

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide technical corrections, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 1637

To amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 On page 59, line 13, insert “section 453(a) of” after
2 “by”.

3 On page 60, line 3, insert “section 453(a) of” after
4 “by”.

1 On page 68, strike lines 10 through 14, and insert
2 the following:

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by this section
6 shall apply to taxable years of foreign corporations
7 beginning after December 31, 2004, and to taxable
8 years of United States shareholders with or within
9 which such taxable years of foreign corporations
10 end.

11 (2) SUBSECTION (c)(29).—The amendments
12 made by subsection (c)(29) shall apply to disclosures
13 of return or return information with respect to tax-
14 able years beginning after December 31, 2004.

15 On page 98, line 3, strike “September 24, 2004” and
16 insert “December 31, 2004”.

17 On page 98, between lines 3 and 4, insert the fol-
18 lowing:

19 **SECTION 237. INTEREST PAYMENTS DEDUCTIBLE WHERE**
20 **DISQUALIFIED GUARANTEE HAS NO ECO-**
21 **NOMIC EFFECT.**

22 (a) IN GENERAL.—Section 163(j)(6)(D)(ii) (relating
23 to exceptions to disqualified guarantee) is amended—

1 (1) by striking “or” at the end of subclause (I),

2 (2) by striking the period at the end of sub-

3 clause (II) and inserting “, or”,

4 (3) by inserting after subclause (II) the fol-

5 lowing new subclause:

6 “(III) in the case of a guarantee

7 by a foreign person, to the extent of

8 the amount that the taxpayer estab-

9 lishes to the satisfaction of the Sec-

10 retary that the taxpayer could have

11 borrowed from an unrelated person

12 without the guarantee.”.

13 (b) EFFECTIVE DATE.—The amendments made by

14 this section shall apply to guarantees issued on or after

15 the date of the enactment of this Act.

16 On page 125, line 25, strike “December 31, 2003”

17 and insert “the date which is 30 days after the date of

18 the enactment of this Act”.

19 Beginning on page 135, line 17, strike all through

20 page 136, line 2, and insert the following:

21 “(i) which is—

22 “(I) described in section

23 501(c)(3) or 501(c)(6) and is exempt

1 from tax under section 501(a) and is
2 organized and operated primarily to
3 conduct research, or

4 “(II) organized and operated pri-
5 marily to conduct research in the pub-
6 lic interest (within the meaning of sec-
7 tion 501(c)(3)),

8 On page 137, lines 18 and 19, strike “which is energy
9 research”.

10 On page 139, lines 9 and 10, strike “Energy Tax In-
11 centives Act of 2003” and insert “Jumpstart Our Busi-
12 ness Strength (JOBS) Act”.

13 On page 14, line 18, of Senate amendment number
14 3118, as passed, strike “2” and insert “3”.

15 On page 14, line 21, of Senate amendment number
16 3118, as passed, insert “for such taxable year” after
17 “United States”.

18 Beginning on page 212, line 9, strike all through
19 page 213, line 3, and insert the following:

1 (1) IN GENERAL.—Section 162(g) (relating to
2 treble damage payments under the antitrust laws) is
3 amended—

4 (A) by redesignating paragraphs (1) and
5 (2) as subparagraphs (A) and (B), respectively,
6 (B) by striking “If” and inserting:

7 “(1) TREBLE DAMAGES.—If”, and

8 (C) by adding at the end the following new
9 paragraph:

10 “(2) PUNITIVE DAMAGES.—No deduction shall
11 be allowed under this chapter for any amount paid
12 or incurred for punitive damages in connection with
13 any judgment in, or settlement of, any action. This
14 paragraph shall not apply to punitive damages de-
15 scribed in section 104(c).”.

16 (2) CONFORMING AMENDMENT.—The heading
17 for section 162(g) is amended by inserting “OR PU-
18 NITIVE DAMAGES” after “LAWS”.

