed.

Question: Will it protect Hawaii? It is a question because of the coverage of the Cobra Dane, because the fact the Aegis system is providing an important part of the tracking system.

Fly before you buy: We are certainly violating that. We are buying the system without flying. That is the fundamental problem we are facing today. Yet we are going to declare the system operational. We can argue about that, and we have. Senator BOXER had an amendment which talked to that specifically.

My amendment is not about deploying the system. My amendment is about conducting operational tests at some juncture. I believe this operational testing scheme has hit a nerve because, as I saw the chairman's substitute to my amendment, he basically said yes, we will do operational—in fact, he specifies a date. I believe it is October of 2005. That is pretty ambitious since we are not planning for any tests yet. It is also pretty ambitious since we do not have a suitable missile target vehicle that could fly from the vicinity of North Korea and go through the space in which Cobra Dane operates.

As a result, in a very short time, we would have to build a target missile, we would have to plan for the test, and we would have to integrate all these other pieces. Yet that is what the amendment offered by my colleague from Virginia would say.

The problem with the amendment is that it takes out of the loop the one person who is there to guarantee the independence, the rigor, and the accuracy of this test, and that is the Director of the Office of Test and Evaluation at the Pentagon. That is something I think is critical.

Again, given this list of items to be accomplished, it seems stunning to me that we are actually debating about whether we should just authorize and require at some point—and at this point, after deployment—operational testing, or at least to plan it. But that is the substance of the debate, and just as importantly, not just the operational testing, but the fact it is going to be conducted by an independent agency within the Pentagon, not by the people who are graded by whether they pass or fail. Again, not high tech but human nature. I think more people are comfortable with having someone objectively design the test and supervise the test than having the people who have everything to lose and everything to gain do that.

There is one other aspect of my amendment I want to mention, which is important, and that is the notion of baselines. The GAO came back to us and said: No one seems to know how much the system is costing because there are no baselines.

They pointed out, for example, that there was a $1 billion overrun of the cost goal of missile defense to be fielded starting in September, but the Department of Defense never explained to Congress this overrun. Instead, they simply changed the cost goal.

How can we evaluate this system? How can we make difficult choices between investing in missile defense and increasing the end strength of our Army, if MDA suddenly says, well, our objective was X, but we found it cost us a billion dollars more, so now it is X plus one billion? We have to have a baseline. This is all designed to have appropriate control and appropriate notification to the Congress about the status of this very complex system.

Additionally, this cost goal change was surprising because the GAO also noted that originally the system in Alaska to be deployed in September was to have 10 interceptors, and now it is 5. So not only did they change the cost goal by increasing the amount of money they are spending, but they lowered the number of interceptors and also, I think by fair inference, the capability of the system. High cost, lower capability, but yet it was not communicated to us.

My amendment would ask them to prepare the baseline, to communicate to us when those baselines are exceeded. If we do not have that, then we will

not have the ability to do our job, which is to supervise appropriately and oversee the activities of the Missile Defense Agency in the development of this very complicated system.

There has been a great debate about whether we should deploy this system. I found it interesting to note that President Reagan was approached years ago by some Congressmen and Congresswomen who wanted to deploy then the existing system. This was in August of 1986. According to the Frances Fitzgerald's book about President Reagan ''Way Out There in the Blue,'' here is what he told those Congressmen:

> I know there are those who are getting a bit antsy [to deploy a missile defense] but to deploy systems of limited effectiveness now would divert limited funds and delay our main research. It could well erode support for the program before it's permitted to reach its potential.

Once again, we are not debating today the deployment in this amendment. We have had that debate previously with Senator BOXER. We are not debating deployment. We are simply debating let us plan to do the operational testing. Let us get that operational testing done at some point because otherwise we are literally getting a system that is untried. No one wants the first time this system is fully operationally tested to be in the deplorable and horrific situation of a missile heading toward us.

So I would hope that we could, in fact, adopt the Reed amendment, have operational testing planned for it, have baselines established to be able to monitor this system as we should and be able, I hope, to assure the American public that when we say it is in service, it will work. There is a difference between telling them it works and proving it in operational and realistic testing. I hope we can do that.

I reserve the remainder of my time in response to my colleagues.

The PRESIDING OFFICER. The Senator yields the floor and reserves the remainder of his time.

Who yields time?

The Senator from Colorado is recognized.

Mr. ALLARD. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. ALLARD. Mr. President, I rise in opposition to the Reed amendment that was before us prior to the amendment from Senator WARNER, and I want to talk about that briefly. Then I want to talk about the second-degree amendment by Senator WARNER.

With respect to the Reed amendment, from my standpoint and the standpoint of the Missile Defense Agency and the Pentagon's office of Test and Evaluation and Formal Operation, tests at this juncture simply would not be helpful.

According to a letter I received on May 17, 2004—and I think this is the most current position—the letter from the Pentagon's Director of Operational Test and Evaluation, Mr. Tom Christie, in response to several questions I asked him, Mr. Christie writes—he is the chief tester we referred to, and he is responsible for overseeing much of the testing that goes on at the Department of Defense and obviously has a deep interest in what is happening as far as accountability in the missile defense system.

Mr. Christie writes, and this is important:

> The Ground-based Midcourse Defense element is currently at a maturity level that requires continued developmental testing with oversight and assistance from operational test personnel.

I would add at this point that the Missile Defense Agency is currently stressing the system is involved in every developmental test to ensure that they are as realistic as possible.

Mr. Christie continues in his letter:

> Conducting realistic operational testing in the near-term for the GMD element would be premature and not beneficial to the program.

I ask unanimous consent that his letter of May 17, 2004, be printed in the RECORD.

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

OFFICE OF THE SECRETARY OF DEFENSE,
Washington, DC, May 17, 2004.

Hon. WAYNE ALLARD,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ALLARD: Thank you for your May 11, 2004, letter concerning my role in the Ballistic Missile Defense System (BMDS).

The Missile Defense Agency (MDA) is building a BMDS test bed that is essential to support realistic testing, and is absolutely essential for conducting adequate operational testing in the future. The test bed is also key to developing operational concepts, techniques, and procedures, while allowing my office to exploit and characterize its inherent defensive capability.

The Ground-based Midcourse Defense (GMD) element is currently at a maturity level that requires continued developmental testing with oversight and assistance from operational test personnel. Conducting realistic operational testing in the near-term for the GMD element would be premature and not beneficial to the program.

My office has unprecedented access to GMD, and I am satisfied with the cooperation between the program office and the test community. I will continue to advise the Secretary of Defense and the Director, MDA, on the BMDS test program. I will also provide my characterization of system capabilities, and my assessment of test program adequacy annually, as required by Congress.

Sincerely,

THOMAS P. CHRISTIE,
Director.

Mr. ALLARD. In testimony before the Senate Armed Services Committee, Mr. Christie expressed his support for the approach the Missile Defense Agency is taking to incorporate operational realism in the developmental test and is conducting, in his words, continuous operational assessments of the ballistic missile defense system.

We must consider that missile defense is a capabilities-based spiral development evolutionary acquisition program—this is a mouthful—and under this approach the missile defense programs are designed to focus on developing capabilities to meet a range of possible threats. These programs are developed incrementally in blocks with the recognition that full capability would not be reached in the first block.

Missile defense does not have a final architecture that is defined in the first block but will continue to evolve over time. Therefore, testing of the system should occur as we continue to develop it.

We should also consider rethinking how we do formal tests and evaluation. Formal operational testing carries with it certain requirements. There can be no developmental goals because of that. Contractors cannot be involved.

The Director of Operational Test and Evaluation must approve the operational test plans. Even the current Director of Operational Test and Evaluation recognizes the need to adopt a new acquisition paradigm for tests and evaluation.

Here is what Mr. Christie said about that in his speech just 2 months ago:

> The concept of milestone driven operational test and evaluation appears to be becoming a process of the past. Either we change our way of doing business, adapt to the new acquisition paradigms and the realities of the war on terrorism, or we will find ourselves becoming irrelevant with dire consequences for our operational forces. . . . Users need up to the minute, continuous test and evaluation to keep them informed of system capabilities and limitations. Even after fielding, the acquisition community needs continuous evaluation to feed spiral development and other evolutionary acquisition concepts.

I ask unanimous consent that a copy of Mr. Christie's speech be printed in the RECORD.

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

TEST AND EVALUATION IN THE ''NEW WORLD OF 2004''—TUESDAY, MARCH 2

(By the Honorable Thomas Christie)

Let me express my thanks to Gen. Farrell and the leadership of NDIA for, once again, affording me the opportunity to discuss with you some of my views and concerns with T&E. I have had the opportunity to do this for the last two years, and recall that, when I spoke in Savannah [March 2002], I warned you that I might sound like a ''stick-in-the-mud'' or some sort of Cassandra because I couldn't help but say that I had seen and heard all this acquisition reform stuff before. I'm not sure my remarks here this morning will paint a much different picture than I presented in my talk in Savannah, where I contended that the problems we face as operational testers may have to take different forms than previously, but remain formidable. Recall that the Cassandra I referred to was a princess of Troy who could foresee the future—but the penalty for her gift was that the Gods made it so that no one would believe her. If you don't believe—I will understand.

The theme for this Conference is ''Operational Test and Evaluation: Twenty Years and Counting: Doing OT&E Better After Twenty Years of Practice.'' That title seems

to imply two things: that we are doing OT&E better after twenty years and that we have been doing OT&E only in the last twenty years. Our conference chairman, Jim O'Bryon has assembled many of the historic—I won't say ancient—personalities in the field. I challenge each of them to demonstrate that we are doing OT&E better after twenty years of so-called practice. I would offer my observation—or at least concern—that program offices and developers appear at times to be learning faster how to avoid testing then we are learning to do it better. This conference should consider that.

I think Jim may have confused the ''Practice makes Perfect'' adage with the professional use of the word practice. Doctors have a practice; and I always worry about that when I go to them. I don't want them to practice on ME. For a variety of reasons, Program Managers don't want T&E to be practiced on them either. I know Walt Hollis used to think that they taught ''Test Avoidance 101'' to program managers at the Defense Systems Management College.

This morning, I thought it would be appropriate for us to spend some time thinking about the history of OT&E in preparation for the insight to be offered by the elder statesmen that you will hear from over the next few days: first, the early reform efforts that set the stage for the creation of DOT&E; then, a little bit of history of the office itself, and I am sure that we will get more of that during the conference because all the living DOT&Es will be here; then, finally, we should discuss some of the challenges that the fast changing acquisition process and accompanying practices are posing.

EARLY REFORM EFFORTS

While I know that the theme of this conference is about the twentieth anniversary of the law on OT&E, for me, OT&E's relevance to OSD goes back, not twenty years, but well over thirty years. The 1970 Blue Ribbon Defense Panel, also known as the Fitzhugh Commission, addressed a whole host of defense management issues, to include ''Defense acquisition policies and practices, particularly as they relate to costs, time and quality.''

This Commission found the acquisition strategies in being then to be ''highly inflexible . . . and also based on the false premise that technological difficulties can be foreseen prior to the detailed engineering effort on specific hardware.''

With respect to OT&E, the Blue Ribbon Presidential Commission made several cogent observations. Let me, once again, recall for you four of them, because they relate to early involvement by operational testers, joint test capability, and T&E funding—all of which are coming around again as important issues:

It has been customary to think of OT&E in terms of physical testing. While operational testing is a very important activity . . . it is emphasized that the goal is operational evaluation and that physical testing is only one means of attaining that goal. This is an important point, since it is often argued that operational testing must await production of an adequate number of operationally-configured systems; and, by this time, it is too late to use the information gathered to help decide whether to procure the new system or even influence in any significance way the nature of the system procured.

If OT&E, as a total process, is to be effective, it must extend over the entire life cycle of a system, from initial requirements to extending its life by adaptation to new uses. It must use analytical studies, operations research, systems analysis, component testing, testing of other systems, and eventually testing of the system itself.

There is no effective method for conducting OT&E that cuts across Service lines although, in most actual combat environments, the U.S. must conduct combined operations.

Because funds earmarked for OT&E do not have separate status in the budget, or in program elements, they are often vulnerable to diversion to other purposes.

DOT&E HISTORY

Some ten or more years after the recommendations of the Fitzhugh Commission, the Congress perceived a lack of responsiveness on the part of the Office of the Secretary of Defense with respect to the call for an independent entity overseeing and reporting on OT&E. Congress then legislated the creation of the D,OT&E in 1983. As many of us recall, the Congressional Military Reform Caucus of the 1980s played the key role in this initiative. Among the players in that reform caucus and that legislation were names you would still recognize: Dave Pryor, Bill Roth, Nancy Kassenbaum, Denny Smith, Dick Cheney, Newt Gingrich, . . . They pushed through legislation that created the DOT&E over the adamant objections of the Pentagon, particularly from the acquisition office at that time. Over the past twenty years, these reformers and their successors have protected the office and the independence of OT&E from continued pressures to eliminate or downgrade its function and to vitiate the independence and influence of the OT&E community throughout the Department.

To my three predecessors as DOT&Es, we testers as well as the men and women in our combat forces owe a great debt of gratitude for their courageous efforts in protecting and nourishing the independence and relevance of OT&E. Over the years, each in some way stood up when it counted and made significant contributions to strengthened testing in the Department.

It took over a year and a half after the landmark legislation of 1983 to actually get the DOT&E office up and running and to bring the first Director—Jack Krings—onboard.

Jack did a masterful job of putting the office together and on its feet. He took the initiative—against the grain in most cases—to initiate many of the processes and activities that we take for granted now: the notion of Early Operational Assessments; responsive reports on systems to the decision-makers in the building and on the Hill; the Central T&E Investment Program; and DOT&E oversight of the Automated Information Systems.

Cliff Duncan, who headed the office during the first President Bush's administration, expanded on many of Jack's initiatives, pushed earlier involvement by OTers and enhanced the evaluation capabilities of the organization with particular focus on Independent Evaluations by DOT&E.

In the 1990s, when the budgets for testing and the infrastructure were being slashed by the Services, there was not a greater champion for testing than Phil Coyle. And I believe his vision for ''testing as learning'' and ''making it all count'' will continue to guide DOT&E as it adapts to new acquisition strategies.

Over the years, we've developed a ritual here at the NDIA Conference. That is, every year we give Phil Coyle a copy of the Annual Report. We won't disappoint him this year. Here is your very own copy. All the rest of you will be able to see what is in it early tomorrow, when it appears on Phil's web site.

One thing that Phil tried very hard to promote while he was the DOT&E was the proper use of models and situations. It fit in well with the Blue Ribbon Panel comment: that the goal is operational evaluation and that physical testing is only one means of attaining that goal. He had one of the most favorable environments in which to promote modeling and simulation that will be around for many administrations: the use of modeling and simulation in T&E became one of the ''Bill Perry's Themes.'' But, in the end, despite Phil's dedicated efforts, I contend that modeling and simulation in support of T&E has been a mixed bag, at best.

MY LEGACY: EARLY INVOLVEMENT, NO SURPRISES AND THE WARFIGHTER AS THE CUSTOMER

As I walked through this short history, you may have wondered what my hopes and desires for the office are. Making early involvement pay off, cutting down on surprises, better serving the operator—these are among my hopes.

Of course, early involvement is not new to DOT&E. Jack Krings did the first early operational assessment, and Phil Coyle worked hard to great effect to make it the normal way of doing business. There is tremendous power that comes from having operational testers involved early. Some of that power is technical, and some of it comes from the added credibility of having an independent tester looking at the system from the outset.

Obviously, if operational testers, to include my office, are involved in programs from the outset—reviewing requirements or desired capabilities; developing and assessing test plans, to include development testing; participating in critical design reviews; monitoring closely DT along with the deficiencies and corrections that arise from it—all of these efforts help to preclude the big surprises at the last stage of programs that operational testers are blamed for.

THE WARFIGHTER IS THE CUSTOMER

Another direction that I have emphasized is a refocus on who our customer really is. The operational test community, to include DOT&E, should consider the prime customer for its efforts to be the user—the men and women in the trenches, on-board the ships, flying our fighter/attack aircraft, maintaining our complex systems, etc., etc. We are in an era where we are rushing to field new equipment to the warfighters in the Global War on Terrorism. We need to be timely and we need to tell it like it is in informing them of the capabilities and limitations of the new system they are being asked to employ in the field.

In that context, I see a critical need to expand our contacts with operational users across-the-board and to cultivate them as principal recipients of our assessments. Right or wrong, the concept of milestone-driven OT&E appears to be becoming a process of the past. Either we change our way of doing business, adapt to the new acquisition paradigms and the realities of the war on terrorism, or we will find ourselves becoming irrelevant with dire consequences for our operational forces. When so many of our systems go to war before IOT&E and before full rate production, users need up-to-the-minute, continuous T&E to keep them informed of system capabilities and limitations. Even after fielding, the acquisition community needs continuous evaluation to feed spiral development and other evolutionary acquisition concepts.

MISSION FOCUS/JOINT TESTING

Also important, I would like to continue the evolving improvements to the OT&E process we have seen over the years: early involvement—testable operational requirements; backing away from the ''pass/fail'' mentality; truly testing for learning; mission-oriented focus; more emphasis on evaluation. These are all very ''old-time,'' but

just as true now as in 1970. Developing and fielding joint force capabilities requires adequate, realistic test and evaluation in a joint operational context. To do this, the Department will need to provide new testing capabilities and institutionalize the evaluation of joint system effectiveness as part of new capabilities-based processes. DOT&E has been directed to develop a roadmap no later than May 2004 that addresses the changes necessary to ensure that test and evaluation is conducted in a joint environment to enhance fielding of needed joint capabilities. We are working with the Service and Defense Agency test communities to satisfy this direction.

ACQUISITION SYSTEM COMMENTS

You all know that the acquisition process changes much faster than we actually acquire anything. DoD would be much better off if we could produce systems as fast as we produce new Acquisition Regulations. So a major acquisition program during its development passes through, not just milestones that used to be called 1,2,3 and are now called A, B, C, but perhaps even several whole acquisition processes. Programs, such as the V–22 Osprey and the F–22 Raptor, have seen an acquisition system that has been called Need-Based, then one called Simulation-Based, then one called (in the Air Force) Reality-Based, and now one called Capability-Based. These changes are not at the root of the problems encountered by these programs, but they certainly haven't helped. The situation may be getting worse rather than better: I believe I am the first DOT&E to sign two versions of the 5000.2 and I've been in the job less than three years.

TESTING TO SUPPORT NEW ACQUISITION STYLES

Among the major new initiatives, as I just mentioned, is Capabilities-Based Acquisition. The idea here, as I see it, is a continuous process of design, development and testing of a new concept or system until we demonstrate and validate a level of capability deemed worth considering for procurement and deployment. At that point, the decision-maker—hopefully, based on the informed advice of the potential user as well as the acquisition and testing communities—decides that the system has indeed demonstrated a needed warfighting capability and approves advancing it, perhaps into full-scale engineering development, or even directly into production and deployment to our operational forces. One of the features of this approach is that, up to this point, there are no hard and fast requirements, threat-based or otherwise, against which to measure the operational effectiveness or suitability of the system. I said two years ago, ''How all this will work in detail is still a little murky.'' We are still feeling our way. The Ballistic Missile Defense System is a major test bed, in fact, for the operational test community in working with this new acquisition paradigm. In this approach to acquisition, we testers won't be making judgments as to a system's effectiveness or suitability against some ORD-based bench-marks, but rather presenting our best judgment as to the capability demonstrated to-date in whatever environments—open-air testing, hardware-in-the-loop, or human-in-the-loop—the system has been subjected to. Interesting enough, we have some helpful guidance in a statement in the new 5000.1 DoD Directive: The Defense Acquisition System. The Directive has only three policies identified, the second of which I quote: ''The primary objective of Defense acquisition is to acquire quality products that satisfy user needs with measurable improvements to mission capability and operational support, in a timely manner, and at a fair and reasonable price.''

METHODOLOGY: MISSION FOCUS/COMPARISON TESTING

This directs me, as I see it, to define some marks on the wall with respect to capabilities that must be improved upon. It also keeps a strong mission-oriented focus. The ''measurable improvement'' phase in the new 5000.1 also highlights the need for comparative evaluations to show improvement. When formal requirements are missing, the current mission capability provides a natural point from which to measure any improvement. This may seem like a simple idea. And we have used it in a number of cases to assist the evaluation. For example, in one Army system, the requirements had specified a timeline for movement after shooting. Well, that requirement was not met in testing, but did that mean the system was ineffective? When we compared the actual time to that of the current system, we found that the new system provided significantly better survivability, even though it did not meet the ''Requirement.'' We used the comparison as part of the justification for calling the system effective.

Now the comparison test idea is often criticized—understandably so in many instances—as being expensive. We need to move to collect data on the capabilities of current systems and forces from ongoing exercises in order to avoid burdening new programs with the time and resources needed to test and collect such data to establish a baseline. But that will require establishing meaningful, accredited databases for operational capabilities of existing forces/equipment/TTPs. As Walt well knows, the information from tests—the databases—quickly become unusable. Archiving the databases should be part of a more robust T&E infrastructure.

TESTING TO SUPPORT ACQUISITION: T&E INFRASTRUCTURE/PEOPLE

While Spiral Development and Block Upgrades might be somewhat different animals, their treatment by the T&E community is somewhat similar. As an aside, we have quite a bit of experience with such approaches, particularly in testing software-intensive systems to include the myriad of automated information systems. Here, we plan our T&E strategies to assess incremental improvements in capabilities as opposed to using the full-up, or ultimate, system requirements spelled out in an operational requirements document as a benchmark. At the least, our assessments should consider whether each spiral or block provides a measurable improvement in military capability over its predecessor. What may be called spiral or block developments, may just be the block upgrades of the past. The T&E community has dealt with those for quite some time now. We should step back now and translate our lessons learned in this context into more concrete policies or strategies for the future.

Undoubtedly, the biggest financial commitment by a program in this context will be to field the first spiral or Block I. Therefore, at a minimum, Block I should clearly demonstrate that it does not represent a decrease in military capability over legacy systems. In addition, If new functionality is added in a spiral or block, we will probably need to carry out some level of regression testing. There will also have to be some assessment of the growth potential of this spiral or block.

The new functionality—if it is to be worth the disruption to the force by requiring retraining, additional training or new operational concepts—ought to represent a significant improvement that should be easy to confirm. We should accept it as our responsibility to confirm, not only that improvement, but that the system continues to be effective and suitable for combat after fielding. In spiral developments, we will need a formal feedback mechanism—spiral reporting, so to speak—to ensure that problems or deficiencies identified in T&E for each spiral are addressed and corrected by the developer. The information needs during spiral development seem to include at least: (1) what is the added capability of the new spiral, (2) what direction should the next spiral take to address the residual deficiencies of the incomplete system and (3) is the new spiral's increase in capability worth the disruption of introducing it into the force—the reconfiguration, the revised training or the changed tactics, techniques and procedures the new spiral might imply.

These considerations lead me to a need for some form of continuous testing, evaluation and reporting even after the system is deployed. Presumably, with increased use of spirals, there will be many more potential engineering change proposals. Hopefully, priorities accorded these proposals will be based on evaluation of data that shows what needs to be fixed depending on the most value to the war fighter.

We need to look to the future beyond the items addressed above—the increasing complexity of systems and tactics to be tested, the need for better trained people in the T&E business, the massive amounts of data becoming available and the concomitant requirement for more sophisticated evaluation techniques/approaches.

T&E INFRASTRUCTURE/TOOLS/MODELING AND SIMULATION

Let me address in some fashion the modeling and simulation disappointment which I inferred earlier. A success story in this context is the AIM–9X. But you have to understand the very special circumstances of that success. First and foremost, the contractor was willing to go down the path. The model was developed by the contractor and was open to the government. The DT program was used to develop and validate the model. The model was a design tool. The OT program also validated the model. The close collaboration of government and contractor was necessary where there are too many cases to cover in a live test program. In the Aim-9X, there were over 500 scenarios that were in the Operational Requirements Document.

However, the experience with M&S, overall, has been a major disappointment of promises undelivered. Why? First, there have been unreasonable expectations. Surely, some design problems can be modeled, but these tend to be small changes in well-understood designs. Defense systems do not tend to be of this ilk. When the system technology is cutting edge, its real limits are probably not well understood. You cannot replace testing with modeling in that case. As Jack Krings used to say, model to interpolate, not extrapolate.

Second is the money problem. Many program managers would like to finance the development of models with money from testing—trade off testing for modeling. That timing is off—modeling, to be successful, has to start early; using OT money is too late. The trade is not what ought to be the goal. Defense systems encounter a lot of problems in development—a fact that the OT community is painfully aware of because so many of those problems appear in IOT&E. To overcome these, in the best case, takes additional time and money. The role of modeling should be as something extra that can be done to help the success of the program—not some trade off with testing.

T&E INFRASTRUCTURE/RESOURCES/T&E CYCLE TIME

Unfortunately, I am concerned that our T&E infrastructure is not in the best of

shape needed to meet the challenges of the future. Past failures of the acquisition process, with all the program slips, have tended to ease the burden faced by the test ranges. Lord knows what would happen if all the programs that claimed to be ready for testing in 2004 actually showed up for testing. If the latest acquisition initiatives deliver what they hope for, then a greater fraction of programs should be ready for testing on or near their schedules. In this respect, I fear the T&E community might not be prepared for success in acquisition reform. A capable test infrastructure to include appropriate targets, instrumentation, etc., will have to be available at our test ranges and facilities.

So, what's the bottom line? First and foremost, we have a lot to be proud of over the past several years in our demonstrated flexibility and responsiveness to an ever-changing acquisition landscape. Our record of early involvement and the fruits of that involvement are also praiseworthy. We have not choice but to continue and even expand our involvement earlier and continuously throughout the life cycle of systems. But, I am concerned with the increasing demands on our resources necessary to make those involvements continue to pay off.

We need to do more in cultivating and serving the users, the operational forces, as prime customers for our products. The Joint Test and Evaluation Capability should play a big role here. Warfighters need to know the capabilities and limitations of the new systems they are deploying, based on our best estimates of what the testing to-date has demonstrated.

The Joint Test and Evaluation Capability will probably borrow a lot from the Joint Training Capability. One key that I believe will connect them is the careful enumeration of the military tasks that is catalogued in the Universal Joint Task List. The tasks, standards, and conditions there can be a basis for comparison of current and new capabilities. It ought to be an important item in the new ''Requirements Generation'' process we will hear about later that is called JCIDS—the Joint Capabilities Integration and Development System.

While acquisition reform has aimed at making substantial reductions in cycle-time, by at least a half in most cases, we in the testing community should be looking at ways of cutting testing turn-around times in half.

I reject the claims of the many critics of the testing process that overall OT&E costs and schedules are excessive—in fact, they're a very small part of system costs (recent Rand study); the costs of skipping tests, of avoiding adequate tests, of skimping on either DT or OT can be huge (as well as cause loss of lives). We started the RAH–66 Comanche, V–22 Osprey and F–22 Raptor programs in the early 1980s. After roughly $7 billion and twenty years of effort, the Comanche is being terminated while still several years from its IOT&E and a production decision. The V–22 program has spent over $16 billion and taken more than twenty years, during which it unfortunately skimped on DT and paid the price in a failed OPEVAL in 2000. It is now embarked on an event-driven test program that will culminate in a second OPEVAL in early 2005. After $36 billion and nearly twenty years in development, the F–22 is about to enter its IOT&E heading for a production decision this coming fall. Now, I challenge you to show me where operational testing has held these programs up or has cost us an arm and a leg as some of our critics would claim.

In closing, I continue to believe the T&E community—in both industry and government, both technical and operational testers—has served the department very well over the years. The success of our operational forces in the last several conflicts reflects that dedication to deploying systems proven effective, suitable and survivable on our ranges and in our facilities. But, the increasing complexity of systems and tactics should be tested, the need for better trained people in the T&E busienss, the massive amounts of data becoming available and the concomitant requirement for more sophisticated evaluation techniques/approaches, all call for new and innovative strategies and capabilities for T&E. I hope this conference does not degenerate into a reminiscence session. We face challenges in the future as we have in the past in ensuring that our soldiers, sailors and airmen are equipped with the best equipment our nation can provide.

Mr. ALLARD. This quote that I just shared describes exactly what he is doing with testing and the Missile Defense Program. Heavy involvement in the developmental test program, with the intent to achieve operational test goals during development, continued test evaluation assessments to keep the warfighter informed of system capabilities and limitations, and continuous evaluation after fielding to feed spiral development. That is the role the Director of the OT&E describes for himself, and that is the role he is playing in missile defense testing.

Everyone on both sides of the aisle, and I would add everyone in the Pentagon, supports operational realistic testing of the ballistic missile defense system, and that is why we are building a missile defense test bed today. That is why the Director of OT&E has over 100 operational test agents influencing and providing input for the GMD. That is why military operators are being used in the tests. Perhaps more importantly, that is why operational test goals are incorporated into each developmental test.

Now, make no mistake, the threat drives this program. We are building missile defenses to meet that threat. The test bed is needed to perform operationally realistic tests of the ballistic missile defense system and testing will proceed, becoming progressively more realistic, and will improve the system. Yet it is these same test bed capabilities that would afford us an early operational capability.

We cannot forget that we have no defense against long-range missiles. The Armed Services Committee has seen intelligence information which illustrates, more than ever, that the ballistic missile threat is real and growing. We are vulnerable and it is time to change that vulnerability. We need a missile defense capability in the field as soon as possible. For that reason, I will oppose the Reed amendment as it was introduced, and I urge my colleagues to oppose those efforts that would tie up our system in a way that adds delays and adds to our inability to defend ourselves from emerging threats in other parts of the world.

With the Warner second-degree amendment, my view of this amendment of Senator REED changes; that is, if we adopt the Warner amendment. This is why I think we need to support Senator WARNER's amendment. The intent is to assure that the Department of Defense conducts operational realistic testing of the BMD system and to support Senator WARNER's second-degree amendment because I believe we will achieve our common goal of operational, realistic testing while avoiding some of the potential pitfalls.

Everyone on both sides supports operational realistic testing, as I mentioned earlier, on the ballistic missile system. I certainly support the Senator's intent to make sure the BMD system is tested. The question is how best to test effectively while improving system capabilities and fielding capabilities as quickly as we can.

Formal operation and testing carries with it certain requirements where there can be no developmental goals. Contractors cannot be involved and the Director of Operational Test and Evaluation approves of the operational test plan.

I think the Warner amendment improves on what was proposed by the Senator from Rhode Island. This is operational testing.

Again, as I said earlier, we are looking at a two-way path here. While we are doing testing, we want to get something in place that is operational. The more we tie this down in a step-by-step process, which happens with the Reed amendment, with accountability on every little finite step in development, the more you delay the process and the more you add to the cost of the program. That is why I am supporting the Warner amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ALLARD. I ask for an additional 1 minute.

The PRESIDING OFFICER. The Senator has that right. He is yielded an additional minute.

Mr. ALLARD. What happens with the step-by-step process in the Reed amendment which leads to delays and additional costs, the Warner amendment refines that down so it is more streamlined and becomes palatable to us who would like to see rapid deployment of some kind of missile defense system for this country.

It is not going to be perfect. That is why we have spiral development. We are going to develop it and improve upon it with time. This is a process we have used before. It works and it is something that is going to assure us that we will have security rapidly deployed for this country where we have emerging threats in Iran and North Korea.

The PRESIDING OFFICER. The time of the Senator has expired. He yields the floor. Who yields time?

Mr. REED. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator from Rhode Island has 35 minutes 38 seconds remaining.

Mr. REED. Mr. President, if you could interrupt in 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. REED. Mr. President, I was very interested in hearing about the letter from Mr. Christie. I have not seen it. I am getting a copy of it.

But as I heard my colleague from Colorado, Mr. Christie seems to be saying that this system is not ready for operational testing yet, that it was premature to operationally test it. But it is ready for deployment in September? I think the notion of deployment is this thing is ready to operate; certainly it is at least ready to begin the threshold operation for testing. So I can't think of anything else that more strongly emphasizes the need for operational testing.

We have all heard the terminology, evolutionary spiral development, new techniques, et cetera, but the basic question here is: Does it work? No evolutionary spiral jargon avoids that question. Related to the question, does it work, is: What can it do? What do we expect this system to do? And then, of course, you validate that by testing under realistic conditions.

None of this is taking place. None of this is planned. I believe my colleagues when they say they want to see this operational testing. But there is no plan to operationally test now.

I find interesting the notion that Mr. Christie says it is premature to test, yet in the amendment to my amendment offered by Senator WARNER there is a specific deadline of October 1, 2005, that a test will be completed.

My amendment doesn't do that because I do recognize the fact that these are very difficult technological issues, that there is great concern about getting the system up and running. There are multiple pieces from space-based radar to ships at sea to land-based radar to booster rockets and kill vehicles. Yet interestingly enough, the Warner amendment would lock in a date of October 1, 2005, to test the ballistic missile system. Yet Mr. Christie is talking about it is too premature, et cetera.

I think the approach I have taken is simply saying at some time in the future we need operational testing. Please lay out a plan—a plan, of course, can be modified—and before these new steps in the process are put into effect, let's have the operational testing. I think it makes a great deal more sense.

Also, there is a question about limiting developmental testing and operational testing by saying, when you do operational testing, you can't do developmental testing. Actually both can be conducted in virtually the same test. I think one of the major differences between developmental testing and operational testing is that developmental testing is designed by the proponent agency and the contractors and they are supervised by the proponent agencies and contractors. Operational testing is designed by Dr. Christie's office, the Office of Operational Test and Evaluation, and supervised and conducted by those individuals from that particular office. It is quite appropriate. It is done frequently.

The Patriot was an example of a system that had both operational and developmental testing taking place. Indeed, the Patriot is another good example of the need for operational testing.

The upgrade PAC–3 missile defense system had a very good record when it was in its developmental phase. It was just doing extremely well. Then they started the operational combat, realistic test phase, and the Patriot PAC–3 failed each of these operational tests. It had four consecutive operational test failures. What did that suggest to you about this system? This system might pass all these tests, as some have argued watered down as they are, but it could pass all of them. Well, the PAC–3 system passed all the development tests and then had four consecutive failures in a row in an operational test.

If we have four consecutive failures in a real operational test of this system, I think the American people will be quite shocked, given the fact we are not planning any operational test, yet we are deploying the system.

Luckily, with the PAC–3, there was time to fix the problem.

These operational tests were not only conducted, but the problems were fixed. In Operation Iraqi Freedom, the system was deployed. It worked very well when it engaged missiles. But again, there are still some difficulties. At least one friendly aircraft was engaged and destroyed by a PAC–3 system. Two were destroyed, suggesting that all the problems with the system in terms of target identification, in terms of proper response and enemy versus friendly targets in the air have not been fully resolved. It is a complex system. This system is much more complex and complicated. But the PAC–3 is a very good example of what we should be doing here—that is, operational testing, learning from those tests, fix the system, and keep doing it continuously.

Again, I think it is an interesting notion about this spiral development and everything else. There has to be consistent, constant testing because that is how you learn so you can make the changes. Yet, again, we don't have an operational test planned for this particular system. I believe we have to have something like that. Again, the national missile system is very complex. We have to have this system.

Part of the Warner amendment to my amendment takes out the Director of Operational Test and Evaluation and lets the Secretary of Defense prescribe the criteria. Let me suggest that in the last several years, Dr. Christie has been advising and consulting. But nothing has happened in terms of operational testing. Each year, he reports to his superiors and to the public at large. In each one of those reports, he calls for more realistic testing. Apparently he is consulting and is not particularly effective. But that is exactly what the Warner amendment to my amendment would do—simply make him a consultant.

The reality is, as a consultant, his voice would be no more prominent than it is today. We don't have an operational testing plan. We have not conducted operational testing yet, and yet we are deploying the system. It seems to me that the Warner amendment waters down further the operational testing. He calls it operational testing, but then it takes out the operational testing, giving it to the Secretary of Defense.

We have seen that this Secretary of Defense is committed to getting this program into the ground by September of this year regardless. That doesn't give me and I don't think it should give the public the confidence that a rigorous realistic testing scheme will be developed. But then the amendment goes on to say within a year we are going to have that, we are going to mandate the test. It seems to be slightly schizophrenic. We don't want the normal procedures, we don't want the Director of Test and Evaluation to be doing it, we want the Secretary of Defense to do it, but he is going to do it by October 1 of 2005.

Again, I don't think the amendment really responds to the problem and the issue. The issue and the problem is developing, as we have done for every other system. PAC–3 is an excellent example of operational testing and planning, and then ensuring that the operational tests take place—not just calling for operational tests but having the independent operational testing agency within the Pentagon designing and conducting the test. That is what my amendment does. It doesn't call for any specific deadline. If the conclusion of Mr. Christie were to be that it couldn't be feasible for 18 months or 2 years, at least we have gotten an operational test plan, and we will conduct the test. That, to me, would be a vast improvement over the current situation.

I hope my colleagues will not favorably respond to Senator WARNER's amendment and give me a chance to have this amendment agreed to.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ALLARD. Mr. President, I support the Warner amendment to the Reed amendment because it adds flexibility with accountability. The second-degree amendment will allow the Missile Defense Program to field capabilities expeditiously and to improve those capabilities rapidly and avoids the disadvantages I see in Senator REED's approach, which requires realistic testing broken off into blocks.

Specifically, Senator WARNER's second-degree amendment will require the Secretary of Defense, in consultation with the Director of OT&E, to set forth formal criteria to define operationally realistic testing for the ballistic missile defense system as a spiral development program. It will require operationally realistic testing consistent

with those criteria during the fiscal year 2005, and it will require operationally realistic testing of each block or spiral of the ballistic missile defense system.

The Warner second-degree amendment provides the flexibility needed to incorporate both operational test goals and developmental test goals in missile defense tests—flexibility that is denied in the Reed amendment. Thus, it avoids the substantial replanning, delay, and additional costs that would result if the Reed amendment is adopted.

But the second-degree amendment also helps ensure that the testing of the missile defense system is realistic and will result in a well-tested system that will be capable of defending our Nation. It requires a formal and appropriate role for the Director of OT&E, and it requires this realistic testing to be conducted during fiscal year 2005—almost certainly sooner than the formal OT&E required in Senator REED's amendment, perhaps even sooner.

I urge my colleagues to support the Warner second-degree amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Rhode Island.

Mr. REED. Mr. President, I am just a bit taken aback by the claim of flexibility. The Warner amendment actually sets out a date certain when the tests will be conducted. Particularly, since it is a year away, particularly Mr. Christie is talking about it is premature because it is in the developmental stage. I thought his letter was quite specific. The ground-based midcourse defense element is currently at a material level which requires continued developmental testing with oversight and assistance from operational testing personnel conducting realistic testing in the near term. I guess the question is, What is ''in the near term''? I suggest it would be a year or more. It would be premature and not beneficial to the program.

Let me reiterate that this is an extraordinary letter. It says basically this system is not mature enough to test, but we are going to deploy it. I think that is very unusual, particularly given the history of having other systems where, even though they had not completed their operational testing—like the Predator and JSTARS—the plan for operational testing had already been sketched out—not by the Secretary of Defense but by the Office of the Director of Operational Test and Evaluation.

I think the flexibility is in my central amendment. It talks about before you deploy a block or a spiral—the new terminology might be ''spiral,'' but what they are going to do essentially is what we do so often: build the system to a certain capability; then, through tests or experience or through actual field trials, develop new software, new technology, and new complements that can make it better. At a certain point, rather than just simply tweaking here and there, you go back in and you develop a new block. That is roughly to me what the spiral development is, minus the catchphrase. Before you do that, we should have operational testing.

I think this is a very critical aspect. My amendment does not intend to stifle flexibility. It has no correlation with deployment. That is an issue that is going to be determined—and has been determined. We had votes on that, but somewhere along the line we need to do operational testing.

I must say I would be much more impressed with the degree of commitment to this operational testing if at least we had a plan for operational tests, a plan prepared by Mr. Christie. We do not have that. At least that would signal that we are serious about operational testing. In fact, that should have been done. It says this system is so immature that we cannot even get to the point of developing a plan to test.

Once again, the amendment is not only reasonable but it is compelling. This is what we do when we develop systems. Again, I suggest it is something we should do.

There is another aspect of my amendment which is very important and that is the baseline. Again, we have to know how much is being spent, what are the cost goals, what are the capability goals with respect to the system.

The GAO discovered—we did not discover this because of the way the books are kept—a $1 billion cost overrun. Rather than reporting it, making it obvious or tracking it, they simply changed the cost goals. In conjunction with that, we find that rather than having 10 interceptors, as they originally talked about in terms of cost goals, they now have 5 interceptors. The situation is that the costs have gone up by $1 billion and capability has gone down by half. Now we have a situation where we were unaware of it until the GAO discovered this.

Call it spiral development, call it evolutionary development, that should not be. One would hope this sophisticated development process, this new form of development, would mean that costs are more transparent, more accurate, and the capability is more obvious. That does not seem to be the case.

Along with the notion of developing operational testing is developing the baseline. None of that is in the Warner substitute to my amendment. I cannot see any discussion of establishing baselines, of making sure the costs are appropriate, of alerting Congress to overruns, rather than just changing goals.

I hope my amendment would be adopted and could be adopted.

I yield the floor, and ask at the conclusion we might think about whether it is appropriate to continue debating or to yield back time.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Colorado.

Mr. ALLARD. Mr. President, on this side, most Members have said whatever they want to say.

I, again, state we have a number of amendments we dealt with last year and this year which, in effect, add delays because of an excess reevaluation of the program. What we are striving for is a commonsense approach to accountability in the missile defense program without so much evaluation that we delay it. Each delay adds more and more costs to the program. Then those people who oppose the missile defense program will use that as a reason to defeat the program.

The fact is, right now we are in the process of putting those missiles in the ground. This fall we expect them to be operational. In order to have the proper developmental process in place, we have to have a test bed. While we are putting the test bed in place, it requires such a wide area we might as well make it operationally functional at the same time. That is what we are trying to do.

The Warner amendment provides the flexibility but still the accountability that we need. I am happy with what he has laid out in that amendment.

Dr. Thomas Christie has indicated time and time again that he is satisfied with his current role and the role his office plays in ballistic missile defense testing. He has testified. He states in his recent letter to me—and maybe I need to read the substance of this letter just to give my colleague an opportunity to hear clearly what his position is—the following:

> The Missile Defense Agency (MDA) is building a BMDS test bed that is essential to support realistic testing, and is absolutely essential for conducting adequate operational testing in the future. The test bed is also key to developing operational concepts, techniques, and procedures, while allowing my office to exploit and characterize its inherent defense capability.
>
> The Ground-based Midcourse Defense (GMD) element is currently at a maturity level that requires continued developmental testing with oversight and assistance from operational test personnel. Conducting realistic operational testing in the near-term for the GMD element would be premature and not beneficial to the program.
>
> My office has unprecedented access to GMD, and I am satisfied with the cooperation between the program office and the test community. I will continue to advise the Secretary of Defense and the Director, MDA, on the BMDS test program. I will also provide my characterization of system capabilities, and my assessment of test program adequacy annually, as required by Congress.