19 On page 225, line 14, strike “paragraph (3)(A)” and
20 insert “this subparagraph”.

21 On page 228, line 1, strike “(c)” and insert “(d)”.

22 On page 228, line 8, strike “(d)” and insert “(e)”.

1 On page 230, line 17, add a period at the end.

2 On page 245, strike lines 5 through 7, and insert the
3 following:

4 (1) IN GENERAL.—Section 14 of the Securities
5 Exchange Act of 1934 (15 U.S.C. 78n) is amended
6 by adding at the end the following new subsection:

7 On page 286, strike lines 6 through 10, and insert
8 the following:

9 (1) Subparagraph (B) of section 6724(d)(1)
10 (defining information return) is amended by redesignating
11 clauses (ii) through (xviii) as clauses (iii)
12 through (xix), respectively, and by inserting after
13 clause (i) the following new clause:

14 On page 286, strike lines 14 through 18, and insert
15 the following:

16 (2) Paragraph (2) of section 6724(d) (relating
17 to definitions) is amended by redesignating subparagraphs
18 (F) through (BB) as subparagraphs (G)
19 through (CC), respectively, and by inserting after
20 subparagraph (E) the following new subparagraph:

1 On page 301, line 7, strike “168(j)” and insert
2 “163(j)”.

3 On page 311, line 10, insert beginning double
4 quotation marks before the beginning single quotation
5 mark.

6 On page 311, line 14, insert beginning double
7 quotation marks before the beginning single quotation
8 mark.

9 On page 311, line 19, insert beginning double
10 quotation marks before the beginning single quotation
11 mark.

12 On page 345, strike lines 13 through 19, and insert
13 the following:

14 “(c) FEES AND EXPENSES.—The Secretary may re-
15 tain and use—

16 “(1) an amount not in excess of 25 percent of
17 the amount collected under any qualified tax collec-
18 tion contract for the costs of services performed
19 under such contract, and

1 “(2) an amount not in excess of 25 percent of
2 such amount collected for collection enforcement ac-
3 tivities of the Internal Revenue Service.

4 The Secretary shall keep adequate records regarding
5 amounts so retained and used. The amount credited as
6 paid by any taxpayer shall be determined without regard
7 to this subsection.

8 On page 346, between lines 4 and 5, insert the fol-
9 lowing:

10 “(f) APPLICATION OF SECTION.—In no event may
11 the term of any qualified tax collection contract extend
12 beyond the date which is 5 years after the date of the
13 enactment of this section.

14 On page 346, line 5, strike “(f)” and insert “(g)”.

15 On page 349, between lines 11 and 12, insert the fol-
16 lowing:

17 (e) BIENNIAL REPORT.—The Secretary of the Treas-
18 ury shall biennially submit (beginning in 2005) to the
19 Committee on Finance of the Senate and the Committee
20 on Ways and Means of the House of Representatives a
21 report with respect to qualified tax collection contracts

1 under section 6306 of the Internal Revenue Code of 1986
2 (as added by this section) which includes—

3 (1) a complete cost benefit analysis,

4 (2) the impact of such contracts on collection
5 enforcement staff levels in the Internal Revenue
6 Service,

7 (3) the amounts collected and the collection
8 costs incurred (directly and indirectly),

9 (4) an evaluation of contractor performance,

10 (5) a disclosure safeguard report in a form
11 similar to that required under section 6103(p)(5) of
12 such Code, and

13 (6) a measurement plan which includes a com-
14 parison of the best practices used by the private col-
15 lectors with the Internal Revenue Service's own col-
16 lection techniques) and mechanisms to identify and
17 capture information on successful collection tech-
18 niques used by the contractors which could be adopt-
19 ed by the Internal Revenue Service.

20 On page 349, line 12, strike “(e)” and insert “(f)”.

21 Beginning on page 349, line 15, strike all through
22 page 353, line 24, and insert the following:

1 **SEC. 488. WHISTLEBLOWER REFORMS.**

2 (a) IN GENERAL.—Section 7623 (relating to ex-
3 penses of detection of underpayments and fraud, etc.) is
4 amended—

5 (1) by striking “The Secretary” and inserting
6 “(a) IN GENERAL.—The Secretary”,

7 (2) by striking “and” at the end of paragraph
8 (1) and inserting “or”,

9 (3) by striking “(other than interest)”, and

10 (4) by adding at the end the following new sub-
11 sections:

12 “(b) AWARDS TO WHISTLEBLOWERS.—

13 “(1) IN GENERAL.—If the Secretary proceeds
14 with any administrative or judicial action described
15 in subsection (a) based on information brought to
16 the Secretary’s attention by an individual, such indi-
17 vidual shall, subject to paragraph (2), receive as an
18 award at least 15 percent but not more than 30 per-
19 cent of the collected proceeds (including penalties,
20 interest, additions to tax, and additional amounts)
21 resulting from the action (including any related ac-
22 tions) or from any settlement in response to such ac-
23 tion. The determination of the amount of such
24 award by the Whistleblower Office shall depend upon
25 the extent to which the individual substantially con-
26 tributed to such action.

1 “(2) AWARD IN CASE OF LESS SUBSTANTIAL
2 CONTRIBUTION.—

3 “(A) IN GENERAL.—In the event the ac-
4 tion described in paragraph (1) is one which the
5 Whistleblower Office determines to be based
6 principally on disclosures of specific allegations
7 (other than information provided by the indi-
8 vidual described in paragraph (1)) resulting
9 from a judicial or administrative hearing, from
10 a governmental report, hearing, audit, or inves-
11 tigation, or from the news media, the Whistle-
12 blower Office may award such sums as it con-
13 siders appropriate, but in no case more than 10
14 percent of the collected proceeds (including pen-
15 alties, interest, additions to tax, and additional
16 amounts) resulting from the action (including
17 any related actions) or from any settlement in
18 response to such action, taking into account the
19 significance of the individual’s information and
20 the role of such individual and any legal rep-
21 resentative of such individual in contributing to
22 such action.

23 “(B) NONAPPLICATION OF PARAGRAPH
24 WHERE INDIVIDUAL IS ORIGINAL SOURCE OF
25 INFORMATION.—Subparagraph (A) shall not

1 apply if the information resulting in the initi-
2 ation of the action described in paragraph (1)
3 was originally provided by the individual de-
4 scribed in paragraph (1).

5 “(3) APPEAL OF AWARD DETERMINATION.—
6 Any determination regarding an award under para-
7 graph (1) or (2) shall be subject to the filing by the
8 individual described in such paragraph of a petition
9 for review with the Tax Court under rules similar to
10 the rules under section 7463 (without regard to the
11 amount in dispute) and such review shall be subject
12 to the rules under section 7461(b)(1).

13 “(4) APPLICATION OF THIS SUBSECTION.—This
14 subsection shall apply with respect to any action—

15 “(A) against any taxpayer, but in the case
16 of any individual, only if such individual’s gross
17 income exceeds \$200,000 for any taxable year
18 subject to such action, and

19 “(B) if the tax, penalties, interest, addi-
20 tions to tax, and additional amounts in dispute
21 exceed \$20,000.

22 “(5) ADDITIONAL RULES.—

23 “(A) NO CONTRACT NECESSARY.—No con-
24 tract with the Internal Revenue Service is nec-

1 essary for any individual to receive an award
2 under this subsection.

3 “(B) REPRESENTATION.—Any individual
4 described in paragraph (1) or (2) may be rep-
5 resented by counsel.

6 “(C) AWARD NOT SUBJECT TO INDIVIDUAL
7 ALTERNATIVE MINIMUM TAX.—No award re-
8 ceived under this subsection shall be included in
9 gross income for purposes of determining alter-
10 native minimum taxable income.

11 “(c) WHISTLEBLOWER OFFICE.—

12 “(1) IN GENERAL.—There is established in the
13 Internal Revenue Service an office to be known as
14 the ‘Whistleblower Office’ which—

15 “(A) shall analyze information received
16 from any individual described in subsection (b)
17 and either investigate the matter itself or assign
18 it to the appropriate Internal Revenue Service
19 office,

20 “(B) shall monitor any action taken with
21 respect to such matter,

22 “(C) shall inform such individual that it
23 has accepted the individual’s information for
24 further review,

1 “(D) may require such individual and any
2 legal representative of such individual to not
3 disclose any information so provided,

4 “(E) may ask for additional assistance
5 from such individual or any legal representative
6 of such individual, and

7 “(F) shall determine the amount to be
8 awarded to such individual under subsection
9 (b).

10 “(2) FUNDING FOR OFFICE.—From the
11 amounts available for expenditure under subsection
12 (a), the Whistleblower Office shall be credited with
13 an amount equal to the awards made under sub-
14 section (b). These funds shall be used to maintain
15 the Whistleblower Office and also to reimburse other
16 Internal Revenue Service offices for related costs,
17 such as costs of investigation and collection.