This is the chief accountability officer. He is responsible to make sure everything is ready to move forward. He is satisfied. There is no doubt that he is satisfied with the way things are going.

In order to meet some of Senator REED's concerns, the Warner amendment allows that. We address some of his concerns. Now we need to adopt the Warner amendment so we can still have the flexibility we need to deal with changing technology and perhaps

some unexpected events as we move forward.

I don't think anyone who has watched the development of military systems ever figures we have it right the first time. We come awfully close. With each passing year, new technology evolves and new ideas evolve and there are things we can do to improve the system. That is what spiral development is all about.

Again, Dr. Christie indicates that he is satisfied with his role and the role his office plays in the Missile Defense Program. He states that his office has ''unprecedented access'' to the ground-based midcourse effort and that cooperation is very good between the program office and his office.

He testified that he makes recommendations related to the developmental test program and his office has the ability to bring input into and influence the GMD test program.

Again, to quote Dr. Christie:

> My staff and I remain involved on a daily basis with the Missile Defense System and the BMDS element program offices in order to ensure that operational tests are addressed in their testing.
>
> We have over 100 operational test agents involved in the missile defense test program. A considerable amount of resources are being put forward to make sure we have accountability.

He goes on and indicates again that he is clearly satisfied with emphasis on operational test goals in the BMD system test plan. I will quote directly:

> The GMD [Ground-based Midcourse] program combined test force effectively integrated the operational testers into the program development activities and the test design and planning efforts.

He approved the operational test goals for the last three integrated flight tests.

He recently testified as follows:

> While I am very encouraged by the improved testing environment and capability that the BMDS test bed will provide, I am even more pleased with the increased emphasis on system integration and user involvement that I have seen over the past year.

We go on and on about his testimony as to how he has testified. The fact is, it is working. We are ready to put it in the ground this fall. We all recognize there are going to be improvements as we move along, but we are in a position to make those improvements.

I think the commonsense approach is to support the Warner amendment. I support it and encourage my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, how much time does the Senator from Rhode Island have remaining?

The PRESIDING OFFICER. There is 20 minutes 20 seconds.

Mr. LEVIN. I ask the Senator if he will yield me 8 minutes.

Mr. REED. Mr. President, I yield 8 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, the amendment of the Senator from Rhode Island simply says that the usual rules will apply in this case, that we are not going to change the rules because some people believe strongly this is an important weapons system. We have lots of important weapons systems of which we apply the rules that you must have operational testing at some point.

Now, there have been a couple of instances where operational testing has been delayed until after there has been some deployment, but there has been operational testing then. There have been plans for operational testing. The two examples which are used frequently are JSTARS and an unmanned aerial vehicle called Predator. Those are the two examples that have been used where a system has been deployed or partially deployed, and then the operational testing has occurred after that deployment.

But in those two cases—this is the critical issue which the Senator from Rhode Island addresses—as in all other cases, operational testing has occurred; and it has been designed by and implemented by the independent Office of Test and Evaluation.

The difference between the amendment offered by the Senator from Rhode Island and the second-degree amendment offered by the Senator from Virginia is that the Senator from Rhode Island preserves the rule, which as far as I can tell has never been violated, that the Office of Test and Evaluation does the testing. That is an independent test office.

Too often these days we see rules being ignored in order to meet some particular goal: We are not going to apply the Constitution here because we have needs over here. We are not going to apply the usual rules as to how we treat captives and how we treat prisoners because we have other needs over here. We are going to bend rules. We are going to ignore rules because of some particular goal that exists.

In this case, there is a proposal made that we ignore the rule, which has been in place for I don't know how many years, with a very important purpose behind it: that we have independent testing of weapons systems before or during or at some point after deployment by an independent test office—not by the Department of Defense in consultation with the test office but by that test office itself. It is the way we have protected our men and women in the military, to make sure that weapons systems work. It is the way we have protected this Nation, by making sure that weapons systems work.

We should not make an exception for it here. No matter how strongly people feel national missile defense will contribute to our national security, it will only contribute to our security if it works. To make sure it works, you need an independent testing office to do the testing and to lay out the criteria—not to consult, not to have a voice, but to do what they do with all other weapons systems that we deploy, which is to do the testing themselves.

This amendment does not prevent the administration from deploying missile defenses prior to operational testing. That was the amendment which was just defeated. This amendment allows that deployment but says you have to have operational testing sometime, at some point, and—this is the difference between the first-degree and the second-degree amendment—in the case of the first-degree amendment, that testing has to be done by that independent Office of Test and Evaluation, as all other testing of all other weapons systems that we have been able to research. You have to have plans. You have to make a decision: Yes, we are going to test this, and we are going to have our independent Office of Test and Evaluation do it.

Now, as I said, some defense programs have been deployed before operational testing was completed, and among them is the Predator, which was deployed in Kosovo in 1999, prior to the initial operational test and evaluation. But the operational testing for the Predator was planned for long before the Kosovo deployment, and it was completed in the next year after that deployment. The testing was done by that independent office, not by people who are out there in the field arguing for a system, but independently by the independent test office.

The JSTARS surveillance aircraft is another example of a military system which was deployed prior to operational testing. There was a great need. It was decided they could do the operational testing after the deployment. So two JSTARS aircraft were deployed during Desert Storm in 1991.

Interestingly enough, following that deployment, the Senate Armed Services Committee wanted to accelerate the program, but the Air Force thought the effort in the gulf war had not alleviated the need for operational testing. Indeed, it illuminated areas that needed more attention in development. So operational testing was performed on JSTARS in 1995, and the operational tests revealed some significant problems. Some of those problems in JSTARS, which independent operational testing—and the word ''independent'' is just as important as the word ''operational'' and just as important as the word ''testing''—those independent operational tests revealed some significant problems, including the inability to operate at the required altitude, inadequate tactics and procedures, and inadequate mission reliability and time-on-station.

What this amendment would do is to insist that the usual rules about operational testing by an independent test office apply here, not before deployment—that approach was defeated when the Boxer amendment was defeated—but at least sometime, and sometime is critically important, and just as critical is that those tests be done not just in consultation with but by the Office of Test and Evaluation.

If you do not like the rules, change the rules, change the law about OT&E, the Office of Test and Evaluation, change the law, but do not simply say we are going to ignore the law here because that law has an important purpose. That law requiring independent test and evaluation is a law which every Member of this body ought to defend. We fought a long time to put it in place. It has had some wonderful results. Our weapons systems have worked better because we have an independent office that does the testing.

So it is not good enough, as the second-degree amendment says: Well, we will have some consultation with that independent office. That does not give them the critical decision as to whether a weapons system is effective or is not effective. To put billions of dollars into systems which are not shown to be effective at some point, which are not operationally tested at some point by an independent office, is to increase the likelihood that billions of dollars will be wasted.

I thank the Chair and yield the floor.

Mr. REID. Mr. President, will the Senator yield?

Mr. REED. Mr. President, I yield to the Senator from Nevada.

Mr. REID. Six minutes?

Mr. REED. Six minutes.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, first, I share a name with the sponsor of this amendment. I have, once in a while, given him some advice. When it comes to military matters, there is no one who I have greater confidence in than the Senator from Rhode Island. He is the only Member of the Senate who is a graduate of the United States Military Academy at West Point. He is someone who has taught at that fine school. He is someone who has maintained his military contacts. And he is a student of what has been going on in the military since his retirement from the military. So I feel very confident and comfortable that the Senator—being a member of this most important committee, the Armed Services Committee, and having offered this amendment—is trying to do what he believes is the right thing for this country.

I express my appreciation to him for his studious efforts in offering this amendment and for often answering my questions about the military. He is such a valuable person to have in the Senate.

As I told the majority leader a few weeks ago, when I get up in the morning, the first thing I read is the sports page. I do that because there is always some good news in it. The rest of the newspaper you have to search hard for the good news. But after I finish the sports page, I reluctantly go to the first section of the paper.

This morning I went to the Washington Post. On the front page is a story. We have all seen the headlines about the 9/11 Commission, that according to available evidence, Iraq and Saddam Hussein had nothing to do with the terrorist attacks of 9/11. Another front-page story dealt with Abu Ghraib prison and some of the abuses that took place there.

On page 3 there is a feature story about a soldier that has been laid to rest in Arlington Cemetery. Page 4, there is some discussion about what we did yesterday dealing with the Leahy amendment.

The reason I mention these items very briefly is, you have to go all the way to page A19—I was stunned when I read this—the fourth paragraph, to read:

> Three U.S. soldiers were also killed Wednesday. . . .

It is like a throwaway.

> Three U.S. soldiers were also killed Wednesday. . . .

Three more deaths didn't warrant anything better than a throwaway line in the fourth paragraph on the 19th page of this newspaper.

We know these soldiers who have been killed—more than 800—are fathers, sons, neighbors, loved ones, all different categories. The families of these men and some women who have lost their lives since the war are paying a terrible price. I am stunned that we have come to the point in this war where we now say:

> Three U.S. soldiers were also killed Wednesday. . . .

I don't know how to describe how I felt when I read that. These three soldiers deserved more than that.

I hope we are not at a point where the death of American soldiers in combat is considered so routine that it is barely mentioned, and instead of meritorious placement in a newspaper, it is buried. We need to do better than that.

Hopefully, one of the things this bill will do is focus attention on the sacrifices being made by the men and women in Iraq. I hope the families of these three men get more attention than page A19 in the future.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I see the Senator from Alabama is here. I appreciate Senator SESSIONS serving on the Strategic Subcommittee with me and serving on the Armed Services Committee. He works very hard on that committee. The defense of this country is important. He agrees with that. He brings a stroke of common sense to our deliberations which I, for one, truly appreciate. I yield 5 minutes to the Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Chairman ALLARD for his leadership and his expertise. He is becoming perhaps the most authoritative Member of the Senate on this issue. He has worked on national missile defense since he has been in the Senate. It is great to work with him.

We do need to do the right thing. We have committed as a country to deploy a national missile defense system. We voted to deploy that system as soon as technologically feasible. That was back in the 1990s, and President Clinton signed the statute we passed. I believe it got 90-plus votes in the Senate. Although there were a lot of people who were opposed to it until the very end, in the end everybody realized that we needed to defend America, and we had the capability of doing so.

There has been a cottage industry of skeptics out there that has made fun of President Reagan. They called his vision for national missile defense Star Wars. Then when President Reagan said no to Gorbachev's proposal in Reykjavik, which accepted so many of the things President Reagan wanted so badly but told President Reagan he would have to stop national missile defense, he thought about that very hard on the eve of the reelection campaign. He knew he would be criticized, but he said, no; national missile defense is important to America. It was important to peace in the world because, instead of worrying about how many of the enemy we could kill, we could begin focusing on how to protect our people from being killed by missile attacks. It was a defining moment in the cold war. One expert recently said that was the moment that signaled the end of the Soviet Union.

We debated it here in the late 1990s. Senator THAD COCHRAN and JOE LIEBERMAN proposed the deploying amendment to go from research and talk to actual deploying and setting a goal for it. We had a bipartisan national commission that unanimously voted that the threat to the United States from missile attack was real, more imminent than intelligence agencies had previously said, and that we needed to move forward to deploy a system.

Under General Kadish, we have achieved a magnificent result. General Kadish—history will record—has been a tremendous leader, a man of substance and honesty and stability and good judgment, under all kinds of pressure. He has been beaten.

Senator LEVIN, the ranking member on our committee, is such a fine Senator. He and Senator REED have been critics of the program. They have raised questions about the program. I don't think it has hurt the program. It has probably helped the program. I know they have never been big fans of it. We made that decision.

We are going forward today. The amendment Senator REED has proposed, I am afraid, would cost us in the long run and provide little benefit. The provisions for cost, schedule, and performance baselines that he mandates have essentially been adopted now by the Department of Defense. It was part of a General Accounting Office study, and the Department of Defense has gone along with that study.

The provision for conducting operationally realistic tests for each block configuration is not unreasonable. Each test we conduct today, however, has developmental objectives. And

since this statute would prohibit the agency from approving developmental tests, we would have a real problem there. Those tests may be a problem. Each test would have developmental capabilities. It would require a significant replanning of the test program, slow the development, and increase costs in the long run.

We made a commitment to a new type of strategy for developing this unprecedented system. It is called spiral development. We said to the military, you develop this system. We are not going to put you in a straitjacket. We are going to allow you to move forward. And as you bring on new science and new capabilities, you decide and make recommendations to us as to how you would deploy it.

Maybe we decided it would be unwise for us to mandate exactly how this system should come out. I think that is what I would have as my biggest complaint with Senator REED's well-meaning amendment. I think it puts too much restraint on the freedom and initiative of the leaders in the Department of Defense to be creative in making the system and utilizing the money we put into the system effectively to come up with the best results.

I have been extremely proud of what has been accomplished so far. In September, we will deploy a missile in Alaska—the spot in the world that allows us to protect all of our States. It can knock down missiles that might be produced by the North Koreans, who have acted bizarrely many times in recent years. It would also allow us to knock down a missile launched by mistake, which could happen at any time. It would not be a complete system yet, and we will begin to test from that platform. In other words, to have a national missile defense system, you have to have a headquarters, radar, a communications system, Aegis-deployed radar to pick up missiles as soon as possible after launch.

This system has to work together as a coherent whole, and you need to have the ability to identify early an incoming missile and knock it down. We have proven hit-to-kill technology, bullet hitting bullet, that has been proven in quite a number of tests, and we continue to try to make it even better. I think the best way to test the system is to go forward with the plan we have today, get it in the ground so we can test it in the harsh Alaskan winters, and in the summer, when the humidity is up and maybe there is condensation in the tubes, and we can see how the radar works, and we can make sure we can have communication with our ships and see how the command structure works in order to make a decision. That is the way we need to test.

General Kadish and his team have accomplished a technological feat that many people in this country believe is second only to putting a man on the Moon. It is incredible. They have proven that they love America, that they are willing to advance rapidly toward a goal but at the same time be honest and prudent with the taxpayers' money.

I would not favor an amendment that would constrict them too much. That is what I am afraid this amendment does. That is why I am supportive of Chairman WARNER's proposal, which I think would accomplish much of what Senator REED would favor, without adverse consequences.

I thank the Chair and yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. REED. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from Rhode Island has 7 minutes remaining. The Senator from Colorado has 29 minutes remaining.

Mr. ALLARD. Does the Senator from Rhode Island wish to draw this to a close and move to a vote?

Mr. REED. I think I will speak for about 5 minutes, and at that point we can call for a vote.

Mr. ALLARD. And I will make just a brief closing comment for about a minute or two. Why don't we go ahead. The Senator can make his statement, then I will make my brief statement, and we will move forward to a vote. I think we may have to go into a quorum call briefly before the vote and get things in order.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, first, I want to emphasize, again, that this amendment does not affect the deployment decisions that have been made with respect to the missile system. Again, also, we have all talked about operational testing, its importance, and that you have to do it. I would be much more confident if, in fact, there was at least a plan today for operational testing. Mr. Christie and the Department of Defense could have developed that over the last year or two. His letter said this system is so immature that I cannot even begin to think about operational testing.

Once again, let me raise the obvious. If it is that immature, then what do we have up in Alaska? Is it going to be a deployed missile system or a test bed? Or is it going to be both? That is the real core of my amendment. The real core is that sometimes, unrelated to deployment, we have to have operational testing.

I argue that my amendment provides even more flexibility to the Department of Defense because it doesn't set a date certain of October 1, 2005, when this test must be conducted. I don't think we can make that date, frankly. I think we will find ourselves back here on the next Defense authorization bill striking that, extending it, or pushing it out because, to me, that is an unrealistic, inflexible deadline.

For that reason alone, I urge my colleagues to think particularly about the Warner amendment. There is a suggestion I would unduly hobble development. As I read Senator WARNER's language, he directs the Secretary of Defense to ensure that each block configuration of the ballistic missile system is consistent with the operational scheme, which is precisely what I am saying. But I am not dictating a specific time to do that. The real key difference between Senator WARNER's proposal and mine is that he is reversing the customary and prudent way to do independent operational testing. He is taking away the independence.

The independence, institutionally, is found in Mr. Christie's office, the Office of Operational Test and Evaluation, not in the Office of the Secretary of Defense. Everybody here has to recognize that there is no more political, ideological issue than missile defense in terms of the national security debate. It has been that way for 20 years.

To suggest that the Secretary of Defense and members of the Cabinet are going to be as independent as someone whose job and career it has been to render objective judgments about weapons systems and deployability and effectiveness is, I think, defying logic. This is not rocket science, it is human behavior. Why are we going to build into the system all those objective judgments and objective pressures that any Secretary, regardless of party, regardless of administration, must feel when something this big is before him to decide?

That is why we created a system 20 years ago where there is an independent Office of Operational Test and Evaluation, with a director appointed by the President and who is not directly subject to political whims, the whims of contractors, or the needs of contractors to make sure the funds keep flowing. That is the big distinction between our amendments. We want operational testing, but we want it to be independent. That is the GAO recommendation—independent, realistic operational testing.

We are not specifying to do it next week. We are not saying you cannot deploy until you test. In fact, I am removing myself from the timing. As I said before, I think it is unrealistic to assume that there can be an accurate operational test by October 1 of next year. It is not going to slow down the deployment or development; I don't think so. It is going to make sure we learn from each step, each mistake, and each achievement. That is what good operational testing does.

I feel very strongly that the Warner amendment is trying to talk about operational testing, but the heart of it is not. It is subjective evaluation that has been going on now for years with respect to this missile program. I think we have to get back to independent evaluation. We can do it with my amendment, and we can also ensure that we get baseline information about how much is being spent, and the MDA cannot, in 1 year, decide that they are a billion dollars off in the cost estimate so they change the cost estimate.

That is another example documented by GAO of the temptation to funding programs when you are the tester and the testee. That is what the Warner amendment would do.

So I hope, sincerely, that the Warner amendment can be defeated and that we can move on and adopt the Reed amendment. In the spirit of our prior comments, I will yield back my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield myself 1 minute. I want to make a very brief comment, and that is this: The key argument is that the Pentagon's chief tester says the operational test is premature. The Warner second-degree amendment requires the definition of ''realistic testing,'' and it requires a test according to these criteria next year. That means we will get realistic testing years sooner than with the Reed amendment.

The Warner second-degree amendment provides a formal and appropriate role for the Director of the Office of Test and Evaluation in a developmental program. That is an unusual step and actually enhances his role in the ballistic missile test program. It does all this without incurring the cost and delay of the Reed amendment.

Mr. President, I yield back the remainder of my time and ask my colleagues to vote in support of the Warner amendment.

Mr. President, I have a unanimous consent request that I need to propound.

Mr. President, I ask unanimous consent that following the vote in relation to the pending Warner second-degree amendment, the Senate proceed to executive session and consecutive votes on the confirmation of the following nominations: James L. Robart, Roger Benitez, and Jane Boyle. I further ask unanimous consent that prior to each of the judge votes there be 4 minutes equally divided for debate on the nominations; provided further, that following the votes, the President be notified of the Senate's action, and the Senate then resume legislative session.

Mr. REID. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, I, first, ask the distinguished acting manager to modify his request to have the votes following the Warner second-degree amendment vote to be 10-minute votes.

Mr. ALLARD. I agree to modify the request to 10-minute votes on the two following the initial vote—or does the Senator want all three of them?

Mr. REID. Yes.

Mr. ALLARD. On all three of them.

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

Mr. REID. Further, Mr. President, under the order, as I understand it, prior to voting on the judges, the Senator from Rhode Island has a right to offer an amendment to his amendment, if the Warner amendment is adopted. The order was he would have the right to offer an amendment; is that right?

The PRESIDING OFFICER. That is the previous order.

Mr. REID. So it is my understanding the Senator from Rhode Island will not offer that amendment now. I ask unanimous consent also, Mr. President—and I think this is in keeping with what Senator WARNER wanted—that following the disposition of these judges, we return to the Defense bill and that the Senator from Rhode Island be recognized to offer another amendment that has already been indicated—I do not know the number of it. It is his second missile defense amendment.

Mr. ALLARD. Missile defense is OK.

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

Mr. ALLARD. Mr. President, I understand we may need to ask for the yeas and nays.

Mr. REID. I ask for the yeas and nays on the Warner amendment.

The PRESIDING OFFICER. The yeas and nays have been ordered on the pending second-degree amendment.

Mr. ALLARD. We are ready to proceed to the vote, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the Warner amendment No. 3453. The clerk will call the roll.

The assistant legislative clerk call the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER (Mr. CRAPO). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—55

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bayh	Enzi	Nickles
Bennett	Fitzgerald	Roberts
Bond	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Landrieu	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	
DeWine	McConnell	

NAYS—44

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Biden	Edwards	Lincoln
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Breaux	Graham (FL)	Nelson (FL)
Byrd	Harkin	Pryor
Cantwell	Hollings	Reed
Carper	Inouye	Reid
Clinton	Jeffords	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kennedy	Schumer
Daschle	Kohl	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Leahy	

NOT VOTING—1

Kerry

The amendment (No. 3453) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. ALLARD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3354

Mr. WARNER. Mr. President, I would like to have a clarification about the standing order with regard to the amendment of the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended.

Without objection, the amendment, as amended, is agreed to.

The amendment (No. 3354) was agreed to.

EXECUTIVE SESSION

NOMINATION OF JAMES L. ROBART TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

The PRESIDING OFFICER. The Senate will now go into executive session to consider nominations.

The clerk will report the first nomination.

The legislative clerk read the nomination of James L. Robart, of Washington, to be United States District Judge for the Western District of Washington.

Mr. WARNER. Mr. President, could I inquire of the Presiding Officer, are these three votes 10 minutes each?

The PRESIDING OFFICER. The Senator is correct.

There is 4 minutes of debate equally divided.

Who yields time?

Ms. CANTWELL. Mr. President, this afternoon it is my privilege to introduce you to the incredibly talented nominee for a vacancy on the District Court for the Western District of Washington, James Robart.

In one sense, today's confirmation vote is a homecoming for Mr. Robart. Early in his career, he served as an aide to Senator Scoop Jackson. I am sure that he would be proud of his accomplishments during a long and productive legal career, and would wholeheartedly endorse his confirmation.

Following his public service as a staff member in both Houses, Mr. Robart returned to Washington State, where he has worked as an attorney for the past three decades. During his considerable years of practice in Federal court, he has earned a reputation for fairness and integrity.

Mr. Robart's nomination is the result of a bipartisan selection process that has worked very well for Washington State. Members of Washington State's legal community, the White House, and my colleague Senator PATTY MURRAY and I worked together to review a group of applicants. This cooperative approach has produced a number of highly qualified judicial nominees, and

I believe it is a sound model for other States.

I am confident that James Robart will make an outstanding Federal judge, and that the people of the Western District of Washington will be well-served by his presence on the bench.

I am pleased to offer Mr. Robart my full support, and I urge my colleagues to approve his nomination.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of James Robart, to be a United States District Judge for the Western District of Washington. He is a graduate of Whitman College and the Georgetown University Law Center. Mr. Robart is currently managing partner at the law firm of Lane Powell Spears Lubersky, LLP, a firm he has worked at for over 30 years. He has handled complex commercial litigation matters including class actions, securities, and employment cases, and has also been involved in counseling clients in the areas of antitrust compliance, employment law, and intellectual property.

Mr. Robart's nomination is the product of a bipartisan judicial nominating commission maintained with the White House by Senators MURRAY and CANTWELL. The State of Washington is well-served by its bipartisan judicial nominating commission which recommends qualified, moderate nominees on whom members of both parties can agree. It is difficult to understand why President Bush has opposed similar bipartisan selections commissions and why this one was so hard to establish. They allow Republicans and Democrats to work together to staff an independent judiciary. I thank Senators MURRAY and CANTWELL for their steadfast efforts in maintaining the commission. The Senate just recently confirmed another well-qualified nominee to the District Court for the Western District of Washington, Judge Martinez, and, with today's vote, the Senate will have confirmed four nominees—all the product of the bipartisan commission—to the district courts in Washington. With this confirmation, there will be no further vacancies in the district courts in Washington.

I would note that, in proceeding to a vote on Mr. Robart, the Republican leadership has again decided to depart from the order of the Executive Calendar and to skip over the nomination of a non-controversial and well-qualified Hispanic nominee to the U.S. District Court for the Eastern District in Pennsylvania, Juan Ramon Sanchez. That is their choice. I do not want to see the Democrats blamed for any delay in confirmation votes for Hispanics when Republicans have controlled the agenda.

With this confirmation we will have confirmed more judges this year than in all of the 1996 session, the last time a President was seeking reelection.

With this confirmation and two more today, the Senate will have confirmed a total of 89 judges this Congress and 189 of this President's judicial nominees overall. With 89 judicial confirmations in just a little more than 17 months, the Senate has confirmed more Federal judges than were confirmed during the two full years of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the 2-year total at the end of the Clinton administration, when Republicans held the Senate majority in 1999 and 2000.

With 189 total confirmations for President Bush, the Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in President Clinton's entire second term, the most recent four-year presidential term and more than were confirmed in President Reagan's term from 1981 through 1984. Of course President Reagan is acknowledged as the all-time champ for having appointed more federal judges than any other President in history.

I congratulate Mr. Robart and his family on his confirmation.

Mr. HATCH. Mr. President, I am pleased today to speak in support of James Robart, who has been nominated to the U.S. District Court for the Western District of Washington.

Mr. Robart has exceptional qualifications for the Federal bench. After graduating from Georgetown University Law Center in 1973 where he was the administrative editor of the Georgetown University Law Review, he joined the law firm of Lane, Powell, Moss & Miller, which is now known as Lane Powell Spears Lubersky LLP.

Mr. Robart became a partner in that firm in 1980, and subsequently became the comanaging partner and later the sole managing partner—a position that he holds today. During his time at the firm, Mr. Robart has specialized in complex commercial litigation with an emphasis on class actions, securities, and employment law.

He brings a wealth of trial experience to the Federal bench after trying in excess of 50 cases to verdict or judgment as sole or lead counsel, and he has been active in the representation of the disadvantaged through his work with Evergreen Legal Services and the independent representation of Southeast Asian refugees.

Mr. Robart's impressive credentials are reflected in his unanimous American Bar Association rating of Well Qualified. I am confident that he will be a fine addition to the bench and urge my colleagues to join me in supporting his confirmation.

Mr. HATCH. Mr. President, this side is willing to yield all remaining time on all three judges.

The PRESIDING OFFICER. All time is yielded.

Mr. HATCH. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the confirmation of the nomination of James L. Robart, of Washington, to be United States District Judge for the Western District of Washington?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 126 Ex.]

YEAS—99

Akaka	Dodd	Lincoln
Alexander	Dole	Lott
Allard	Domenici	Lugar
Allen	Dorgan	McCain
Baucus	Durbin	McConnell
Bayh	Edwards	Mikulski
Bennett	Ensign	Miller
Biden	Enzi	Murkowski
Bingaman	Feingold	Murray
Bond	Feinstein	Nelson (FL)
Boxer	Fitzgerald	Nelson (NE)
Breaux	Frist	Nickles
Brownback	Graham (FL)	Pryor
Bunning	Graham (SC)	Reed
Burns	Grassley	Reid
Byrd	Gregg	Roberts
Campbell	Hagel	Rockefeller
Cantwell	Harkin	Santorum
Carper	Hatch	Sarbanes
Chafee	Hollings	Schumer
Chambliss	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Sununu
Craig	Landrieu	Talent
Crapo	Lautenberg	Thomas
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lieberman	Wyden

NOT VOTING—1

Kerry

The nomination was confirmed.

NOMINATION OF ROGER T. BENITEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. The clerk will report the next nomination.

The assistant legislative clerk read the nomination of Roger T. Benitez, of California, to be United States District Judge for the Southern District of California.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of Roger Benitez to the Southern District of California. Judge Benitez is being considered for the last of 5 new seats in the Southern District of California that were created by statute on November 2, 2002, as part of a package of judgeships created for border districts that have a massive caseload and that needed more Federal judges. I worked hard with Senator FEINSTEIN to help create these new positions under Democratic Senate leadership. By doing so, we did what the Republican majority refused to do in the years 1995 through 2000 when there was a Democratic President. We did so under Senate Democratic leadership knowing

that the appointments would be made by a Republican.

Unlike many other nominees who have come before this Committee, Roger Benitez comes before us with judicial qualifications, having had experience serving as a judge both in State and Federal courts. He served for 4 years as a California Superior Court Judge for Imperial County and 3 years as a U.S. Magistrate Judge for the Southern District for California.

However, like many nominees of this President, concerns have been raised about this nominee's fitness to serve. Judge Benitez is one of 28 of President Bush's nominees who have received a partial or majority rating of ''Not Qualified'' from the ABA Committee that conducts a peer evaluation of judicial nominees. Of those, 18 have already been confirmed and another has been recess appointed.

Before President Bush ejected the ABA from the process of providing an informal rating prior to a nomination, temperament or ethics concerns would have been raised at the early stage of a nominee's consideration and in time for the White House to make a decision whether to proceed with that nominee, with knowledge of such determinations and the opportunity to conduct follow-up inquiry. The change in the role of the ABA has led to ABA ratings being less helpful. In Judge Benitez's case, based on interviews with 23 judges and 44 attorneys, more than 10 members of the ABA committee concluded that, based on his temperament, he is not qualified to serve a lifetime appointment on the Federal bench.

Despite these concerns, Judge Benitez is supported by both of his home-State Senators and is the product of the bipartisan commission that Senators FEINSTEIN and BOXER have worked so hard to maintain. I will honor their support of this nominee and support him, as well. With this confirmation, the Senate will have confirmed 14 nominees to the district courts in California.

Judge Benitez is the 17th Latino confirmed to the Federal courts in the past three years. With the exception of Mr. Estrada, who failed to answer many questions and provide the Senate with his writings and views, we have pressed forward to confirm all of the other Latinos whose nominations have been reported to the floor. Democrats will now have supported the swift confirmation of 17 of President Bush's 21 Latino nominees. Unfortunately, Republicans have been delaying Senate consideration of a number of Hispanic nominees and passed over several of the numbers would be even better.

While President Clinton nominated 11 Latino nominees to Circuit Court positions, 3 of those 11 were blocked by the Republican Senate and never given a vote. President Bush has only nominated 4 Latino nominees to Circuit Court positions, three of whom have been confirmed with Democratic support. President Bush's 21 Latino nominees constitute less than 10 percent of his nominees, even though Latinos make up a larger percentage of the U.S. population. It is revealing that this President has nominated more people associated with the Federalist Society than Hispanics, African Americans and Asian Pacific Americans, combined. While President Clinton cared deeply about diversity on the Federal bench, this President is more interested in narrow and slanted judicial ideology.

I congratulate Judge Benitez and his family on his confirmation.

Mr. HATCH. Mr. President, I rise today to express my unqualified support for the nomination of Robert Benitez to the District Court for the Southern District of California and to urge my colleagues to confirm this fine nominee.

Born in Havana, Cuba, Judge Benitez's life embodies the spirit and strength of this Nation. After coming to this country, he obtained a law degree from the Western State University College of Law in 1978, and then distinguished himself in a diverse and successful law practice. The people of California recognized his obvious ability and appointed him to the Superior Court in 1997. He was re-elected to that court in 1998, and served with distinction until 2001. Since that time, Judge Benitez has served as a Federal magistrate judge in the Southern District of California.

Mr. Benitez is an exceptional nominee. I fully expect him to serve with distinction on the Federal bench in California.

Mr. DURBIN. Mr. President, I oppose the nomination of Roger T. Benitez to be a United States District Judge for the Southern District of California because this nominee received a rating by the American Bar Association of ''substantial majority Not Qualified.'' More than 10 members of the 15-member ABA evaluation committee agreed that Magistrate Judge Benitez is unqualified for this position. The ABA conducts thorough background investigations of all of the President's Article III judicial nominees.

At the February 25, 2004 nomination hearing of Judge Benitez, ABA officials made the following statements on the record:

Judge Benitez is ''arrogant, pompous, condescending, impatient, short-tempered, rude, insulting, bullying, unnecessarily mean, and altogether lacking in people skills.''

Judge Benitez ''would often become irrationally upset and outraged if an attorney who had been appointed to represent a defendant had a scheduling conflict and asked another equally competent and prepared attorney to appear before the nominee.''

Interviewees had ''grave doubts about Judge Benitez' ability to competently handle the more demanding docket caseload of a Federal district judge and efficiently manage a district courtroom, based on their perception of his very slow and rigid manner of handling his current court calendar.''

''Based on their exposure to the nominee's mode of relating professionally to others in his official capacity as a judge, interviewees expressed doubt over Judge Benitez's ability to become an accommodating and collegial member of the Federal district court.''

''[T]he nominee's temperament problems are compounded by the fact that Judge Benitez fails to appreciate the depth of concern by the bench and bar regarding his temperament and has not demonstrated that he is willing or able to address those concerns.''

''Our committee members, after reviewing my report on the nominee, were particularly concerned about the clear, consistent pattern to the criticisms that emerged from the interview.''

These statements are highly troubling, and they strongly suggest that Judge Benitez is not prepared for this important lifetime position.

I am also concerned about the ABA's discovery that Judge Benitez has a practice of limiting the number of guilty pleas that he accepts on a given day. The ABA said that this practice was ''highly unusual compared to most other Federal judges, who will typically hear several matters in a day of the kind Judge Benitez has on his docket.''

The ABA did not make these allegations or reach the rating of Not Qualified lightly. The ABA investigator, Richard M. Macias, conducted interviews with 23 judges and 44 attorneys, and two-thirds of those interviewed raised concerns, including a majority of both judges and lawyers. The comments were based on first-hand knowledge or observation. The ABA reports that ''[t]he negative comments about Judge Benitez' temperament reflected a consistent pattern over the years up to the present time.''

Mr. Macias, a respected member of the legal profession and an experienced ABA investigator, said that he has never received so many negative comments about a judicial nominee in the 10 years he has been conducting background investigations. Mr. Macias was supported in his testimony by Thomas Z. Hayward, Jr., a respected Chicago attorney and chair of the ABA's Standing Committee on Federal Judiciary.

When he took office, President George W. Bush abolished the historic practice—dating back to President Eisenhower—of seeking the views of the ABA, the Nation's largest association of attorneys, before making an Article III judicial nomination. One of the main reasons that presidents waited for the ABA evaluation was to avoid nominating unqualified nominees and prevent situations like the one we face today with Judge Benitez. Past Presidents often decided not to nominate individuals who received ABA ratings of Not Qualified. President Bush would be wise to reinstate the ABA's traditional role in the judicial nomination process.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Roger T. Benitez, of California, to be United States District Judge for the Southern District of California?

Mr. REID. I ask for the yeas and nays?

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 127 Ex.]

YEAS—98

Akaka	Dodd	Lott
Alexander	Dole	Lugar
Allard	Domenici	McCain
Allen	Dorgan	McConnell
Baucus	Edwards	Mikulski
Bayh	Ensign	Miller
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham (FL)	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Clinton	Inouye	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Specter
Collins	Kennedy	Stabenow
Conrad	Kohl	Stevens
Cornyn	Kyl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Thomas
Crapo	Leahy	Voinovich
Daschle	Levin	Warner
Dayton	Lieberman	Wyden
DeWine	Lincoln	

NAYS—1

Durbin

NOT VOTING—1

Kerry

The nomination was confirmed.

NOMINATION OF JANE J. BOYLE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if Senator REID and Senator WARNER are here. I want to clarify the length of time which the next amendment will take. My understanding is that Senator REED's amendment might take as little as 10 minutes; in which case, it would make sense to stack his vote with the vote on the Biden amendment which would then be 2 hours later. However, if there is objection to that, I think people should be informed there could be another vote after this final vote on judges in about 10 or 15 minutes.

I am wondering if Senator WARNER is here.

Mr. WARNER. He is right here.

Mr. LEVIN. Is Senator REID here?

Mr. REED. I am here.

Mr. LEVIN. Senator Harry Reid, too.

Mr. WARNER. Mr. President, for the convenience of the Senate, stacking the two votes is quite acceptable.

Mr. LEVIN. Should I make a unanimous consent request? I think Senator HATCH——

Mr. WARNER. I discussed it with him, and it is fine.

Mr. LEVIN. Mr. President, I ask unanimous consent that after this vote, there then be a period of time to debate the Senator Jack Reed amendment, which we expect would be short. We would immediately go to the Biden amendment.

Mr. WARNER. Mr. President, we were going to intersperse a Sessions amendment for 30 minutes.

Mr. LEVIN. I will amend that to ask that immediately after Jack Reed's amendment, there be a Sessions amendment for 30 minutes equally divided, and that we then go to a Biden amendment for perhaps as much as 2 hours, and there be three votes stacked at that point.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Excuse me. Do we have a copy of the Sessions amendment? Is Senator SESSIONS here?

Mr. WARNER. He is not here.

Mr. LEVIN. So there will be no time agreement on the Sessions amendment until we know which amendment it is.

Mr. WARNER. We must check with our Finance Committee regarding the time on the Biden amendment. We are trying to work toward putting the votes in one batch.

Mr. LEVIN. Mr. President, I revise that unanimous consent request to ask that immediately after the debate on Senator REED's amendment, it be laid aside and we proceed to a debate on the Sessions amendment; that it then be laid aside and we then go to the Biden amendment, and we will hopefully have three votes at that time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Texas is recognized.

Ms. HUTCHISON. Mr. President, the nominee we are going to vote on, Jane Boyle, has served our country in so many positions: U.S. magistrate, where she had an outstanding record, as our U.S. Attorney, where she had an equally outstanding record. She has shown fairness, a judicial temperament, and great leadership in every position she has held.

Mr. President, I am proud to have recommended her nomination along with my colleague, Senator CORNYN, and before that, Senator Gramm. We have never been disappointed in Jane Boyle's performance, and know she will be an outstanding judge.

I urge a vote for her nomination.

Mr. LEAHY. Mr. President, I also support the nomination of Jane J. Boyle.

Mr. President, Ms. Boyle is currently the United States Attorney for this district. She comes to the Senate with extensive litigation and judicial experience. Before serving as the Northern District's U.S. Attorney, Ms. Boyle served for over a decade as a United States Magistrate and she served for years as a Federal and city prosecutor. I support Ms. Boyle's nomination.

With the three judicial confirmation votes today, the Senate will now have confirmed 20 judicial nominees this year alone. Only 17 judges were confirmed under Republican leadership in the entire 1996 session and no circuit court nominees were confirmed that entire time. That was the last year in which a President was seeking reelection. The Senate has now exceeded the number of total judges confirmed and the number of circuit court judges confirmed.

With these three confirmations today, the Senate will have confirmed a total of 89 judges this Congress and 189 of this President's judicial nominees overall. With 89 judicial confirmations in just a little more than 17 months, the Senate has confirmed more Federal judges than were confirmed during the two full years of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the two-year total at the end of the Clinton administration, when Republicans held the Senate majority in 1999 and 2000. It is not quite as many as the 100 judges nominated by President Bush that a Democratic-led Senate confirmed in our 17 months in the majority in 2001 and 2002.

With 189 total confirmations for President Bush, the Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in the most recent four-year presidential term that of President Clinton from 1997 through 2000. It is more than a Republican majority confirmed in President Reagan's entire term from 1981 through 1984. Of course, President Reagan is recognized as the all-time champ in terms of judicial appointments having appointed more than any other President in our history.

I congratulate Ms. Boyle on her confirmation.

Mr. HATCH. Mr. President, I rise in support of the confirmation of Jane J. Boyle to the U.S. District Court for the Northern District of Texas. I have had the pleasure to review Ms. Boyle's distinguished career and I am confident that she will make a fine Federal judge.

Jane J. Boyle is an extremely experienced attorney who has tried over 180 cases to a verdict during her impressive career as an assistant district attorney, an assistant U.S. attorney, and as the U.S. attorney for the Northern District of Texas. She has also served with distinction as a magistrate judge in the same district. Ms. Boyle brings a wealth of experience to the Federal

bench and she will make an excellent addition to the Northern District of Texas.

I am not alone in believing that Ms. Boyle will make an outstanding Federal district judge. The Texas Employment Lawyers Association, TELA, calls Ms. Boyle ''considerate, concerned, and well-read,'' in addition to possessing ''a great deal of knowledge about employment law'' and an excellent judicial demeanor that is reflected in her ''even-handed and fair'' approach to adjudication. Ms. Boyle also has strong bipartisan support. The current chair of the Dallas County Democratic Party has written a letter expressing her ''enthusiastic support of the nomination of Jane J. Boyle,'' and a former chair of the same organization wrote a letter stating that ''in the case of this nominee, partisan considerations are unwise and should evaporate.''

Ms. Boyle's experience both as a U.S. attorney and as a Federal magistrate judge will serve her well on the Federal district court. I urge my colleagues to join me in strong support of Ms. Boyle's nomination.

Mr. CORNYN. Mr. President, I am proud today to cast my vote in the affirmative for Jane J. Boyle who has been nominated to the U.S. District Court for the Northern District of Texas. She presently serves as United States Attorney for the Northern District of Texas. Judge Boyle has a long and distinguished career of public service and is well qualified to return to the bench having served as United States Magistrate Judge for the Northern District of Texas from 1990 to 2002.

In addition, she served a previous term as United States Attorney, Northern District of Texas from 1987 to 1990, and was an Assistant District Attorney in the Dallas County District Attorney's Office from 1981 to 1987.

Judge Boyle is imminently well qualified, as the ABA has rated her. More importantly, there is bipartisan consensus of those who know her and work with her. Moreover, she has garnered the respect of her colleagues and those who work for her. Most notably, she has gained the respect of the Dallas community, including folks from the entire political spectrum.

I ask unanimous consent to have a related article printed in the RECORD.

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

(For immediate release, June 17, 2004)

SENATE CONFIRMS JANE BOYLE FOR JUDGESHIP

WILL FILL VACANT SEAT IN NORTHERN DISTRICT, BASED IN DALLAS

WASHINGTON.—The U.S. Senate on Thursday unanimously approved the federal judicial nomination of current U.S. Attorney Jane Boyle to be the U.S. District Judge for the Northern District of Texas. Boyle, 49, will be based in Dallas, and replaces retired Judge Jerry L. Buchmeyer. The Northern District's jurisdiction includes 100 counties.

''Jane Boyle has remarkable experience and knowledge of the law. She has done an outstanding job as U.S. Attorney in Dallas, and I'm confident that she will continue to serve Texas and the nation with excellence,'' Cornyn said. ''She has garnered the respect of her colleagues, those who work for her, and most notably, she has gained the respect of folks from across the political spectrum.''

U.S. Sen. John Cornyn, a member of the Judiciary Committee, along with Sen. Kay Bailey Hutchison, recommended Boyle to President Bush on September 9, 2003. The President nominated Boyle on November 24, 2003, and she was confirmed by the Judiciary Committee on April 1, 2004.