18 “(3) REQUEST FOR ASSISTANCE.—

19 “(A) IN GENERAL.—Any assistance re-
20 quested under paragraph (1)(E) shall be under
21 the direction and control of the Whistleblower
22 Office or the office assigned to investigate the
23 matter under subparagraph (A). To the extent
24 the disclosure of any returns or return informa-
25 tion to the individual or legal representative is

1 required for the performance of such assistance,
2 such disclosure shall be pursuant to a contract
3 entered into between the Secretary and the re-
4 cipients of such disclosure subject to section
5 6103(n).

6 “(B) FUNDING OF ASSISTANCE.—From
7 the funds made available to the Whistleblower
8 Office under paragraph (2), the Whistleblower
9 Office may reimburse the costs incurred by any
10 legal representative in providing assistance de-
11 scribed in subparagraph (A).”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to information provided on or after
14 the date of the enactment of this Act.

15 On page 354, line 12, strike “May 8, 2003” and in-
16 sert “the date of the enactment of the Jumpstart Our
17 Business Strength (JOBS) Act”.

18 Beginning on page 355, line 17, strike all through
19 page 357, line 24, and insert the following:

1 **SEC. 493. MODIFICATION OF EXEMPTION FROM TAX FOR**
2 **SMALL PROPERTY AND CASUALTY INSUR-**
3 **ANCE COMPANIES.**

4 (a) **PREMIUMS AS PERCENTAGE OF GROSS RECEIPTS**
5 **INCREASED.**—Section 501(c)(15)(A)(i)(II) is amended by
6 striking “50 percent” and inserting “60 percent”.

7 (b) **LIMITATION ON NET WRITTEN PREMIUMS IN-**
8 **CREASED.**—Section 831(b)(2) (relating to companies to
9 which this subsection applies) is amended—

10 (1) by striking “\$1,200,000” and inserting
11 “\$1,890,000”, and

12 (2) by adding at the end the following new sub-
13 paragraph:

14 “(C) **INFLATION ADJUSTMENTS.**—

15 “(i) **IN GENERAL.**—In the case of any
16 taxable year beginning in a calendar year
17 after 2005, the dollar amount in subpara-
18 graph (A)(i) shall be increased by an
19 amount equal to—

20 “(I) such dollar amount, multi-
21 plied by

22 “(II) the cost-of-living adjust-
23 ment determined under section 1(f)(3)
24 for the calendar year in which the tax-
25 able year begins, by substituting ‘cal-

1 endar year 2004’ for ‘calendar year
2 1992’ in subparagraph (B) thereof.

3 “(ii) ROUNDING.—If the amount in
4 subparagraph (A)(i) as increased under
5 clause (i) is not a multiple of \$10,000,
6 such amount shall be rounded to the near-
7 est multiple of \$10,000.”.

8 (c) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the amendments made by this section
11 shall apply to taxable years beginning after Decem-
12 ber 31, 2004.

13 (2) TRANSITION RULE FOR COMPANIES IN RE-
14 CEIVERSHIP OR LIQUIDATION.—In the case of a
15 company or association which—

16 (A) for the taxable year which includes
17 April 1, 2004, meets the requirements of sec-
18 tion 501(c)(15)(A) of the Internal Revenue
19 Code of 1986, as in effect for the last taxable
20 year beginning before January 1, 2004, and

21 (B) on April 1, 2004, is in a receivership,
22 liquidation, or similar proceeding under the su-
23 pervision of a State court,

24 the amendments made by this section shall apply to
25 taxable years beginning after the earlier of the date

1 such proceeding ends (or, if later, December 31,
2 2004) or December 31, 2007.

3 Beginning on page 358, line 1, strike all through
4 page 363, line 21, and insert the following:

5 **SEC. 494. TREATMENT OF CHARITABLE CONTRIBUTIONS OF**
6 **PATENTS AND SIMILAR PROPERTY.**

7 (a) IN GENERAL.—Section 170(e)(1)(B) (relating to
8 certain contributions of ordinary income and capital gain
9 property) is amended by striking “or” at the end of clause
10 (i), by adding “or” at the end of clause (ii), and by insert-
11 ing after clause (ii) the following new clause:

12 “(iii) of any patent, copyright, trade-
13 mark, trade name, trade secret, know-how,
14 software (other than software described in
15 section 197(e)(3)(A)(i)), or similar prop-
16 erty, or applications or registrations of
17 such property,”.

18 (b) ADDITIONAL DEDUCTION FOR CERTAIN CON-
19 TRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—Sec-
20 tion 170(e) is amended by adding at the end the following
21 new paragraph:

22 “(7) ADDITIONAL DEDUCTION FOR CERTAIN
23 CONTRIBUTIONS OF PATENTS AND SIMILAR PROP-
24 ERTY.—

1 “(A) IN GENERAL.—In the case of a chari-
2 table contribution of any property described in
3 paragraph (1)(B)(iii) (other than copyrights de-
4 scribed in section 1221(a)(3) or 1231(b)(1)(C)
5 or property contributed to or for the use of an
6 organization described in paragraph (1)(B)(ii)),
7 if—

8 “(i) the lesser of—

9 “(I) 5 percent of the fair market
10 value of such property (determined at
11 the time of such contribution), or

12 “(II) \$1,000,000, exceeds

13 “(ii) the amount of such contribution
14 as determined under paragraph (1),
15 then the amount of the charitable contribution
16 of such property otherwise taken into account
17 under this section shall equal the amount deter-
18 mined under clause (i).”.

19 (c) CERTAIN DONEE INCOME FROM INTELLECTUAL
20 PROPERTY TREATED AS AN ADDITIONAL CHARITABLE
21 CONTRIBUTION.—Section 170 is amended by redesi-
22 gnating subsection (m) as subsection (n) and by inserting
23 after subsection (l) the following new subsection:

1 “(m) CERTAIN DONEE INCOME FROM INTELLEC-
2 TUAL PROPERTY TREATED AS AN ADDITIONAL CHARIT-
3 TABLE CONTRIBUTION.—

4 “(1) TREATMENT AS ADDITIONAL CONTRIBU-
5 TION.—In the case of a taxpayer who makes a quali-
6 fied intellectual property contribution, the deduction
7 allowed under subsection (a) for each taxable year of
8 the taxpayer ending on or after the date of such con-
9 tribution shall be increased (subject to the limita-
10 tions under subsection (b)) by the applicable per-
11 centage of qualified donee income with respect to
12 such contribution which is properly allocable to such
13 year under this subsection.

14 “(2) QUALIFIED DONEE INCOME.—For pur-
15 poses of this subsection, the term ‘qualified donee
16 income’ means any net income received by or ac-
17 crued to the donee which is properly allocable to the
18 qualified intellectual property.

19 “(3) ALLOCATION OF QUALIFIED DONEE IN-
20 COME TO TAXABLE YEARS OF DONOR.—For pur-
21 poses of this subsection, qualified donee income shall
22 be treated as properly allocable to a taxable year of
23 the donor if such income is received by or accrued
24 to the donee for the taxable year of the donee which
25 ends within or with such taxable year of the donor.

1 “(4) 10-YEAR LIMITATION.—Income shall not
 2 be treated as properly allocable to qualified intellec-
 3 tual property for purposes of this subsection if such
 4 income is received by or accrued to the donee after
 5 the 10-year period beginning on the date of the con-
 6 tribution of such property.

7 “(5) BENEFIT LIMITED TO LIFE OF INTELLEC-
 8 TUAL PROPERTY.—Income shall not be treated as
 9 properly allocable to qualified intellectual property
 10 for purposes of this subsection if such income is re-
 11 ceived by or accrued to the donee after the expira-
 12 tion of the legal life of such property.

13 “(6) APPLICABLE PERCENTAGE.—For purposes
 14 of this subsection, the term ‘applicable percentage’
 15 means the percentage determined under the fol-
 16 lowing table which corresponds to a taxable year of
 17 the donor ending on or after the date of the quali-
 18 fied intellectual property contribution:

“Taxable Year of Donor End- ing On or After Date of Contribution:	Applicable Percentage:
1st or 2d	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th or 12th	10.