Boyle was appointed by President George W. Bush in 2002 to be U.S. Attorney for the Northern District after a long and distinguished legal career in Texas. Prior to that selection, she served as U.S. Magistrate Judge for the Northern District for twelve years, earning significant judicial experience in the region.

Boyle also worked for a number of years as an Assistant U.S. Attorney and an Assistant District Attorney for Dallas County. She earned a J.D. degree from Southern Methodist University School of Law in 1981 and graduated with honors from The University of Texas at Austin in 1977. She has been published in numerous legal periodicals, including the Texas Bar Journal.

Sen. Cornyn chairs the subcommittee on the Constitution, Civil Rights & Property Rights, and is the only former judge on the committee. He also serves on the Armed Services, Environment and Public Works, and Budget Committees. He served previously as Texas Attorney General, Texas Supreme Court Justice, and Bexar County District Judge.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Texas, Mr. CORNYN, is recognized.

Mr. CORNYN. Mr. President, in the interest of time, I will not belabor the point. I wanted to add my voice to that of Senator HUTCHISON commending this fine nominee, Jane Boyle, to the U.S. Senate.

The PRESIDING OFFICER. The question is, Shall the Senate advise and consent to the nomination of Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 128 Ex.]

YEAS—99

Akaka	Brownback	Collins
Alexander	Bunning	Conrad
Allard	Burns	Cornyn
Allen	Byrd	Corzine
Baucus	Campbell	Craig
Bayh	Cantwell	Crapo
Bennett	Carper	Daschle
Biden	Chafee	Dayton
Bingaman	Chambliss	DeWine
Bond	Clinton	Dodd
Boxer	Cochran	Dole
Breaux	Coleman	Domenici
Dorgan	Johnson	Pryor
Durbin	Kennedy	Reed
Edwards	Kohl	Reid
Ensign	Kyl	Roberts
Enzi	Landrieu	Rockefeller
Feingold	Lautenberg	Santorum
Feinstein	Leahy	Sarbanes
Fitzgerald	Levin	Schumer
Frist	Lieberman	Sessions
Graham (FL)	Lincoln	Shelby
Graham (SC)	Lott	Smith
Grassley	Lugar	Snowe
Gregg	McCain	Specter
Hagel	McConnell	Stabenow
Harkin	Mikulski	Stevens
Hatch	Miller	Sununu
Hollings	Murkowski	Talent
Hutchison	Murray	Thomas
Inhofe	Nelson (FL)	Voinovich
Inouye	Nelson (NE)	Warner
Jeffords	Nickles	Wyden

NOT VOTING—1

Kerry

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action on this nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that Senator WARNER and Senator REED have worked out an arrangement whereby the missile defense amendment will not be offered, but the end strength amendment will be offered at this time.

The chairman has arrived. What I have said is that the chairman and Senator REED have agreed that his missile defense amendment will be offered at a subsequent time and that now the end strength amendment that has been around for several days would be debated at this time and voted upon.

Mr. WARNER. Mr. President, that was a suggestion I made to the Senator from Rhode Island. I think he will perhaps reflect on the need to go forward with his second missile defense amendment, and he had asked for that need to be reconsidered. Therefore, in its place we can put the end strength amendment, which would be a matter of convenience and great interest to our membership on this side, given it is a bipartisan amendment.

Mr. REID. Following that, the amendment of Senator SESSIONS will be offered, and following that the amendment of Senator BIDEN will be offered.

Mr. WARNER. Could we put time agreements on this now?

Mr. REID. We certainly should be able to.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WARNER. Mr. President, the distinguished leadership on the other side and myself and the leadership on this side have worked out the following time agreements: On the amendment from the Senator from Rhode Island, which has a second degree from the Senator from Virginia, Mr. WARNER—

Mr. REID. No. 3352.

Mr. WARNER. Correct—we would need 40 minutes equally divided on those amendments.

Mr. REID. A total of 40 minutes?

Mr. WARNER. A total of 40 minutes equally divided. We would then proceed to lay that aside and proceed to an amendment by the Senator from Alabama.

Mr. REID. No. 3371.

Mr. WARNER. Correct. That will take 20 minutes.

Mr. REID. Twenty minutes equally divided?

Mr. WARNER. Fifteen on this side, and I think the other side only needed 5 on that amendment.

Mr. REID. We will take the 15 and probably would not use it.

Mr. WARNER. Then 30 minutes equally divided. That amendment will not require other than a voice vote which we will do. We will then immediately proceed to the Biden amendment.

Mr. REID. No. 3379.

Mr. WARNER. Correct. At the moment, that would require 2 hours equally divided, with the expectation that can be reduced in time.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I ask unanimous consent, as the chairman has indicated, that on amendment No. 3352 there be 40 minutes equally divided, with no second-degree amendments in order except for the one that Senator WARNER has indicated that he will offer, and Senator REED knows about that; No. 3371, there be no second-degree amendments in order; and No. 3379, there be no second-degree amendments in order, with the time as stated previously. There would be no second-degree amendments then prior to the vote.

Mr. WARNER. That is correct.

Mr. REID. As indicated, 40 minutes, 30 minutes, and 2 hours.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. I concur in the request.

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

The Senator from Rhode Island.

AMENDMENT NO. 3450 TO AMENDMENT NO. 3352

Mr. REED. Mr. President, I ask for regular order for No. 3352.

The PRESIDING OFFICER. That amendment is now pending.

Mr. REED. Mr. President, I understand that Senator WARNER has a second-degree amendment which I will accept.

Mr. WARNER. That is correct, and I seek now to modify it, and I will send a modification to the desk and add to the modified amendment.

It is a very minor modification. I simply strike one word, and it is the word ''the.'' I send the modification to the desk and ask for its immediate consideration.

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

The amendment (No. 3450), as modified, is as follows:

(Purpose: To provide for funding the increased number of Army active-duty personnel out of fiscal year 2005 supplemental funding)

Strike line 2 and insert the following:

''502,400, subject to the condition that costs of active duty personnel of the Army in excess of 482,400 shall be paid out of funds authorized to be appropriated for fiscal year 2005 for a contingent emergency reserve fund or as an emergency supplemental appropriation''.

Mr. WARNER. I am ready to indicate to my colleague we have worked on this amendment in the second degree. It is my understanding that the Senator from Rhode Island is prepared to take the Warner amendment as modified.

Mr. REED. That is correct.

Mr. WARNER. Fine.

Mr. REED. I want to thank the chairman for his instructive work on this amendment. He recognizes, as I recognize, along with my colleagues and principal cosponsors Senators HAGEL, MCCAIN, CORZINE, AKAKA, and BIDEN, that our Army is stretched very thin across the globe with numerous missions, and in order to fulfill these missions we have to raise the end strength of the Army.

The amendment before us today would put within the authorized end strength a 20,000 increase in the number of soldiers in the U.S. Army. These are the number of troops the Army has indicated that they can absorb this year, and that they can train and utilize this year. It represents the recognition that we cannot simply depend upon emergency powers through supplementals to increase the end strength of the Army. We have to, as we do in this amendment, put in the actual end strength number to reflect a larger Army and also to reflect the fact that this is not a temporary occurrence.

Our commitments in Iraq, Afghanistan, and around the globe are going to require a substantially larger Army for an indefinite period of time.

As a result, working together with the chairman, we have placed in the Defense authorization bill the precise number of soldiers, this precise increase of 20,000 troops.

What the chairman has added, though, is the fact that these troops have to be paid for. There is a strong argument that we should pay for them in terms of regular budget authority, but he has suggested that we again go the emergency supplemental route to pay for these troops, which are now fully authorized in law. What I wanted to accomplish in the amendment first is to make sure we do incorporate a suitable end strength number. That has been accomplished.

Second, I wanted to avoid a situation where the Army had to go within its existing programs to search high and low for dollars to pay for these extra troops. That has been accomplished by the chairman's suggestion that we move some funds already identified in the emergency supplemental and designate those to pay for these additional troops.

So we have avoided a situation where the Army this year is going to be forced to come up with funds by going through and ransacking their existing programs, and we have set it in the authorization bill, the appropriate forum for such a decision. We have set in the precise number of end strength that is appropriate this year for the U.S. Army.

The question still arises, What happens in succeeding years? The argument myself, Senator MCCAIN, Senator HAGEL, and others have made is we cannot continue to depend upon supplemental and emergency funding. This is not an emergency. This is a fact of life in the world today. We need a larger Army.

We are accomplishing our objectives today for this fiscal year in this authorization, but I think the chairman and we all recognize we will eventually confront a situation where we have to raise the bottom line of the Army in terms of the funds they have. We do not want to see a situation a year from now or 2 years from now when the supplementals are inadequate but the needs of these troops are still persistent.

Senator LEVIN has language in this authorization bill that indicates in succeeding years, after this fiscal year and after this authorization bill, any increase in end strength will have to be put in the Army budget. I think that is an appropriate response. I think the Reed amendment as modified by Senator WARNER will, in effect, accomplish that.

This is the thrust of the amendment. I have had an opportunity to explain it. At this point I reserve the remainder of my time to allow the Senator from Virginia to comment.

Mr. WARNER. I thank my colleague. This is one of those situations. Senator REED is a very valued member of the committee and the amendment has strong cosponsorship; namely, Senators MCCAIN and HAGEL and others on our side. I think all along the committee has recognized the need to work with the Department of Defense, most specifically the Department of Army, to resolve this situation. I thought it necessary to second degree the amendment which would authorize the Department of Defense to pay the cost of the additional Active-Duty soldiers for fiscal year 2005 from supplemental or

contingent emergency reserve funds because the sponsors of the amendment had not identified the considerable sum, some $2 billion plus, that their amendment would generate in the need for the Army budget.

The Army needs this Active-Duty strength. I think we are in agreement on this point.

Senator, I indicate now I am going to urge my colleagues to accept the amendment.

I note that in the bill we are considering there is a specific authorization which the committee worked out in section 402 for temporary increases of up to 30,000 active duty soldiers above the currently authorized level. This goes 10,000 active-duty soldiers beyond the end strength level proposed in Senators REED and HAGEL's amendment.

My second degree amendment, however, addresses the real issue stemming from these increases—how to pay for them. The Reed/Hagel amendment provides no offsets for the $2.4 billion cost of these extra troops. I submit that this is not a cost for the Department to take ''out of hide,'' or that the Department of the Army should absorb out of the FY 2005 budget.

The approach in my second degree amendment reflects the recommendation of the Army Chief of Staff, General Schoomaker, who testified that using supplemental appropriations gives necessary flexibility and is, in fact, essential to preserve the Army's ability to plan for operational readiness in the present and modernization for the future.

The Reed/Hagel amendment would have the effect of directing the Army to increase its end strength by 20,000 in FY 2005 at a cost of $2.4 billion. The amendment identifies no offset, it identifies no means to pay for these additional troops. Consider the potential effect of that proposal on the Army. The $2.4 billion represents a 15 percent reduction of funding for direct costs of operating forces for home station training, exercises and operations; in other words—fuel, spare parts, maintenance, food, and other consumables. Alternatively, this reduction would eliminate almost all funding for Army individual and unit training—such as basic training, flight training, and combat training center rotations. The $2.4 billion represents a 42 percent reduction of funding for Army command and control, logistics, weapons and ammunition transportation and storage. It could reduce resources to key readiness and modernization accounts, as indicated above, and divert money needed to train and retain more experienced personnel because of the imperative to satisfy an end strength number.

My amendment would afford the Army the opportunity to flexibly execute its budget while increasing its manpower. I would ask you to keep this in mind and also keep in mind that the conferees will have the task of finding $2.4 billion in offsets if this amendment becomes a law.

Mr. HAGEL. Mr. President, I rise today to join my colleague Senator JACK REED in introducing an amendment to the fiscal year 2005 Defense authorization bill to increase the size of the United States Army by 20,000 additional troops.

Over the last year the Congress has expressed grave concern that our Armed Forces are too small to meet the extraordinary demands being placed on them today. These demands will be with us well into the future.

Senator REED and I are proposing this amendment to formally increase the size of the United States Army by 20,000 troops in the coming year.

The additional troops are urgently required to give the Chief of Staff of the U.S. Army the tools he needs to fight the war on terrorism, stabilize Iraq and Afghanistan, and meet the global demands being placed on the total force today.

Under emergency authority, the U.S. Army has already exceeded its authorized end strength by around 15,000 soldiers. This amendment provides straightforward congressional approval for these additional troops. It also puts the future funding of these troops on the record, not masked in the emergency supplemental appropriations process.

The size and cost of the Army must be transparent to the American people, our allies, and to those that would oppose us in the war on terrorism.

This amendment gives General Schoomaker, the Chief of Staff of the United States Army, the additional manpower he has told us he needs to transform the total force . . . the active duty Army, the Army Reserve, and the Army National Guard.

The amendment recognizes the fact that the Army needs 20,000 more troops now. In the future the Army must also be authorized to add 10,000 more soldiers.

The amendment increases the approved Army end strength personnel floor from 482,400 to 502,400 troops. It tells the soldiers in the Army that we strongly support increasing the size of the Army to meet the increased demands being placed on the service.

I commend Chairman WARNER and ranking member LEVIN for their outstanding work on this Defense authorization bill. Members of our Armed Forces are currently engaged in combat operations in Iraq and Afghanistan.

Hundreds of thousands of American men and women in uniform are serving around the world defending the freedoms we hold dear.

Chairman WARNER and ranking member LEVIN are tireless supporters of our men and women in these dangerous times. Our Nation owes them both, and their staffs, a debt of gratitude for their service.

I also appreciate the Chairman's contribution to this effort with his second degree amendment.

And finally, I wish the U.S. Army a happy 229th birthday.

Mr. BIDEN. Mr. President, I am very pleased to be a cosponsor of this amendment with Senators REED, MCCAIN, HAGEL, CORZINE, and AKAKA.

I understand that we have accepted the Senator from Virginia's amendment paying for these additional 20,000 soldiers in the supplemental.

While I think the Army would be better served by an end strength increase that is not subject to repeated supplementals, I am pleased that we are all in agreement that we need more troops today.

I think it is very simple. Soldiers provide stability. Without adequate numbers of boots on the ground, you can't get security and stability.

That is true in Iraq, Afghanistan, Korea, and the Balkans.

As Senator MCCAIN and I have both said repeatedly, we need more troops in Iraq to achieve stability. If we had put more troops into Iraq after major combat operations, the situation might be very different. I don't believe it is too late. I still think that additional troops are needed.

I also believe that it is my obligation to back that up with some relief for those soldiers serving today. We shouldn't have to keep issuing ''stop-loss'' orders, forcing soldiers to stay in the Army.

Let's give the Army what it needs.

What my colleagues and I hoped to accomplish was to reassure today's soldiers and their families that they will not have to keep looking at extended deployments and stop-loss orders. Instead, we want them to know that we are committed to making the Army large enough to do the missions America is asking it to do.

Some of our colleagues believe that the need for additional soldiers is temporary. I disagree.

It is true that the Army is planning a major restructuring. This may mean future efficiencies, but we don't know that yet. Like any other major change, more resources are needed during the change. In this case, more soldiers are needed as the Army moves to a more capable brigade structure.

I would rather plan for the clear needs of the next decade in the regular budget. I don't think we should be relying on supplementals to provide the right sized Army.

If I and my colleagues are wrong, then we can revisit these numbers and cut end strength like we did in the beginning of the last decade. I would rather take the cautious approach and err on the side of our soldiers and their families.

I urge my colleagues to adopt this amendment which takes us closer to that goal.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, with the series of votes that we have, first on REED and then on BIDEN—we have received word there may be a couple of other Senators who may want to speak on this amendment. I ask unanimous

consent of the Chair, in the form of a unanimous consent request, that prior to the Reed amendment being voted on, as amended by WARNER, there be 10 minutes set aside to talk about that prior to this vote.

Mr. WARNER. I think that is an accommodating gesture. In fact, the amount of time I reserved on this side, portions of it perhaps could be yielded back, and then absorbed by the proposal of the distinguished leader.

Mr. REID. The time may not be necessary.

Mr. WARNER. It may not be necessary. But so many of our colleagues are doing a lot of work all over the system right now. They didn't recognize that this would be brought up at this time. We want to accommodate them.

Mr. REID. Mr. President, I ask unanimous consent that prior to the vote on the Reed amendment, Senator REED control 10 minutes, Senator REED of Rhode Island.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Rhode Island.

Mr. REED. Mr. President, I yield such time as remained.

Mr. WARNER. Mr. President, would the distinguished Democratic leader allow the time to be managed on this side by either Senators HAGEL or MCCAIN, the time we have on this side? That would sort of divide it between yourself and the two colleagues on this side?

Mr. REID. That would be appropriate because those were the two Senators we were worried about.

Mr. WARNER. I thank the Senator.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. I thank the chairman for his constructive participation in this process and also to emphasize what he has emphasized and that is the extraordinary stress our Army is withstanding at this point. They are doing it magnificently, performing with great skill and professionalism.

We have 126,000 soldiers in Iraq; we have 13,000 soldiers in Afghanistan; we have soldiers still in the Balkans, 2,500; we have forces in Kuwait, about 17,000; we still have our mission in the Sinai; we have 1,700 soldiers in Guantanamo maintaining the detention facilities there; we have 16,000 soldiers, Noble Eagle, which is the heart of our defense of our homeland; we have soldiers in the Philippines; 31,600 soldiers in South Korea. We have them all over the world doing an extraordinary task and job for our company. Frankly, they need more help and that is the heart of the Reed amendment.

In addition to that, we have seen troubling signs that this operational tempo is putting great stress and duress on our soldiers. Recently, there was a stop-loss order announced by the G–1 of the U.S. Army that said essentially any soldier who is scheduled to depart within 90 days for deployment cannot leave the service, even if that soldier's time in service has expired. Essentially what they have said is: You can't get out of the service. The Volunteer Army is no longer completely volunteer. That is just one example.

We are withdrawing troops from Korea at a time when there is a huge crisis on the peninsula. The North Koreans indicated they have plutonium; they are intending to process it. They may have already constructed eight nuclear devices. We don't know for sure. Yet at this time when we need maximum military force to complement our diplomacy, we are withdrawing troops, which is perhaps sending a signal to the North Koreans that they can wait us out or that we are not able or ready to match our diplomacy appropriately with military force.

That is another prime example, I believe. In fact, frankly, I think that if North Korea 2 or 3 years ago brazenly declared they had nuclear weapons, our response would not have been to withdraw troops. The calls in this Chamber would have been for more troops in Korea. But now because of Iraq that is difficult; we are pulling them out to send them to Iraq.

Then we have a situation in our training centers, the infrastructure of the Army. This is one of the major reasons why we have such extraordinarily skilled soldiers.

First, they are men and women of courage and character, but second they received the greatest, most realistic training in the world. They are individuals who can and will do any job, but they do that so well because they are the best trained.

We are taking soldiers from our training centers—those trainers who are preparing the troops to go overseas—and we are deploying them.

As a result, these are indications that we have a military force which is significantly stretched. That is why it is so important to raise the number of troops that we have entering the Army.

Today, the Army has 495,374 soldiers serving on active duty. The end strength has to increase. The Reed amendment increases it by 20,000 troops.

There are those who have predicted we would get in this predicament. General Shalikashvili's predictions and other predictions are coming true. Our responsibility is now to give the military, particularly the Army, sufficient resources and sufficient personnel to do the job which we are asking them to do.

Last December, in 2003, the Army's Strategic Studies Institute published a report which stated that the ground force requirements in Iraq have forced the U.S. Army to the breaking point.

We have to prevent that breaking point from being reached, and that means putting more troops into the force structure.

Last year, during the appropriations debate, Senator HAGEL and I sponsored an amendment that would have raised the end strength by 10,000 in the supplemental appropriations. It passed the Senate. I thank my colleagues on both sides who were very supportive of that. But, unfortunately, at that point the administration thought it was unnecessary and they were able to successfully defeat that proposal in conference. At least now they recognize the need for additional troops. But what they are still adhering to is this notion that the emergency is temporary.

I hope by putting the actual number of the end strength increase in this bill we are sending a signal to everyone that we will, in fact, stay the course—not just rhetorically but with actual resources and actual troops.

Senator WARNER explained the funding mechanism was one where some of us would have preferred, frankly, if we could have, to increase just the bottom line of the Army. But given these other demands on resources and this authorization bill, it was his suggestion that we, once again, use emergency funding to fund this now authorized end strength. That gets us through this year. But the concern I have and the concern others have is that we will reach a point within a year or two where the Army is going to have these troops in uniform but their baseline is not going to be sufficient if a supplemental or emergency funding is not made readily available. That is a real crisis and we have to start thinking about that now.

Senator LEVIN has been very thoughtful on this topic. He has language in the bill that says any increases in the next fiscal year of the end strength have to be budgeted through regular budget processes. Again, I hope that takes place. But that means giving more resources to our Army, and we will work—I think I can speak for Senator WARNER—to make sure the Army has those resources.

I am very pleased we are able to make this adjustment—overdue adjustment—in the end strength of the U.S. Army.

I retain the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged equally to both sides.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, in regard to the Reed amendment—and that discussion has been had so far—I am pleased that the chairman and Senator REED have worked out an agreement. I hope that will be satisfactory.

I haven't had time to fully study the details of it, but I expect to be supportive of the agreement which they have reached. We know the Army is stretched today. We definitely need to consider what we can do to alleviate that.

I would like to add a few thoughts in general on the subject of the Army, its restructuring which is ongoing, and how we best can deal with it and what our policy about it should be.

We are in the process of a major restructuring within all of the Department of Defense, but particularly the Army. In dealing with that, they are in the middle of it right now.

General Schoomaker, who spent his career as a combat officer and a special forces officer, is a man of decisive leadership skills. He is working very hard to determine how to get the Army in the posture we want it to be.

With Guard and Reserve, we have over 2 million personnel in uniform, but we are finding it extremely difficult to maintain 150,000 or less soldiers in Iraq.

General Schoomaker has a story which he tells. It is about a rain barrel. He says the way he sees the military, the Army's rain barrel has a spigot and the spigot is about two-thirds of the way up. Whenever we have a demand, we draw down the water, but we are only drawing the top third of the barrel. In large part, the barrel is not accessible and readily deployable for purposes that we are likely to face in the future. He believes we can work on that.

He knows something we all know—that we have a finite defense budget. I am as strong a person as there is in this Senate on expanding spending for defense and making our defense capabilities second to none. We are that today. We have the greatest army the world has ever known. The professional soldiers who serve us so well are doing incredible things. We are proud of them. People just say that. I say to you that every military in the world knows the American military is unsurpassed. They respect us. That is why they want to train with us. They want to learn our tactics. They want to see what equipment we are using. It is something in which we should take pride. He is working with that and how to better utilize our resources.

There was an article recently which a radio reporter in Alabama asked me about. People are transferring from the Air Force to the Army. I said I didn't know that. I did some checking on it.

The Air Force has concluded they are 17,000 above their needs, that these 17,000 soldiers are excess for the mission they have. So they are giving an opportunity to change their MOS, or transfer to the Army, which needs more.

The Navy has discovered it has 7,000 excess.

I chaired an Armed Services Committee, the Sea Powers Subcommittee, and all the new ships that we are building today are using half—maybe less than half—the number of sailors to operate them as we used to use because of technology, better equipment, and science. We can operate a combat warship with half the people he used to have.

So the Navy is downsizing. They do not want to spend any more money than they have to for personnel who aren't critical for their mission because they have technological advances they would like, and new ships they need to bring on. The Air Force is thinking the same way.

The Army, of course, is more personnel driven. Although it is quite technologically advanced today, all of our soldiers have to be highly trained to be able to utilize the technology they have.

We are already at an increased end strength posture for the Army. The numbers I have are around 19,000 above the authorized end strength, but that is flexible.

General Schoomaker says he is not asking for legislation that mandates a permanent increase in his end strength. He stated in committee, in answers to questions as part of his formal testimony, he would prefer not to be mandated to have this end strength increase, but because we are in combat today he has done it and can maintain it. He would like to be able to utilize funding from the supplemental to maintain that strength. He has said he would prefer we allow him to continue to work on his restructuring and see if we cannot create more combat brigades that are ready to be deployed, fully equipped, and highly trained.

Frankly, in years past, we have had more soldiers than we have had equipment and training. The Europeans are being criticized by the United States, and in their own self-evaluations, for bringing on large numbers of draftees and others who stay just for a short period of time. They are not highly trained and not highly equipped and are spending a lot of money, but the soldiers are not deployable to serious combat situations. Their ability to deploy and actively participate in combat is far less than it should be.

If we think about the rain barrel analogy of General Schoomaker, we think about the ability to move personnel numbers from the other services, which can be an important part of our restructuring and improvement in our defense forces, we may find that we can make more progress than we think. That is certainly my goal.

Our Guard and Reserve are performing exceedingly well. I visited them in Iraq. I know some military police and the Guard unit have been criticized for unacceptable behavior in the Abu Ghraib prison. I visited an Alabama National Guard MP unit in Baghdad. Every day our soldiers were going to a local MP unit. They were working with the local Iraqis. They told me they bonded with them. They walked out on patrol with them. They taught them how to investigate crimes. They taught them all they knew about law enforcement. Forty percent of those guardsmen—many of them 40 years of age—were State troopers and police officers in Alabama. They are well trained in how to handle people, how to deal with crowds, how to maintain order, how to handle traffic tickets, and investigate crimes.

Our Guard and Reserve are important. They can absolutely supplement our Active-Duty forces, and should. We should not create a system or expect we have to do all our work with only Active-Duty soldiers. They certainly can do that. I don't think anyone is suggesting to the contrary.

So we have one national defense system. We have one Army, Guard, and Reserve today. We need to continue to transform and restructure that entity so we have a structure that is sufficient to meet the demands. But we also are lean and well paid and well trained. It does no good to add a bunch of soldiers to the military if we are not going to add training capability, if we are not going to add equipment, if they are not trained on the best helicopters, if they are not trained with the best missiles, or trained with the best computer systems and do not know how to access our global hawk and other satellite systems that provide intelligence. If we do not do that, we are not as successful as we should be.

At a NATO conference not long ago, a year or so ago after the Iraq war, a French rapporteur reported on it. He said the conclusion that one would draw from the war in Iraq is that a smaller, technologically advanced, well-trained military can defeat a much larger military not well-trained and not technologically advanced.

As we work to make sure we do everything possible for our Army, everything possible for our Guard and Reserve, we must make sure they have the best pay possible, make sure they have the best benefits possible. I will offer an amendment in a few minutes on that. We must make sure they are trained with the best equipment possible, so when they are on the battlefield, they have the ability to inflict the greatest military force on the enemy and be as protected as is possible.

That is where we are. Hopefully, on this amendment, we have reached an accord we can all live with. Many people want to do something for our Army because they are so proud of them and they know how tough the duty is in Iraq. They have seen their neighbors go off in the Guard and Reserve to serve in Iraq or Afghanistan. They want to do something for them. It does sound like maybe one of the best things we could do is increase the numbers. I am not sure we ought to rush too fast. We need to be thoughtful and cautious as we go that way. We need to listen to General Schoomaker. He has not asked for permanent increases in end strength, although he is up now pushing 20,000, as I understand it, above the authorized end strength.

If we do all that is necessary to bring efficiency to bear and we reward our soldiers for their terrific performance, we will have met our challenge.

I see Senator REED, a West Point graduate. He understands the military. It is a pleasure to serve with him on the Armed Services Committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. I thank the Senator from Alabama for his kind words also.

We are all in agreement that there is tremendous stress on our Army. Let me suggest this chart shows the deployments in Operations Iraqi Freedom and Enduring Freedom projected not just over the next several months but actually into 2007. The dark green demonstrates the actual planned deployment today, the projection of February 2004. On July 19, 2003, last year, these are the force projected, brigades equivalents.

It was projected for July of 2004 we would be roughly at about 8 brigade equivalents. Today in Iraq and Afghanistan there are 18 brigades, more than twice as many soldiers, or about 130,000-plus soldiers in these two operations.

This is not just a spike. This is, as you can see on the chart, a plateau. We are expected, under the projections today, to have 17 brigades all the way out to the end of 2005, the beginning of January of 2006. They come down a little bit if things stabilize a bit in March of 2006, to around 13 or 14 brigades.

This is a long way out to project. So far, if we look at the projections, we have ended up with more troops needed than what we thought we could entertain.

My point is that this is not a temporary spike in requirements for soldiers in the U.S. Army. This stretches out to 2007, 3 years from now. It is entirely appropriate we put this number into the Defense bill, that we do not simply give some emergency powers to the Secretary of Defense.

The challenge we have going forward—we have met the challenge this year by tapping into that emergency fund, but the challenge going forward is giving the Army the resources in succeeding budgets in their own bottom line so they can continue to field these forces. That is what we are projecting today. It is not as if in 6 months we will be fine, Iraq will be resolved, Afghanistan will be resolved, we will be back to a low level of participation.

Our planners' best thoughts today are for 17 brigades for a long time. So that is what is at the heart of the amendment I have proposed, along with Senator MCCAIN, Senator HAGEL, Senator CORZINE, Senator AKAKA, and Senator BIDEN. I believe we are taking a very important step by putting the end strength number in our authorization bill, not as an emergency but as a reality, as a near- and medium-term reality. That is what this chart says. Three years from now we are going to have to still find troops to put in about 14 or 15 brigades in these 2 operations.

But the issue that is still outstanding—not this year because we have bridged it with the emergency funding—is, how do we build up the resources within the Army budget to carry these soldiers forward 2 and 3 years hence? We will be working on that, obviously, over the next few weeks into conference and beyond.

I know there are other colleagues—Senator MCCAIN, Senator HAGEL, and others—who might want to talk. We have made arrangements prior to the vote for 10 minutes, which I would gladly offer to them for their comments.

Mr. President, may I inquire how much time I have?

The PRESIDING OFFICER. The Senator has 4 minutes 38 seconds.

Mr. REED. Thank you, Mr. President. I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. The Senator has 3 minutes 40 seconds.

Mr. SESSIONS. Three minutes.

Mr. President, I would just share for our colleagues some other things that are happening. There is a serious effort to restructure our forces that also includes looking at our troop strength deployed abroad in a number of different areas. I think we have 37,000 soldiers in South Korea. I believe that number is larger than it needs to be. The military is looking at what they can do to reorganize those forces there and bring some of them home.

I believe, having visited 12 military installations in Europe just within the last 2 months, we can bring home substantial numbers of our troops from there. In fact, I think it would be a mistake if we do not bring home two divisions. Probably 40,000 Army soldiers and their dependents could be brought home from Europe. It is not necessary to maintain that kind of strength abroad.

So there are a lot of things we can do to make life easier for our soldiers. General Schoomaker would like to see a soldier be able to go to a military base with his family and stay there 7 years, and be promoted and stay with a unit and improve his technical skills and his unit cohesion before being moved again. Those are goals we need to seek so we will be even better in capability, and it will also be good for the soldiers and their families.

I reserve the remainder of the time and yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I rise in strong support of the Reed amendment. Yesterday, in USA Today: "Army division sees its war tour extended and its casualties rise," a very interesting front-page story in USA Today, entitled: "13 months on the ground in Iraq." It says: "After more than a year of combat, soldiers of the 1st Armored Division wonder when they'll go home."

There are some interesting comments in this article from individuals:

"The option left to the nation, the Army, was to keep 1st Armored here or pretty much concede defeat," says Lt. Col. T.C. Williams, the battalion commander. Soldiers were disappointed, he says, but they also knew that after a year in Iraq, they were prepared for anything. "Nobody does this better than we do," he says.

I am sure he is correct.

There are other quotes:

"We still have a mission we have to accomplish, for the good of the Iraqi people and the future," says Staff Sgt. Brad Watson. . . .

But these soldiers don't hide their concern that their extension has been violent, hard on their families, and left them wondering how things could have been.

"Gosh, we could have got out of here in 12 months with little or no casualties, and all of a sudden 17 people in your platoon become a casualty?" Watson says, "It's something I never dreamed could happen."

The point of the story is there are some very brave young Americans who have had to remain in Iraq. There are also stories about the so-called stop-loss rule, which has been imposed, which prohibits people from leaving the military at the time when they are supposed to, which I think some could argue is some form of conscription, of a draft.

What we are doing is we are stopping men and women in the Army and in the Marine Corps from leaving the service at the time of the expiration of their contract. So we are involuntarily keeping people in the military. And instead of the draft applying to all Americans—conscription—we are basically penalizing those people who volunteered to serve, which, in my view, is the worst of all worlds.

The reason why we are in trouble in Iraq and in as much trouble as we are in today and having the difficulties we are having today is because after the conclusion of the combat phase of the war we had too few boots on the ground in Iraq. Anyone outside of the Pentagon, with rare exception—any retired general will tell you that we did not have enough people on the ground to pacify the situation, stop the looting, stop the resurrection of the Baathists, stop the beginning of an insurgency. We had a window of opportunity to do so. We did not have enough people on the ground. And now we are paying a very heavy price for that incredible mistake on the part of the civilian leadership in the Pentagon.

And why were they so reluctant to send additional troops? The dirty little secret is, they did not have them. Do you think we are taking troops out of Korea to deploy to Iraq because the situation has gotten better in Korea? The last time I checked, the North Koreans posed an even greater threat and are acting in a more intransigent fashion than ever before. But we are having to take thousands of people out of deployment in Korea and move them to Iraq.

Meanwhile, we see people who are guardsmen and reservists who are going back and back and back. Now, I have had the opportunity of meeting and talking to many. In fact, 40 percent or 55,000 of the soldiers currently serving in Iraq and Afghanistan are guardsmen and reservists. They are wonderful. They are magnificent people. But they did not join the Guard

and Reserves to be deployed every other year to Afghanistan or Iraq.

When we look at the training of the soldiers who were assigned to the prison in Abu Ghraib, they were people who were involuntarily extended and had no real training in carrying out the functions they were supposed to at that prison—again, a very heavy price, a very heavy price.

Mistakes happen in conflicts. That is why we try to avoid them. But a fundamental error that is still not corrected—still not corrected—is the shortage of the military on the ground with the kinds of specialties and skills that are so badly needed: special forces, military police, linguists, civil affairs, and others who simply are not there today. And we see in some cases a chaotic situation in some parts around Baghdad and in the Sunni Triangle.

So I regret that we are here on the floor of the Senate having to force an increase in the size of the Army on the Department of Defense. As I say, literally every retired military officer I have talked to has said—and every military expert says—you do not have a large enough Army. I recently talked to one retired general who said: I have a fear of not enough people in Iraq and that we are not able to do the job.

But my far greater fear and nightmare is that we have something in Korea, something between China and Taiwan, something in our own hemisphere like significant unrest in Venezuela or a significant commitment we might have to make on the continent of Africa. We don't have the people to do it.

I hope we will support the Reed amendment. I hope the Pentagon and the civilian leadership there will come to their senses and recognize that there are not enough men and women in the military today. They are magnificent, but there are not enough of them. They are stretched too thin. They are badly overworked, and we have paid a very heavy price for these failings from the beginning of the Iraqi conflict.

I still believe we can win and must win, but long ago we should have repaired this deficiency in the size of the Army and the Marine Corps.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). All time has expired.

Mr. WARNER. Have we pretty well resolved this? The Senator from Arizona and the Senator from Alabama, have we taken adequate time over here for our colleagues who have been in strong support? I think we have reached a conclusion on this matter. We will not need that extra tranche of time.

Mr. REED. If the Senator will yield, I believe we were waiting for Senator HAGEL, another cosponsor.

Mr. WARNER. I think we should allow some time for Senator HAGEL. We will make that time available.

Mr. REED. I thank the Senator.

The PRESIDING OFFICER. There are 10 minutes available prior to the vote.

Mr. WARNER. Then let's hope Mr. HAGEL can make it.

Mr. REID. Under the order, the Sessions amendment is now in order.

The PRESIDING OFFICER. That is correct.

Mr. BIDEN. May I have 10 seconds on the Reed amendment?

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I can't think of a more important amendment we are going to vote on than the Reed amendment. I am a principal cosponsor. I believe it is overdue. I hope to the Lord we go ahead and do the right thing here and support this amendment.

The PRESIDING OFFICER. Under the previous order the Senator from Alabama is recognized.

Mr. REID. Mr. President, after the amendment is reported, I wonder if I could speak first. I am going to use 15 minutes on another subject. It will take a few minutes. I would like to go do something else.

Mr. WARNER. Absolutely, Mr. President.

Mr. REID. Is that OK with Senator SESSIONS?

Mr. SESSIONS. It is all right with me. I know Senator CHAMBLISS wanted to speak also.

Mr. WARNER. Mr. President, I think this might be an appropriate time that I would like to urge adoption of my amendment in the second degree to the Reed amendment.

Mr. REID. I think that is totally appropriate.

Mr. WARNER. Let's have that.

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment No. 3450, as modified.

The amendment (No. 3450) was agreed to.

Mr. WARNER. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. This amendment has the strong support of the Senator from Virginia.

I thank the Chair.

AMENDMENT NO. 3371

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, does the Senator from Nevada want 15 minutes right now?

Mr. REID. I am going to use 15 minutes. It has nothing to do with your amendment. We have 15 minutes, but we weren't going to oppose your amendment anyway. I would like to take my few minutes now.

Mr. SESSIONS. All right. So you want the full 15 minutes?

Mr. REID. I don't know how much time I will use. I don't think I will use near that amount.

Mr. WARNER. If the Senator will yield, I am advised by the parliamentarians that we may need to put in on the Reed amendment now that there are no further amendments, second degree or otherwise, in order on that amendment. The desk asked me to check that.

Mr. REID. That was part of the original order. Would the Chair ask that the Sessions amendment be called up now.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Alabama [Mr. SESSIONS] proposes an amendment numbered 3371.

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

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

The amendment is as follows:

(Purpose: To provide for increased support of survivors of deceased members of the uniformed services)

On page 130, between lines 9 and 10, insert the following:

SEC. 642. DEATH BENEFITS ENHANCEMENT.

(a) FINAL ACTIONS ON FISCAL YEAR 2004 DEATH BENEFITS STUDY.—(1) Congress finds that the study of the Federal death benefits for survivors of deceased members of the Armed Forces under section 647 of the National Defense Authorization Act for Fiscal Year 2004 has given Congress sufficient insight to initiate action to provide for the enhancement of the current set of death benefits that are provided under law for the survivors.

(2) The Secretary of Defense shall expedite the completion and submission of the final report, which was due on March 1, 2004, under section 647 of the National Defense Authorization Act for Fiscal Year 2004.

(3) It is the sense of Congress that the President should promptly submit to Congress any recommendation for legislation, together with a request for appropriations, that the President determines necessary to implement the death benefits enhancements that are recommended in the final report under section 647 of the National Defense Authorization Act for Fiscal Year 2004.

(b) FISCAL YEAR 2005 ACTIONS.—At the same time that the President submits to Congress the budget for fiscal year 2006 under section 1105(a) of title 31, United States Code, the President, in consultation with the Secretary of Defense, shall submit to Congress a draft of legislation to provide enhanced death benefits for survivors of deceased members of the uniformed services. The draft legislation shall include provisions for the following:

(1) Revision of the Servicemembers' Group Life Insurance program to provide for—

(A) an increase of the maximum benefit provided under Servicemembers' Group Life Insurance to $350,000, together with an increase, each fiscal year, by the same overall average percentage increase that takes effect during such fiscal year in the rates of basic pay under section 204 of title 37, United States Code; and

(B) a minimum benefit of $100,000 at no cost to the insured members of the uniformed services who elect the maximum coverage, together with an increase in such minimum benefit each fiscal year by the same percentage increase as is described in subparagraph (A).

(2) An increase, each fiscal year, of the amount of the death gratuity provided under section 1478 of title 10, United States Code, by the same overall average percentage increase that takes effect during such fiscal year in the rates of basic pay under section 204 of title 37, United States Code.

(3) An additional set of death benefits for each member of the uniformed services who dies in the line of duty while on active duty that includes, at a minimum, an additional death gratuity in the amount that—

(A) in the case of a member not described in subparagraph (B), is equal to the sum of—

(i) the total amount of the basic pay to which the deceased member would have been entitled under section 204 of title 37, United States Code, if the member had not died and had continued to serve on active duty for an additional year; and

(ii) the total amount of all allowances and special pays that the member would have been entitled to receive under title 37, United States Code, over the one-year period beginning on the member's date of death if the member had not died and had continued to serve on active duty for an additional year with the unit to which the member was assigned or detailed on such date; and

(B) in the case of a member who dies as a result of an injury caused by or incurred while exposed to hostile action (including any hostile fire or explosion and any hostile action from a terrorist source), is equal to twice the amount calculated under subparagraph (A).

(4) Any other new death benefits or enhancement of existing death benefits that the President recommends.

(5) Retroactive applicability of the benefits referred to in paragraphs (1) through (4) so as to provide the benefits—

(A) for members of the uniformed services who die in line of duty on or after October 7, 2001, of a cause incurred or aggravated while deployed in support of Operation Enduring Freedom; and

(B) for members of the uniformed services who die in line of duty on or after March 19, 2003, of a cause incurred or aggravated while deployed in support of Operation Iraqi Freedom.

(c) FISCAL YEAR 2006 BUDGET SUBMISSION.—The budget for fiscal year 2006 that is submitted to Congress under section 1105(a) of title 31, United States Code, shall include the following:

(1) The amounts that would be necessary for funding the benefits covered by the draft legislation required to be submitted under subsection (b).

(2) The amounts that would be necessary for funding the organizational and administrative enhancements, including increased personnel, that are necessary to ensure efficient and effective administration and timely payment of the benefits provided for in the draft legislation.

(d) EARLY SUBMISSION OF PROPOSAL FOR ADDITIONAL DEATH BENEFITS.—Congress urges the President to submit the draft of legislation for the additional set of death benefits under paragraph (3) of subsection (b) before the time for submission required under that subsection and as soon as is practicable after the date of the enactment of this Act.

ENRON DEJA VU

Mr. REID. Mr. President, I appreciate the courtesy of my two friends. I have been here all day, and I have to leave the floor for a few minutes.

''You have seen that before.'' That is what deja vu means, so I am told. We have seen it before. We in Nevada have the second highest gas prices in the whole country. They have soared to record levels. The oil companies say these price increases are a matter of supply and demand. I have heard that before. I remember now that is the same excuse we heard 4 years ago during the western electricity crisis when Nevada consumers were being ripped off by one of the most ravenous corporate swindlers in history—Enron.

While Enron reaped windfall profits, it told consumers the record high prices were the result of supply and demand. But it turned out Enron was rigging the market to rob consumers. Over the last few weeks, bit by bit, audiotape recordings of Enron traders have come to light in various ways, chiefly through CBS News.

I am reminded of Senator Jesse Helms. I was a new Senator, and Jesse Helms sat back here. He stood and said: I don't want to be here. It was the pornography issue. He said: I hate to talk about this kind of stuff, but I have to. And the stuff he proceeded to talk about was pretty gross, to be honest with you.