1 “(7) QUALIFIED INTELLECTUAL PROPERTY
2 CONTRIBUTION.—For purposes of this subsection,
3 the term ‘qualified intellectual property contribution’
4 means any charitable contribution of qualified intel-
5 lectual property—

6 “(A) the amount of which taken into ac-
7 count under this section—

8 “(i) is reduced by reason of subsection
9 (e)(1), or

10 “(ii) determined under subsection
11 (e)(7), and

12 “(B) with respect to which the donor in-
13 forms the donee at the time of such contribu-
14 tion that the donor intends to treat such con-
15 tribution as a qualified intellectual property
16 contribution for purposes of this subsection and
17 section 6050L.

18 “(8) QUALIFIED INTELLECTUAL PROPERTY.—
19 For purposes of this subsection, the term ‘qualified
20 intellectual property’ means property described in
21 subsection (e)(1)(B)(iii) (other than copyrights de-
22 scribed in section 1221(a)(3) or 1231(b)(1)(C) or
23 property contributed to or for the use of an organi-
24 zation described in subsection (e)(1)(B)(ii)).

25 “(9) OTHER SPECIAL RULES.—

1 “(A) APPLICATION OF LIMITATIONS ON
2 CHARITABLE CONTRIBUTIONS.—Any increase
3 under this subsection of the deduction provided
4 under subparagraph (a) shall be treated for
5 purposes of subsection (b) as a deduction which
6 is attributable to a charitable contribution to
7 the donee to which such increase relates.

8 “(B) NET INCOME DETERMINED BY
9 DONEE.—The net income taken into account
10 under paragraph (2) shall not exceed the
11 amount of such income reported under section
12 6050L(b)(1).

13 “(C) DEDUCTION LIMITED TO 12 TAXABLE
14 YEARS.—Except as may be provided under sub-
15 paragraph (D)(i), this subsection shall not
16 apply with respect to any qualified intellectual
17 property contribution for any taxable year of
18 the donor after the 12th taxable year of the
19 donor which ends on or after the date of such
20 contribution.

21 “(D) REGULATIONS.—The Secretary may
22 issue regulations or other guidance to carry out
23 the purposes of this subsection, including regu-
24 lations or guidance—

1 “(i) modifying the application of this
2 subsection in the case of a donor or donee
3 with a short taxable year, and

4 “(ii) providing for the determination
5 of an amount to be treated as net income
6 of the donee which is properly allocable to
7 qualified intellectual property in the case
8 of a donee who uses such property to fur-
9 ther a purpose or function constituting the
10 basis of the donee’s exemption under sec-
11 tion 501 (or, in the case of a governmental
12 unit, any purpose described in section
13 170(c)) and does not possess a right to re-
14 ceive any payment from a third party with
15 respect to such property.”.

16 (d) REPORTING REQUIREMENTS.—Section 6050L
17 (relating to returns relating to certain dispositions of do-
18 nated property) is amended to read as follows:

19 **“SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED**
20 **PROPERTY.**

21 “(a) DISPOSITIONS OF DONATED PROPERTY.—

22 “(1) IN GENERAL.—If the donee of any chari-
23 table deduction property sells, exchanges, or other-
24 wise disposes of such property within 2 years after
25 its receipt, the donee shall make a return (in accord-

1 ance with forms and regulations prescribed by the
2 Secretary) showing—

3 “(A) the name, address, and TIN of the
4 donor,

5 “(B) a description of the property,

6 “(C) the date of the contribution,

7 “(D) the amount received on the disposi-
8 tion, and

9 “(E) the date of such disposition.

10 “(2) DEFINITIONS.—For purposes of this
11 subsection—

12 “(A) CHARITABLE DEDUCTION PROP-
13 PERTY.—The term ‘charitable deduction prop-
14 erty’ means any property (other than publicly
15 traded securities) contributed in a contribution
16 for which a deduction was claimed under sec-
17 tion 170 if the claimed value of such property
18 (plus the claimed value of all similar items of
19 property donated by the donor to 1 or more
20 donees) exceeds \$5,000.

21 “(B) PUBLICLY TRADED SECURITIES.—
22 The term ‘publicly traded securities’ means se-
23 curities for which (as of the date of the con-
24 tribution) market quotations are readily avail-
25 able on an established securities market.