Well, I hate to point to this chart, this audiotape today that CBS played last night on the news, but I am going to because it fully outlines what Enron did to the people of the State of Nevada and people in other parts of the Western United States.

Here is a direct quote from one of the Enron traders, one of the people who caused these prices to go up. He worked for Enron:

I want to see what pain and heartache this is going to cause Nevada Power Company.

This Enron trader goes on to say:

I want to . . .

Everyone can see as well as I can the next word. I am not going to repeat it. It starts with ''f'' and ends with a ''k.''

I want to . . . with Nevada for a while.

Second trader says:

What do you mean?

And the first trader says:

I just, I'm still in the mood to screw with people, OK?

Enron traders had all kinds of ways to cheat customers. They shipped power from California to Oregon, masked the original source of the power, and then sold it back to California at inflated rates. This little scheme, this one right here, made Enron a profit of $222,678 in 3 hours. Enron traders also boast on the tapes that Enron CEO Ken Lay will wield a lot of influence in the Bush administration. They were right about that.

A few weeks ago the Washington Post reported on the influence of the people who raised large amounts of money for the President's campaign. One of those big fundraisers was Ken Lay—the President gave him a nickname of Kenny Boy—who served on the administration's Energy Department transition team, if you can believe that, and recommended two of the members of the Federal Energy Regulatory Commission, known as FERC.

After Enron gouged western consumers, utilities in Nevada and other States turned to FERC for help. Remember, two of them came from Kenny Boy. But FERC ruled in favor of Enron and against providing relief to Nevada utilities and taxpayers.

Adding injury to insult, last fall the bankruptcy court ruled that Nevada taxpayers owe Enron an additional $330 million for power Enron never even delivered. Our utilities have asked FERC to hear the case. Senator ENSIGN and I have submitted a brief in support of their complaint. Now I am also joining with western Senators and requesting that FERC vacate the exorbitant contracts that were signed during the manipulated energy crisis.

The parallel between the western electricity crisis and today's gasoline market is troubling, to say the least. The big oil companies are making record profits of up to 75 cents a gallon for a fill-up of a car in Nevada. For 10 gallons, that is a profit of $7.50. The big oil companies are making these record profits, which come out of the pockets of working families in Nevada.

I am afraid I am not the only one feeling, as we stated earlier, that I have seen this before, deja vu. Nevada consumers know they are getting gouged again and it is not a good feeling.

I appreciate the courtesy of the Senator from Georgia and the Senator from Alabama.

The PRESIDING OFFICER. Who yields time?

The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I yield time to the Senator from Georgia, who chairs the Subcommittee on Personnel of the Armed Services Committee, on which the Presiding Officer also serves. I value his judgment on this issue and appreciate his support for this amendment.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I thank my colleague from our neighboring State of Alabama for his terrific interest in our brave men and women who serve in every branch of our military. At this time, when we have so many men and women in harm's way, it is very appropriate that leadership come from this body. Senator SESSIONS has provided the kind of leadership that our men and women have come to expect.

Today, I rise in support of the amendment Senator SESSIONS has proposed. This amendment will provide a much needed revision of the Department of Defense's current policies related to providing benefits to the families of service members who make the ultimate sacrifice for their country.

The DOD's current death benefit policies have been in place, without any substantial revision, for some time now. These benefits have not kept pace with the times and, in particular, the needs of military families in the event the primary provider dies in the line of duty.

Obviously, these events are extremely difficult for any family. They are painful times for military families. I agree that we need to expand the benefits these families receive under those circumstances.

Specifically, this amendment directs the administration to expedite the

final death benefits study that is currently working its way through the DOD. This study was due to Congress on March 1 of this year but has still not been delivered.

The amendment also indexes increases in the current death gratuity benefit of $12,000 to the same rate as the basic pay increase, which is 3.5 percent, beginning in fiscal year 2005. Beginning in fiscal year 2006, the amendment increases the maximum coverage under the Serviceman's Group Life Insurance program by $100,000, from $250,000 to $350,000, and indexing future indexes in the SGLI at the same rate as the basic pay increase; and it provides that the Government shall pay the premium on the first $100,000 of this life insurance.

The amendment creates two new benefits, which I believe are much deserved. First, it allows for the payment of one year's salary and benefits to soldiers who die while on active duty, 2 year's pay in salary and benefits to soldiers killed in action or in a hostile or terrorist event.

The amendment, as drafted, does not violate any budget points of order and allows the Department of Defense necessary time to incorporate the costs and implementation of this program in the fiscal year 2006 budget.

We have just had a thorough discussion by Senator REED and Senator SESSIONS regarding the increase of troop strength. I am so respectful to folks such as Senator REED, Senator MCCAIN, as well as Senator SESSIONS on that particular issue. I agree with them on that issue. We do need to increase the size of the force structure. We need to be able to continue to do that under the current all-volunteer system that we have. If we are going to have that all-volunteer system compete with forces in the outside world, we are going to have to continue to look at the benefits we provide to our brave men and women. This amendment does that.

It adds an additional benefit to our men and women that they don't have today, and it certainly will be of help to our recruiters from the standpoint of continuing to allow them to recruit our finest men and women in America into the military.

Secondly, we will be able to retain the men and women that we invest so much money in, from the standpoint of making sure they have the equipment and training necessary to continue to defend freedom and democracy around the world.

So I commend very highly my friend from Alabama, and I thank him for his great leadership. I am pleased to join in this amendment. I ask my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Georgia and also my cosponsors, Senators JOE LIEBERMAN and JIM INHOFE.

When we ask American soldiers to leave our shores to go abroad in a combat environment to execute the policies of the people of the United States of America, we need them to know, and Americans want them to know, that if their life is lost in that effort, their families are going to be well taken care of. We have a lot of private groups that work at this, but it is most important that the Federal Government have in place policies that would allow their loved ones to be fully and adequately compensated.

Last year we increased the basic death gratuity from $6,000 to $12,000. That was an improvement. It doubled. It is important that we have indexed that to inflation, and it is still not nearly enough for a family today. So we looked at the Serviceman's Group Life Insurance policy, which is somewhat subsidized by the Government, but it is paid for by the soldiers. They take out up to $250,000 in life insurance. Many young soldiers don't like that $16 a month or so that comes out of their paycheck. They sometimes don't choose to take it out. We want to encourage more people to take on that benefit—take out the maximum life insurance so the military will now, under this amendment, if approved, have an additional $100,000 in life insurance fully paid for by the Government, if the soldier takes out his life insurance part. I think that will encourage more people to sign up and provide a much larger benefit package for them. Those are some of the issues that we were concerned about.

Years ago, soldiers got a year's salary if they lost their life. That was changed as part of the life insurance package a number of years ago. I think the Senate believed that we needed to guarantee a person's salary for the year they worked if they are hurt during an Active-Duty accident—not in combat. For 1 year, they will get their salary and benefits paid. Those killed in combat, because they were serving their country in a hostile environment, would have 2 years of salary paid for them.

Those are the kinds of things that can make a real difference in the life of a family. Families will not need to worry about where their next meal is going to come from if they have enough money to take on new housing and move, and maybe for expenses in putting children in school, and all those things that go with the tragic loss of a loved one. We need to make sure they are fully taken care of in that regard, and this amendment would do that.

I cannot say again how strongly I believe we should do the right thing by those soldiers who give their lives for their country. In my State of Alabama, I have talked to over 20 families who have lost a loved one since the war on terrorism began. I have talked to husbands, wives, fathers, and mothers. We have talked to them about the loved ones they have lost—their children. I have been to funerals. Those are things that are very meaningful to anybody who has had that experience.

I feel a special responsibility, as I think every Senator does, to those soldiers who went because we voted to send them there; we asked them to go for us.

I think this is a good first step toward achieving the compensation that families need. There are other compensation benefits they receive, such as benefits for children, income for spouses that are in law, but this is a lump sum that can help a family adjust and establish a life under new and different circumstances and help them get through the tragic period of pain and loss they inevitably will have to go through.

We asked that the Defense Department do a study for us on their ideas and evaluate the current system for fairness and workability. They did not complete that report. We have seen a draft of that report. It was supposed to have come in March. It has not officially been completed.

I will say this: I think it is quite likely that after we evaluate that report, we may want to come back again next year to do some other things to bring more fairness and more support to the families who lost a loved one in the service of their country. There is no higher service that one can render than to give their life for their country.

We have lost a good number of soldiers. We have lost them in the past, and we are losing them in this war on terrorism. I feel strongly that our obligation includes making sure those families left behind are well taken care of.

I yield the floor and reserve the remainder of the time.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be charged equally to both sides.

The Senator from Alabama.

Mr. SESSIONS. Mr. President, there is one point I want to make clear. The act provides for retroactivity of the salary benefits. With regard to soldiers who lost their life in combat since the beginning of the Afghan war or in terrorist acts, their families will receive 2-year's salary and benefits retroactive to the loss, as well as being a part of future benefits for those soldiers who lose their lives in the future.

To reiterate, I ask my colleagues in the Senate to consider that we have before us an opportunity to correct what has been for many a longstanding inequity for our military, the paucity of our death benefits programs for our soldiers killed in combat.

We began to make a difference when in the fiscal year 2004 Defense Authorization Act, this Senate offered and the Congress passed the provision to improve the death gratuity from $6,000 to $12,000. This was an important improvement, but more can be and needs to be done. To that end, I offer this amendment that begins the process of enhancing our death benefits program

to bring it more in line with the significance I believe we all attach to the sacrifices made by our military and their families.

This amendment asks the President and the Secretary of Defense, working with the Secretary of Veterans Affairs, to submit enhanced death benefits for our military and their families as part of the fiscal year 2006 budget request. We expect the next budget in just 8 months. This will give the Department time to deliver the final report on the death benefits from the study we directed in the fiscal year 2004 Authorization Act.

There are specific areas where the death benefits provisions are in need of improvement. The Veterans Administration reached similar conclusions in a 2001 study, and I am confident that the compensation teams working on these issues in the Defense Department are equally convinced that we need changes.

Among the changes is an increase to the Servicemen's Group Life Insurance maximum benefit to $350,000. The Department of Defense would also provide a minimum floor of Servicemen's Group Life Insurance of $100,000 for every servicemember at no cost provided that members selected the maximum amount of $350,000.

I felt great anguish that some of our troops were not selecting the insurance due to the cost or perhaps a lack of understanding about the risks of serving in our military and or the benefits of this program. It may seem hard to believe, but saving $16.25 per month, the current fee to receive the current maximum $250,000 benefit, may appear to be an important financial decision for some, especially our more junior troops. This change makes the insurance a more attractive option.

The amendment will direct in fiscal year 2005 indexing the current death gratuity to the same rate as the basic pay increase. It further asks the Defense Department, beginning in fiscal year 2006, to index Servicemen's Group Life Insurance to the same percentages to which basic pay increases. This is important to ensuring that the benefit does not erode over time like the death gratuity benefit clearly did.

Further, this amendment makes possible for the first time a benefit to ease the transition as well as to clearly recognize the sacrifice of military members killed due to hostile or terrorist actions. For the family left behind, there is no greater tragedy than loved ones lost in combat.

It is clear that service aboard our ships, in our aircraft and around our mechanized equipment is a hazardous vocation. Our troops work with live ammunition and in environments so very different and inherently dangerous when compared to many other occupations. When troops are lost in training accidents or in service-connected events, we should recognize that risk and provide benefits accordingly. The amendment would authorize one full year of salary and benefits to those lost in the service of their country to recognize the hazardous nature of the work performed by the military.

Similar in intent to procedures in other militaries, such as Canada and the UK, and in many U.S. States and cities, this amendment provides an increased benefit for members killed in hostile acts. I have recommended 2 years salary and allowances for those lost in hostile situations. The Defense Department, by a DoD instruction, already makes a determination if a casualty resulted from hostile actions for every member of the military who is lost on active duty.

By comparison, the surviving dependents of a police officer or firefighter killed in the line of duty receive $267,494 under the Public Safety Officers Benefits Act. This benefit has been indexed to correct for inflation and sends a clear signal to our Nation about the value of these leaders of our citizenry. The military is no less valued and this benefit, along with the other provisions in existence and the enhancements in this amendment reflect our Nation's appreciation.

These provisions are similar in intent to the Public Safety Officers Benefits Act of 1976 which acknowledges the risks faced by our police officers and firemen. This amendment acknowledges the risks of military service and helps those left behind with transition assistance.

Anyone who witnessed the bravery of our police and fire personnel on 9/11 and who saw the memorable pictures from that day was profoundly struck by how wonderful these heroes were and how willing they were to go into harm's way. Our soldiers are no less brave. I have visited our wounded heroes at Walter Reed Hospital recently and, like our police and fire personnel, our military is extraordinary for their bravery. This is especially the case for those who pay the ultimate price and die in the service of their country.

I would add that in 1908, the 60th Congress saw fit to authorize 6 months of pay as a death gratuity, and in 1917, the 65th Congress repealed this law in favor of a Government life insurance program. In retrospect, I think the 60th Congress had it correct.

A key feature of this amendment is that the recognition benefits—the one year or two year salary compensation—are to be retroactive for those who were lost in Operation Iraqi Freedom, and Operation Enduring Freedom. We owe this recognition to those troops who went abroad to defend our freedoms.

This amendment also provides an opportunity for the President to recommend any other benefits he deems appropriate. The amendment does not impact the plan for fiscal year 2005, except for beginning to index the $12,000 death gratuity. This will, I believe, give the Defense Department some time to finalize its approach to these changes. The intent of this legislation is to ensure that as part of the fiscal year 2006 budget request, which is due to us in 8 months, that the budget request we receive will incorporate these measures. This gives the administration time to expedite the final report, gather the appropriate accounts together, and to provide to the Congress the legislative initiatives and supporting regulations to substantially improve our death benefits programs. We owe our brave men and women no less.

I yield the floor. Mr. President, I believe no one else is seeking to speak on this subject, so I yield back all the time.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to amendment No. 3371.

The amendment (No. 3371) was agreed to.

Mr. SESSIONS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. BIDEN. Parliamentary inquiry, Mr. President. Is the Biden amendment in order at this moment?

The PRESIDING OFFICER. It is.

Mr. BIDEN. Further parliamentary inquiry: Is there a copy of the amendment at the desk?

The PRESIDING OFFICER. There is.

AMENDMENT NO. 3379

Mr. BIDEN. Mr. President, I ask that we proceed to amendment No. 3379.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN] for himself, Mrs. CLINTON, Mr. CARPER, Mr. CORZINE, and Mrs. FEINSTEIN, proposes an amendment numbered 3379.

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

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

The amendment is as follows:

(Purpose: To provide funds for the security and stabilization of Iraq by suspending a portion of the reduction in the highest income tax rate for individual taxpayers)

At the end of subtitle A of title X, add the following:

SEC. ____. (a) PROVISION OF FUNDS FOR SECURITY AND STABILIZATION OF IRAQ THROUGH PARTIAL SUSPENSION OF REDUCTION IN HIGHEST INCOME TAX RATE FOR INDIVIDUAL TAXPAYERS.—The table contained in paragraph (2) of section 1(i) of the Internal Revenue Code of 1986 (relating to (relating to reductions in rates after June 30, 2001) is amended to read as follows:

"In the case of taxable years beginning during calendar year:	The corresponding percentages shall be substituted for the following percentages:			
	28%	31%	36%	39.6%
2001	27.5%	30.5%	35.5%	39.1%
2002	27.0%	30.0%	35.0%	38.6%
2003 and 2004	25.0%	28.0%	33.0%	35.0%
2005 and thereafter	25.0%	28.0%	33.0%	36.0%''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

(c) APPLICATION OF EGTRRA SUNSET TO THIS SECTION.—The amendment made by this section shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

Mr. BIDEN. Mr. President, with regard to amendment No. 3379, I ask unanimous consent that Senators CARPER, CLINTON, CORZINE, and FEINSTEIN be listed as cosponsors.

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

Mr. BIDEN. Mr. President, my amendment is quite simple and straightforward. It is no different in its intent than the amendment I offered when the President some months ago requested $87 billion for the reconstruction of Iraq, as well as the support of American forces.

The bottom line is it says we should stop borrowing to cover the cost of our mission in Iraq and Afghanistan. If this mission is as important as the President says it is—and I believe it is—then we should pay for it. We should not make my kids pay for it. We should not make my grandchildren pay for it. We should pay for it.

Before I get into the details of the amendment, because it relates to my finding the money to pay for the $25 billion asked for in this authorization by the President, let me remind people what the state of the Tax Code is now relative to the highest bracket.

In the year 2001, the highest bracket of individual taxpayers was 39.6 percent.

With President Bush's tax cut that was passed, that bracket, along with others, was reduced from 39.6 percent to what it will be and what it is in 2004, 35 percent. So it has come down from 39.6 percent to 35 percent.

The way the Bush tax cut proposal works, when it became law—and I see the chairman of the Finance Committee here who, as the old joke goes, has forgotten more about the Tax Code than I am going to know—is that top bracket will stay at 35 percent in 2005, 2006, 2007, 2008, 2009, and 2010. In the taxable year of 2011, under the present status of the Tax Code, it will go back to 39.6 percent.

I realize there is a move in the House and among many here to ''make the tax cut permanent'' so the 35-percent tax bracket would remain in 2011, 2012, 2015, 2018, and so on, but right now, unless it is made permanent in the taxable year 2011, it will go back to what it was in 2001, 39.6 percent.

One other statistic, to be in this top tax bracket, the people in the 35-percent tax bracket, which used to be 39.6, have on average a taxable income of a million dollars a year. Now, obviously, there are people in there making a billion dollars a year, but no one is in that bracket unless their taxable income is $319,000.

That means after all of the deductions are taken, after all of the things one is able under the law to deduct, so one is likely to have an income of closer to $450,000 or $500,000, they end up with a taxable income of $319,000. OK? So it is taxable income.

That is after one deducts for medical costs they are able to deduct, deduct for their children, for all the things one is entitled to deduct, and people in that category can deduct for a lot of things that average folks do not get to deduct.

So what does my amendment do? How do we have $25 billion so that these bright young pages—and I am not being solicitous; I am not joking—sitting down at the base of the podium there, whose average age is probably 16 or 17 years old, how do we act responsibly enough to say that they should not be paying for this war, that those of us who voted for it, my generation, those who are paying taxes now, should pay for it?

What happens with this $25 billion? It is essentially paid for by the deficit. This all goes to the deficit. This is going to be paid for. It is going to be added. I predict before the year is over—and I do not claim to be an expert on our budget, but I have been around long enough that I think I am pretty knowledgeable—this year's deficit will end up being closer to $600 billion than $500 billion. Everybody knows it is going to be over $500 billion. So why are we going to ask them, why are we going to ask my granddaughters, who range from age 3 to 10, to pay for this war, when we are fully capable of doing it?

One might say: OK, BIDEN, how are you going to pay for this war? Are you going to take money away from education? Are you going to take money away from things that affect these kids? No.

I am going to ask my colleagues shortly to do what I think every patriotic American is fully prepared to do. At the United Way they talk about, this guy gave at the office, but what do we give at the office in this war? What are any of you people, and what am I, giving at the office?

None of us are in Iraq. We are not in the military. We are not getting shot at. We are not away from our families. We are not that National Guardsman or Guardswoman who is taking a pay cut of 30, 40, sometimes 50 percent to serve their country right now.

I mean, this is never a healthy thing for a nation. We are in the midst of a war when the bulk of America is not asked to do anything about it. There are very few people sacrificing for this war. Like our grandparents or our parents, no one has asked us to put tape over our headlights when we drive at night or use ration cards or have to pay higher taxes to support the war. There is no draft.

So what happens? Well, there are a lot of patriotic, young women and men—and some not so young, meaning in their thirties and forties—who are over in Iraq right now. What are we doing?

The idea that if we ask the wealthiest Americans among us to contribute to the war effort, that they are unwilling to do that is preposterous.

I sometimes get mad at some in my party—not those on the Senate floor but some in my party—and some liberal commentators. What frustrates me sometimes is they assume that only poor, middle-class people are patriotic; that they are the only ones willing to make sacrifices for their country. I am here to say that wealthy Americans, the wealthiest among us, the wealthiest 1 percent, are as patriotic as the lowest 1 percent.

In the last time out, when I tried to do this—and I will get to the detail in a minute—to pay for the $87 million, I happened to be with a group at an exclusive country club in Wilmington, DE. We are a wealthy little State. We have some very wealthy people in our State. All States do, but as a percentage we have some very wealthy people. I happened to be with a group of them for an outing. We got to the time that we had the buffet, and it was outside. A couple started asking me about the war. The next thing I know, as every Senator knows and as every staffer has observed their Senators being engaged, all of a sudden it was like a roving press conference. It went from 1 press person to 2, to 5 to 10 to 15, and all of a sudden there was a group of people standing around. Before I knew it, literally, standing outside on this beautiful evening, on this patio of this magnificent club, there were no fewer than 40, mostly men, who are among the wealthiest—not literally the wealthiest, but some were probably in the top 20 or so in my State—some of the wealthiest people in my State, and they are asking about the war.

I said: Let me ask you all a question—and in fairness I want to acknowledge, maybe they were intimidated because no one wanted to be the one to say, no, do not count me in, but I said I am going to go down to the Senate, and I am going to offer an amendment that would require you people right here on this outside patio to give up 1 year of the 10 years of your tax cut to pay for this war. Does anybody here think that is unfair?

I give my word, my honor as Biden, not one person raised their hand. Then people started to chime in. They said, no, it is fair. They started talking about what other people are doing.

When have we ever gone to war when we simultaneously have suggested, as we have gone, to say this is going to be a long, tortuous undertaking to fight terror, and at the same time any President in the past, some 200-plus years, has said: And by the way, as we go, I am going to give you the biggest tax cut in the history of the United States of America?

Now, again, try to be objective about this. Let's assume—I do not, but let us assume for the sake of argument that we badly needed this tax cut in order to spur on the economy. Let me accept that as a given for the sake of this debate.

I asked these people: Does anyone here think if the top 1 percent of the people paying taxes in America were to forego 1 year of the tax cut that, in fact, that would slow the economy? The economy would stall? Sputter? Assuming they were the reason it was growing. I didn't hear anybody tell me that. I have not heard any reputable economists tell me that.

So here I am, back on the floor again, finding it fascinating, absolutely fascinating—and I expect this will be voted on party lines again—why the overwhelming number of my colleagues, for whom most of these wealthy people likely vote, are unwilling to do what the wealthiest among us are fully willing to do.

This time around what I am suggesting is even less ''painful.'' In order to come up with $25 billion to pay for this piece of the war in Iraq and in Afghanistan, you know the only thing you have to do? You have to say: In the year 2005, the tax cut for the wealthiest 1 percent of Americans, who in fact cannot have a taxable income less than $319,000, will go back up from 35 percent to 36 percent. The 1-percent solution.

I can't fathom any wealthy person in America, even at the low end—and, by the way, the average income of this top 1 percent is over $1 million. I can't fathom a single one of these people not having enough patriotic instinct to say: No, no, no, no, I am unwilling. I am unwilling to pay, in the year 2005, 2006, 2007, 2008, 2009, and 2010, 1 percent more than I would otherwise have to pay.

What does that mean? Does it mean 1 percent less investment in their portfolio? Does it mean they buy a Lexus instead of a Mercedes? What does it mean? What does it mean?

While we are now saying, as I think the President probably has no choice, to the people who signed up volunteering in the military: No, no, you are staying another year because your patriotic responsibility is we need you. The President is probably right about that.

Or he is saying to what will be approaching 40 percent of the forces on the ground being shot at or subjected to car bombs in Iraq and Afghanistan who are reservists and National Guard: You have to go twice.

He is saying to the physician who is in the Guard, whose income may have been $150,000 or $200,000 whose pay as a colonel may be $80,000 but he still has the same mortgage payment, the same tuition payment, the same ''nut'' to pay, as they say: It's your patriotic responsibility.

How can we in this country at this moment say we can ask that of those people and we can't say to people whose average income is $1 million: Do us a favor, pay 1 percent more to pay for this installment on the war?

What have we become? Can you imagine that being said in 1943? No, no, no, no, don't ask it of them.

Can you imagine that being said if the income tax had been in place in 1915 or 1916?

Can you imagine that being the case in the Korean war? Can you imagine that?

What is the second logical argument as to why this is a bad idea? If you all agree with me that these Americans are as patriotic as anyone else and that it could not possibly hurt them in any material way, then you have to say: Here is the deal. This will slow economic recovery. This is bad for the economy.

I got a letter from the Chamber of Commerce saying this is going to hurt small business.

My friend from Iowa is here, the chairman of the committee. As the old thing goes—in this case, it is true—he is my friend.

The Chamber of Commerce says it is going to hurt small business. What they mean by that is there are some small businesses that pay their taxes as if they were individual taxpayers. Do you know how many of them pay at the top 1 percent? Of all the small businesses in America? For every 100 small businesspersons in America who claim and pay as individuals, 2 percent—t-w-o percent—of them are in this category where they would be affected.

I am sure the Senator will be able to tell me—I suspect he is here to engage in debate—how taking 1 percent of the American individual taxpayers and asking them to pay 1 percent more in the next 5 years, and taking 2 percent of the small businesspersons in America and asking them to pay 1 percent more for the next 5 years, when each of them fall in a category where they have a taxable income of at least $319,000 a year—how this is going to slow the economy.

I have said this to the President and I have said it publicly—Senator MCCAIN was on the floor earlier—what I am about to say. Senator MCCAIN was on the floor earlier talking about the end strength amendment of Senator REED. He said we need this. He said mistakes happen in war. That is why—and he went on from there.

I believe, and I am confident, this President has made some very serious mistakes in the conduct of this war. I am also confident were I President I would have made mistakes. I am confident, had it been President Gore, he would have made mistakes. I am confident that Senator KERRY will make some mistakes if he is President. I don't think this President will be judged harshly for the mistakes he has made.

But I do think history will judge him fairly harshly for the opportunities he has squandered. One of the opportunities squandered here is the ability to have united this Nation in common purpose after 9/11.

Let me ask a rhetorical question. Can you imagine if immediately after 9/11, when the President had that big economic summit down in Crawford, TX, or near Crawford, with some of the most prominent, significant, and patriotic businessmen in America, and some of the most wealthy men and women in America—what do you think would have happened, as that broke up, if he said: By the way, I want to ask the following of all of you. I would ask each one of you in the spirit of unity and harmony in this country, when you leave this room after hearing me speak, I strongly urge you—I ask you to take out your cell phone and call your accountant at home and ask him to go out and find four of the most worthy young women and men, eligible for college, who are unable to pay for college for 4 years, and commit to pay their tuitions.

Would any of my colleagues on the Senate floor think there would have been a single solitary man or woman in that room who would not have walked out, dialed up their cell phone, and said to their accountants, find those people? I mean it sincerely. I am not joking about this. I can't fathom that group of women and men not responding to the call for unity—not just to deal with the war on terror but to deal with healing and uniting this country. Nothing has been asked of these people, not because they have refused, not because they are unwilling, but because of an ideological disposition that somehow in any way to alter the tax structure beyond what we have just done is ipso facto wrong, bad, counterproductive. We are a slave to ideology on this floor.

There is not a single person in here who can say this $25 billion because it is all fungible is not going to be added to the deficit. Why don't we pay for it

fairly, honestly, and straightforwardly? When have we ever succeeded in the great noble causes of this country without engaging all segments of society?

I would make the rhetorical point—I suspect you will not do this, but I will make you a bet. If you were to call your State's 10 wealthy people who fall into this category and ask them whether they would support having to pay at a 36-percent rate rather than a 35-percent rate to pay for the war, I am willing to bet you that 8 out of 10 or more of them will say, I am willing. I am betting—and I trust all of my colleagues would—if you do that, you will come and tell me you found in your State more than 2 out of 10 said they wouldn't do that, I will buy you dinner anywhere you want to go to dinner. It is on me. My financial disclosure statement shows, unfortunately, that I am one of the least well positioned in this body to pay for dinner.

There is something wrong, there is something not sensible about failing to be more responsible. How can it be called responsible to say we are going to make these pages, these kids, pay the $25 billion? I don't get this. Every one of us, Democrats and Republicans, comes to the floor of the Senate and talks about the need for a culture of responsibility. I truly don't get it, other than ideology.

I respectfully suggest that if, in fact, we do this to set a precedent that engages more people in the outcome of this war on terror—I am not making a populist argument—the group that is in the top 1 percent will get, out of the total tax cut of $1.8 trillion, $88.9 billion.

Again, I am not making a populist argument. That may be arguably justified on the merits. But it is the idea that 1 percent can't give up 1 percent of $688.19 billion. It is not even 1 percent; it is actually $688.19 billion over 10 years—that they will not give up 1 percent for 5 of those years. It is the equivalent of asking them to give up one-half of 1 percent of that number when 99 percent of the American people pay—not all 99 percent; some don't pay taxes—but 99 percent of the American people get a tax cut of about $1.1 billion dollars.

A couple of my Republican colleagues have said it is unfair to pick on the wealthy. It is not picking on anybody. I am trying to find the most equitable way to do this. What I am trying to do is make sure we are in a position to act responsibly, and it is not responsible to pile the debt upon our children for an endeavor we chose to undertake when it is fully within our power to pay for it without in any way being unfair to any single group of taxpayers and without having any rational argument that it will, in fact, negatively impact on the economy.

Were I in my 27-year-old populist mode, I would say it is greed. But I have learned a lot in my 32 years here. It is that we have not asked. For every wealthy group of businessmen and businesswomen in my State that I have approached, I have yet to have one tell me there is something unfair or unequitable about this.

I urge my colleagues. I will conclude this portion by saying I urge my colleagues to let us be responsible, what I define as responsible. It doesn't mean if you disagree you are irresponsible, but let us be responsible here. Let us pay for something we can easily pay for and not pile more debt for an elective judgment we made in this body—and I made it as well—to take on the dictatorship and the maniacal leadership of Saddam Hussein, to take down the Taliban, and to seek al-Qaida in its hovel.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent to set this amendment aside temporarily. I further ask unanimous consent that the time not be charged against either side on this amendment for the purpose of resolving an amendment discussed earlier today.

The PRESIDING OFFICER. Is there objection?

Mr. BIDEN. Reserving the right to object, Mr. President, I am told by leadership staff that we have not been able to clear that at this moment on the Senate floor. So I would suggest the Senator withhold briefly until I find out why there is some doubt. I object, and I say to my friend from Missouri that I will find out why in a moment.

The PRESIDING OFFICER. Objection is heard.

Mr. BOND. Mr. President, I guess that is objection to the unanimous consent request.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, do I have 20 minutes?

The PRESIDING OFFICER. There is 60 minutes allotted to the Senator. Out of fairness, I yield myself 20 minutes because there are other Members who want to speak.

The PRESIDING OFFICER. The Senator has 20 minutes.

Mr. GRASSLEY. There is a big problem with Senator BIDEN's amendment. Before I go into the problem with Senator BIDEN's amendment, let me say I agree with his concerns about the size of future Iraq funding packages. I am concerned about the Federal deficit we are facing on the horizon.

But we also have to realize we are in war. You do not go to war unless you go to war to win. If you go to war, you go to war to win. You put all the resources behind the men and women that it takes to win that war. You do not put their life in danger on the battlefield. It may sound like we do not care about future generations, but you don't worry about deficits.

If we worried about deficits in World War II, Hitler would have been in New York City. The Japanese would have been in California. They would not have stopped at Pearl Harbor. We decided we were going to win that war, and we put all the resources behind it.

For only the first time since Pearl Harbor, we have been attacked. On September 11, 3,000 Americans died. We decided we were going to defend America. We decided we were going to fight not on American soil, we were going to fight on the soil of the people who harbor the terrorists who attacked America on September 11. We are going to go to war to win. We are going to put the resources behind our men and women. We are not going to take any chances.

I don't find any fault with anyone who talks about deficits. Only if they are so concerned about deficits that they do not care if we win the war and protect Americans, and the Constitution gives our Government that responsibility.

We also found, as a result of the war, being attacked in America, that the economy went into the tank. Out of 2.5 million jobs supposedly lost in this recession, 1 million of those jobs were lost 3 months after September 11, 2001; not because of the economy but because of war and the public not being certain what would happen in the future.

So we had tax cuts to revive the economy. We have a strong economy. A strong economy produces more resources so we can fight the war and win the war. The economy is growing. Federal revenues, as a result of these tax cuts, returned to their average levels, where they have been for 50 years, 18 to 19 percent of gross domestic product. We fought the Vietnam war and the Persian Gulf war during that period of time. So 18 to 19 percent of GDP for Federal taxes seems to be a level that does not hurt the economy.

In fact, the economy grows, and it is a level of taxation that people have accepted. It is producing the results we need to bring in more revenue to close the gap so that we do not have big budget deficits in the future.

On the point of taxes and the point of the budget gap, I note that Senator BIDEN's amendment contains no dedication of the revenue from raising taxes to any kind of fund that is oriented toward the war. In other words, the amendment simply raises taxes for more spending. The implication is on a Defense bill it will go to defense efforts.

When we hear about sacrifice, I am not sure I hear sacrifice. Let's spend less for domestic programs so we can give more to support our men and women in uniform. In World War II there were efforts to curtail domestic expenditures. We put all of our efforts behind our men and women but not, raise taxes, more spending, bread and butter at the same time.

I also point out there are two sides to the Federal ledger. One is the revenue side. That is what we take in from the people who work in our factories, our

offices, and our farms across America. The other side of the ledger is the spending side.

My friends on the other side focus exclusively, as my good friend from Delaware has, on the tax side. They look only to taxpayers to put our fiscal house in order.

I agree with the goals of reducing the deficit, but I don't intend to hurt the economy through higher taxes and put a damper on the economy. I want the economy to grow. The economy is growing. What sort of a signal would raising taxes send? Lower taxes one year, raise them the next year. How do you get investment that way?

I disagree that it is all right to look only at the tax side of the ledger. Indeed, the Senate approved a bill a little over a month ago that included $170 billion in revenue offsets. Republicans, working with like-minded Democrats, have been willing to exercise fiscal discipline, especially when it comes to closing corporate loopholes and curtailing tax shelters.

I digress for a moment on the subject of offsets. I notice with some amusement a story in Congress Daily A.M. dated last month, May 18. The story noted the special alchemy in the Finance Committee work in formulating offsets. The article went on to quote anonymous lobbyists who were frustrated with the Finance Committee production of offsets.

As a matter of fact, the tax staff at the Finance Committee happens to be the only committee personnel putting in work to generate offsets to raise revenues, and doing it in a fair way for corporations taking the advice of big tax firms, big investment bankers, big accounting firms, working together, to think of some miraculous tax loophole that is not legal to avoid taxation. That is cheating.

We are going after the cheaters and bringing in that revenue.

The record is clear. We found plenty of revenue raisers. I ask the full Senate, who was the last Democrat to propose any savings on this spending side? All we have to do is look at Senator SANTORUM's ''spendometer,'' that thermometer he has of red ink that adds up every Democrat amendment being offered on budgets and otherwise. We know where the pressure to spend is.

How can we in good conscience propose those billions and billions of dollars of expenditures—mostly for domestic programs, not to win the war in Iraq—and then complain about budget deficits?

Not a single spending cut is being proposed by those on the other side. Maybe back in the mid-1990s, but we have to go back many years. All I see is spending increases.

So if those on the other side want to claim to be fiscal disciplinarians, let's see entries on the spending side of the ledger. To have credibility, you cannot just go to the American people and ask for more money. You know, if I could ever get a reasonable tax increase, and have people on the other side of the aisle tell me how high taxes had to go to satisfy their appetite to spend money, I might just scratch my head and say: Well, maybe we ought to do it if we could get a consensus that is as high as taxes are going to go, and we don't have to worry about them going any higher. But I have never seen that you could raise taxes high enough to satisfy some people in this body who want to spend money.

I am also concerned about the degree to which taxpayers finance reconstruction in Iraq on a blank-check basis. I first raised this concern almost a year ago. We ought to be very careful about the structure of future aid packages.

Now I will speak specifically about Senator BIDEN's amendment. He says he is seeking to offset the President's war-funding request with a tax increase. As I noted above, the text of the amendment simply raises taxes for more spending. There is no connection between taxes raised and Iraq funding.

Let's take a look at the tax increase. For 2001, the top rate was reduced to 38.6 percent. In the 2003 tax bill, we reduced the top rate to 35 percent. Senator BIDEN's amendment would raise that top rate back to 36 percent. The premise of the Biden amendment seems to be that taxpayers in the top bracket are solely Park Avenue millionaires. They clip coupons, bring in the money, get out their cigars, lean back in their chairs, and enjoy life. Well, the facts are somewhat different.

According to the Treasury Department, about 80 percent of the benefits of the top rate go to taxpayers with small business ownership. Now, we have had some debates about the definition of ''small business.'' Some on the other side define ''small business'' as only those businesses with taxable income below, say, $320,000.

To those folks, a local chain of shoestores, if it makes over $320,000—no matter how many folks it employs—is the same, in their category, as the Nordstroms or the J.C. Penneys.

Those of us from the heartland know that the definition of ''small business'' does not cut off at, say, $320,000. It depends upon whether the business is locally owned. It depends on whether the business finances its growth from its own earnings.

Conversely, to folks from small towns, like me, big businesses are generally the companies that finance themselves through big, massive bond borrowing or through the stock market.

The reason the distinction is important for public policy issues, such as the level of taxation, is that we value local or regionally based businesses. The folks who own those businesses are from that community. They go to the local church. They support the local Little League. Small business, as I see it, is a stabilizing yet very dynamic social force in these communities and makes America what it is today.

So when I talk about small business, I am not going to use any artificially low level of taxable income. I am going to use a commonsense definition of what small business is. There is too much at stake to demagog the definition.

When we are considering tax policy, and specifically the tax rate applicable to business, we have really two categories. The first category is the regular big corporation. Virtually all big businesses, that is, publicly traded companies, are taxed under the regular corporate rate schedule.

Small business income is generally taxed at the individual or personal level. In most cases, the owner of the small business puts the income of the small business on his or her personal tax return.

As a practical matter, then, the individual tax rate is the rate paid by that small business. The corporate tax rate, with some exceptions in the case of some older, smaller corporations, generally applies to big business. The relationship between the top individual rate and the top corporate rate has a bearing on our policy toward small business. If the top individual marginal rate is higher than the top corporate marginal rate, then we as a society are sending a very bad and negative signal about small business, and even to small businesses that exist.

Before 2001, the top marginal rate for small business was 39.6 percent. Guess what. If you were a big corporation, the top rate was 35 percent. We had a penalty against small business. When you look at the difference, it was a 15-percent penalty against small business—before we changed the tax law last year. So it was a 15-percent small business penalty. That was the law. That was our Federal tax policy bias against small business.

In 2001, a bipartisan majority of this Senate, including almost one-fourth of the Democrats voting with us, voted to gradually equalize the top marginal rate between small business and big business, recognizing that penalty as being unfair, being anti-entrepreneurial.

Starting last year, for the first time in many years, the top rate, 35 percent, is the same for Fortune 500s as it is for successful small businesses. Senator BIDEN's amendment would take the first step to restore and perhaps even enhance the 15-percent penalty on small business. With all the appetite for taxing and spending around here, rest assured, small business would be facing even higher taxes in the future because, as I said, you cannot raise taxes high enough on the other side of the aisle to satisfy the appetite to spend money.

I do not quarrel with the notion that taxpayers in the top bracket make incomes starting in the range that has been stated of $320,000. A lot of these successful small business owners make figures like that. But keep in mind, that figure represents the total net income of those small businesses. Successful small businesses are those that

purchase the equipment and hire the new workers.

I would ask my friends on the other side, those friends who are so eager to raise taxes—and not all are—why they are all so reluctant to cut spending and eager to increase spending, to focus on the effects of their policy on small business, the effects of their policy on entrepreneurship in America, because small business creates 80 percent of the jobs in this country. Why, at this time, with a recovering job market—1.2 million jobs created this year—would we want to put a damper on the economic recovery by raising taxes on the very people, the very businesses, the very small businesses, that create 80 percent of the new jobs?

Last month, the Senate, by a vote of 92 to 5, approved a bill designed to cut the top marginal tax rate for small business manufacturers yet again to 32 percent. Senator BIDEN's amendment would go the other way and hammer our small business manufacturers.

Anyone voting for Senator BIDEN's amendment is, in effect, saying they support raising taxes on small business manufacturers. A vote for the Biden amendment is a vote to raise the top marginal tax rate on small business manufacturing from the 32 percent in the JOBS bill that we just passed to 36 percent. That is a tax increase on small business of 13 percent—13 percent. Is that the direction we want to go in a recovering economy, in a job-creating economy? Is there something wrong with the economy that is growing now, with 1.2 million jobs in the last 6 months? Why would you want to dampen that?

Finally, I do not want you to take my word for this. I am just a public official. I would like to have you listen to what small business folks are saying.

I would like to have you take a look at this chart. The chart is a copy of a letter from the three principal small business grassroots organizations. The first organization is the National Federation of Independent Business or NFIB. The second one is the Small Business Legislative Council, and the third organization is the Small Business Survival Committee.

The PRESIDING OFFICER (Mr. SMITH). The Senator has used 20 minutes.

Mr. GRASSLEY. I ask unanimous consent for 3 more minutes.

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

Mr. GRASSLEY. I am going to read the second paragraph of this letter.

> Accelerating income tax relief: Approximately 85 percent of small businesses file their tax returns as individuals. An increase in tax refunds means small firms will have more resources and more capital to put back into growing their businesses. A series of studies by four top tax economists examined the effect of tax rate cuts on sole proprietors. Their results indicate that a 5 percent point cut in rates would increase capital investment by about 10 percent. And, they found that dropping the top tax rate from 39.6 percent——

Where it was up until the year 2001——

> to 33.2 percent would increase hiring by 12.1 percent.

What these small business groups said was their tax policy priorities included a reduction in the top marginal rate. It is right there in their letter.

Now let's think about this. As the small business folks say in their letter, there is a link between tax relief, economic growth, and jobs. We have seen the evidence of that linkage over the last year or so. Check out the economic statistics. The tax relief kicked in, the economy started growing, and jobs started coming back—1.2 million jobs in the last 5 or 6 months.

Why would we want to reverse the course? Some would speculate that for the minority party, it is good politics for the economy to go into the tank. Raise taxes as the economy is coming back, and you stifle economic growth. If economic growth is stifled, then jobs disappear. If jobs disappear, then voters will throw out the President and his party.

I am not that cynical. I don't believe some of the opposition would want to put short-term political advantages over the economic well-being of their constituents. But it does make you wonder.

To sum up, a vote for the Biden amendment is, clearly and simply, a tax increase. How high do taxes have to go to satisfy the appetite on the other side of the aisle to spend money? I don't know. But this is a start. It is a tax increase during an economic recovery. It is a tax increase on the folks who create the jobs in America, our hard-working small business owners.

For those reasons, I obviously ask Members to reject the Biden amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I compliment my friend and colleague, Senator GRASSLEY, for his remarks. I join in those remarks. I compliment him for his leadership as chairman of the Finance Committee. Under his leadership of the Finance Committee, we have passed two very significant tax cuts: The tax cut in 2001, and we accelerated or completed that tax cut in 2003. As a result of those tax cuts, the economy is growing. As a result of the tax cuts, the maximum tax rate is 35 percent. Again, this has made a difference. The economy is growing.

Senator GRASSLEY mentioned there have been over 1 million jobs created in the last few months. He is correct. The stock market has rebounded substantially—the stock market is up 25 percent, if you are looking at the Dow Jones; 40 percent, if you are looking at the NASDAQ—from the time we took up that bill last year.

Some people want to undo that. They say: We want to pay for the war; we don't want to add more debt to our children and grandchildren. I appreciate that, but what about other spending? This is $25 billion. They say: We will increase the rate 1 percent on the upper income people to pay for that.

Let me just look at a couple of other facts. As recently as May 12, 3 or 4 weeks ago, we had an amendment on the floor of the Senate that was voted on that would have increased spending $86 billion. It wasn't paid for. We made a budget point of order against it. We defeated it, I think, by one vote. But no one was saying: We want to increase taxes to pay for that. I guess on this one, you would have to increase the maximum rate by 3 or 4 points to pay for it. On the same day there was a motion to increase spending by $9 billion. We defeated that with a budget point of order; again, I believe, by one vote. That was $9 billion.

On May 4, there was another spending increase. This was trade adjustment assistance, $5 billion. We defeated that by a vote or two.

Many of the people who are saying they want to pay for this $25 billion, they want to pay for the war, they didn't want to pay for this additional spending or they didn't offer that. So I find it interesting, for the ones who are acting as if, in many cases, they want to balance the budget, I have a total of about 68 votes where budget points of order were made, and in most cases, mostly Democrats—with the exception of my very good friend, ZELL MILLER from Georgia—voted to waive the budget every time. In other words, they voted for more spending.

The three amendments I just alluded to in May of last year were over $100 billion of new spending. So there are lots of attempts to increase spending over and above what we are doing anyway, mostly by our colleagues on the other side of the aisle. That is one of the points I wanted to make.

Let me echo a couple of other things my friend from Iowa said. Why would you want to have an individual rate higher than corporations? I used to be in manufacturing. I used to have my own business. Why should an individual be taxed more than Exxon? The corporate rate is 35 percent. There is an effort to make manufacturers at 32 percent. Yet we are going to tell self-employed people, S corp people, that they should pay 36 percent. That doesn't make a lot of sense.

There is one other comment. This happens to be about the Constitution. Are people trying to kill this bill? You put this on this bill and the House is going to, what we call, blue-slip it. It is going to stop the bill. Why? Because there is something called the Constitution. The Constitution says in article I of the Constitution, section 7:

> All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

It says all revenue measures, all tax measures have to originate in the House of Representatives. This is the U.S. Senate. So if we do that, the tradition is, the House will say: Thank you

very much, but we are not going to let you preempt our constitutional prerogative. So they blue-slip it. In other words, they kill the bill.

This is a Department of Defense authorization bill. I have great respect for Senator WARNER and Senator LEVIN, but they are not supposed to rewrite the tax bill. That is for the Finance Committee. That is under the jurisdiction and leadership of Senators GRASSLEY and BAUCUS. Tax amendments don't belong on this bill. Maybe it sounds good rhetorically: We will just ask the upper 1 percent.

I think that is bad policy: We want the upper 1 percent to pay for the war. Nobody else has to pay for it, just the upper 1 percent.

That doesn't make sense. We don't do that for education. We don't do that for other spending. I don't think it makes sense. I happen to think the income-tax code is already so progressive, the upper 5 percent pay over half; the upper 1 percent pay over 20 percent. Yet some people want to make it more and more progressive.

It wasn't too long ago we were celebrating Ronald Reagan's legacy and his great contributions to this country and the free world during his term of office. At the conclusion of his term of office, the maximum tax rate was 28 percent. I know under President Clinton it went all the way up to 39.6. That is a pretty significant increase. Now we have it at 35 percent. Yet some people say: Let's make it more progressive.

I guess you could take this same amendment and put it on every one of these spending amendments. And I haven't totaled it. It is about $1.4 trillion worth of additional spending that most of our colleagues on the Democratic side of the aisle have proposed, and we have stopped using budget points of order. For those who ask, Do we need budget points of order? Yes, we do.

They have been effective in curtailing the growth of spending. I said $1.4 billion, but it is actually $1.2 trillion, not since the budget was adopted last year. Real money, a lot of money. I think the figure is well over $140 billion just in 2004 or 2005 alone.

Constitutionally, those of us who have the pleasure of serving this great body, the Senate, stand before the President of the Senate and put our hand—most of us—on the Bible and swear allegiance to the Constitution of the United States. The Constitution of the United States says all revenue measures shall originate in the House. If you don't like that, try to amend the Constitution. That is in the Constitution. We have over 200 years of history and tradition of the Senate of following the Constitution. All revenue measures shall originate in the House. So to try to circumvent that and say we are going to stick a little tax bill into a Defense authorization bill is not the way the Senate is supposed to work. It hasn't worked that way.

I have only been here 24 years, which is not quite as long as my colleague from Delaware. But the Senate doesn't originate tax bills. It hasn't for hundreds of years, and it should not today. I ask my colleagues to, at the appropriate time, vote against the amendment by our friend and colleague from Delaware.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I say to my friend from Oklahoma, he doth protest too loudly. I am not taking it out of the tax bill. This is good stuff on the Constitution, but I think my friend voted for the JOBS bill and just violated the Constitution, by his definition, because we had a revenue measure in there. It didn't get blue-slipped, and he apparently violated his oath, by his definition. I don't think he violated his oath at all.

But the truth is this: In the JOBS bill, what did we do? We changed the Tax Code. So this is great rhetoric, and my friend from Iowa went through this whole thing about—

Mr. NICKLES. Will the Senator yield for a clarification?

Mr. BIDEN. Yes.

Mr. NICKLES. For my colleague's information, we have not yet passed the JOBS bill. What we are going to do is take a House bill, strike that House bill, and insert that bill into an H.R. So it will be a House revenue measure before it goes to conference. We have not gone to conference. The bill before us is a Senate bill. There is a difference.

Mr. BIDEN. The Senator did vote for the Senate bill, correct?

Mr. NICKLES. Yes.

Mr. BIDEN. He would be able to do the same thing with this bill if he used his ingenuity, would he not?

Mr. NICKLES. To clarify, this is a Senate bill, and it will stay that when it goes to conference.

Mr. BIDEN. But it doesn't have to any more than the last Senate bill had to stay a Senate bill. I have been here 32 years. I may not be in the No. 2 position in my party, as my friend was, but I don't need an education on how we do this. This is malarkey, as they say—this argument being made about the Constitution. Let me move on, if I may.

My friend references President Reagan, and I might note that I voted for the Roth-Kemp tax cut. Then I watched President Reagan and voted with him when he raised taxes three times after that because he was a responsible fellow. He raised taxes three times after that out of necessity. I also was here—and we talked about World War II. The President says this is the equivalent of World War II. My friends talk about World War II. We raised taxes through the ceiling in World War II. I don't know whether they didn't teach the same history in Oklahoma and Iowa as they did in Delaware, but we raised taxes in World War II.

Also, this notion about all these other programs—the Senator, because he is so busy and has extensive responsibilities on his side of the aisle, did not have an opportunity—he didn't miss much—to hear my speech on the front end.

There are two purposes in my doing this: One is to unite this Nation, for everybody to get in on the deal. Many other people are being asked to sacrifice. You know, this is a war. People are dying. Some people are sacrificing. People are having their incomes radically changed—those in the National Guard and Reserves. They are contributing at the office.

The other part is—I will say this again, and I said it last time—would any wealthy American—and I hope every one of my kids becomes a wealthy American. By most people's standards, based on my salary, most people think I am wealthy. I don't have stocks, bonds, debentures, and savings accounts. I am not bragging about that, but that is a fact. Most Americans think I am wealthy based on the salary I get paid. But I say to the top 1 percent out there, call me, give me your name, and tell me you are not willing to pay 1 percent higher for the next 5 years in order to make sure these kids sitting here don't pay.

War is different than education. Part of the purpose of a leader, when you go to war, is to unite the Nation, share the responsibility, engage in the sacrifice.

The other point I will make is that my friend from Iowa talks about the fact that this tax cut generated economic growth. I don't disagree with that. But the real question is, is taking one-tenth of 1 percent of the total tax cut going to stop economic growth? Is the Senator making that argument? Well, if he is right, this is a bad idea. One-tenth of 1 percent is the total cost of the total tax cut of this amendment—$25 billion, one-tenth of 1 percent. That is going to bring this economic growth to a screeching halt? Give me a break.

Let's talk about the small business people. I didn't make the assertion that all small business people are sitting back clipping coupons. I am not saying that. I just tell you what the facts are. The facts are, as the Senator knows, that small business owners have to be in the top 1 percent of wage earners to fall into this bracket. Only 2 percent of all the small business owners in America fall into this bracket. That does include some people with passive incomes participating in investment and small businesses. This is not the hands-on, mom-and-pop business owners by any stretch of the imagination. If you look at only sole proprietor returns, those with hands-on owners, they are less than 2 percent. So I can understand my friend disagreeing with me. That is a logical position he takes. He may believe that it is unfair to have them pay 1 percent more and not ask people making $100,000 to pay 1 percent more. I can understand that. That is just an honest disagreement.

I can understand my friend from Oklahoma in his argument on why are we taxing corporations more. That makes sense, too. We can do that. If he wants to go that route, I will help him.

There are other ways to do this. I tried to pick the most painless, unifying mechanism I could find to do a responsible thing: make sure these kids in the blue suits don't pay for this war. They are still going to pay for the war, by the way. We have already spent over $200 billion on this war. I am not complaining about that. I am arguing that we need more troops.

My Lord, all these specious arguments: My God, the mom-and-pop grocery store owners are going to be put in jeopardy by this amendment; this is going to slow down economic growth; this is unfair.

Then the irony is that my friend from Iowa, who always says he is not a lawyer—as I pointed out to him, he is smarter than any lawyer on that committee. Be careful of this good old boy from Iowa, who says: Golly, gee whiz, I am not a lawyer. He knows more hard case law than anybody I know on the Senate floor. Yet he stands up there straight faced and says: You know what, this $25 billion tax increase—and it is—paid for by the top 1 percent is bad for the economy, but I, Chuck Grassley, am out there making sure corporations pay more. I am finding loopholes and closing them.

I congratulate him. Guess what it means. It means you are going to have more people pay more taxes. Is that going to slow down the economy? When my friend takes out of the tax stream or adds to the tax stream by shutting loopholes that do not belong in the law, guess what. More money is coming to the Government. More money than $25 billion I am talking about.

He is a very bright guy. So let's be logical. Let's set up a little syllogism here. If his thesis is my $25 billion is going to slow down the economy, $25 billion now is in the hands of people out there, or will be over the next 5 years out in the hands to be spent by Americans, what about the $25 billion, $35 billion, $100 billion he is looking to take out of the economy over the next 5 years that will be spent by corporations, being spent by, maybe unfairly, but being spent—that is not going to slow down the economy, but my $25 billion is?

Again, to use the expression of my granddaughter, give me a break. I may not be the brightest candle on the table, but I am a relatively logical guy. There is no logic in the argument.

So, look, there are three good reasons to be against Biden: One, you ideologically think this is a bad idea because somehow you think—and I am being a little facetious—that the top 1 percent of the American public pays too much of a burden and is put upon, and to add anything else on them is just unfair to the rest of the American public. OK. Got it. It is a straightforward argument, logical.

The second logical argument is, if there is any merit to it: You ought to spread this out, Biden. If, in fact, you are going to add to the deficit by paying for Medicare or the prescription drug bill—which I voted against and which a lot of you voted for; it cost a lot more than you promised it was going to cost, raising the deficit, spending that I did not vote for—it is better to say unless you are going to pay for this spending, you should not pay for it with revenues. OK. I got it. It is a straightforward argument.

Or lastly, one might argue: Psychologically this is dangerous because after cutting taxes, to now raise them for 5 years by 1 percent for 1 percent of the population, it is going to inject some uncertainty. I don't know what that means. That could be an argument one could make.

With all due respect, you cannot make the argument mom and pop are going under; mom and pop are slowing down; that the loss of revenue is going to stifle economic growth; that this portion of the population is put upon; that this is no different than education or health care or highways, because it is. It is war.

By the way, when I introduced this proposal on a larger measure—$87 billion—a while ago, according to the national polls, 56 percent of the Americans polled on the last version of this amendment said pay for the war from the tax cut.

This is all about values. This is about value differences. And the value that I am espousing—and I am not being so moralistic to suggest that I know it is superior to the value my friends are proposing, but it is a different value. I value the necessity of a greater sense of national unity and a greater contribution from all sectors of the economy in winning this war. I value the notion that when we are clearly able, without doing any harm to the economy or being unfair to any one segment, that we should pay, when we can, rather than make our children and grandchildren pay.

The difference between war and education is on education we made a judgment that we should have an educational system, and we do not control the population. So as children are born, the responsibility to keep a commitment we made exists. It is not elective. War, in this case, was elective. I elected to go to war. That is not a societal responsibility that rests with a generation that has not even come of age yet; it is a responsibility of ours, just as World War II was the responsibility of the greatest generation in the history of mankind, the World War II generation. They did not say: Make my son, Joe, make my daughter, Valerie, make my son, Jim or Frank, pay for this war. They valued responsibility. They stepped up to the ball. As to the idea that this even calls for any serious sacrifice, if that is the case, my Lord, we have lost our bearings.

I have seen not one scintilla of evidence that this will slow economic recovery; that this is a burden upon a group of people who strongly resist taking on the burden; that this is, per se, unfair. This is something I believe—and I cannot prove it because I have not conducted any national poll—that if the people who will be affected by this, again, whose average income is $1 million a year, who have to have a taxable income of $320,000 a year even to get in the game, and if they are small business, 98 percent of them will be not affected one single little way by this, my guess is, if they know it is really going to pay for the $25 billion needed next year for the war, they would pay it, proudly pay it, and rightfully should pay.

My dad, who passed away long ago, used to have an expression. My dad was, I guess, probably like the mom or dad of Senator GRASSLEY and Senator NICKLES and others, a generation that had a different view. My dad's table was a place where you had dinner, you sat down, and two things were demanded. One, you had to have good table manners, and the other was you had to engage in conversation. Our table was a table where you sat down and had conversation and incidentally ate, rather than sat down, ate, and had incidental conversation. It was the one place the family got together with certainty every night, and friends were always included.

I will never forget my father in a discussion with my uncle, Bill Scheen, talking about a particular tax. My dad looked at him and said: Bill, there is no price too high to pay to live in this great country.

I am not asking for a big price. I am just asking for people to do what in their heart they know is right.

I understand my friends, what they have not said—and I may be wrong, but I suspect part of their concern about this amendment, because at least four Members on that side have come up to me and said: I would like to vote for this, Joe, but here is my fear—I give my word this is true—this is my fear: My fear is this would be a foot in the door. If you make this argument and it has catches, I am paying for the war, then your guys are going to come back and say: Look, we ought to raise taxes on the wealthiest corporations to pay for health care, or to pay for whatever. I think that is a legitimate concern on the part of my Republican friends. I understand that. Maybe that is the reason why, not the people who have spoken but some of the people who have spoken to me, who share my concern about not passing this on to these kids are not going to vote with me. I think it is a shame. I just cannot think of how we are able to communicate to the American people that we are in mortal combat for what will be an extended period of time with an enemy that does not wear a uniform but has the capacity to do overwhelming harm to us but that there is no need to rally the entire Nation to contribute a little bit at the office in order to win that war.

Again, the example I gave of what if the President had said go out and pay the tuition of two or four people in your neighborhood, for those of you who can afford it, that is not going to help the war. If anyone thinks that is what I meant, they missed the whole point.

The point is, we should use this time of crisis to unite the country, to talk about the things where we can help one another, where it is not paid for, where it is not unfair. That is the point I am trying to make, and I guess I am not being articulate enough because I do not think a lot of my friends get it.

It is probably my fault because maybe I am not explaining it well enough, but just to make sure everybody understands, how does one convince people that this is as tough a deal as it is if, in fact, we have this incredibly large tax cut? How does that square? It is like my saying to my kids, when they ask me can they go to a summer camp, and my saying I cannot afford to do that, and I drive up the driveway the next day in a brand new Lexus; it is tough times, kids, I cannot afford to send you to that college, you are going to go to the State university, and we buy a summer house. I mean, how does one do that?

By the way, this war is going to cost us a couple hundred billion dollars more before this is over.

Well, I have said all I want to say. I wish I could have said it better but I think this is fair. I think it is equitable. I think it is necessary, and I hope my colleagues will see it that way. I understand if they do not.

I reserve the remainder of my time, and I yield the floor.

Mrs. FEINSTEIN. Mr. President, I join Senator BIDEN in support of this amendment to pay for the President's request for an additional $25 billion to fund the war in Iraq.

This amendment will temporarily roll back the acceleration of the President's May 2003 tax cuts for those making more than $319,000 per year by raising the income tax rate from 35 percent to 36 percent for 5 years, 2005–2009.

Assuming passage of this supplemental funding request, the Iraq war will have cost the American people more than $175 billion. And without this amendment, every penny of this $25 billion supplemental request will be borrowed, becoming another debt we will leave to our children and grandchildren.

This amendment, however, offers a very reasonable way to pay for this stage of the war on terror.

By rolling back the acceleration of the May 2003 tax cut just enough to fund the $25 billion request before us, we will reduce the already serious debt burden on our Nation.

We are offering this amendment because it is essential that we begin paying for the programs that we propose.

It is important for the public to know that they—along with our soldiers—must also sacrifice during this war on terror.

Except to tell us that we should visit our shopping malls more frequently, the President has shown little leadership in asking citizens to give to this war effort.

This amendment sends a different message—one that says that it is important that those who have the capacity to pay for this war effort must step forward.

It is time for sacrifice. Deficits, interest costs and the debt are growing again.

Net interest payments on Federal debt are set to increase sharply from approximately $170 billion in 2003 to more than $300 billion by 2012.

And we are facing these daunting fiscal realities as we try to meet a host of new challenges: the war on terror, the war in Iraq, the threat of North Korea, and, of course, securing our homeland.

The Congressional Budget Office predicts that the Federal deficit for fiscal year 2004 will top $470 billion—the largest deficit in our history.

A portion of every dollar we spend from this day until the end of September 2004, will be borrowed money—money our children and grandchildren will have to repay.

After this year's deficit, it is estimated that we will accumulate almost $1.5 trillion in debt during the next 5 years and a total of $2 trillion during the next decade

To help us understand the fiscal track we are on, one must understand that this year's deficit is larger than the amount the President requested for defense in his Fiscal Year 2005 budget request, 447 billion, and larger than the combined non-defense discretionary budget for this year, 459 billion.

Further, the budget projections we are now using do not include the cost of military operations in Iraq and Afghanistan. So add another $25 billion to $80 billion to the deficit.

Nor do they include long-term costs associated with correcting a growing problem with the Alternative Minimum Tax, AMT. This will cost $660 billion over the next 10 years.

The current budget picture also hides the full impact of extending the President's tax cuts to just the next 5 years. Beyond this 5-year window, the costs escalate dramatically. The total 10-year cost of those cost: $1.6 trillion.

And the budget uses $1.1 trillion of revenue from the Social Security and Medicare trust funds over the next 5 years.

Overall, our Federal debt is expected to rise from $6.8 trillion today to $15.1 trillion in 2014.

Why do Deficits Matter? They matter, as the Brookings Institution points out, because they slow economic growth. By 2014, the average family's income will be an estimated $1,800 lower because of the slower income growth that results when government competes with the private sector for a limited pool of savings or borrows more from abroad.

They increase household borrowing costs by driving up interest rates: A family with a $250,000, 30-year-mortgage, for example, will pay an additional $2,500 in interest for a one-percent hike in interest rates.

They increase indebtedness to foreign creditors. Japan holds $526 billion of our debt. China holds $144 billion. The United Kingdom holds $112 billion. Caribbean Banking Centers hold $62 billion.

They require that a growing proportion of revenues be devoted to paying interest on the national debt: By 2014, this increased borrowing will cost the average household $3,000 in added interest on debt alone.

They impose enormous burdens on future generations. Today's young people will have to pay more because our generation has increased the debt so tremendously. And there will be added pressure to cut spending on health care, education, and other critical services.

Additionally, deficits will prevent us from addressing looming crises in both Social Security and Medicare when the baby boomers retire.

In 2003, we spent $1.2 trillion on these programs and other entitlements—54 percent of the Federal budget. This includes Social Security, Medicare, Medicaid, food stamps, unemployment compensation.

By 2009, we will be spending $1.6 trillion for these entitlements—57 percent of the Federal budget.

By 2014, we will be spending $2.1 trillion—59 percent of the budget.

These programs are in serious danger if we continue down this path of deficit spending.

In January of last year during his State of the Union Address, the President said the following:

> This country has many challenges. We will not deny, we will not ignore, we will not pass along our problems to other Congresses, to other Presidents, and to other generations. We will confront them with focus and clarity and courage.

Well, this is one challenge we are passing on to other Congresses and to other generations.

Today we have a chance to meet this challenge and demonstrate fiscal responsibility by temporarily rolling back a small portion of the accelerated tax cut for the wealthiest Americans.

Everyone who is affected by this amendment makes more than $319,000 a year in taxable income, which typically means that they are making more than $430,000 a year in gross income.

This amendment does not revoke the 2001 or 2003 reductions in the top income tax rate, nor would it affect any other element of the 2001 or 2003 tax packages. It would merely temporarily raise the marginal income tax rate on the richest in our society.

By scaling back a small portion of the accelerated cut in the May 2003 tax package, we will be taking a first step toward putting our fiscal house in order and asking citizens to sacrifice for the war on terror.

Passing this amendment is the responsible thing to do. I urge your support.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I assure my colleague from the State of Delaware, for whom I have a tremendous amount of respect, that his inability to persuade us has nothing to do with his lack of passion or eloquence. He has an abundance of both, and a lot of good faith and friendliness thrown in to boot. The problem is, he is wrong. That is the only problem.

I would like to try to explain why I think that is so, with all good faith, to my friend. He started out by saying that the purpose of his amendment is to unite the Nation and then proceeded to offer an amendment which chose a very small minority of taxpayers on whom to raise taxes, and that is supposed to unite the Nation.

With all due respect to my friend, I do not think that unites the Nation. That hearkens back to the old class warfare concept that there are some people who are so rich that we have to soak them a little bit more in order to be fair.

In fact, that is implicit in the argument. We have a lot of people overseas sacrificing. These rich people must not be sacrificing enough so let us extract more money from them in the form of income taxes. That is the implicit argument. That is not a uniting argument.

The interesting thing is that when it comes to the Tax Code of the United States, Americans are very egalitarian. Middle-income taxpayers support repeal of the death tax, for example, even though they know it would never help them. They support the retention of the tax cuts on the highest tax brackets, on the middle tax brackets. We all support it for the lower tax brackets. In fact, a lot of people would like to be in the next higher bracket. That may be one reason they do not want to soak the rich, because they would like to be in that next bracket maybe in a few years.

The reality is, most people are perfectly happy, even where they are, supporting fair taxes. Polls have been taken, and the question asked is, What do you think is the fair percentage of taxes to extract from Americans? The answer, uniformly, year after year, is about one-third, and that applies to all tax brackets. So most Americans believe that the fair tax would be about a third of what one makes, regardless of how rich they are.

What are the real facts about the sacrifice that Americans make financially, the sacrifice, that is to say in the amount of taxes that they pay to fund things such as the war effort? Let me give the exact statistics, because I think this makes the point that there is already a lot of sacrifice—and, by the way, it is a willing sacrifice.

When it comes to war, I think we are all willing to do more because we are asking some young men and women to sacrifice an awful lot, but let's get the exact facts.

How much do the top 1 percent—and that is the people we are talking about—pay in taxes in this country? The top 1 percent obviously pay more than 1 percent, maybe 5 percent or 10 percent, maybe 20 percent, 30 percent? Do my colleagues know how much the top 1 percent pay? They pay almost a third of the taxes of this country. So the folks we are talking about, the 1 percent pay, to be exact, 32.3 percent of the taxes. Almost exactly a third of the taxes are paid by the top 1 percent.

That is more than fair. That is a pretty progressive tax system.

How about the top 5 percent? They pay over half of all taxes. Just the top 5 percent pay 52.8 percent of the taxes.

How about the top 10 percent? We always like to talk about the top 10 percent of the class, and that is a pretty elite group. The top 10 percent pay almost two-thirds of all of the taxes—64.8 percent, to be exact. What do the bottom half percent of our taxpayers pay? There is the top half and the bottom half. How much do my colleagues think the bottom half pay? Less than 4 percent of the taxes are paid by the bottom half—36 percent, to be exact.

One could say the wealthier people in this country are paying their fair share. One could say they are making a sacrifice. I would not put it that way because, frankly, I think most of them can afford to do it. I do not think it is something they resent doing. So I think it is a sacrifice they are very willing to take on, but I do not think we should contend that we are uniting America by picking a very small minority of taxpayers, who are already paying a third of all of the taxes in the country, and saying now they are going to have to pay some more or else they are not sacrificing enough.

The interesting thing is that the tax cuts President Bush proposed and we passed into law actually increased the percentage of taxes paid by those in the higher brackets. It did not decrease it. So it added to the sacrifice, if one wants to put it that way.

In every one of these brackets, if we want to take the top 1 percent, the top 5 percent, the top 10 percent, the percentage of taxes paid by that group of people is higher today than it was before the tax cuts. And the percentage paid by the lower 50 percent is actually less. It used to be 4.1 percent. Now it is down to 3.6 percent.

So it is a specious argument to suggest that somehow these people are not paying their fair share, that the only way to be fair is to make them sacrifice some more. I don't think we should look at the war effort this way, let alone fund our Government this way. I don't think it is the way to unite the country. If anything, it further tends to divide the country.

I would like to move to the second point. I think most people now recognize that the tax reductions had a great deal to do with the stimulation of the economy. Why was that so? Primarily because there was more capital available. People were able to keep more of their own money, and they did one of three things with it: They either spent it, which helped some businesses because they now had more revenue; or they invested it, then there was more capital to be invested in businesses to create more jobs, for example; or they saved it, and savings amounts to investment because whatever institution you put it in then invests the money.

So in all three situations there was more money infused into the economy; more capital, which created more jobs; and those jobs, the jobs that have been created and the capital infused in the economy, have created an extraordinarily strong economy.

One of the results of that has been to begin to reduce the budget deficit by providing more income to the Federal Government because more money is being paid by people and by businesses. That wealth is what is going to be able to help us win the war as well as fund the other things we have to fund.

The argument of my colleague from Delaware is: But this is a very small amount of money. One-tenth of 1 percent, I believe, is the number. That may be. One-tenth of 1 percent of what we are talking about is a heck of a lot of money—$25 billion to be exact, as I understand it. So we are not talking peanuts. That is $25 billion that would not be helping to create new jobs, to stimulate the economy, to create additional wealth, which could be used to pay for the war as well as the other things on which we need to spend it.

It is an especially important part of the economy. Phil Gramm, our former colleague from Texas, used to talk about one of his constituents who said he had a lot of jobs in his life. He worked for a lot of employers, and he said, the funny thing was they all had more money than he did.

There are employers and there are employees. Thank God for both. But you have to have enough capital, enough wealth, to create jobs to pay people to do work for you in order for the rest of us to have a job. It is those people in these tax brackets who have that capital that they are able to invest in a business, so-called disposable income, money that they can invest in a stock or some other equity to help create a job in this country. That money has more effect in the economic recovery than a lot of the other money that is paid in taxes. Therefore, this is not an insignificant proposition that we are talking about, only talking about one-tenth of 1 percent, and therefore what difference and does it matter? It could make a great deal of difference in the economic health of our country.

It is wrong to raise taxes at this point when we know the reduction in taxes, especially the marginal rates, have produced such a strong effect on the economy.

We could get into an argument about small businesses. There is an entire report that I could get into that talks about the effect on small businesses. We know many of the people in this tax bracket are small business owners. These are where most of the jobs are created, 7 out of 10 jobs, if you want to get into the statistics, are created by small businesses. There are 8 million small businesses in America that employ over half the workers, and this tax rate is the rate many pay because they are a passthrough entity, like the subchapter S corporations and partnerships and so on. We don't need to get into all that.

The point is, this hurts small businesses just as much as it hurts big businesses. In any event, it hurts those who create jobs, and it doesn't unite America. It doesn't unite us as a nation, as my colleague would suggest. It tends to divide us and hurt us. That is one of the reasons we oppose it.

There are very few people on the other side of the aisle for whom I have greater respect than the Senator from Delaware. I understand the motivation behind his proposal. I simply think it is the wrong approach. It is in that spirit that I oppose his amendment and urge my colleagues to keep the tax cuts that we put in place. They have done a lot of good. Let's keep them. We do not need to hurt somebody in order to unite the country. We have enough revenue to pay for the increased needs of our country. Of course, the amendment doesn't even apply that money to the war in Iraq. There is an assumption that it would be used for that purpose, and I will grant that assumption. But the bottom line is we don't have to do this in order to win the war in Iraq, in order to supply our troops, and it would have very negative effects on the economy of the country, as well as being very unfair.

So I urge my colleagues to vote against the amendment of the Senator from Delaware.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

When the author of this amendment finished, he spoke about my being inconsistent; that I want to close tax loopholes. He says that takes money out of the economy, so it is inconsistent when I say that it is wrong for him to take money out of the economy.

I think the thing for him to remember about closing these tax loopholes, we are taking in money from dishonest taxpayers, whereas he is taking money away from honest taxpayers by raising the marginal tax rate. He would say I am inconsistent in complaining about his taking money out of the economy and running it through Government, whereas I am taking money out of the economy by closing the tax loopholes of dishonest taxpayers.

When I close those loopholes, have dishonest taxpayers pay taxes they ought to be paying anyway—except for the fact that they buy tax shelters put together by big corporate lawyers, big accounting firms, and big investment bankers—I am getting money from dishonest taxpayers. But in the bill that I referred to, the JOBS bill, we reduce taxes in America so that companies that do manufacture in the United States will pay less corporate tax as an incentive to create jobs in America.

We are taking money from dishonest taxpayers, but we are putting it right back into the economy in the private sector by reduced taxes for people who do manufacturing in America to create jobs. So I think I am totally consistent. I think having dishonest taxpayers pay what they would otherwise pay if they hadn't been buying these tax shelters is the right policy.

I think the Biden amendment reducing marginal tax rates and hurting small business is the wrong policy. It is the right policy to have dishonest taxpayers who use tax shelters pay their taxes, and I think it is all right to give tax relief to companies that manufacture in America—not those that manufacture overseas but create jobs in America. That bill passed 92 to 5, and I presume with the support of the Senator from Delaware.

I believe we are doing the right thing. I believe he is doing the wrong thing. I believe we encourage job creation and entrepreneurship, particularly among small business. I believe his amendment will actually discourage it.

I believe his amendment is the first step towards what Senator KERRY is campaigning for in his campaign for the Presidency—that, if he is elected, he made it very clear he is going to raise the top marginal tax rate not just to 36 percent as the Senator from Delaware would, but raise it to 39.6 percent.

Do you think that is the end? There is not enough money there to do all the things Senator KERRY is campaigning on. Pretty soon it is not just 39.6. Pretty soon it is taking away deductions so that the top marginal tax rate might say 39.6, but it is effectively 42, or, in the case of subchapter S, 45 as it used to be. Pretty soon there is not enough money there. Pretty soon you are taxing middle-income people to a greater extent. Who knows where that all ends?

I think sometime there has to be a decision made that the Government will only take so much out of the economy; that 535 Members of Congress will only spend so much money. That amount of money is not satisfactory to people on the other side of the aisle, but I decided that where it has been for 50 years—17 to 19 percent of GNP—is where it ought to be, and the tax reductions we passed in 2001 and in 2003 to stimulate the economy, to get us out of the recession, out of the joblessness that came as a result of the September 11 attack on America by terrorism, and to revive the economy, is about right. These tax bills were at their highest level since World War II. We ought to bring it back to where it was for 50 years—17 to 19 percent—for two reasons.

No. 1: The economy has grown at that level of taxation very well over that 50 years. It hasn't done any harm to the economy.

No. 2: It is a level of taxation that is accepted by the people of this country.

There is a basic philosophical difference between that side of the aisle and this side of the aisle. They believe we should bring the money into Washington and let 535 Members of Congress decide how to divide up the goods and services of this country. There is a philosophy we have on this side of the aisle that it is better to leave the money in the pockets of the taxpayers because having 130 million people decide how the goods and services of this country ought to be expended or invested results in a more dynamic economy than if 535 Members elected to the Congress of the United States make that decision for 270 million Americans.

When we enacted the individual tax cuts in 2001, the Treasury Department estimated that roughly three out of four taxpayers affected by the 35 percent bracket filed returns with small business activity involving a sole proprietorship, S-corporation, partnership, or a farm.

Advocates of tax increases now claim that only 2 percent of small businesses are impacted by the top rates.

I would like to address their criticism that a very small percentage of all small businesses are affected by the top brackets.

This statistic merely states the obvious. Only about 2 percent of all taxpayers have incomes above $200,000 per year, so it is not surprising that the distribution of small business owners follows roughly the same pattern.

Let's consider the impact of this tax increase on small business.

A soon-to-be-released study by the Tax Foundation concludes that most high-income taxpayers are active business owners rather than ''passive'' investors.

The Tax Foundation study combines IRS data with demographic Census data, and finds that high-income taxpayers are mostly in ''active'' business occupations—such as construction, manufacturing, and retail trade—rather than in passive occupations such as banking, finance, and securities.

What is significant about the Tax Foundation report is that, overall, about 74 percent of those hit by the highest marginal rate have active business activity.

This business activity comes in three basic forms: Schedule C, for sole proprietorships; Schedule E, for S-corporations, royalties, and partnerships; and Schedule F, farm income. The most common of these are Schedule E.

Of those taxpayers hit by the 35 percent rate, nearly two-thirds—62.7 percent—have Schedule E income from an S-corporation, royalty, or partnership.

It is likely that most of these taxpayers are shareholders in S-corporations.

The Tax Foundation data shows that these high-income taxpayers receive about 37 percent of their overall income from salaries and wages which, when combined with their Schedule C, E, and F income, would bring their total amount of business income to 65 percent of their total adjusted gross income.

This figure does not include other ways in which a business owner may take profits out of the firm.

For example, an entrepreneur who capitalized his business with a loan, may receive regular interest in return.

Taxable interest and dividends account for roughly 9 percent of the overall income for high-income taxpayers.

While most of this interest and dividend income is likely from traditional investments, a portion could be ''business income'' taken as interest or dividends from their small business.

The Tax Foundation was able to isolate the occupations and industries that these high-income individuals are engaged in. They did this by combining IRS data with demographic Census data.

They found that high-income taxpayers are engaged in a wide variety of active business industries and occupations throughout the economy.

The largest single category of 31.5 percent is ''executive, administration & managerial''—the most likely category that the president or CEO of a firm would choose.

By contrast, physicians, lawyers, and judges comprise just 11.4 percent of these individuals.

Another analysis shows that high-income taxpayers are engaged across all industries.

The one category in which passive investors would most likely be found is within the ''securities, brokerage, and investment companies.'' But only about 4 percent of high-income taxpayers are found in this industry.

By contrast, 4.9 percent of these taxpayers are found in the construction industry, 8.1 percent are in manufacture durable goods, 5 percent are in retail trades, and 6 percent are in business services such as computers and data processing.

High-income taxpayers engaged in legal services comprise just 3.2 percent of these high-income taxpayers.

The data clearly shows that a very large proportion of high-income taxpayers are engaged in some form of active business operation—not clipping coupons and resting back in their rocking chairs smoking their cigars, the image of a lot of rich people.

The only conclusion from these findings is that raising taxes on these high-income taxpayers would ripple through every industry, not just passive investors.

And as the U.S. Chamber of Commerce says in their letter, it will kill job growth in small businesses.

The 1997 economic census—the most recent available—shows that S-corps, proprietorships, and partnerships employed over 30 million people that year.

It seems unlikely that 30 million jobs cold be created by ''shell'' companies owned by passive investors.

The stakes of this debate are high because there has been an explosion of individual-owned businesses over the past two decades.

Between 1980 and 2000, for example, the total number of sole proprietorships, partnerships, and S-corporations more than doubled, from 10.8 million in 1980 to 22.8 million in 2000.

S-corps alone grew 424 percent, from 545,389 in 1980, to 2.86 million in 2000, and now far exceed the number of conventional C-corporations.

This year, the IRS estimates that nearly 58 percent of all corporate tax returns will be S corporation returns. If you are prepared to vote for a tax increase on small business job growth, then Members should vote for the amendment before the Senate by the Senator from Delaware. If Members care about sustaining the job growth that we have experienced over the past several months, I urge Members not to vote against that growth by increasing taxes on the important small business sector.

There is also another problem with the bill. Senator BIDEN would have Members believe the world is filled with wealthy, passive investors. The truth is, however, that people continually move in and out of high tax rate categories, most likely because they have sold a business or a major asset.

The IRS recently released a study of 400 of the highest individual income tax returns for the years 1990 through 2000. That study shows less than 25 percent of those returns appeared in the top 400 more than once and less than 13 percent appeared more than twice, which shows high-income people are not high income through their livee.

I could add that low-income people are not always low income throughout their lives because we have a dynamic society, a dynamic economy. Some people improve their lot and some people do not improve their lot. Some people end up in a lower level.

What does this mean? The top taxpayers are not a fixed group of people. People move in and out of this group according to economic fluctuations or maybe because of major events. So we are probably looking at a large number of business owners who are selling their businesses or selling their farm. If members think they are voting for a tax increase on a class of idle rich, think again. These are not coupon-clipping people who get their money, smoke their cigars, and lean back in their rocking chairs. These are people that create jobs, probably never retire, keeping that small business going by reinvesting their earnings.

If Members vote for this amendment, I am not sure they will know whose taxes they are increasing.

How much time remains on this side?

The PRESIDING OFFICER. The time in opposition is expired.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. There are 6 minutes 18 seconds remaining.

Mr. REID. This is for Senator BIDEN's amendment.

Mr. BIDEN. If my colleagues are finished responding, I am prepared to yield back the remainder of my time and at whatever time appropriate, vote on the amendment.

Mr. GRASSLEY. My time has expired.

Mr. BIDEN. I yield back the time.

AMENDMENT NO. 3352, AS AMENDED

Mr. REID. Under the order, there will now be 10 minutes for Senator REED. We are going to yield back that time.

The PRESIDING OFFICER. Time is yielded back.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

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

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

Mr. WARNER. The regular order is the vote on the Reed amendment?

The PRESIDING OFFICER. As amended.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I anounce that the Senator from Utah (Mr. BENNETT) and the Senator from Oklahoma (Mr. INHOFE) are necessarily absent.

Mr. REED. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 4, as follows:

[Rollcall Vote No. 129 Leg.]

YEAS—93

Akaka	Coleman	Graham (SC)
Alexander	Collins	Grassley
Allard	Conrad	Gregg
Allen	Cornyn	Hagel
Baucus	Corzine	Harkin
Bayh	Crapo	Hatch
Biden	Daschle	Hollings
Bingaman	Dayton	Hutchison
Bond	DeWine	Inouye
Boxer	Dodd	Jeffords
Breaux	Dole	Johnson
Brownback	Domenici	Kennedy
Bunning	Dorgan	Kohl
Burns	Durbin	Kyl
Byrd	Edwards	Landrieu
Campbell	Ensign	Lautenberg
Cantwell	Enzi	Leahy
Carper	Feingold	Levin
Chafee	Feinstein	Lieberman
Chambliss	Fitzgerald	Lincoln
Clinton	Frist	Lott
Cochran	Graham (FL)	Lugar

McCain	Pryor	Snowe
McConnell	Reed	Specter
Mikulski	Reid	Stabenow
Miller	Roberts	Stevens
Murkowski	Rockefeller	Sununu
Murray	Sarbanes	Talent
Nelson (FL)	Schumer	Voinovich
Nelson (NE)	Sessions	Warner
Nickles	Shelby	Wyden

NAYS—4

Craig	Smith
Santorum	Thomas

NOT VOTING—3

Bennett	Inhofe	Kerry

The amendment (No. 3352), as modified, was agreed to.

Mr. FRIST. Mr. President, I move to reconsider the vote.

Mr. ENSIGN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, we have made good progress on the bill. I congratulate the managers for their tremendous progress. We have been in discussions with the Democratic leadership and the chairman and the ranking member as to how we can complete action on the bill. I think we are underway, although we have a number of amendments pending, a lot of amendments planned for tomorrow and Monday. After discussion with the Democratic leadership, we are prepared to vitiate cloture in large part because of the progress we made yesterday and today, and we will continue to make tomorrow and Monday.

Members have talked to the managers of the bill about amendments tomorrow as well as Monday. They have a good outline. We would, therefore, not vote tomorrow. We have one more vote tonight. So we would not vote tomorrow.

Monday has to be a very productive day and, in all likelihood, we would have a series of votes beginning late Monday afternoon, sometime after 5 o'clock. We can talk about the specific time. But there are likely to be four or five or even six rollcall votes on Monday, starting after 5 o'clock, probably 5:30 or so. The exact time will be announced tomorrow.

We will have a busy day Tuesday as well, as we consider the remaining amendments. It is my personal hope—as long as we continue working together very aggressively—to complete the bill on Tuesday, understanding we have a lot of work to do. Thus, the proposal would be to have one more rollcall vote, which will be shortly, no more rollcall votes tonight, no votes tomorrow, and starting at about 5 or 5:30 on Monday, a series of rollcall votes.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3379, offered by the Senator from Delaware, Mr. BIDEN.

Mr. REID. Have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Utah (Mr. BENNETT) and the Senator from Oklahoma (Mr. INHOFE) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 44, nays 53, as follows:

[Rollcall Vote No. 130 Leg.]

YEAS—44

Akaka	Dorgan	Leahy
Biden	Durbin	Levin
Bingaman	Edwards	Lieberman
Boxer	Feingold	Lincoln
Breaux	Feinstein	Mikulski
Byrd	Graham (FL)	Murray
Cantwell	Harkin	Nelson (FL)
Carper	Hollings	Reed
Chafee	Inouye	Reid
Clinton	Jeffords	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kennedy	Schumer
Daschle	Kohl	Stabenow
Dayton	Landrieu	Wyden
Dodd	Lautenberg	

NAYS—53

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (NE)
Allen	Ensign	Nickles
Baucus	Enzi	Pryor
Bayh	Fitzgerald	Roberts
Bond	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chambliss	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Kyl	Sununu
Collins	Lott	Talent
Cornyn	Lugar	Thomas
Craig	McCain	Voinovich
Crapo	McConnell	Warner
DeWine	Miller	

NOT VOTING—3

Bennett	Inhofe	Kerry

The amendment (No. 3379) was rejected.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. The managers, together with our distinguished colleague from Nevada, would like to do the following to accommodate Senators on both sides: The Senator from Missouri would introduce an amendment, lay it down, and speak maybe 1 minute to it. We then would turn to the other side. The Senator from New York wishes to address the Senate for several minutes and then we will come back over to Senator TALENT, who wishes to speak with Senator CLINTON. They will each have a couple of minutes. Then Senator BROWNBACK will lay an amendment down and Senator DORGAN may or may not speak to it, but there will be no more votes, of course, tonight.

Mr. LEVIN. Then we will clear those amendments after all of that?

Mr. WARNER. No, we might stop midway and clear the amendments. As soon as the package is ready, the Senator from Michigan and I may clear an en bloc package of amendments.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I have a question for the manager of the bill. I will have a second-degree amendment to the Brownback amendment which I will also lay down after his.

Mr. WARNER. That is fine. I am not seeking unanimous consent. I am just trying, in a gentlemanly way, to organize this.

I see the distinguished Senator from Nevada wishes to speak?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, can we just do this one step at a time, before we agree to any amendment? If there is going to be a second-degree amendment as part of a unanimous consent, I think we better withhold that piece. We didn't realize there was going to be a second-degree amendment. Is it to the Brownback amendment? If this is in the form of a unanimous consent request, we can't at this moment agree to it.

Mr. WARNER. It is not in the form of a unanimous consent.

Mr. REID. Mr. President, if I could address remarks to the Chair? We have a number of Senators who have been waiting. The two managers have cleared 18 amendments, or something like that. It would take just a matter of a minute or two to do that, but they are not yet ready.

Mr. WARNER. I thank the leader. The package is being put together. At this point in time I yield the floor and I see the Senator from Missouri seeks recognition.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 3384

Mr. BOND. Mr. President, I thank my good friend, the chairman, and certainly I thank the ranking member, for their accommodation. I call up amendment No. 3384 which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri (Mr. BOND), for himself, Mr. TALENT, and Mr. HARKIN, proposes an amendment numbered 3384.

Mr. BOND. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program and to provide for the disposal of certain excess Department of Defense stocks for funds for that purpose)

At the end of subtitle D of title XXXI, insert the following:

SEC. 3146. INCLUSION OF CERTAIN FORMER NUCLEAR WEAPONS PROGRAM WORKERS IN SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.

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

(1) Energy workers at the former Mallinkrodt facilities (including the St. Louis downtown facility and the Weldon Springs facility) were exposed to levels of radionuclides and radioactive materials that were much greater than the current maximum allowable Federal standards.

(2) The Mallinkrodt workers at the St. Louis site were exposed to excessive levels of airborne uranium dust relative to the standards in effect during the time, and many workers were exposed to 200 times the preferred levels of exposure.

(3)(A) The chief safety officer for the Atomic Energy Commission during the Mallinkrodt-St. Louis operations described the facility as 1 of the 2 worst plants with respect to worker exposures.

(B) Workers were excreting in excess of a milligram of uranium per day causing kidney damage.

(C) A recent epidemiological study found excess levels of nephritis and kidney cancer from inhalation of uranium dusts.

(4) The Department of Energy has admitted that those Mallinkrodt workers were subjected to risks and had their health endangered as a result of working with these highly radioactive materials.

(5) The Department of Energy reported that workers at the Weldon Springs feed materials plant handled plutonium and recycled uranium, which are highly radioactive.

(6) The National Institute of Occupational Safety and Health admits that—

(A) the operations at the St. Louis downtown site consisted of intense periods of processing extremely high levels of radionuclides; and

(B) the Institute has virtually no personal monitoring data for Mallinkrodt workers prior to 1948.

(7) The National Institute of Occupational Safety and Health has informed claimants and their survivors at those 3 Mallinkrodt sites that if they are not interviewed as a part of the dose reconstruction process, it—

(A) would hinder the ability of the Institute to conduct dose reconstruction for the claimant; and

(B) may result in a dose reconstruction that incompletely or inaccurately estimates the radiation dose to which the energy employee named in the claim had been exposed.

(8) Energy workers at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) between 1947 and 1975 were exposed to levels of radionuclides and radioactive material, including enriched uranium, plutonium, tritium, and depleted uranium, in addition to beryllium and photon radiation, that are greater than the current maximum Federal standards for exposure.

(9) According to the National Institute of Occupational Safety and Health—

(A) between 1947 and 1975, no records, including bioassays or air samples, have been located that indicate any monitoring occurred of internal doses of radiation to which workers described in paragraph (8) were exposed;

(B) between 1947 and 1955, no records, including dosimetry badges, have been located to indicate that any monitoring occurred of the external doses of radiation to which such workers were exposed;

(C) between 1955 and 1962, records indicate that only 8 to 23 workers in a workforce of over 1,000 were monitored for external radiation doses; and

(D) between 1970 and 1975, the high point of screening at the Iowa Army Ammunition Plant, only 25 percent of the workforce was screened for exposure to external radiation.

(10) The Department of Health and Human Services published the first notice of proposed rulemaking concerning the Special Exposure Cohort on June 25, 2002, and as of May 13, 2004, the rule has yet to be finalized.

(11) Many of those former workers have died while waiting for the proposed rule to be finalized, including some claimants who were waiting for dose reconstruction to be completed.

(12) Because of the aforementioned reasons, including the serious lack of records and the death of many potential claimants, it is not feasible to conduct valid dose reconstructions for the Iowa Army Ammunition Plant facility or the Mallinkrodt facilities.

(b) INCLUSION OF CERTAIN FORMER WORKERS IN COHORT.—Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384*l*(14)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

''(C) Subject to the provisions of section 3612A, the employee was so employed for a number of work days aggregating at least 45 workdays at a facility operated under contract to the Department of Energy by Mallinkrodt Incorporated or its successors (including the St. Louis downtown or 'Destrahan' facility during any of calendar years 1942 through 1958 and the Weldon Springs feed materials plant facility during any of calendar years 1958 through 1966), or at a facility operated by the Department of Energy or under contract by Mason & Hangar-Silas Mason Company at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) during any of the calendar years 1947 through 1975, and during the employment—

''(i)(I) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of an employee's body to radiation; or

''(II) was monitored through the use of bioassays, in vivo monitoring, or breath samples for exposure at the plant to internal radiation; or

''(ii) worked in a job that had exposures comparable to a job that is monitored, or should have been monitored, under standards of the Department of Energy in effect on the date of enactment of this subparagraph through the use of dosimetry badges for monitoring external radiation exposures, or bioassays, in vivo monitoring, or breath samples for internal radiation exposures, at a facility.''.

(c) FUNDING OF COMPENSATION AND BENEFITS.—(1) Such Act is further amended by inserting after section 3612 the following new section:

''SEC. 3612A. FUNDING FOR COMPENSATION AND BENEFITS FOR CERTAIN MEMBERS OF THE SPECIAL EXPOSURE COHORT.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Labor for each fiscal year after fiscal year 2004 such sums as may be necessary for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) in such fiscal year.

''(b) PROHIBITION ON USE FOR ADMINISTRATIVE COSTS.—(1) No amount authorized to be appropriated by subsection (a) may be utilized for purposes of carrying out the compensation program for the members of the Special Exposure Cohort referred to in that subsection or administering the amount authorized to be appropriated by subsection (a).

''(2) Amounts for purposes described in paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a).

''(c) PROVISION OF COMPENSATION AND BENEFITS SUBJECT TO APPROPRIATIONS ACTS.—The provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort referred to in subsection (a) in any fiscal year shall be subject to the availability of appropriations for that purpose for such fiscal year and to applicable provisions of appropriations Acts.''.

(2) Section 3612(d) of such Act (42 U.S.C. 7384e(d)) is amended—

(A) by inserting ''(1)'' before ''Subject''; and

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

''(2) Amounts for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) shall be derived from amounts authorized to be appropriated by section 3612A(a).''.

On page 373, line 18, strike ''$6,674,898,000 and insert ''$6,494,898,000''.

AMENDMENT NO. 3384, AS MODIFIED

Mr. BOND. I send to the desk a modification on behalf of myself, Senator HARKIN, Senator TALENT, and Senator GRASSLEY, and ask it be immediately considered as a modification.

The PRESIDING OFFICER. Is there objection to the modification? Hearing none, it is so ordered.

The amendment (No. 3384), as modified, is as follows:

(Purpose: To include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program and to provide for the disposal of certain excess Department of Defense stocks for funds for that purpose)

At the end of subtitle D of title XXXI, insert the following:

SEC. 3146. INCLUSION OF CERTAIN FORMER NUCLEAR WEAPONS PROGRAM WORKERS IN SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.

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

(1) Energy workers at the former Mallinkrodt facilities (including the St. Louis downtown facility and the Weldon Springs facility) were exposed to levels of radionuclides and radioactive materials that were much greater than the current maximum allowable Federal standards.

(2) The Mallinkrodt workers at the St. Louis site were exposed to excessive levels of airborne uranium dust relative to the standards in effect during the time, and many workers were exposed to 200 times the preferred levels of exposure.

(3)(A) The chief safety officer for the Atomic Energy Commission during the Mallinkrodt-St. Louis operations described the facility as 1 of the 2 worst plants with respect to worker exposures.

(B) Workers were excreting in excess of a milligram of uranium per day causing kidney damage.

(C) A recent epidemiological study found excess levels of nephritis and kidney cancer from inhalation of uranium dusts.

(4) The Department of Energy has admitted that those Mallinkrodt workers were subjected to risks and had their health endangered as a result of working with these highly radioactive materials.

(5) The Department of Energy reported that workers at the Weldon Springs feed materials plant handled plutonium and recycled uranium, which are highly radioactive.

(6) The National Institute of Occupational Safety and Health admits that—

(A) the operations at the St. Louis downtown site consisted of intense periods of processing extremely high levels of radionuclides; and

(B) the Institute has virtually no personal monitoring data for Mallinkrodt workers prior to 1948.

(7) The National Institute of Occupational Safety and Health has informed claimants and their survivors at those 3 Mallinkrodt sites that if they are not interviewed as a part of the dose reconstruction process, it—

(A) would hinder the ability of the Institute to conduct dose reconstruction for the claimant; and

(B) may result in a dose reconstruction that incompletely or inaccurately estimates the radiation dose to which the energy employee named in the claim had been exposed.

(8) Energy workers at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) between 1947 and 1975 were exposed to levels of radionuclides and radioactive material, including enriched uranium, plutonium, tritium, and depleted uranium, in addition to beryllium and photon radiation, that are greater than the current maximum Federal standards for exposure.

(9) According to the National Institute of Occupational Safety and Health—

(A) between 1947 and 1975, no records, including bioassays or air samples, have been located that indicate any monitoring occurred of internal doses of radiation to which workers described in paragraph (8) were exposed;

(B) between 1947 and 1955, no records, including dosimetry badges, have been located to indicate that any monitoring occurred of the external doses of radiation to which such workers were exposed;

(C) between 1955 and 1962, records indicate that only 8 to 23 workers in a workforce of over 1,000 were monitored for external radiation doses; and

(D) between 1970 and 1975, the high point of screening at the Iowa Army Ammunition Plant, only 25 percent of the workforce was screened for exposure to external radiation.

(10) The Department of Health and Human Services published the first notice of proposed rulemaking concerning the Special Exposure Cohort on June 25, 2002, and the final rule published on May 26, 2004.

(11) Many of those former workers have died while waiting for the proposed rule to be finalized, including some claimants who were waiting for dose reconstruction to be completed.

(12) Because of the aforementioned reasons, including the serious lack of records and the death of many potential claimants, it is not feasible to conduct valid dose reconstructions for the Iowa Army Ammunition Plant facility or the Mallinkrodt facilities.

(b) INCLUSION OF CERTAIN FORMER WORKERS IN COHORT.—Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384*l*(14)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

''(C) Subject to the provisions of section 3612A and section 3146(e) of the National Defense Authorization Act for Fiscal Year 2005, the employee was so employed for a number of work days aggregating at least 45 workdays at a facility operated under contract to the Department of Energy by Mallinkrodt Incorporated or its successors (including the St. Louis downtown or 'Destrehan' facility during any of calendar years 1942 through 1958 and the Weldon Springs feed materials plant facility during any of calendar years 1958 through 1966), or at a facility operated by the Department of Energy or under contract by Mason & Hangar-Silas Mason Company at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) during any of the calendar years 1947 through 1975, and during the employment—

''(i)(I) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of an employee's body to radiation; or

''(II) was monitored through the use of bioassays, in vivo monitoring, or breath samples for exposure at the plant to internal radiation; or

''(ii) worked in a job that had exposures comparable to a job that is monitored, or should have been monitored, under standards of the Department of Energy in effect on the date of enactment of this subparagraph through the use of dosimetry badges for monitoring external radiation exposures, or bioassays, in vivo monitoring, or breath samples for internal radiation exposures, at a facility.''.

(c) FUNDING OF COMPENSATION AND BENEFITS.—(1) Such Act is further amended by inserting after section 3612 the following new section:

''SEC. 3612A. FUNDING FOR COMPENSATION AND BENEFITS FOR CERTAIN MEMBERS OF THE SPECIAL EXPOSURE COHORT.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Labor for each fiscal year after fiscal year 2004 such sums as may be necessary for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) in such fiscal year.

''(b) PROHIBITION ON USE FOR ADMINISTRATIVE COSTS.—(1) No amount authorized to be appropriated by subsection (a) may be utilized for purposes of carrying out the compensation program for the members of the Special Exposure Cohort referred to in that subsection or administering the amount authorized to be appropriated by subsection (a).

''(2) Amounts for purposes described in paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a).

N O T I C E

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR FRIDAY, JUNE 18, 2004

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Friday, June 18. I further ask that following the prayer and the 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 resume consideration of Calendar No. 503, S. 2400, the Department of Defense authorization bill. I further ask consent that the cloture vote be vitiated. I further ask consent that the Brownback recognition request be vitiated.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will resume consideration of the Defense authorization bill. As I mentioned earlier, we intend to complete action on this bill early next week. The chairman and ranking member of the Armed Services Committee have done a superb job in moving this bill forward, and as I commented a couple of hours ago on the floor, we made real progress over the last 48 hours. We will maintain that momentum and that effort over the course of tomorrow's session.

As I stated, I vitiated the scheduled cloture vote in anticipation of further cooperation and with the view of finishing the bill on Tuesday. I also stated earlier that we would not have rollcall votes tomorrow, although a number of Senators have expressed an interest in offering their amendments, and a number have said they still want to offer an amendment. If that is the case, I ask that they contact the managers so that we can proceed in that fashion tomorrow.

The next votes will occur Monday at approximately 5:30, and there will likely be a number of votes after 5:30 on Monday night, given that we will be voting on some of the amendments considered tomorrow as well as Monday during the day.

Finally, as a reminder, the resolution we just adopted moments ago provides for the official photograph of the Senate to occur on Tuesday, June 22. Members are asked to be at their desk at 2:15 sharp that day for this photograph.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 9:24 p.m., adjourned until Friday, June 18, 2004, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 17, 2004:

DEPARTMENT OF COMMERCE

ALBERT A. FRINK, JR., OF CALIFORNIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE LINDA MYSLIWY CONLIN, RESIGNED.

DEPARTMENT OF STATE

JOHN RIPIN MILLER, OF WASHINGTON, TO BE DIRECTOR OF THE OFFICE TO MONITOR AND COMBAT TRAFFICKING, WITH THE RANK OF AMBASSADOR AT LARGE. (NEW POSITION)

DEPARTMENT OF VETERANS AFFAIRS

ROBERT ALLEN PITTMAN, OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF VETERANS AFFAIRS (HUMAN RESOURCES AND ADMINISTRATION), VICE JACOB LOZADA, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

NANCY H. FIELDING, 6900
TAMMY L. MIRACLE, 4858

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

BRIAN R. COPES, 8224
JUDITH M. ELLER, 7230
JEFFREY G. PHILLIPS, 3129
DENNIS P. SIMONS, 5667

CONFIRMATIONS

Executive Nominations Confirmed by the Senate June 17, 2004:

FEDERAL RESERVE SYSTEM

ALAN GREENSPAN, OF NEW YORK, TO BE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOUR YEARS.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

JAMES L. ROBART, OF WASHINGTON, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON.

ROGER T. BENITEZ, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

JANE J. BOYLE, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS.

EXTENSIONS OF REMARKS

RECOGNIZING STACY RASTAUSKAS FOR HER WORK IN THE HOUSE REPUBLICAN CLOAKROOM

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. HASTERT. Mr. Speaker, all too often, the hard work of House staff goes unnoticed. Members of Congress thank their legislative staff when their bills pass the House, but rarely do they thank the people who make the House Floor run on a day to day basis. So today I rise to recognize someone who deserves the thanks of this entire institution: Stacy Rastauskas, the outgoing Assistant Floor Chief of the House Republican Cloakroom.

For 2 two years, Stacy has helped to run the House Floor from her desk in the Republican Cloakroom. She has been a source of invaluable information to all Members, a trusted colleague to countless House staff, and a mentor to our House pages. It is impossible to visit the Cloakroom without being on the receiving end of one of her brilliant smiles. In short, Stacy made the Cloakroom feel like home to us all.

Soon Stacy will be leaving to open a Washington office for Ohio State University. I cannot possibly thank her enough for the dedicated hours she spent as Assistant Floor Chief. It is with a heavy heart that we say goodbye and good luck. The Republican Cloakroom won't be the same without her.

A TRIBUTE TO JOSSIE B. LAWSON

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. TOWNS. Mr. Speaker, I rise in honor of Jossie B. Lawson in recognition of her commitment to public service through her work in the Brooklyn District Attorney's Office and dedication to her community through volunteer efforts in her church.

Jossie B. Lawson was born in Brooklyn, New York on December 6, 1954. She is the proud mother of two talented daughters, Sareve C. Lawson and Alia H. Akili. Jossie is the product of the New York City public school system. After graduating from Performing Arts High School, she attended Hunter College. Her most recent academic achievement was the completion of the prestigious EEO Complaint Handling program at the Cornell University, School of Industrial and Labor Relations in 2001.

Shortly after receiving her certification in Paralegal Studies from Long Island University, Jossie was hired as a paralegal by the Brooklyn District Attorney's Office in 1983. She was later promoted to Administrative Manager in 1990, and again to her current position of EEO Coordinator by the current District Attorney Charles "Joe" Hynes in 1998. She is also responsible for facilitating the College Internship program in the agency and has represented the District Attorney's Office on the Board of Women's Advisors for the City of New York.

As a young adult, Jossie began working with the youth of her congregation, Zion Baptist Church where Dr. M. M. Peace is the pastor. She is a gifted singer and serves as a worship leader in her church. Her strong commitment to personal mentoring and use of her considerable skills as a life coach, has earned her the love and respect of many.

Jossie has given her time and support to countless individuals across the years. Her ability to motivate and encourage people coupled with her gift of helping others discover and nurture the gifts within themselves is why she is frequently invited to participate in workshops and motivational sessions. Jossie is a woman who will push you to excellence, pray you toward success and pull you with the strength of her belief in your potential. Many have been blessed by her guidance. She is truly a woman who makes a difference.

Mr. Speaker, Jossie B. Lawson has dedicated her life to her community through both her professional and her personal activities. As such, she is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

PRESENTING A MEMORIAL TRIBUTE TO THE LIFE OF RAMON J. REEVEY

HON. JUANITA MILLENDER-McDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. MILLENDER-McDONALD. Mr. Speaker:

Whereas, Congresswoman JUANITA MILLENDER-McDONALD recognizes the extraordinary spirit of this man, who after becoming a paraplegic went on to accomplish what others would consider impossible. He had started his career with the Federal government when tragedy struck in a car accident. But he was not deterred and as a paraplegic, he worked hard and received his Baccalaureate degree from Long Beach State University. He went on to receive his Master's degree in Hospital Administration from the University of California at Los Angeles; and

Whereas, Ramon J. Reevey distinguished himself to veterans and hospital administrations nationwide by demonstrating total commitment to the Department of Veterans Affairs. He understood the problems of patients in the Veterans hospitals. His empathy allowed him to manage the resources of the hospital to better provide needed care. His caring and positive attitude is reflected in his motto: "If you have happy employees, you have happy patients"; and

Whereas, Ramon J. Reevey throughout his career accomplished many goals, with the crown jewel of his career being the hosting of the 23rd National Veterans Wheelchair Games in July 2003, while heading up the VA Long Beach Healthcare System. He was also a competitive participant in the Games; and

Now therefore, be it resolved, that the dedication of this man to the welfare of the lives of our community is much appreciated.

TRIBUTE TO DR. MICHAEL LEMAY

HON. JOE BACA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. BACA. Mr. Speaker, I rise to pay tribute to Dr. Michael Lemay, who is retiring from the California State University San Bernardino after 12 dedicated years of service to the university. Dr. Lemay is an individual of great distinction, and we join with family and friends in honoring his remarkable achievements and expressing pride in his work throughout the last dozen years.

Dr. Lemay has devoted his life to helping students through his chosen profession in education. His kindness and passionate spirit make him an incredible resource to the university and beloved community member.

For the past 12 years, Dr. Lemay has dedicated himself to Cal State San Bernardino, serving as Associate Dean, Assistant Dean, Department Chair, Academic Advisor, and Professor. In these capacities, he has been an integral contributor to the management and administration of the school, as well as a participant in developing the young minds of the future.

Through his participation in countless activities and committees, Dr. Lemay has exhibited kindness, love, humility, and a deep resolve to ameliorate all aspects of university life, so it is only appropriate that we thank him today. He has received the highest evaluation of his profession for integrity and performance, and has taken a proactive approach to leadership at Cal State San Bernardino.

I join today with family in friends in congratulating him for his 12 years of service. He is a symbol of all that is good in his profession and an inspiration to all that know him.

And so, Mr. Speaker, we salute Dr. Michael Lemay. We express admiration in his career and hope that others may recognize his good works in the community.

A TRIBUTE TO DR. HE-HON LAO

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. TOWNS. Mr. Speaker, I rise in honor of Dr. He-Hon Lao in recognition of her contribution to the field of medicine and her special

role in helping to standardize the field of acupuncture in America.

Dr. Lao is a physician in Chinese medicine, a senior Acupuncturist and Herbalist, and the Founder and Director of New York Oriental HealthCare Center in Brooklyn. As a graduate of Shandong University of Medicine in 1968, she received her post-graduate training with herbal master Huang Siang-Zhou and acupuncture professor Jin Rui. She also served as Chief physician at the Red Cross Hospital under the Department of Complementary Medicine in Canton, China. While working at the Red Cross Hospital, she was one of the first physicians in China at that time to use Acupuncture and Chinese medicine in clinical research.

Inspired by the lack of standardization and regulation of the acupuncture profession, Dr. Lao joined the New York State Department of Education in January 1991 where she established a comprehensive educational requirement for licensing and code of ethics. She believes a profession without proper and rigorous training is not a profession. In addition, Dr. Lao set standards in the clinical experience of acupuncture with an emphasis on professional competency. In fact, the comprehensive practice of acupuncture today is a direct result of her advocacy.

As a physician, Dr. Lao has over 35 years experience of clinical practice and teaching in Acupuncture and Oriental Medicine. She has a long list of published works and is also a frequent lecturer on holistic medicine. Most of her lectures and seminars are professional development oriented for other doctors and healthcare professionals.

Currently, Dr. Lao works at Woodhull Hospital as a supervisory acupuncturist where she treats several thousand patients every year. She is in charge of supervising the acupuncture detoxification program which is an integral part of the treatment for chemically dependent patients. She finds her job very rewarding, especially when she sees a converted drug addict go to the podium and receive a graduation certificate from her hands. She has a similar impact on many other people's lives, and that is why she loves her job.

Mr. Speaker, Dr. He-Hon Lao has dedicated her life to easing patients' pain through the practice and development of acupuncture. As such, she is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

PRESENTING A MEMORIAL TRIBUTE TO THE LIFE OF FRANCIS OLIVER ARNOLD

HON. JUANITA MILLENDER-McDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. MILLENDER-McDONALD. Mr. Speaker: Whereas, Congresswoman JUANITA MILLENDER-McDONALD recognizes the fine work of this man, who was born and raised in the city of Los Angeles, attended David Starr Jordan High School; became an entrepreneur starting and operating his own trucking company, while serving as an employee of the City of Los Angeles; later co-owning and operating Moe's Liquor Store in Compton successfully for nearly 20 years. He enjoyed listening to Jazz and traveling whenever possible. His loving wife, Evelyn, and his family will always cherish his love and devotion.

Now therefore, be it resolved, that the dedication of this man in enriching the lives of our community is much appreciated.

SMALL BUSINESS HEALTH FAIRNESS ACT OF 2004

SPEECH OF

HON. JOE BACA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 14, 2004

Mr. BACA. Mr. Speaker, I rise in opposition of H.R. 4281 and the association health plans it creates.

This bill does nothing to help uninsured Americans, hurts those who enroll in the plans and will even cause healthcare costs to go up.

There are 44 million Americans who are uninsured in this country and this bill will not even help one percent of them. Not one percent!

A Congressional Budget Office study showed that only 360,000 uninsured Americans would join AHP's. There has to be a better way to help 44 million uninsured Americans.

What is just as bad is that AHP's will use loopholes to get around state health regulations. This will leave consumers who enroll in these plans without needed safeguards.

If an AHP denies someone a cancer treatment or diabetic supplies that person may not have the right to appeal the decision. Their health will suffer and they will be left with no options.

AHP's will enroll only the healthiest Americans. This will leave those other Americans, the ones who are sick and the ones who take prescription drugs, with fewer options.

According to the Congressional Budget Office up to 20 million Americans will face higher healthcare costs. 20 million!

Health insurers will give breaks to the AHP's and charge other consumers more.

These higher healthcare costs could cause up to 10,000 Americans to become uninsured.

There is a better way to help small businesses and the uninsured.

That is why I support the Democratic substitute to the AHP bill.

The substitute will provide small businesses and their employees with affordable quality health insurance. The plan is even similar to what the federal government offers its employees.

The substitute will protect patients by making sure the insurers are overseen by the states.

And finally this substitute will not raise the price of healthcare.

H.R. 4281 will not help small businesses or their employees.

By voting for the substitute we will help these businesses. We will help their employees and we will help all Americans have access to and afford health insurance.

TRIBUTE TO JULIE SPENCER

HON. TAMMY BALDWIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. BALDWIN. Mr. Speaker, I rise today to recognize one of my constituents, Julie Spencer, of Baraboo, Wisconsin. Julie was the fastest U.S. female in the 108th Boston Marathon. She finished 16th in a time of 2:56:39, her personal best. The Boston Marathon is a competitive international race, and it is an honor to recognize Julie Spencer for her great athletic achievement.

The Boston Marathon ranks only behind the Super Bowl as the largest single day sporting event in the world. Approximately 500,000 spectators line the streets of the 26.2 mile course. In this year's historic Boston Marathon the elite women runners started before the elite men runners for the first time in marathon history, giving Julie a truly unique Boston Marathon experience.

In addition to being a dedicated runner, Julie is a teacher at East Elementary School in Baraboo, Wisconsin. She uses her running expertise to help coach Baraboo High School's cross country team and track teams. By coaching, she shares and passes on her passion to the high school teams.

Obviously, it is an impressive feat to accomplish the 26.2 mile Boston Marathon on the fifth hottest day in the race's 108 year history, but to be the top female U.S finisher is worth the praise of all. It is my esteemed pleasure to contribute to the recognition of Julie Spencer's first place finish for the United States.

Mr. Speaker, Julie's friends and family have been quoted as saying, ''We're so proud.'' I know Wisconsinites and runners across the world share this message and join me in recognizing her today.

TRIBUTE TO BONNIE GAINER

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. SANDERS. Mr. Speaker, I want to recognize today a woman who is, at one and the same time, exceptional and representative. Bonnie Gainer has served with great dedication as director of the Rutland County Women's Network. Originally the Battered Women's Shelter, this organization has been a mainstay for women who seek counsel, help, and often a safe haven, from abusive relationships.

Bonnie Gainer is exceptional in both the depth of her commitment to women in need, and her ability to organize both staff and community so that those women can find the support and assistance that they all too often desperately require. But in another sense, she is representative: all across Rutland, all across Vermont, all across this nation, women respond and have been responding to the inhospitable condition in which too many of their sisters live.

Physical and mental abuse is, tragically, widespread in America. It is not limited to women, of course, but with Greater frequency than most can imagine wives, girlfriends and daughters find themselves trapped in difficult

and dangerous relationships. It is both a point of pride—in the good work they do—and despair—that the number is so large—that I report that the Women's Network has sheltered women in Rutland for 1087 bed-nights in the past three months alone.

For a decade and a half Bonnie Gainer has led the effort to provide a haven and an alternative to women who are abused. She has been a bulwark in the community, a truly essential resource for hundreds and hundreds of women. She is a remarkable woman, and I salute her, and the many, many other women who support each other in times of desperate need.

H. CON. RES. 398: EXPRESSING THE CONCERN OF CONGRESS OVER IRAN'S DEVELOPMENT OF THE MEANS TO PRODUCE NUCLEAR WEAPONS

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. PAUL. Mr. Speaker, I rise in strong opposition to this ill-conceived and ill-timed legislation. Let's not fool ourselves: this concurrent resolution leads us down the road to war against Iran. It creates a precedent for future escalation, as did similar legislation endorsing ''regime change'' in Iraq back in 1998.

I find it incomprehensible that as the failure of our Iraq policy becomes more evident—even to its most determined advocates—we here are approving the same kind of policy toward Iran. With Iraq becoming more of a problem daily, the solution as envisioned by this legislation is to look for yet another fight. And we should not fool ourselves: this legislation sets the stage for direct conflict with Iran. The resolution ''calls upon all State Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), including the United States, to use all appropriate means to deter, dissuade, and prevent Iran from acquiring nuclear weapons . . .'' Note the phrase ''use all appropriate means.''

Additionally, this legislation calls for yet more and stricter sanctions on Iran, including a demand that other countries also impose sanctions on Iran. As we know, sanctions are unmistakably a move toward war, particularly when, as in this legislation, a demand is made that the other nations of the world similarly isolate and blockade the country. Those who wish for a regime change in Iran should especially reject sanctions—just look at how our Cuba policy has allowed Fidel Castro to maintain his hold on power for decades. Sanctions do not hurt political leaders, as we know most recently from our sanctions against Iraq, but rather sow misery among the poorest and most vulnerable segments of society. Dictators do not go hungry when sanctions are imposed.

It is somewhat ironic that vie are again meddling in Iranian affairs. Students of history will recall that the U.S. government's ill-advised coup against Iranian leader Mohammed Mossadegh in 1953 and its subsequent installation of the Shah as the supreme ruler led to intense hatred of the United States and eventually to the radical Islamic revolution of 1979. One can only wonder what our relations would be with Iran if not for the decades of meddling in that country's internal affairs. We likely would not be considering resolutions such as this. Yet the solution to all the difficulties created by our meddling foreign policy always seems to be yet more meddling. Will Congress ever learn?

I urge my colleagues to reject this move toward war with Iran, to reject the failed policies of regime-change and nation-building, and to return to the wise and consistent policy of non-interventionism in the affairs of other sovereign nations.

SESQUICENTENNIAL OF THE SAUK CITY FIRE DEPARTMENT

HON. TAMMY BALDWIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. BALDWIN. Mr. Speaker, I rise today to recognize the Sesquicentennial of the Sauk City Fire Department. On May 23, the Sauk City Fire Department will celebrate its 150 years of service to community in a festival at the Saint Aloysius Church.

Sauk City was founded in 1854 as Wisconsin's first incorporated village. That same year a Sauk City merchant, J.J. Heller, had a small wooden fire engine built to protect his store from fire. Mr. Heller organized a meeting seeking assistance with the labor-intensive fire engine, making Sauk City home to Wisconsin's oldest volunteer fire department and oldest standing fire station.

During the 19th century, there was a great need for organized and responsive fire departments due to the fire prone stoves, lamps, and chimneys of that era. Furthermore, the business districts, composed of crowded rows of wooden buildings, were constantly at risk for a rapidly spreading fire. Sauk City was a pioneer for this region in stopping these devastating fires.

This is a wonderful success story about a community coming together to fill a need. In 1859, the fire department had a new locally made fire wagon. In order to raise money to purchase a bigger fire engine, the town and its several breweries organized a festival. The outpouring of support was so impressive at the first festival that it became a boisterous event. As the community grew and the technology advanced, the Sauk City Fire Department kept pace with new stations and fire engines. Today, the thirty-eight volunteer professional firefighters of the Sauk City Fire Department serve a 170 square mile area in south central Wisconsin.

While the sheer length of the Sauk City Fire Department's service to the community is worthy of praise, it boasts several other impressive qualities. The Sauk City Fire Department has done a remarkable job of restoring two of its locally manufactured fire engines from 1924 and 1928. It was also first fire department to use the two-toned Decot siren, which was created by Sauk City Fire Chief Ted Decot and became a nationwide commercial success.

Mr. Speaker, I join Fire Chief Michael Fehrenbach and all the residents of Sauk City in celebrating the Sauk City Fire Department's 150 years of service to the community.

HONORING THE LIFE OF ALAN ALBERTUS

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor the life of a true American. Alan Albertus was a man that served his country in the U.S. Air Force, as well as his community as an engineer. He was an outdoorsman who had few peers, respecting the land God had blessed us with while enjoying the challenges of Colorado's Rocky Mountains.

Alan gave much of his time to defending our constitutional right to bear arms, and often instructed young families on firearms safety, reloading, and firearms ballistics. He was active in politics—he organized rallies, celebrated the Bill of Rights, and was a delegate to conventions. Alan believed the best legacy he could leave to America was that of freedom, and he worked hard to preserve that freedom.

Most importantly, Alan Albertus served his family and his Lord and Savior, Jesus Christ. He will be missed.

A TRIBUTE TO MONICA GILL

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. TOWNS. Mr. Speaker, I rise in honor of Monica Gill, in recognition of her dedication to children and young adults as a teacher and social worker, as well as her accomplishments in the business world.

Monica is not afraid of anything that comes before her other than God as she has always had obstacles in her life that she had to overcome. Losing her mother at the early age of 13 set the precedent for a difficult road ahead. She attended the Spence School—High School, University of Nebraska—Omaha, University of Missouri, Kansas City and Hunter College Graduate School of Social Work. Monica earned a BA in Journalism/International Studies, a M.S. in Urban Studies and 24 credits toward her Masters in Social Work, respectively. While obtaining her college degrees, she had three children: Joan, and twins, Imani and N'Namdi. At the same time, she would also work one or sometimes two jobs.

She began her career as a photographer/public relations assistant at Warner Communications. Next she went to Europe, where she assisted Air Force personnel with their college achievements in Europe. Monica returned to the states where she worked with the college administration preparing the paths for college graduates to successfully gain employment for one of the Fortune 500 companies. She would work one job during the day around her classes and on weekends, she worked with Cox Cable of Omaha in the production and programming department.

In 1983, she received a scholarship from the National Association of Black Journalists for an essay she wrote regarding the life of Malcolm X. That same year she received a broadcaster's award from KMTV–TV Omaha and an internship from KETV–TV as a weekend reporter. She moved to Kansas City and

became an in-house writer for the Federal Reserve Bank District 10. Afterward, she worked for the Kansas City Conventions and Visitors Bureau and the Kansas City Globe (an African-American Daily). Her journalism and broadcasting career was booming, until the twins helped her change careers and she became a Language Arts Teacher for four years. The frustration of teaching children who were dirty and hungry led her to become a social worker and work to improve the lives of youth. After working as a social worker for more than 10 years, she realized her specialty was working with adolescents from 16–23 years old. She assisted over 200 youth to obtain housing, GEDs, employment and vocational training to better their lives. Finding services and advocating for the youth was a God-given vocation for her, which Monica had to recently give up due to surgical complications.

Monica is currently a real estate sales associate for Coldwell Banker-Five Star Realty and serves on the Bedford Stuyvesant Real Estate Board. She is on the Advisory Board for Building Blocks Child Care Center, Board Advisor for the NYS Office of Children and Family Services—Pyramid Reception Center, Bronx, and a consultant for the Caribbean Carnival Bands and Activities. Monica also attends Christian Cultural Center, which is pastored by the Rev. A.R. Bernard.

Mr. Speaker, Monica Gill has significantly improved her community through her work as a teacher, social worker, and now as an advisor to advocacy organizations. As such, she is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

PRESENTING A TRIBUTE TO THE LIFE OF WILLIE PEARL ESTERS

HON. JUANITA MILLENDER-McDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. MILLENDER-McDONALD. Mr. Speaker:

Whereas, Willie Pearl Esters was born on April 22, 1915, in Scottsville, Louisiana, she was the third child of Charlie and Lucille Graham; and was affectionately called ''Pearl''. She spent her early life in Bossier City and Shreveport, Louisiana where she attended public schools; and

Whereas, Willie Pearl Esters accepted Jesus Christ at an early age and was baptized at the Bright Star Baptist Church in Scottsville, Louisiana. She met and married Herman T. Walker and to that union two daughters were born, Maxine W. and Joyce Ann Walker; and

Whereas, Willie Pearl Esters, in 1936 moved with her family to Los Angeles, California where she united with Bethlehem Baptist Church, later she joined New Hope Baptist Church where she taught Sunday School and was a member of Choir #2, and the Mission; and

Whereas, Willie Pearl Esters, in 1949 met the man who was to be her life-long spouse, Everson Boyd Esters, and after a brief courtship they were married and from this union was born a son Everson B. (Chuck) Esters; and

Whereas, Willie Pearl Esters was always looking out for the welfare of her children and left no stone unturned to expose them to the beauty of the arts, culture and the world of music. She would not settle for what was common, but she gave them her best in the hope that they would comprehend and excel. She surrounded them with a loving home and a rich family environment; and

Whereas, Willie Pearl Esters, with her family in God's hands, caught the fire of the holy spirit and followed her husband into the ministry. She grew a large circle of love by serving the needy and encouraging others to challenge what they weren't sure they could do. As a result, she developed a number of leaders and singers in the church, she expanded her circle and achieved State and national recognition for her voluminous work in service to others; and

Whereas, Willie Pearl Esters, after lengthy illness passed on, leaving us to humbly acknowledge the living legacy of her love of her husband, Everson B. Esters, her children, Maxine Swan, Joyce Walker and Chuck Esters and other relatives and friends. She will be missed in the lives of all those she has touched, and . . .

Now, therefore, be it Resolved, That Congresswoman JUANITA MILLENDER-MCDONALD proudly recognizes this woman of faith, leadership, dedication, courage, persistence and wisdom and her distinguished service to her church and our community.

HELP EFFICIENT, ACCESSIBLE, LOW-COST, TIMELY HEALTH CARE (HEALTH) ACT OF 2004

SPEECH OF

HON. JOE BACA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 12, 2004

Mr. BACA. Mr. Speaker, I rise in opposition to H.R. 4280. This bill gives us the wrong solution to a complex problem.

The bill will limit the rights of patients, it will harm low-income Americans and it will do nothing to lower the cost of health insurance.

This bill proposes to cap non-economic damages at $250,000. That is fine if a victim of poor medical care is a business executive, because they will receive economic damages as compensation. But what happens to the minimum wage worker or the stay-at-home mom? They rely on non-economic damages to receive adequate compensation.

This bill shows that the life of a wealthy American is worth more than that of a new immigrant working in a restaurant or a stay-at-home mother who raises her children.

We're all searching for a way to lower the cost of health insurance for all Americans. But this bill won't help. The Congressional Budget Office found that this bill won't do anything to help bring down the costs of health insurance.

Even if the cost of malpractice insurance goes down, those savings will not be passed along to Americans who try to purchase health insurance. They will still face the high cost of health insurance without any help.

This bill does not help patients and it does not help Americans. The Republicans have given us a bill that does nothing to solve the real problems with our healthcare system.

I oppose this bill because it does nothing to lower healthcare costs. And it does nothing to protect patients' rights.

TRIBUTE TO STATE REPRESENTATIVE DALE SHELTROWN

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. STUPAK. Mr. Speaker, I rise today to honor the career of an extraordinary public servant and community leader, State Representative Dale Sheltrown. Dale is currently serving his third and final term representing the 103rd District of the Michigan House, which includes Roscommon, Missaukee, Iosco and Ogemaw Counties. Dale's record of leadership in public office, business and his community stands as a shining example of a citizen legislator.

Dale Sheltrown was born on Election Day, November 5th, 1940, foretelling a lifelong commitment to public service and political leadership. His father, Ed Sheltrown, served for 35 years as Township Supervisor, and two of his five siblings are also elected officials.

Dale has been a lifelong resident of Ogemaw County, and after earning a Bachelor's of Science degree in Agriculture from Michigan State University, he began his successful business career. From 1965 to 1974, Dale owned and operated his own dairy and beef farm. From 1974 to 1976, he was a sales manager at the John Deere dealership in West Branch, Michigan. Since 1976, Dale has been a partner with Century 21 Horizon Realty in West Branch.

Dale recognized long ago the importance of giving back to the community that had been so good to him. He was elected to serve on the Ogemaw County Board of Commissioners from 1974 to 1982 and from 1988 to 1998. From 1986 to 1988, he was the Township Supervisor and Assessor in Edwards Township, Ogemaw County, Michigan. Dale's dedication and leadership has also been recognized by his appointment to the Michigan State Commission on Aging from 1980 to 1990.

On November 3rd, 1998, Dale was elected to his first term in the Michigan House of Representatives. In the years since, he has served with distinction on the Agriculture and Resource Management Committee, the Outdoor Recreation and Conservation Committee, and the Agriculture Appropriations Subcommittee. Dale has spearheaded efforts in the Michigan House to control the Bovine Tuberculosis epidemic that has hurt so many farmers in Northeast Lower Michigan. He has also been a leader in the State's program to award high school diplomas to veterans of World War II and the Korean War.

Dale Sheltrown's exceptional life of public service and community leadership provides ample reason for this recognition, but Dale's commitment to his family is one of the things I respect most about him. Dale and his wife Lori have four grown children and four beautiful grandchildren that he never misses an opportunity to talk about. It is clear to me that whatever else Dale might be doing in his life, his family always comes first.

Mr. Speaker, Dale Sheltrown's commitment to his family, his community and the State of Michigan serves as an example to all of us, and I ask the House to join me in honoring him.

A TRIBUTE TO JASMINE EDWARDS, ESQ.

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. TOWNS. Mr. Speaker, I rise in honor of Jasmine Edwards in recognition of her commitment to serving families in need of assistance.

Born to Guyanese immigrants, Jasmine is a member of the first generation in her family to be born in the United States of America. Her mother emigrated to the U.S. as a registered nurse and later became a New York City school teacher. Her father, a former probation officer supervisor emigrated to the U.S. to attend the University of Connecticut. She recently became the seventh member in her family to become an attorney.

Jasmine is admitted to practice law in New York State and the United States District Courts. She is a member of the Association of Black Women Attorneys, Brooklyn Bar Association and the New York State Bar Association. She is also a licensed real estate broker and an instructor at the New York Paralegal School. Her law firm of Edwards & Greenidge is based in Bedford Stuyvesant, Brooklyn. Jasmine and her partner, both Guyanese-Americans, are committed to serving those in the community who desperately need legal advice.

After graduating from Temple University, she worked as a social worker. Jasmine provided services to families that had been accused of child abuse and/or neglect. Her goal was to assist parents in implementing alternative parenting skills. During her tenure at CUNY School of Law, Jasmine accepted an internship at the prestigious Federal Defenders Association of Philadelphia in the Habeas Corpus Unit. The objective of the Habeas Corpus Unit was to convince the appellate courts that certain convicted criminals should not be executed. While working as a researcher that summer, Jasmine discovered that over 80 percent of the persons on death row shared the same painful experiences when they were younger as those abused and neglected children, who were part of families that she once counseled as a social worker.

These experiences coupled with her desire to assist others inspired her to establish a law office in a neighborhood where many people are underserved. Jasmine's goal is to provide outstanding legal representation that is proactive as well as reactive.

Mr. Speaker, Jasmine Edwards has dedicated her life to helping those in need, as a social worker for abused and neglected children and now as an attorney for the underserved residents of Brooklyn. As such, she is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

TRIBUTE TO THE SPRUCE CREEK ROD AND GUN CLUB

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. SHUSTER. Mr. Speaker, I rise today to extend my sincere congratulations to the Spruce Creek Rod and Gun Club for reaching its 100th anniversary.

Since 1904, the Spruce Creek Rod and Gun Club has never lost sight of its original purpose: to preserve Spruce Creek as a fishery. While maintaining its honorable traditions of conservation, the club in Huntingdon County has conquered numerous obstacles and received high acclaim for its perseverance.

Throughout the past century, the club has undergone a complete restoration, upon conclusion of which the building was placed on the National Registry of Historic Places in 1991. With the extraordinary vision of its past leaders, the club has been able to merge the old with the new by upholding its age-old traditions while improving the services available to members.

Due to its reputation for excellence, Spruce Creek has attracted such renowned leaders as Presidents Dwight D. Eisenhower and Jimmy Carter, Senator John Heinz, Vice President DICK CHENEY, and former Pennsylvania Governor Tom Ridge, to name a few.

The success of the club over the past one hundred years is a testament to the integrity with which the institution has been run. I would like to congratulate the Spruce Creek Rod and Gun Club on its 100th Anniversary. Thank you for upholding Pennsylvania's tradition of distinguished service to its citizens.

EXPRESSING SENSE OF CONGRESS THAT ALL AMERICANS OBSERVE THE 50TH ANNIVERSARY OF BROWN V. BOARD OF EDUCATION WITH A COMMITMENT TO CONTINUING AND BUILDING ON THE LEGACY OF BROWN

SPEECH OF

HON. JERRY MORAN

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 13, 2004

Mr. MORAN. Mr. Speaker, I rise today to recognize the 50th anniversary of the landmark Supreme Court decision in Brown versus the Topeka Board of Education.

In 1951, a door closed on Linda Brown when she was denied admission to an all-white public school in Topeka, Kansas. But on this day in 1954, a door opened for our nation. The Brown decision was the culmination of many desegregation cases. Previous court decisions had ruled that "separate but equal" was a valid policy.

By ruling in favor of Linda Brown, the Supreme Court helped America finally open its eyes and see that segregation is, in fact, wrong and does, in fact, perpetuate inequality. Through the plight of young Linda, a mere third-grader, Americans came to understand that separate is never equal.

While in law school, I was privileged to study under Paul Wilson. Earlier in his life. as a humor Kansas assistant attorney general, Professor Wilson was assigned to defend the Topeka Board of Education. He never suspected that he would end up arguing before the Supreme Court.

I would like to take a moment and pay tribute to Professor Wilson. His role in the Brown decision was a difficult one. He knew that segregation was wrong, but he was charged with the duty of defending the Topeka Board of Education. During his time at the University of Kansas, Professor Wilson wrote about the Brown decision and his recollections of that time period. In the classroom, he told my fellow students and me about his trip to Washington, D.C., and about being admitted to the Supreme Court bar. He said to us, "The decision issued in 1954 caused me, caused America, to realize that to argue the policy of separate but equal was to defend the indefensible." Professor Wilson's words, and the tales of experiences, have stayed with me.

We must never lose sight of the importance of Brown versus the Topeka Board of Education. This decision has set a higher standard for our schools and for our nation. Even today, disparities exist among groups of students, and we must continue working to ensure that all students are learning what they need to learn, and are receiving the kind of high-quality education they deserve.

As the father of two daughters, one in middle school and one in high school, I am thankful for the change that the Brown decision brought to the American education system and to our society. I am thankful that my daughters attend school in a country where all children are considered equal.

Our public schools today are rich in diversity because of the hard work of the NAACP, and the willingness of Linda Brown and her family to stand up for what is right. Because of the Brown decision, we are better able to foster understanding, tolerance, and morality in our young people.

I am proud to have been a part of establishing the Brown vs. Topeka 50th Anniversary Commission in 2001. Since its inception, the Commission has been preparing for this anniversary. Commission members have traveled all over the country, visiting the cities whose desegregation cases set the stage for Brown's success. The Commission has also encouraged many activities across the nation related to the anniversary, including an essay contest, a film and discussion series, and traveling museum exhibits.

I want to thank everyone who worked to make this anniversary so memorable and so historic. Cheryl Brown Henderson, daughter of the late Oliver Brown, has worked tirelessly, not only for this anniversary, but also for educational equity everywhere. As cofounder of the Brown Foundation for Educational Equity, Excellence and Research, Mrs. Brown Henderson has helped establish a living tribute to the plaintiffs and attorneys involved in the Brown case.

Today, President Bush visited Kansas for the first time. The President spoke this morning in Topeka at the dedication of the National Park Service's $11.3 million historic site in the Monroe School, the former all-black school that Linda Brown attended before the 1954 Supreme Court ruling. I want to thank President Bush and the city of Topeka for helping to make this anniversary worthy of the event it commemorates.

We cannot forget that our work is not yet done. We have celebrated and remembered, but we must do more. We must recommit ourselves to the philosophy behind the Brown decision—to the elimination of bias and the changing of society for the better. We must continue working to provide equal opportunities for all. We must make a fresh commitment to this Nation's children.

Colleagues, I trust we can be of one voice tonight. Let us join together in our celebration

of the 50th anniversary of the Brown decision and in our renewed commitment to our children.

A TRIBUTE TO SANDRA DOCTOR

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. TOWNS. Mr. Speaker, I rise in honor of Sandra Doctor in recognition of her long-standing commitment and work for her immediate community, New York City and the State of New York.

Sandra is a woman of faith, hope and strength. A spiritual person, she is hard-working and cares deeply for her family and her fellow man. She tries to make a difference in the lives of others. She also has a passion for the arts, modern and praise dancing, and music. Sandra loves to read books as well.

Sandra was born and raised in Brooklyn, New York. She is the eldest daughter of Roy Lee and Mildred Miller. She has been a member of St. Paul Community Baptist Church for over 31 years and has served on the young adult usher board and now works with the Jewel Collective Women's Ministry.

Sandra attended Bay Ridge High School in Brooklyn and went on to pursue a Bachelors of Science degree in Business Management from the State University of New York College at Old Westbury in May 1986. After graduating from college she worked for the New York City Board of Education as a Purchasing Assistant. Two years later, she took a position with the NYC Human Resources Administration, Adult Protective Services, and has been there for the last 16 years. She has held many positions including Field Caseworker, Intake Caseworker, Unit Supervisor, Assistant to the Director, and is currently the Community Outreach Coordinator. Sandra is the liaison between APS and community based organizations, the Office of Health and Mental Health, the NYS Office of Fair Hearings and NYS Office of Mental Retardation and Developmental Disabilities.

She also worked weekends for two years at Clinton Housing Development Corp. as a counselor and front desk security. CHDC is a SRO that provides housing and social services to mentally ill, elderly and previously homeless adults. Currently Sandra attends Hunter College School of Social Work Management Development Program.

Sandra serves on many advisory boards; Manhattan Geriatric Committee, New York County Taskforce on Elder Abuse, Elder Mistreatment Committee, Living Alone Needing Care (LINC), and Mentally Ill Chemically and Alcohol Dependent (MICA).

She has been a member of the Women's Caucus for Congressman Ed Towns since 1998. She is also a member of the Rainbow PUSH Coalition, the Mayor's Taskforce and HRA Crisis and Disaster Team, where she has volunteered for the last five years. Sandra has received awards for the 911 Tragedy and the Citywide Y2K Operation. She has received emergency training through HRA Crisis and Disaster team and the American Red Cross.

Mr. Speaker, Sandra Doctor has dedicated her life to her community and her church through both her professional and personal life. As such, she is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

PASTOR REVEREND MINGO HONORED BY THE CHRIST TEMPLE BAPTIST CHURCH FOR 13 YEARS OF EXTRAORDINARY SERVICE

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. PORTMAN. Mr. Speaker, I rise today to recognize Pastor Peterson Mingo, a friend and distinguished community leader, who celebrates his 13th Pastoral Anniversary this month with the Christ Temple Baptist Church located in the Evanston neighborhood of Cincinnati, Ohio.

Pastor Mingo was honored on Friday, May 14th for his distinguished service to Christ Temple Baptist Church and for his tireless efforts to improve the lives of young people in the Evanston neighborhood and throughout the entire inner city.

Pastor Mingo has dedicated his life to community service by fostering relationships and building partnerships throughout the city. Pastor Mingo founded the Evanston Youth Association, the Inner City Rites of Passage Program and the Evanston Bulldogs Youth Football team. He still manages to work with the Cincinnati Youth Street Worker Program during the day, and has a full time job at night.

For the past several years, I have had the honor of serving with Pastor Mingo on the board for a Coalition for a Drug-Free Greater Cincinnati. I am continually inspired by his dedication and commitment to providing drug free environments and healthy alternatives for our young people. Pastor Mingo also serves on the recruitment committee for the Life Center, and serves on the board of the Cincinnati Cooperative Church League.

Pastor Mingo is also dedicated to his family. He is the loving father to 11 children—eights sons and three daughters—and is a devoted husband to his wife, Regina.

All of us in Cincinnati thank Pastor Mingo for all he has done to make our community a better, safer place for our children to live and play, and we congratulate him on his Pastoral Anniversary.

CREDIT UNIONS, A VITAL AMERICAN INSTITUTION

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. SANDERS. Mr. Speaker, I want to talk today about an essential element in our national life, America's credit unions. They are one of the most vital, one of the most democratic, institutions in America, and yet time and again credit unions are overlooked and even ignored by the mainstream media. But I know, as tens of millions across the Nation know, that credit unions are healthy, thriving, and essential to the prosperity of the Nation and the well-being of millions of families.

The principle behind credit unions is simple. A group of people join together to pool some of their resources; in turn, those resources are available as low-cost loans to the members of the group. Without the need to make a profit, without heavy advertising costs, without huge bonus packages to corporate executives, credit unions can provide loans at rates lower than other financial institutions. And they also can provide loans to those who might otherwise be turned away from conventional banking institutions.

Credit unions are cooperatively owned by those who deposit money in them, not by 'investors' who want to make a profit from loaning money. They are democratic, owned and run by their members. And anyone who makes a deposit is a member.

Although the concept of coming together to pool resources dates back to ancient times, the modern credit union movement began in the mid-nineteenth century, when economic depression, massive crop failures, and especially harsh winters created horrendous conditions for rural and working people in Europe. The first credit union dates from 1850 in Germany. Quickly, the idea spread across Europe.

In 1901, in Quebec, the Canadian province neighboring my State of Vermont, the first credit union in North America was established by Alphonse Desjardins in a town called Levis. It was called La Caisse Populaire de Levis, and like its European counterparts it made credit available to all sorts of people who could not get loans from banks: small farmers, working families, and renters who had no collateral.

In 1908, inspired by that model, the first credit union in the United States was founded. Parishioners of St. Mary's Church in New Hampshire, Vermont's neighbor to the east, formed the first U.S. credit union, with help from Desjardins. (Today, St. Mary's Bank is still a credit union and still vital, with more than $450 million in assets.)

In 1909 Edward Filene, a progressive businessman whose department stores are still prominent in the Northeast—one is located in Burlington, Vermont—helped develop and enact the Massachusetts Credit Union Act. Many states followed Massachusetts in passing similar legislation. By 1930 there were 32 states with credit union laws, and there were a total of 1,100 credit unions nationwide.

The depression, of course, made credit more important than ever to hard-pressed working people. In 1934, the Congress passed the Federal Credit Union Act. When President Franklin Roosevelt signed the law in 1934, he said its purpose would be "to make more available to people of small means credit for provident purposes through a national system of cooperative credit."

Credit unions grew and flourished. By 1960 more than 6 million people were members at one or more of over 10,000 federal credit unions.

I was proud to be an original sponsor, and to work side-by-side with credit unions and their members during a long and contentious struggle in 1998. We were successful in that fight, and passed the law that preserved the right of consumers to join credit unions. So, credit union membership remained open to many millions of Americans.

Today, I am pleased to report, credit unions are stronger than ever, and serving more people than ever. There are over 12,000 credit

unions in existence today. They have $316 billion in assets—and they serve 70 million people in our nation.

The credit union movement's long and great history of making credit available to people of small means has been based on the same central idea from the outset. Credit unions enable everyday people to band together for the common good, allowing them to make basic financial services available through not-for-profit and democratic means.

In our day, unhappily, tragically, the conditions that led to the beginning of the credit union movement in Germany more than a century-and-a-half ago still exist. Families, even with two and three workers in a household, even with people holding multiple jobs, often cannot pay their bills, their health care, their pharmaceutical costs.

Our economy is booming—but only for some. Corporate profits are up, productivity is up and stock prices are relatively high. The wealthiest people in our country have never had it so good. The richest one percent of our population now owns more wealth than the bottom 95 percent, and the typical CEO of a major corporation now earns over 300 times more than the average worker.

But workers across the country are often working longer hours for lower wages than they earned twenty-five years ago. Thirty percent of our workers earn poverty or near-poverty wages. In fact, low-wage American workers are now the lowest paid in the industrialized world. One out of every five children in America now lives in poverty, compared to one out of seven twenty-five years ago. Thirty-four million Americans live in hunger or in families so poor that parents skip meals so their children can eat.

Ordinary Americans are struggling. They need allies like the credit union movement.

Meanwhile, the for-profit financial services industry has left many ordinary Americans behind. Mergers have led to larger institutions serving higher-end customers, the loss of local ownership and control, less competition, higher fees, and the lack of life-line financial services to moderate- and low-income consumers.

There are 20 million American adults who do not have checking or savings accounts. Some have been priced out by high fees. Others simply can't get small loans from banks. When their cars break down, they borrow the money to fix them from wherever they can—like payday loans. Banks often think that the best way for working people to get a loan is to draw heavily on their credit cards—cards that often charge hefty monthly penalty fees on top of close to thirty percent interest rates!

So America's credit unions are just as vital today as they were when Desjardins helped organize that first credit union in New Hampshire.

Yet even though credit unions serve seventy million people—perhaps because they serve seventy million people—they are under attack by the for-profit financial establishment.

Today, huge corporate banks are hard at work lobbying Congress to tax credit unions. Unscrupulously, the banking lobby has even questioned the safety and soundness of credit unions. They hammer away and hammer away at their theme: "It is not fair that credit unions are not taxed. They get a federal subsidy." Yet it is the banks, with their multi-million dollar CEO's, their rising profits, and their rising ATM surcharges, that come before Congress to ask for huge bailouts for bad overseas investments. When the banks say that credit unions should pay a billion a year in taxes, they conveniently forget to mention that privately owned banks have received hundreds of billions in taxpayer support in the last fifteen years, ranging from outright bailouts of failed domestic banks to underwriting of their losses abroad.

Credit unions are tax exempt for good reasons, and not because anyone is doing them a special favor. Credit unions are tax-exempt because they are not-for-profit institutions. And under federal law, and rightly in my view, nonprofits are exempt from taxes: churches, hospitals, libraries, universities—and credit unions.

For almost all of the past century, credit unions brought people together, allowed them to share their resources, and served the financial needs of their members in good times and bad.

It is my belief that credit unions and their members have the potential to be an even more important economic, social and political force in our country in the decades ahead. In a nation facing forces that threaten to rip our economic well-being apart—downsizing, outsourcing, shipping jobs abroad—credit unions remind us that we can work together for the common good. They show us, day after day, that it is not necessary to incorporate the profit motive into every aspect of American life. In fact, credit unions show us how, if profits are not involved, people can come together to help themselves, sustain themselves, and create healthy communities.

I never make excuses for the fact that I am a strong supporter of credit unions. I want to see credit unions grow and flourish because I believe credit unions are good for the working people of Vermont and good for America.

A TRIBUTE TO JANET B. MUNROE ROUSSEAU

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. TOWNS. Mr. Speaker, I rise in honor of Janet B. Munroe Rousseau in recognition of her dedication to her community and improving the lives of children.

Janet was born in Trinidad, West Indies. When she immigrated to the United States with her husband, she had already had a nursing degree. She started her nursing profession in England. However, Janet decided to broaden her scope of knowledge by completing the certification for the Nurse Midwifery Program (R.N, C.N.M.) at Downstate University in Brooklyn, New York. She is licensed to practice Midwifery by the New York State Education Department and the American College of Nurse Midwives. Janet also completed her Bachelor of Science degree in Community Health at St. Joseph's College while working full-time and presiding as Vice-President of the PTA at her daughter's elementary school.

Janet is a member of over ten professional affiliations within her nursing career including: the Nursing Admissions Committee, the Clinical Faculty of the College of Health Related Professions, and the Search Committee for the Chairperson of the Nurse-Midwifery Program, which is only given to those who are accomplished in their field.

During her career Janet has collaborated with other nursing professionals in formulating the first health fair for Central and East Flatbush area.

In addition to being a health care provider, Janet has been a member of the Sesame Flyers International Inc. since its inception in 1983. She has held numerous positions within this prestigious organization including Vice-President, Treasurer, Comptroller, Head of Social Affairs, Nutritionist for the Children's Saturday Program and now, a member of the Board of Directors. This community service organization is her second family. Janet devotes a lot of her spare time to making sure the group lives up to the motto, "Love a Kid Today and Everyday."

Janet is truly worthy to be honored as a "Woman Who Dares to Be Different." She is not only a daring woman, but she is also a dynamic wife, mother, grandmother, mother-in-law, sister, friend and well-rounded blessed person.

Mr. Speaker, Janet B. Munroe Rousseau has dedicated her life to strengthening her community as a health care provider and community activist. As such, she is more than worthy of receiving our recognition today and I urge my colleagues to join me in honoring this truly remarkable person.

RECOGNIZING INDUSTRY EFFORTS TO FIGHT UNDERAGE DRINKING

HON. JOHN A. BOEHNER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. BOEHNER. Mr. Speaker, I rise today during prom and graduation season to recognize The Century Council and the distilled spirits industry for their efforts to fight underage drinking this month and throughout the year.

As we focus on public health and safety issues during prom and graduation season, we must pay close attention to the challenges facing our nation's youth. While many youth under the age of 21 obey the minimum drinking age law and do not drink, other youth unfortunately make irresponsible decisions about beverage alcohol. The consequences can be tragic. In addition to countless non-fatal injuries, statistics from the National Highway Traffic Safety Administration show there were 516 alcohol-related traffic fatalities among youths under the age of 21 in May and June 2002.

The Century Council, funded by America's leading distillers to fight drunk driving and underage drinking, is kicking off its fifth annual National Prom and Graduation Safety Months Initiative consisting of a series of initiatives aimed at educating students, parents, educators and lawmakers throughout the upcoming months. This includes the nationwide distribution of prom and graduation safety kits and gubernatorial proclamations in more than 30 states.

The Council's programs have been implemented across the country in numerous public/private partnerships to educate parents, educators, youth, lawmakers, law enforcement, and community groups about the problem of underage drinking. The Council's programs are developed by experts to provide the

public with educational tools and programs aimed at reducing underage drinking.

Mr. Speaker, I am pleased to join more than 30 governors from across the nation who have recognized the efforts of The Century Council in declaring May and June Prom and Graduation Safety Months.

REGARDING CO–SPONSORSHIP OF H.R. 4061

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. LEE. Mr. Speaker, I rise today in regards to H.R. 4061, the Assistance for Orphans and Vulnerable Children Act of 2004, which passed the House International Relations Committee by unanimous consent on March 31th.

Last week the International Relations Committee filed House Report 108–479.

Because House rules prohibit the addition of additional co-sponsors to a bill once the committee report has been filed, I am not able to formally add another Member of Congress as a co-sponsor of this legislation.

I ask that the record show that Ms. Granger of Texas is in support of my bill and should be considered by this body as a co-sponsor of H.R. 4061.

CONGRATULATIONS TO BETHESDA-CHEVY CHASE HIGH SCHOOL

HON. CHRIS VAN HOLLEN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. VAN HOLLEN. Mr. Speaker, I rise today to congratulate Bethesda-Chevy Chase High School BCC in my district for being named a GRAMMY Signature School by the GRAMMY Foundation. BCC is only one of 41 public high schools in the country to receive this prestigious award. The GRAMMY Foundation recognizes outstanding public high schools across the U.S. that demonstrate a commitment to music education.

I am proud that, even in the midst of budget cuts, faculty and staff at BCC have managed to maintain and develop its arts and music program. BCC has successfully used the arts to captivate and engage students in the process of learning. The arts help children develop discipline as well as problem solving and critical thinking skills which are invaluable for future endeavors.

I applaud BCC for its commitment to music education and for making a positive difference in the lives of young people.

PERSONAL EXPLANATION

HON. GEORGE R. NETHERCUTT, JR.

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. NETHERCUTT. Mr. Speaker, on Thursday, May 13, I was unavoidably detained due to a prior obligation. Had I been present, I would have voted "no" on the following: Rollcall vote No. 172 on agreeing to the Kind substitute amendment to H.R. 4281, the Small Business Health Fairness Act of 2004; and rollcall vote No. 173 on the motion to recommit H.R. 4281, the Smail Business Health Fairness Act of 2004.

I would have voted "yes" on the following: Rollcall vote No. 174 on passage of H.R. 4281, the Small Business Health Fairness Act of 2004; Rollcall vote No. 175 on the motion to suspend the rules and pass H.J. Res. 91, Recognizing the 60th anniversary of the Servicemen's Readjustment Act of 1944; and Rollcall vote No. 176 on agreeing to H. Con. Res. 414, Expressing the sense of Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown.

50TH ANNIVERSARY OF BROWN V. BOARD OF EDUCATION

HON. EDDIE BERNICE JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today in honor of the 50th Anniversary of Brown v. Board of Education decision, which declared segregation of public schools illegal. The case was sparked by Linda Brown, a black girl denied admission into a white elementary public school in Topeka, Kansas. The NAACP took up her case, along with similar ones in Kansas, South Carolina, Virginia, and Delaware. All five cases were argued together in December, 1952 by Thurgood Marshall.

I am proud to stand here today in honor of one of our country's pioneers in the history of civil rights. Before serving 24 years as the first African-American on the United States Supreme Court, Thurgood Marshall served as legal director of the NAACP. Marshall was once asked for a definition of "equal" by Justice Frankfurter. He responded, "Equal means getting the same thing, at the same time, at the same place."

I am grateful to have contributed to the legacy of such a great American. As immediate past chair of the Congressional Black Caucus, I am pleased that the seed planted under my administration has now blossomed into a fruitful initiative.

Mr. Speaker, I would also like to thank all of my colleagues here in Washington, around this nation and Topeka, Kansas for commemorating this significant event, so fundamental to our societal growth. I am here today because I believe that education must be our number one national priority. In my almost thirty years as a legislator, I have fought to ensure that education is at the forefront of the legislative agenda.

The President has promised to "leave no child behind", unfortunately, the current administration is not getting the message. The President's budget falls $9.4 billion short of the funding commitment made in No Child Left Behind to K–12 education for Fiscal Year 2005. In my home State of Texas, the President's budget will impact math and reading programs for 205,157 children.

How can we ask educators to meet high standards at the same time we hand them a budget that forces class size increases, cuts in academic programs, and teacher layoffs? Demanding more but paying less does not work.

Other programs barely survive the budget chopping block—resources for teacher training, educational technology, after-school programs, and safe and drug-free schools are frozen; while for the second year in a row he allocates no money for school modernization.

Education is not a luxury item that can be trimmed when more enticing budget items beckon. It is an essential element that should be our highest national priority. Now is the time to increase education spending.

Mr. Speaker, I would like to close by asking my colleagues in the House of Representatives to join me in extending my appreciation to the legacy of Justice Thurgood Marshall, the Brown family, and all of the unsung heroes who worked so tirelessly for equality and justice in America's public institutions of learning.

RECOGNIZING THE 50TH ANNIVERSARY OF BROWN V. THE BOARD OF EDUCATION

HON. KENDRICK B. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. MEEK of Florida. Mr. Speaker, today marks the 50th anniversary of the landmark civil rights ruling of Brown vs. The Board of Education. The plaintiffs in this case, led by Thurgood Marshall, argued that states did not have a valid reason to impose segregation, that racial segregation caused psychological damage, and that restrictions based on race or color violated the equal protection clause of the Fourteenth amendment. On May 17, 1954, the Supreme Court unanimously agreed.

Fifty years later, we must ask ourselves if the vision of equality sought by the plaintiffs in Brown has been realized. While today the legal battle against segregation is largely over, the struggle for equal opportunity continues. Gaps in academic achievement and outcomes separate white and minority students, and little has been done to address them. New data from the Urban Institute and the Harvard Civil Rights Project indicates that only about one-half of black and Hispanic students graduate from high school nationwide. The study also found that black students are over represented in special education programs and under represented in honors education programs.

Meaningful change in our public schools is needed, but the No Child Left Behind Act passed by Congress in 2001 is not the answer. Showcasing achievement gaps will only further erode support for our public schools and drive more students to private schools. A national mass exodus from our public schools, which has already occurred in some urban communities, would turn our public schools into classrooms of last resort and little hope.

The dream codified by Brown is alive, but we must continue to push for full equity and quality in education for all Americans. Today is an occasion to celebrate the progress made in the last 50 years, reflect on our progress thus far and recommit ourselves to the goal of equality that is the promise of our Constitution.

COMMEMORATING THE 50TH ANNIVERSARY OF BROWN V. THE BOARD OF EDUCATION

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. MARKEY. Mr. Speaker, 50 years ago today, in the landmark Brown v. the Board of Education, Chief Justice Warren declared, unanimously, that ''in the field of public education, the doctrine of 'separate but equal' has no place.'' Separate educational facilities are inherently unequal. The Brown decision promised that every child, regardless of the color of his or her skin, would have unequivocal access to quality education and an equal opportunity to pursue his/her dreams. Since that moment, our society has evolved to the point where the idea of intentionally separating students on the basis of on the color of their skin in the United States of America is appalling. However, while we should certainly celebrate the demise of overt official racism, we must also critically examine where we are at this historical moment, recognize the many challenges ahead and reaffirm our commitment to making Brown v. Board a reality.

In Massachusetts we tend to think about segregation and racial disparity as a southern phenomenon, alien to our abolitionist New England roots. But a recent study released by the Civil Rights Project at Harvard University found that the Metro-Boston area still remains a widely segregated society. In fact, 70 percent of white students attend suburban schools that are over 90 percent white, while more than 75 percent of black and Latino students attend schools in the inner city or in one of the urbanized satellite cities. The segregated schools of today are arguably no more equal than the segregated schools of the past. Students who attend high minority and high poverty schools are far less likely to graduate on time, be taught by a ''highly qualified teacher'' and apply to college, and are far more likely to drop out of school, score poorly on the SATs, and fail the MCAS.

I am proud of what has happened in my hometown, where Mayor Howard seized an opportunity to modernize the entire school system so that everybody in this diverse working-class community feels that people care about the education of Malden's children, regardless of race or income. Unfortunately, this is the exception, not the rule. Efforts at the national level to support such initiatives have been very uneven. The No Child Left Behind NCLB Act set lofty goals but is failing to provide the funding and the assistance needed to achieve those goals. President Bush's budget for next year failed to provide $9.4 billion of promised money to K–12 education, $7.2 billion of which was intended to help schools educate our country's most impoverished children. In order for our schools to make ''adequate yearly progress,'' the President needs to provide ''adequate yearly funding.'' Almost every day, I get calls from constituents, and communicate with teachers about the many problems with implementing standards without financial support.

Our work is clearly not done and there is too much at stake to leave the work unfinished. Education is not only a ladder of opportunity, but it is also an investment in our future. Our nation's security, economy, and place on the world stage depends on the success our educational system. Although children are only 24 percent of the population, they're 100 percent of our future and we cannot afford to provide any child with a substandard education.

50TH ANNIVERSARY OF BROWN V. BOARD OF EDUCATION

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. LANTOS. Mr. Speaker, today we mark the 50th anniversary of the Supreme Court's historic ruling in Brown v. Board of Education. This monumental decision effectively overturned the egregious standard of ''separate but equal'' and truly opened the schoolhouse doors for all children in America.

The decision was a watershed event in U.S. history. It represents the moment in time when the U.S. government no longer sanctioned discrimination against a person solely based on the color of their skin. Most importantly, the decision established the fundamental right of access, granting everyone the ability to gain an education and excel in America.

Mr. Speaker, even though this nation officially banished slavery and attempted to fully integrate the former slaves into society with the 13th, 14th and 15th amendments to the Constitution, equality did not come immediately. States enacted laws to circumvent the intention of these post-Civil War amendments. Then in 1896 the Supreme Court codified the usurpation of rights in the decision that allowed for ''separate but equal'' facilities for African Americans, in essence endorsing an official government policy of segregating black and white citizens.

Shortly after that shameful decision, the National Association for the Advancement of Colored People (NAACP) was founded and soon began its legacy of fighting legal battles that address social injustice. One of the most prominent lawyers from the NAACP legal team was a young man named Thurgood Marshall, who graduated first in his class from Howard University School of Law in 1933, and joined Julian Dugas, Charles Houston and Oliver White Hill to advocate for the NAACP in the nation's courtrooms. After a series of legal successes, Thurgood Marshall scored one of the greatest legal victories when he and Charles Houston successfully argued Brown v. Board of Education before the Supreme Court in 1954.

The success of this case was enhanced by the Court's unanimous decision. This was largely thanks to Chief Justice Earl Warren, who recognized that proponents of segregation might see a divided decision as vulnerable to being revisited in later years. Furthermore the Chief Justice wisely recognized that failing to get the support of all the Justices would carry less weight with the Eisenhower Administration and the general public.

Mr. Speaker, despite the lofty promises of desegregating schools with all deliberate speed that the Supreme Court offered when it decided Brown v. Board of Education, some communities still suffer from de facto segregation.

Even more troubling are the disputes that still exist. Part of the problem stems from schools being largely based on housing patterns and funded by local property taxes. A school with a majority African American or Latino population, especially in large cities, is less likely to have proper textbooks, experienced and prepared teachers, and adequate classrooms of manageable size as a result of these funding imbalances. Unfortunately, this means these schools are often rated the worst and produce unprepared students, along with having high drop-out rates.

Students at these schools have limits placed on their access to a quality education. Mr. Speaker, we are all aware that students who go to impoverished schools are less likely to take college preparatory or advanced placement classes, and in the hyper-competitive world of college admissions the classes are mandatory to gain entrance. A quality education has the power to break the cycle of poverty that has plagued minority communities. We are the richest country in the history of the world, and it is unconscionable that schools are failing their students.

Mr. Speaker, as we stand in the shadow of this extraordinary decision half a century after it was made, we in Congress should recommit ourselves to the doctrine of Brown v. Board, which Chief Justice Warren stated so eloquently 50 years ago when he said, ''We conclude that, in the field of public education, the doctrine of 'separate but equal' has no place.''

IN HONOR OF MARK TOGNAZZINI

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. FARR. Mr. Speaker, I rise today to honor a public servant, Mark Tognazzni, of the highest caliber on his retirement from the posts of Agricultural Commissioner and Sealer of Weights and Measures for San Benito County, California. I wish to express my gratitude for his good work, and wish him well for the future.

Mark is a native of San Benito County, born and raised in Hollister. After attending local schools, he started working with the Agricultural Commissioner's office in 1963, and over time worked his way up through the ranks to become Commissioner in 1984. While in that position, Mark has worked on a local and regional level to promote good dialogue and relationships with the agricultural industry. His work continued State-wide as well and he was active in the California Agricultural Commissioners and Sealers Association, serving as both the Vice President and President of that group. His local work includes eight years as the Chairperson of the Agriculture/Horticulture Division of the San Benito County Fair and work with other county fairs in the area.

Mr. Speaker, Mark Tognazzini's career has spanned four decades and huge changes in the way California farmers operate and the government regulates. Throughout this time he has maintained good relationships with growers and residents, and has served the people of San Benito County and the State of California well. I am sure I join many others in wishing him all of the best for the future in his retirement.

ROSS OPPOSES ADMINISTRATION OVERTIME REGULATIONS

HON. MIKE ROSS

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. ROSS. Mr. Speaker, on Wednesday, May 12, 2004, I missed a vote to table the Motion to Instruct Conferees on H.R. 2660, the Labor–HHS Appropriations Act of fiscal year 2004, offered by Representative GEORGE MILLER. Had I been present, I would have voted no on the motion to table.

Although the FY04 omnibus appropriations bill included the FY04 Labor-HHS Appropriations bill, technically, it is still in conference and motions to instruct are in order. By tabling this motion to instruct, it will injure the working men and women of Arkansas's Fourth Congressional District, and the nation who often depend on overtime pay to make ends meet. I support the Senate language to prohibit the use of funds to issue or enforce a regulation that would take overtime pay away from any employee who, under current regulations, is entitled to overtime pay.

On April 23, the Labor Department published a final overtime eligibility rule in the Federal Register that will take effect later this year. The final rule differs from the proposed rule in that it substantially expands the Fair Labor Standards Act's (FLSA) exemptions and threatens the overtime rights of millions of workers. For instance, the final rule greatly expands the exemption for administrative employees, thus creating loopholes for employers to potentially exploit hard working Americans. Additionally, the final rule expands the learned professional exemption to workers without college degrees and jeopardizes the overtime protection of blue collar workers considered ''management.''

Working families in the Fourth Congressional District of Arkansas depend on overtime pay to feed their families, make their mortgages, and contribute to this great society. Any action by our government to reduce this simple process in unconscionable.

It is for these reasons that had I been present, I would have voted no on the motion to table Representative GEORGE MILLER's Motion to Instruct Conferees on H.R. 2660.

CELEBRATING NATIONAL TRANSPORTATION WEEK

HON. LINCOLN DAVIS

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. DAVIS. Mr. Speaker, the development of modern transportation infrastructure has changed the way Americans live, travel, and continues to be one of the driving factors in maintaining a strong economy. Since this is National Transportation Week I would like to recognize the significant contributions transportation infrastructure has made in districts like mine.

The 2004 American Almanac of Politics recently rated Tennessee's Fourth Congressional District as the fourth most rural in Congress. As a farm boy who grew up and lives in one of the most rural counties in the district I understand the importance of roads, and infrastructure. Many of the communities, towns and cities in my district, like many others, depend on these investments for their livelihood.

A Senate and House Conference Committee have been working with the Administration to find common ground in the highway reauthorization bill, commonly referred to as TEA–LU. The funding for this legislation has been set for a six year span. It is my strong belief, the investment in building and adding upon existing infrastructure will not only impact our grandchildren, but their children as well.

Thank you, Mr. Speaker, for allowing me to praise the work we have accomplished in strengthening our nation's roads, highways, national security, and economy.

PERSONAL EXPLANATION

HON. DENISE L. MAJETTE

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. MAJETTE. Mr. Speaker, I was unable to be in attendance for votes on May 13, 2004 due to a family commitment.

1. Had I been present, on rollcall No. 169, a substitute to H.R. 4275, I would have voted ''aye.''
2. On rollcall No. 170, H.R. 4275, to extend the 10-percent individual income tax rate bracket, I would have voted ''nay.''
3. On rollcall No. 171, a motion that the House instruct conferees on S. Con. Res. 95, I would voted ''aye.''
4. On rollcall No. 172, a substitute to H.R. 4281, the Small Business Health Fairness Act, I would have voted ''aye.''
5. On rollcall No. 173, a motion to recommit H.R. 4281, I would have voted ''aye.''
6. On rollcall No. 174, the Small Business Health Fairness Act, I would have voted ''nay.''
7. On rollcall No. 175, Recognizing the 60th anniversary of the Servicemen's Readjustment Act of 1944, I would have voted ''aye.''
8. Finally, on rollcall No. 176, Expressing the sense of the Congress that, as Congress recognizes the 50th anniversary of the Brown v. Board of Education decision, all Americans are encouraged to observe this anniversary with a commitment to continuing and building on the legacy of Brown, I would have voted ''aye.''

HONORING THE 50TH ANNIVERSARY OF BROWN V. TOPEKA BOARD OF EDUCATION

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. FARR. Mr. Speaker, it was 228 years ago that the Second Continental Congress affirmed that all men are created equal, as they declared their independence from England. Despite the grand idea of creating a better government that cherished equality and unalienable rights, the United States of America endorsed overt racial discrimination and exploitation for over 178 years.

It was only 50 years ago, in the Supreme Court ruling on Brown vs. Topeka Board of Education that our government took a big step towards correcting these wrongs and recognizing the full spirit of equality. This ruling reversed the Plessy vs. Ferguson case and established that, ''separate educational facilities are inherently unequal.'' The Supreme Court's acknowledgment in Brown vs. Topeka Board of Education was a pivotal point in the rising civil rights movement that led to the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.

Today, we celebrate the 50th anniversary of Brown vs. Topeka Board of Education. We also honor all the people, young and old, who bravely challenged the status quo and risked their own personal safety to fight for equality. It was their courage that spurred our country to become a better place and we will continue to recognize their important role in our history.

As we commemorate the achievement of the Brown decision, we must also recognize that this fight is not over. Across the country children of all races are being deprived of their fundamental right to an education. In California we see painful overcrowding in schools, creating conditions that are not conducive to learning. Without the critical skills provided by a good education, our children's futures are restricted. In the last several years we have seen a symbol of commitment to improving education in the enactment of the No Child Left Behind Law. This legislation sets high standards for the kind of achievement we would like to see from all of our children. However, this law fails to provide the resources and tools for states and localities to achieve these goals. Underperforming schools are punished instead of helped, and our children are once again denied their right to a good education.

The significance of Brown vs. Topeka Board of Education is too important for us to let it slip away. We must continue to dedicate ourselves to achieving equal rights and equal opportunity for all Americans.

IN MEMORY OF STAFF SERGEANT HESLEY BOX, JR.

HON. MIKE ROSS

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. ROSS. Mr. Speaker, I rise today to honor the life of Staff Sergeant Hesley Box, Jr, of Chidester, Arkansas, who died on May 6, 2004, fighting for his country. Hesley, just 24 years old, was part of the Arkansas National Guard, Bravo Company, 1st Battalion, 153rd Infantry, 39th Brigade Combat Team. I wish to recognize his life and achievements.

I am deeply saddened by the tragic loss Hesley Box, Jr. from Arkansas's 39th Brigade, who died while supporting Operation Iraqi Freedom. Hesley lost his life while making the ultimate sacrifice to serve our country, and I will be forever grateful to him for his courageous spirit.

Hesley gave his life to serve our country and will forever be remembered as a hero. My deepest condolences go out to his parents, Barbie and Hesley, his brother, Tarcus, his wife, Alexis, their daughter, TaDarius, and their son, Zacheas. I know Hesley was proud of his service to the U.S. Army and to our country. He will be missed by his family, fellow

soldiers, and all those who knew him and counted him as a friend. I will continue to keep Hesley and his family in my thoughts and prayers.

HONORING MR. RICK CRANDALL FOR HIS OUTSTANDING PUBLIC SERVICE

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. UDALL of Colorado. Mr. Speaker, I rise today to honor Mr. Rick Crandall of Aurora, Colorado for his lifetime of achievement and service to his family, community, and country.

Mr. Crandall served his country honorably with the U.S. Air Force in Guam. Following his service, Mr. Crandall created the popular radio talk-show ''The Breakfast Club'' emphasizing the sacrifices made by American veterans. On his show, Rick interviews veterans about their experiences on and off the battlefield. The show made history in 2000 when he went ''on the air'' from the American Cemetery above Omaha Beach. Rick's radio venue has been warmly welcomed by the veteran community and he has received special recognitions from the American Legion and the Veterans of Foreign Wars for his work.

Mr. Crandall has been an outstanding advocate for several other causes as well. He holds annual charity events for the American Lung Association and the American Heart Association. He has also been helpful for community organizations like the Aurora Senior Center, Rainbow Bridge, and the Denver District Attorney's Office. Most notably, Rick hosts an annual golf tournament which raises funds for the local Meal on Wheels.

Rick Crandall has made service a life-long pursuit. His latest undertaking is the establishment of the Colorado Freedom Memorial in Aurora. This memorial honors the thousands of Coloradans who have given their lives serving in combat for the United States since the Spanish-American War. The Colorado Freedom Memorial is just in its introductory stages, so Mr. Crandall surely has a project to keep him active for years to come.

Mr. Speaker, it gives me great pleasure to honor a man who has given so much to so many. Rick has been an inspiration to our Nation's youth by promoting community service and activism. I urge my colleagues to join me in recognition of Rick Crandall and the commitment he has made to improving his community.

TRIBUTE TO MAEVA NEALE IN MEMORY OF A LEADER, ENVIRONMENTALIST, POET, SCHOLAR AND DOCTOR

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. ESHOO. Mr. Speaker, I rise to honor my constituent Maeva Neale who passed away on May 8, 2004. She was a physician, leader, a poet, and a hero to those who lived in the coastside town of Pescadero, California. She lived a life filled with values, devoting herself to improving the lives of everyone around her.

Maeva Neale was born in Chicago, the daughter of a minister and Spanish teacher. She majored in Russian studies at Cornell University and was fluent in Swahili, Spanish, French, German, and Arabic. She began medical school at the University of Chicago and completed her studies at the University of California at San Francisco. In the spirit of her thirst for knowledge and adventure, she moved to Kenya for a decade where she practiced medicine and raised her two children, Ama and Geoffrey. Looking for new adventure, she then moved to Saudi Arabia for two years.

In 1989, our community was blessed with Maeva Neale's decision to move to Pescadero, where one of her first acts as a member of our community was to foil an attempt to drop sewage sludge above the ecologically vital coastal area of Pigeon Point. She spent ten years on the Pescadero Municipal Advisory Council, including one as the Chair, leading the drive to stop chemical spraying along Pescadero's roadways. She wrote volumes of beautiful poetry in several languages that were illustrated by local artists and was commended by President Clinton for her work on behalf of Russian children who were devastated by severe pollution.

Mr. Speaker, it is with a heavy heart that I rise to honor the life of Maeva Neale. She brought our community together, no matter how divergent its opinions. She was an artist and a healer, and always was an inspiration to me. I ask my colleagues to join me in honoring and remembering Maeva Neale for her extraordinary life of service to our community and humanity. We are better people because of her gentleness, her leadership and her incredible spirit.

IN HONOR OF BROWN V. BOARD OF EDUCATION

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Ms. SCHAKOWSKY. Mr. Speaker, I rise today to celebrate the 50th anniversary of the Supreme Court's landmark ruling in the case of Brown v. Board of Education. Fifty years ago today, Chief Justice Earl Warren announced that, under the Constitution, education is ''a right which must be made available to all on equal terms.'' That ruling paved the way for the end of legal segregation; it affirmed the truth that we all knew in our hearts—that separate can never be equal.

In only 2,000 words, Chief Justice Warren changed the course of our nation for the better. It took the Chief Justice only a few minutes to read the ruling, but his words are still echoing in every classroom throughout the country. His words reverberated through the Supreme Court's marble halls and flowed into public school hallways. Those words continued to carry across the land by drawing power from the hope they gave to the people who heard them. They were a promise that every child would have the same opportunity to receive an education and, even more importantly, that every person would have the opportunity to shape and contribute to our society's future.

The Brown v. Board of Education ruling was a crucial step on our way to becoming a more just society. We still have a very long way to go, but we cannot let the length of the road ahead of us discourage us. The Brown v. Board of Education ruling put the power of the law behind the fight for racial equality. It was a legal ruling that did so much more than end legal segregation in schools; it promised all Americans the right to participate in the ''American dream.''

The National Association for the Advancement of Colored People (NAACP) carefully formed a strategy to boldly challenge the constitutionality of segregation. Linda Brown represented the millions of children suffering from the effects of segregation, and her father, Oliver Brown, represented the millions of parents who believed that their children deserved better. Civil rights advocates used the Supreme Court's ruling on education to challenge discrimination in transportation, voting practices, housing and other parts of our society. The effort to win legal rights also gave birth to Dr. Martin Luther King's powerful dream of an America where all people are free from the scars of discrimination.

Today, we celebrate the courage and conviction of those who stood up for their rights and helped to bring about the great victory of the Brown v. Board of Education decision. Today we also must join together to reaffirm our commitment to equality and to work so that all Americans have a real opportunity to reach their full potential. The goal of achieving equal opportunity requires us to continue to fight for justice and equality. It also requires that we expand opportunity by providing adequate funding for quality, public education; creating good jobs; ending health disparities; and guaranteeing full access to the ballot booth in practice as well as in theory.

Today, we have much to celebrate but we also have much left to achieve.

COMMEMORATING THE 50TH ANNIVERSARY OF BROWN V. BOARD OF EDUCATION

HON. JUDY BIGGERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mrs. BIGGERT. Mr. Speaker, today I rise to commemorate the 50th Anniversary of Brown versus the Board of Education. Fifty years ago, the Supreme Court ruled the doctrine of ''separate but equal'' unconstitutional, and the doors of education were opened to every child.

Sadly, although schools were open to every child, a tremendous learning gap opened up. Some students received a great education, while others—largely poor and minority—slipped through the cracks of the system. The achievement gap between African-American and Caucasian fourth-graders is 28 percentage points, and 29 points between Hispanic and Caucasian students.

This is not equal access to education.

The No Child Left Behind Act continues Brown's legacy. Under NCLB, every child, regardless of race or national origin, is given the same opportunity to learn. Schools are required to ensure that every child is learning.

No longer can students shuffle through the system without learning. We are already seeing positive results. According to a 2004 study by the Council of Great City Schools, the achievement gap is narrowing between minority and Caucasian students in both reading and math. These results are due, in large part, to NCLB.

The No Child Left Behind Act is the second step of Brown. The ruling in Brown may have given students equal access to the classroom, but NCLB ensures that they are given equal access to an education in that classroom.

TRIBUTE TO NEIL BRADLEY

HON. SUE WILKINS MYRICK

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mrs. MYRICK. Mr. Speaker, I rise today on behalf of the members of the Republican Study Committee (RSC) to express our sincere gratitude and best wishes to Neil Bradley. Neil, who has served as Executive Director of the RSC since January 2000, was recently asked by the House Majority Whip to serve as his Policy Director. As the members and staff of the RSC prepare to wish Neil well in his new position, we wanted to take a moment to reflect upon his outstanding service to our organization and to thank him for it.

For those who may be unaware, the Republican Study Committee is a group of Republicans organized for the purpose of advancing a conservative economic and social agenda in the House of Representatives. The group is dedicated to a limited government, a strong national defense, the protection of individual and property rights, and the preservation of traditional family values. Although these values are shared in the abstract by a majority of my colleagues, it is necessary that we measure what is produced through the deal-making and political give-and-take that permeates this institution against the ideals we were elected to uphold. The RSC plays an invaluable role in seeking to ensure that all legislation that moves through this body reflects and respects these fundamental values.

Over the past four and a half years, the RSC's efforts have been tremendously improved because of the service of Neil Bradley as the group's Executive Director. Neil is a committed and principled conservative. He is a tireless and effective advocate for the RSC's objectives. And, as anyone who has worked with or against him will readily acknowledge, Neil is a master of House procedure, especially the federal budget process. Mr. Speaker, Neil has served the RSC with integrity and distinction. We will miss him greatly, but are glad that he will be working for our shared values in a position of influence within the House Leadership.

As his friends and colleagues know, Neil's emails always conclude with some quotation from a famous conservative political thinker or office holder that is relevant to the policy fight of the day. Many of the quotes come from Neil's political hero, former President Ronald Reagan. I thought it would be fitting to close with some words from the great leader.

In 1989, in his farewell address to the Nation, Reagan said the following to the officials and staff that served in his Administration:

> [A]s I walk off into the city streets, a final word to the men and women of the Reagan revolution, the men and women across America who for 8 years did the work that brought America back. My friends: We did it. We weren't just marking time. We made a difference.

Mr. Speaker, Neil Bradley has spent 4 and a half years working passionately for the Republican Study Committee, for the House of Representatives, and for America. He was not just marking time. He made a difference.

On behalf of the RSC, I thank him for his service and wish him well in his new endeavor.

HONORING BROWN V. BOARD OF EDUCATION

HON. PETER DEUTSCH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 17, 2004

Mr. DEUTSCH. Mr. Speaker, I rise today to commemorate the 50th Anniversary of Brown v. Board of Education. This landmark victory in the effort to rid this nation of segregation continues to product national repercussions, and on this day I believe we must rededicate ourselves to the ideals that it proposes.

Mr. Speaker, many people consider Brown a failure. It is not universally accepted or practiced, and the victories of the civil rights movement have been overturned or forgotten in the subsequent years. Minority populations including black and Latino children continue to find themselves as this nation's lowest academic performers. Indeed, if Thurgood Marshall surveyed the racial landscape today, he may wonder if Brown had been overturned.

But these very real challenges must not let us forget the lasting lesson of Brown. For many black parents, integration was not the key issue as it was the recognition of the fact that unless their children went to school with the children of the whites who controlled the purse strings, their children's educational opportunities would likely be shortchanged.

Brown ultimately decrees that all children—black, white, Latino; Asian, Native American—are all equally deserving of a high quality education, and that we cannot allow superficial differences to dissuade us from this fact. We must provide our children the presumption of competence and the expectation of success. Our children must have an environment that nurtures aspiration, guardians who provide direction, and peers who provide support. If we are serious about realizing the promise of Brown, then we must challenge ourselves to deliver those things which they most desperately need.

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 committees 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, May 18, 2004 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MAY 19

9:30 a.m.

Commerce, Science, and Transportation

To hold hearings to examine personal gain relating to a transition from public sector to private sector.

SR–253

Foreign Relations

To continue hearings to examine the way ahead in Iraq.

SD–419

10 a.m.

Banking, Housing, and Urban Affairs

To hold an oversight hearing to examine the International Monetary Fund and World Bank.

SD–538

Appropriations

District of Columbia Subcommittee

To hold hearings to examine proposed budget estimates for fiscal year 2005 for the District of Columbia.

SD–138

Finance

To hold an oversight hearing to examine the Treasury Department and terrorism financing; to be followed by a hearing to examine the nominations of Juan Carlos Zarate, of California, to be an Assistant Secretary of the Treasury, and Stuart Levey, of Maryland, to be Under Secretary of the Treasury for Enforcement.

SD–215

Indian Affairs

Business meeting to consider S.J. Res. 37, to acknowledge a long history of official depredations and ill-conceived policies by the United States Government regarding Indian Tribes and offer an apology to all Native Peoples on behalf of the United States, and S. 2277, to amend the Act of November 2, 1966 (80 Stat. 1112), to allow binding arbitration clauses to be included in all contracts affecting the land within the Salt River Pima-Maricopa Indian Reservation.

SR–485

10:30 a.m.

Agriculture, Nutrition, and Forestry

Business meeting to markup an original bill to reauthorize child nutrition programs.

SH–216

11:30 a.m.

Energy and Natural Resources

Business meeting to consider pending calendar business.

SD–366

2:30 p.m.

Energy and Natural Resources

Water and Power Subcommittee

To hold hearings to examine S. 900, to convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the pertinent irrigation districts, S. 1876, to authorize the Secretary of the Interior to convey certain lands and facilities of the Provo River Project, S. 1957, to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, S. 2304 and H.R. 3209, bills to amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project, S. 2243, to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska, H.R. 1648, to authorize the Secretary of the Interior to convey certain water distribution systems of the Cachuma Project, California, to the Carpinteria Valley Water District and the Montecito Water District, and H.R. 1732, to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project.

SD–366

Aging

To hold hearings to examine Health Savings Accounts and the New Medicare Law, focusing on the future of health care.

SD–628

MAY 20

9:30 a.m.

Environment and Public Works

Clean Air, Climate Change, and Nuclear Safety Subcommittee

To hold an oversight hearing to examine the Nuclear Regulatory Commission.

SD–406

Commerce, Science, and Transportation

To hold hearings to examine SPAM.

SR–253

Judiciary

Business meeting to consider pending calendar items; to be following immediately by oversight hearings to examine the FBI, terrorism, and other topics.

SD–226

10 a.m.

Banking, Housing, and Urban Affairs

To hold an oversight hearing to examine the Extended Custodial Inventory Program.

SD–538

Health, Education, Labor, and Pensions

To hold hearings to examine prescription drug reimportation.

SD–106

Indian Affairs

To hold hearings to examine S. 2382, to establish grant programs for the development of telecommunications capacities in Indian country.

SR–485

2:30 p.m.

Energy and Natural Resources

National Parks Subcommittee

To hold hearings to examine S. 1672, to expand the Timucuan Ecological and Historic Preserve, Florida, S. 1789 and H.R. 1616, bills to authorize the exchange of certain lands within the Martin Luther King, Junior, National Historic Site for lands owned by the City of Atlanta, Georgia, S. 1808, to provide for the preservation and restoration of historic buildings at historically women's public colleges or universities, S. 2167, to establish the Lewis and Clark National Historical Park in the States of Washington and Oregon, and S. 2173, to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

SD–366

JUNE 2

9:30 a.m.

Foreign Relations

To hold hearings to examine the greater Middle East initiative.

SD–419

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.

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CANCELLATIONS

MAY 19

9:30 a.m.

Health, Education, Labor, and Pensions

Business meeting to consider pending calendar items.

SD–430

POSTPONEMENTS

MAY 20

10 a.m.

Appropriations

Commerce, Justice, State, and the Judiciary Subcommittee

To hold hearings to examine intellectual property.

SD–138

Daily Digest

HIGHLIGHTS

The House passed H.R. 4568, Department of Interior and Related Agencies Appropriations Act for Fiscal Year 2005.

Senate

Chamber Action

Routine Proceedings, pages S6911–S6969

Measures Introduced: Twelve bills and two resolutions were introduced, as follows: S. 2535–2546, S. Res. 382, and S. Con. Res. 119. **(See next issue.)**

Measures Reported: S. 2537, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005. (S. Rept. No. 108–280)

S. 2013, to amend section 119 of title 17, United States Code, to extend satellite home viewer provisions, with an amendment in the nature of a substitute. **(See next issue.)**

Measures Passed:

Authorizing Senate Chamber Photograph: Senate agreed to S. Res. 382, authorizing the taking of a photograph in the Chamber of the United States Senate. **(See next issue.)**

National Defense Authorization Act: Senate continued consideration of S. 2400, to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Services, taking action on the following amendments proposed thereto:

Pages S6913–41, S6945 (continued next issue)

Adopted:

Murray Modified Amendment No. 3427, to facilitate the availability of child care for the children of members of the Armed Forces on active duty in connection with Operation Enduring Freedom or Operation Iraqi Freedom. **Pages S6915–18**

By 55 yeas to 44 nays (Vote No. 125), Warner Amendment No. 3453 (to Amendment No. 3354), to require the Secretary of Defense to prescribe and apply criteria for operationally realistic testing of fieldable prototypes developed under the ballistic missile defense spiral development program.

Pages S6928–41

Reed Amendment No. 3354, to require baselines for and testing of block configurations of the Ballistic Missile Defense System. **Pages S6928–41**

Warner Modified Amendment No. 3450 (to Amendment No. 3352), to provide for funding the increased number of Army active-duty personnel out of fiscal year 2005 supplemental funding.

Pages S6913, S6946–51

Sessions Amendment No. 3371, to provide for increased support of survivors of deceased members of the uniformed services. **Pages S6951–54**

By 93 yeas to 4 nays (Vote No. 129), Reed Amendment No. 3352, to increase the end strength for active duty personnel of the Army for fiscal year 2005 by 20,000 to 502,400. **Pages S6913, S6965–66**

Warner (for Alexander) Modified Amendment No. 3173, to provide for the supplemental subsistence allowance, imminent danger pay, family separation allowance, and certain federal assistance to be cumulative benefits; and to require a report on availability of social services to members of the Armed Forces.

(See next issue.)

Levin (for Daschle) Amendment No. 3202, to provide relief for mobilized military reservists from certain Federal agricultural loan obligations.

(See next issue.)

Warner (for Ensign) Modified Amendment No. 3440, to promote a thorough investigation of the United Nations Oil-for-Food Program.

(See next issue.)

Levin (for Clinton/Talent) Modified Amendment No. 3163, to provide for improved medical readiness of the members of the Armed Forces. **(See next issue.)**

Warner (for Inhofe) Modified Amendment No. 3199, to authorize United Service Organizations, Incorporated (USO) to procure supplies and services

from the General Services Administration supplies and services on the Federal Supply Schedule.

(See next issue.)

Levin (for Feinstein) Modified Amendment No. 3172, to express the sense of the Senate that perchlorate contamination of ground and surface water is becoming increasingly problematic to the public health of people in the United States. **(See next issue.)**

Warner (for Bond) Modified Amendment No. 3245, to require two reports on operation of the Federal Voting Assistance Program and the military postal system together with certain actions to improve the military postal system. **(See next issue.)**

Levin (for Leahy) Modified Amendment No. 3285, to amend title 32, United States Code, to provide for the use of members of the National Guard on full-time National Guard duty for carrying out homeland security activities in support of Federal agencies. **(See next issue.)**

Warner (for Allard/Pryor) Amendment No. 3254, to repeal a requirement for an officer to retire upon termination of service as Superintendent of the Air Force Academy. **(See next issue.)**

Levin (for Akaka) Modified Amendment No. 3413, to amend the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program. **(See next issue.)**

Warner (for Snowe) Amendment No. 3246, to permit qualified HUBZone small business concerns and small business concerns owned and controlled by service-disabled veterans to participate in the mentor-protege program of the Department of Defense.

(See next issue.)

Levin (for Bingaman) Modified Amendment No. 3390, to express the sense of Congress on the Global Partnership Against the Spread of Weapons of Mass Destruction. **(See next issue.)**

Warner (for Snowe) Modified Amendment No. 3273, to revise and extend the authority for an advisory panel on review of Government procurement laws and regulations. **(See next issue.)**

Levin (for Bingaman) Modified Amendment No. 3284, to require an independent report on the efforts of the National Nuclear Security Administration to understand the aging of plutonium in nuclear weapons. **(See next issue.)**

Warner (for McConnell/Snowe) Modified Amendment No. 3434, to express the sense of the Senate on the effects of cost inflation on the value range of the contracts to which a small business contract reservation applies. **(See next issue.)**

Levin (for Dodd/DeWine) Amendment No. 3401, to amend the Federal Fire Prevention and Control Act of 1974 to provide financial assistance for the improvement of the health and safety of firefighters, promote the use of life saving technologies, and achieve greater equity for departments serving large jurisdictions. **(See next issue.)**

Warner (for Campbell) Modified Amendment No. 3237, to ensure fairness in the standards applied to members of the Army in the awarding of the Combat Infantryman Badge and the Combat Medical Badge for service in Korea in comparison to the standards applied to members of the Army in the awarding of such badges for service in other areas of operations. **(See next issue.)**

Levin (for Nelson (FL)) Modified Amendment No. 3279, to require a report on any relationships between terrorist organizations based in Colombia and foreign governments and organizations.

(See next issue.)

Rejected:

By 42 yeas to 57 nays (Vote No. 124), Boxer Amendment No. 3368, to allow deployment of the ground-based midcourse defense element of the national ballistic missile defense system only after the mission-related capabilities of the system have been confirmed by operationally realistic testing.

Pages S6918–28

By 44 yeas to 53 nays (Vote No. 130), Biden Amendment No. 3379, to provide funds for the security and stabilization of Iraq by suspending a portion of the reduction in the highest income tax rate for individual taxpayers. **Pages S6954–65, S6966**

Pending:

Bond Modified Amendment No. 3384, to include certain former nuclear weapons program workers in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program and to provide for the disposal of certain excess Department of Defense stocks for funds for that purpose. **Pages S6913, S6966 (continued next issue)**

Brownback Amendment No. 3235, to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane language.

(See next issue.)

Burns Amendment No. 3457 (to Amendment No. 3235), to provide for additional factors in indecency penalties issued by the Federal Communications Commission. **(See next issue.)**

During consideration of this measure today, Senate also took the following action:

The pending motion to invoke cloture on the bill was vitiated. **(See next issue.)**

A unanimous-consent agreement was reached providing for further consideration of the bill at 9:30 a.m, on Friday, June 18, 2004. **Page S6968**

Nominations Confirmed: Senate confirmed the following nominations:

By unanimous vote of 99 yeas (Vote No. Ex. 126), James L. Robart, of Washington, to be United States

District Judge for the Western District of Washington. **Pages S6941–42, S6969**

By 98 yeas 1 nay (Vote No. Ex. 127), Roger T. Benitez, of California, to be United States District Judge for the Southern District of California.

Pages S6942–44, S6969

By unanimous vote of 99 yeas (Vote No. Ex. 128), Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas.

Pages S6944–45, S6969

Alan Greenspan, of New York, to be Chairman of the Board of Governors of the Federal Reserve System for a term of four years. (Reappointment)

(See next issue.)

Nominations Received: Senate received the following nominations:

Albert A. Frink, Jr., of California, to be an Assistant Secretary of Commerce.

John Ripin Miller, of Washington, to be Director of the Office to Monitor and Combat Trafficking, with the rank of Ambassador at Large. (New Position)

Robert Allen Pittman, of Florida, to be an Assistant Secretary of Veterans Affairs (Human Resources and Administration).

Routine lists in the Army. **Page S6969**

Messages From the House: **(See next issue.)**

Measures Referred: **(See next issue.)**

Executive Communications: **(See next issue.)**

Executive Reports of Committees: **(See next issue.)**

Additional Cosponsors: **(See next issue.)**

Statements on Introduced Bills/Resolutions: **(See next issue.)**

Additional Statements: **(See next issue.)**

Amendments Submitted: **(See next issue.)**

Notices of Hearings/Meetings: **(See next issue.)**

Authority for Committees to Meet: **(See next issue.)**

Privilege of the Floor: **(See next issue.)**

Record Votes: Seven record votes were taken today. (Total—130)

Pages S6928, S6941, S6942, S6944, S6945, S6965–66, S6966

Adjournment: Senate convened at 9:30 a.m., and adjourned at 9:24 p.m., until 9:30 a.m., on Friday, June 18, 2004. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S6968.)

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS: HOMELAND SECURITY

Committee on Appropriations: Committee ordered favorably reported an original bill (S. 2537) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005.

BOND MARKETS REGULATION

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine the regulation of the bond markets, focusing on fixed-income market transparency, Trade Reporting and Compliance Engine (TRACE) enabling investors to access current price information for U.S. corporate bonds, and State, local, and Internal Revenue Service regulation of municipal issuers, after receiving testimony from Annette L. Nazareth, Director, Division of Market Regulation, U.S. Securities and Exchange Commission; Doug Shulman, National Association of Securities Dealers, New York, New York; Christopher A. Taylor, Municipal Securities Rulemaking Board, Alexandria, Virginia; Micah S. Green, Bond Market Association, Washington, D.C.; Christopher M. Ryon, Vanguard Group, Valley Forge, Pennsylvania; Arthur Warga, University of Houston C.T. Bauer College of Business, Houston, Texas.

BUSINESS MEETING

Committee on Banking, Housing, and Urban Affairs: Committee ordered favorably reported the following business items:

S. 894, to require the Secretary of the Treasury to mint coins in commemoration of the 230th Anniversary of the United States Marine Corps, and to support construction of the Marine Corps Heritage Center;

S. 976, to provide for the issuance of a coin to commemorate the 400th anniversary of the Jamestown settlement; and

The nomination of Alan Greenspan, of New York, to be Chairman of the Board of Governors of the Federal Reserve System.

BORDER SECURITY

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine federal efforts to enhance border security, focusing on technological advancements and national border control and cross-agency law enforcement initiatives, after receiving testimony from Senator Kyl; Representative Kolbe; Asa Hutchinson, Under Secretary for Border and Transportation Security, Charles E. McQueary, Under Secretary for Science and Technology, and Mary Delaquis, Port Director, Customs

and Border Protection, all of the Department of Homeland Security; Roger Di Rosa, Refuge Manager, Cabeza Prieta National Wildlife Refuge, U.S. Fish and Wildlife Service, Department of the Interior; George Happ, Alaska EPSCoR, University of Alaska-Fairbanks; and Ned Norris, Jr., Tohono O'Odham Nation, Sells, Arizona.

U.S. SPACE EXPLORATION POLICY

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine the final report of the President's Commission on Implementation of United States Space Exploration Policy, focusing on a transformation of NASA, building an international space industry, a discovery-based science agenda, and educational initiatives to support youth and teachers inspired by space exploration, after receiving testimony from Edward C. Aldridge, Jr., Chairman, President's Commission on Implementation of United States Space Exploration Policy; Paul D. Spudis, Johns Hopkins University Applied Physics Laboratory, Laurel, Maryland; Marie T. Zuber, Massachusetts Institute of Technology Department of Earth Atmospheric and Planetary Sciences, Cambridge; Laurie A. Leshin, Arizona State University College of Liberal Arts and Sciences, Tempe; and Lester L. Lyles, Columbus, Ohio.

ENVIRONMENTAL MANAGEMENT PROGRAM

Committee on Energy and Natural Resources: Committee concluded a hearing to examine the Environmental Management Program of the Department of Energy and issues associated with accelerated cleanup, focusing on concerns over activities at the Hanford Site involving occupational medical services and potential exposures to tank farm vapors, development of risk-based end states, and waste incidental to reprocessing, after receiving testimony from Jessie H. Roberson, Assistant Secretary for Environmental Management, Glenn S. Podonsky, Director, Office of Security and Safety Performance Assurance, and Gregory H. Friedman, Inspector General, all of the Department of Energy.

WATER MANAGEMENT

Committee on Energy and Natural Resources: Subcommittee on Water and Power concluded a hearing to examine S. 1211, to further the purposes of title XVI of the Reclamation Projects Authorization and Adjustment Act of 1992, the "Reclamation Wastewater and Groundwater Study and Facilities Act", by directing the Secretary of the Interior to undertake a demonstration program for water reclamation in the Tularosa Basin of New Mexico; S. 2460, to provide assistance to the State of New Mexico for the development of comprehensive State water plans; S. 2508, to redesignate the Ridges Basin Reservoir, Colorado, as Lake Nighthorse; S. 2511, to direct the Secretary of the Interior to conduct a feasibility study of a Chimayo water supply system, to provide for the planning, design, and construction of a water supply, reclamation, and filtration facility for Espanola, New Mexico; and S. 2513, to authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, after receiving testimony from John W. Keys III, Commissioner, Bureau of Reclamation, Department of the Interior; Mayor David M. Lansford, Clovis, New Mexico; and John R. D'Antonio, Jr., New Mexico State Engineer, Santa Fe.

LAW ENFORCEMENT TREATIES

Committee on Foreign Relations: Committee concluded a hearing to examine Council of Europe Convention on Cybercrime (the "Cybercrime Convention" or the "Convention"), which was signed by the United States on November 23, 2001 (Treaty Doc. 108–11), United Nations Convention Against Transnational Organized Crime (the "Convention"), as well as two supplementary protocols: (1) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and (2) the Protocol Against Smuggling of Migrants by Land, Sea and Air, which were adopted by the United Nations General Assembly on November 15, 2000. The Convention and Protocols were signed by the United States on December 13, 2000, at Palermo, Italy (Treaty Doc. 108–16), Inter-American Convention Against Terrorism ("Convention") adopted at the Thirty-second Regular Session of the General Assembly of the Organization of American States ("OAS") Meeting in Bridgetown, Barbados, and signed by thirty countries, including the United States, on June 3, 2002 (Treaty Doc. 107–18), and Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures done at Brussels on June 26, 1999 (Treaty Doc. 108–6), after receiving testimony from Michael T. Schmitz, Acting Assistant Commissioner for International Affairs, U.S. Customs and Border Protection, Department of Homeland Security; Bruce Swartz, Deputy Assistant Attorney General, Criminal Division, Department of Justice; and Samuel M. Witten, Deputy Legal Adviser, Department of State.

INTERNET PHARMACIES

Committee on Governmental Affairs: Permanent Subcommittee on Investigations held a hearing to examine the danger of purchasing pharmaceuticals over

the Internet, focusing on the extent to which consumers can purchase pharmaceuticals over the Internet without a medical prescription, the importation of pharmaceuticals into the United States, and whether pharmaceuticals from foreign services are counterfeit, expired, unsafe, or illegitimate, receiving testimony from Marcia Crosse, Director, Health Care—Public Health and Military Healthcare Issues, and Robert J. Cramer, Managing Director, Office of Special Investigations, both of the General Accounting Office; Rudolph W. Giuliani, Giuliani Partners, LLC, New York, New York; Marvin D. Shepherd, University of Texas at Austin College of Pharmacy; Francine H. Haight, Orange County, California; and Elizabeth Carr, Sacramento, California.

Hearings continue on Thursday, June 24.

BUSINESS MEETING

Committee on the Judiciary: Committee ordered favorably reported the following business items:

S. 2013, to amend section 119 of title 17, United States Code, to extend satellite home viewer provisions, with an amendment in the nature of a substitute; and

The nomination of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit.

Also, committee failed to approve the issuance of a subpoena to Attorney General John Ashcroft to obtain certain documents.

BUSINESS MEETING

Select Committee on Intelligence: Committee met in closed session to consider pending intelligence matters.

Committee recessed subject to the call.

House of Representatives

Chamber Action

Measures Introduced: 9 public bills, H.R. 4603–4611; and 4 resolutions, H. Con. Res. 453–456, were introduced. **Page H4391**

Additional Cosponsors: **Pages H4391–92**

Reports Filed: Reports were filed today as follows:

H.R. 4471, to clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (H. Rept. 108–550);

H.R. 3797, to authorize improvements in the operations of the government of the District of Columbia (H. Rept. 108–551, Pt. 1); and

H.R. 3751, to require that the Office of Personnel Management study and present options under which dental and vision benefits could be made available to Federal employees and retirees and other appropriate classes of individuals, amended (H. Rept. 108–552). **Pages H4390–91**

Chaplain: The prayer was offered today by Rev. Greg Surratt, Pastor, Seacoast Christian Community Church in Mount Pleasant, South Carolina. **Page H4291**

Journal: Agreed to the Speaker's approval of the Journal of Wednesday, June 16 by a recorded vote of 342 ayes to 67 noes, with one voting "present", Roll No. 260. **Page H4291**

American Jobs Creation Act of 2004: The House passed H.R. 4520, to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad, by a recorded vote of 251 ayes to 178 noes, Roll No. 259. **Pages H4305 (continued next issue)**

Agreed to the amendment in the nature of a substitute recommended by the Committee on Ways and Means, as modified by the amendment printed in H. Rept. 108–549. **(See next issue.)**

Rejected the Rangel motion to recommit the bill to the Committee on Ways and Means with instructions to report the same back to the House forthwith with amendments by a yea-and-nay vote of 193 yeas to 235 nays, Roll No. 258. **(See next issue.)**

H. Res. 681, the rule providing for consideration of the bill was agreed to by a recorded vote of 230 ayes to 195 noes, Roll No. 257, after agreeing to order the previous question by a yea-and-nay vote of 233 yeas to 193 nays, Roll No. 256. **Pages H4295–S4305**

Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 2005: The House passed H.R. 4568, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2005, by a yea-and-nay vote of 334 yeas to 86 nays, Roll No. 264. The bill was also considered on Wednesday, June 16. **(See next issue.)**

Agreed to:

Dicks amendment requiring that the Secretary of the Interior submit a report 30 days after the enactment of this act with a date certain of when and whether the public will have full access to the Statue of Liberty, including all areas that were closed after 9/11. **(See next issue.)**

Rejected:

Hinchey amendment (no. 18, printed in the Congressional Record of June 16) that sought to prohibit the use of funds to kill or assist in the killing of bison in the Yellowstone National Park herd (by a recorded vote of 202 ayes to 215 noes, Roll No. 261); **(See next issue.)**

Sanders amendment (modified by unanimous consent) that sought to prohibit the use of funds to maintain more than 647 million barrels of crude oil in the Strategic Petroleum Reserve (by a recorded vote of 152 ayes to 267 noes, Roll No. 262); and **(See next issue.)**

Holt amendment (no. 4, printed in the Congressional Record of June 15) that sought to prohibit the use of funds to permit recreational snowmobile use in Yellowstone National Park, Grand Teton National Park and the John D. Rockfeller, Jr., Memorial Parkway (by a recorded vote of 198 ayes to 224 noes, Roll No. 263). **(See next issue.)**

Withdrawn:

Jackson-Lee of Texas amendment that was offered and subsequently withdrawn that sought to prohibit the use of funds to eliminate or restrict programs that are for the reforestation of urban areas; and **(See next issue.)**

Jackson-Lee of Texas amendment that was offered and subsequently withdrawn that sought to prohibit the use of funds appropriated in title I of the bill for construction of the Gregory Lincoln Education Center in Houston, Texas. **(See next issue.)**

Point of Order sustained against:

Weiner amendment that would have directed the Secretary of the Interior to provide public access to the Statue of Liberty and its interior substantially equivalent to the access provided before September 11, 2001, not later than July 31, 2004. **(See next issue.)**

H. Res. 674, the rule providing for consideration of the bill was agreed on Wednesday, June 16.

(See next issue.)

Department of Homeland Security Appropriations Act for Fiscal Year 2005—Rule: The House began consideration of H.R. 4567, making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005. Further consideration will resume tomorrow, June 18.

(See next issue.)

Agreed to:

Weldon of Pennsylvania amendment (no. 12, printed in the Congressional Record of June 16) that increases funding for the Staffing for Adequate Fire and Emergency Response Firefighters Program; and (See next issue.)

Turner amendment (agreed) that increases funding for customs and border protection. (See next issue.)

Rejected:

Simmons amendment (no. 11, printed in the Congressional Record of June 15) that sought to increase funding for the Coast Guard acquisition, construction, and improvements program; (See next issue.)

DeFazio amendment (no. 17, printed in the Congressional Record of June 16) that sought to strike a provision in title II of the bill relating to the maximum staffing level for full-time equivalent aviation screeners (by a recorded vote of 180 ayes to 228 noes, Roll No. 265); and (See next issue.)

Sweeney amendment (no. 3, printed in the Congressional Record of June 15) that sought to increase High Threat grants for Urban Areas Security Initiative (by a recorded vote of 171 ayes to 237 noes, Roll No. 266); (See next issue.)

Withdrawn:

Stupak amendment that was offered and subsequently withdrawn that would have increased funding for the Office of State and Local Government Coordination and Preparedness. (See next issue.)

Point of Order sustained against:

Section of the bill on page 14, lines 9–19, concerning the Federal Government's share of costs for aviation security at airports; and (See next issue.)

Language on page 22, lines 22 and 23 of the bill that states "not withstanding any other provision of law"; (See next issue.)

Sweeney amendment (no. 16, printed in the Congressional Record of June 16) that would have required that any grants to states under the formula-based grant program in excess of any statutorily required minimum amount be distributed based on an assessment of the risk of terrorist threats, vulnerabilities and consequences. (See next issue.)

H. Res. 675, the rule providing for consideration of the bill was agreed to on Wednesday, June 16. (See next issue.)

Amendments: Amendments ordered printed pursuant to the rule appear on page H4392.

Quorum Calls—Votes: Three yea-and-nay votes and eight recorded votes developed during the proceedings of today and appear on pages H4304–05, H4305 (continued next issue). There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 12:33 a.m. on Friday, June 18.

Committee Meetings

IRAQI SECURITY FORCES

Committee on Armed Services: Held a hearing on training of Iraqi security forces. Testimony was heard from LTG David H. Petraeus, USA, Chief, Office of Security Transition—Iraq. Department of Defense.

U.S. DEFENSE INDUSTRIAL BASE—IMPACT OF DEFENSE TRADE OFFSETS

Committee on Armed Services: Held a hearing on the impact of defense trade offsets on the U.S. defense industrial base. Testimony was heard from public witnesses.

SAFEGUARD AGAINST PRIVACY INVASIONS ACT

Committee on Energy and Commerce: Subcommittee on Commerce, Trade, and Consumer Protection approved for full Committee action, as amended, H.R. 2929, Safeguard Against Privacy Invasions Act.

E-RATE PROGRAM PROBLEMS

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations held a hearing entitled "Problems with the E-rate Program: Waste, Fraud, and Abuse Concerns in the Wiring of Our Nation's Schools to the Internet." Testimony was heard from the following officials of the FCC: H. Walker Feaster III, Inspector General; Carol E. Mattey, Deputy Chief, Wireline Competition Bureau; and Jane E. Mago, Chief, Office of Strategic Planning and Policy Analysis; the following officials of the Commonwealth of Puerto: Manuel Diaz Saldana, Comptroller; and Cesar A. Rey Hernandez, Secretary, Department of Education

U.S.-EU REGULATORY DIALOGUE

Committee on Financial Services: Subcommittee on Domestic and International Monetary Policy, Trade, and Technology held a hearing entitled, "The U.S.-EU Regulatory Dialogue: The Private Sector Perspective." Testimony was heard from public witnesses.

WAR AGAINST DRUGS AND THUGS

Committee on Government Reform: Held a hearing entitled "The War Against Drugs and Thugs: A Status Report on Plan Colombia Successes and Remaining Challenges." Testimony was heard from John P. Walters, Director, Office of National Drug Control Policy; the following officials of the Department of State: Roger F. Noriega, Assistant Secretary, Western Hemisphere Affairs; and Robert B. Charles, Assistant Secretary, International Narcotics and Law Enforcement Affairs; the following officials of the Department of Defense: Thomas W. O'Connell, Assistant Secretary, Special Operations and Low-Intensity Conflict; and GEN James T. Hill, USA, Commander, U.S. Southern Command; Karen P. Tandy, Administrator, DEA, Department of Justice; Luis Alberto Moreno, Ambassador to the United States, Republic of Colombia; and public witnesses.

OVERSIGHT—ELECTION ASSISTANCE COMMISSION—HELP AMERICAN VOTE ACT IMPLEMENTATION

Committee on House Administration: Held an oversight hearing on the Election Assistance Commission and Implementation of the Help America Vote Act. Testimony was heard from the following officials of the Election Assistance Commission: DeForest B. Soaries, Jr., Chairman; Gracia Hillman, Vice Chair; Paul DeGregorio and Ray Martinez, both Commissioners.

MISCELLANEOUS RESOLUTIONS; EGYPT-U.S. ECONOMIC ASSISTANCE

Committee on International Relations: Favorably considered and adopted a motion urging the Chairman to request that the following measures be considered on the Suspension Calendar: H. Res. 642, amended, House Commission for Assisting Democratic Parliaments Resolution; and H. Con. Res. 410, Recognizing the 25th anniversary of the adoption of the Constitution of the Republic of the Marshall Islands and recognizing the Marshall Islands as a staunch ally of the United States, committed to principles of democracy and freedom for the Pacific region and throughout the world.

The Committee also held a hearing on "United States Economic Assistance to Egypt: Does It Advance Reform?" Testimony was heard from David B. Gootnick, Director, International Affairs and Trade, GAO; and public witnesses.

MISCELLANEOUS MEASURES

Committee on International Relations: Subcommittee on Europe approved for full Committee action the following measures: H. Con. Res. 415, Urging the Government of Ukraine to ensure a democratic, transparent, and fair election process for the presidential election on October 31, 2004; and H. Res. 652, Urging the Government of the Republic of Belarus to ensure a democratic, transparent, and fair election process for its parliamentary elections in the fall of 2004.

FAMILY MOVIE ACT

Committee on the Judiciary: Subcommittee on Courts, the Internet, and Intellectual Property held a hearing H.R. 4586, Family Movie Act of 2004. Testimony was heard from Marybeth Peters, Register of Copyrights, Library of Congress; and public witnesses.

OVERSIGHT—DETRIMENTAL IMPACT OF IMMIGRATION BACKLOG

Committee on the Judiciary: Subcommittee on Immigration, Border Security, and Claims held an oversight hearing entitled "Families and Businesses in Limbo: The Detrimental Impact of the Immigration Backlog." Testimony was heard from Eduardo Aguirre, Director, Bureau of Citizenship and Immigration Services, Department of Homeland Security.

MISCELLANEOUS MEASURES

Committee on Resources: Subcommittee on Forests and Forest Health held a hearing on the following bills: H.R. 3102, To utilize the expertise of New Mexico State University, the University of Arizona, and Northern Arizona University in conducting studies under the National Environmental Policy Act of 1969 in connection with grazing allotments and range and continuing range analysis for National Forest System lands in New Mexico and Arizona; H.R. 3427, Craig Recreation Land Purchase Act; H.R. 4494, Grey Towers National Historic Site Act of 2004; and S. 2003, To clarify the intent of Congress with respect to the continued use of established commercial outfitter hunting camps on the Salmon River. Testimony was heard from Representative Sherwood; Mark Rey, Under Secretary, Natural Resources and Environment, USDA; and public witnesses.

EXAMINE RULE X—ORGANIZATION OF COMMITTEES

Committee on Rules: Subcommittee on Technology and the House concluded hearings to examine Rule X, the Organization of Committees, including its current legislative impact, arrangement, and effectiveness. Testimony was heard from Representatives Goss, Sensenbrenner, Goodlatte, Stenholm, Barton of Texas, Dingell, Manzullo, Young of Alaska and Oberstar.

DEPARTMENT OF LABOR'S ENFORCEMENT AGAINST SMALL BUSINESSES

Committee on Small Business: Subcommittee on Regulatory Reform and Oversight held a hearing on Department of Labor's Enforcement Against Small Businesses. Testimony was heard from Robert Varnell, Deputy Solicitor, Department of Labor; and public witnesses.

DVA—EFFORTS TO ELIMINATE FRAUD, WASTE, ABUSE AND MISMANAGEMENT IN PROGRAMS

Committee on Veterans' Affairs: Held a hearing on efforts to identify and eliminate fraud, waste, abuse and mismanagement in programs administered by the Department of Veterans Affairs. Testimony was heard from the following officials of the Department of Veterans Affairs: Gordon H. Mansfield, Deputy Secretary; and Richard J. Griffin, Inspector General; McCoy Williams, Director, Financial Management and Assurance Team, GAO.

HEALTH CARE INFORMATION TECHNOLOGY

Committee on Ways and Means: Subcommittee on Health held a hearing on Health Care Information Technology. Testimony was heard from David Brailer, M.D., National Health Information Technology Coordinator, Department of Health and Human Services; Robert M. Kolodner, M.D., Acting Chief Health Informatics Officer and Deputy Chief Information Officer for Health, Department of Veterans Affairs; and public witnesses.

FAILURE TO PROTECT CHILD SAFETY

Committee on Ways and Means: Subcommittee on Human Resources held a hearing on Failure to Protect Child Safety. Testimony was heard from Christopher J. McCabe, Secretary, Department of Human Resources, State of Maryland; the following officials of the City of Baltimore: Floyd Blair, Interim Director, Department of Social Services; and Peter Beilenson, M.D., Commissioner of Health; and a public witness.

CUSTOMS BUDGET AUTHORIZATIONS AND OTHER CUSTOMS ISSUES

Committee on Ways and Means: Subcommittee on Trade held a hearing on Customs Budget Authorizations and Other Customs Issues. Testimony was heard from the following officials of the Department of Homeland Security: Robert C. Bonner, Commissioner, U.S. Customs and Border Protection; and Michael J. Garcia, Assistant Secretary, U.S. Immigration and Customs Enforcement; and public witnesses.

BRIEFING—COUNTERNARCOTICS: AFGHANISTAN

Permanent Select Committee on Intelligence: Subcommittee on Human Intelligence, Analysis, and Counterintelligence met in executive session to receive a briefing on Counternarcotics: Afghanistan. The Subcommittee was briefed by departmental witnesses.

BRIEFING—GLOBAL INTELLIGENCE UPDATE

Permanent Select Committee on Intelligence: Subcommittee on Intelligence Policy and National Security met in executive session to receive a briefing on Global Intelligence Update. The Subcommittee was briefed by departmental witnesses.

COMMITTEE MEETINGS FOR FRIDAY, JUNE 18, 2004

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No committee meetings are scheduled.

Next Meeting of the SENATE

9:30 a.m., Friday, June 18

Senate Chamber

Program for Friday: Senate will continue consideration of S. 2400, National Defense Authorization Act.

Next Meeting of the HOUSE OF REPRESENTATIVES

9 a.m., Friday, June 18

House Chamber

Program for Friday: Continue consideration of H.R. 4567, Department of Homeland Security Appropriations Act for Fiscal Year 2005 (open rule).

(Senate and House proceedings for today will be continued in the next issue of the Record.)

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