1 “(b) QUALIFIED INTELLECTUAL PROPERTY CON-
2 TRIBUTIONS.—

3 “(1) IN GENERAL.—Each donee with respect to
4 a qualified intellectual property contribution shall
5 make a return (at such time and in such form and
6 manner as the Secretary may by regulations pre-
7 scribe) with respect to each specified taxable year of
8 the donee showing—

9 “(A) the name, address, and TIN of the
10 donor,

11 “(B) a description of the qualified intellec-
12 tual property contributed,

13 “(C) the date of the contribution, and

14 “(D) the amount of net income of the
15 donee for the taxable year which is properly al-
16 locable to the qualified intellectual property (de-
17 termined without regard to paragraph (9)(B) of
18 section 170(m) and with the modifications de-
19 scribed in paragraphs (4) and (5) of such sec-
20 tion).

21 “(2) DEFINITIONS.—For purposes of this
22 subsection—

23 “(A) IN GENERAL.—Terms used in this
24 subsection which are also used in section

1 170(m) have the respective meanings given
2 such terms in such section.

3 “(B) SPECIFIED TAXABLE YEAR.—The
4 term ‘specified taxable year’ means, with re-
5 spect to any qualified intellectual property con-
6 tribution, any taxable year of the donee any
7 portion of which is part of the 10-year period
8 beginning on the date of such contribution.

9 “(c) STATEMENT TO BE FURNISHED TO DONORS.—
10 Every person making a return under subsection (a) or (b)
11 shall furnish a copy of such return to the donor at such
12 time and in such manner as the Secretary may by regula-
13 tions prescribe.”.

14 (e) PROCESSING FEE.—Section 170, as amended by
15 subsection (b), is amended by redesignating subsection (n)
16 as subsection (o) and by inserting after subsection (m) the
17 following new subsection:

18 “(n) PROCESSING FEE.—In the case of a deduction
19 allowed for any taxable year under this section with re-
20 spect to a charitable contribution of any property de-
21 scribed in subsection (e)(1)(B)(iii) (other than copyrights
22 described in section 1221(a)(3) or 1231(b)(1)(C) or prop-
23 erty contributed to or for the use of an organization de-
24 scribed in subsection (e)(1)(B)(ii)), the taxpayer shall in-
25 clude, with the taxpayer’s return of tax including such de-

1 duction, a fee equal to 1 percent of the amount of such
2 deduction. Such fee shall be credited by the Secretary to
3 the operations of the Exempt Organizations unit within
4 the Internal Revenue Service.”.

5 (f) MODIFICATION OF SUBSTANTIAL VALUATIONS
6 MISSTATEMENT PENALTY FOR CHARITABLE CONTRIBU-
7 TIONS OF PROPERTY.—

8 (1) SUBSTANTIAL MISSTATEMENTS.—Section
9 6662(e)(1)(A) (relating to substantial valuation
10 misstatements under chapter 1) is amended by in-
11 sserting “(50 percent or more in the case of a chari-
12 table contribution of any property described in sec-
13 tion 170(e)(1)(B)(iii))” after “200 percent or
14 more”.

15 (2) GROSS MISSTATEMENTS.—Section
16 6662(h)(2)(A) (defining gross valuation
17 misstatements) is amended by striking clause (ii)
18 and inserting the following new clauses:

19 “(ii) ‘100 percent or more’ for ‘50
20 percent or more’,

21 “(iii) ‘25 percent or less’ for ‘50 per-
22 cent or less’, and”.

23 (g) ANTI-ABUSE RULES.—The Secretary of the
24 Treasury—

1 (1) may prescribe such regulations or other
2 guidance as may be necessary or appropriate to pre-
3 vent the avoidance of the purposes of paragraphs
4 (1)(B)(iii) and (7) of section 170(e) of the Internal
5 Revenue Code of 1986 (as added by subsections (a)
6 and (b)), including preventing—

7 (A) the circumvention of the reduction of
8 the charitable deduction by embedding or bun-
9 dling the patent or similar property as part of
10 a charitable contribution of property that in-
11 cludes the patent or similar property,

12 (B) the manipulation of the basis of the
13 property to increase the amount of the chari-
14 table deduction through the use of related per-
15 sons, pass-thru entities, or other intermediaries,
16 or through the use of any provision of law or
17 regulation (including the consolidated return
18 regulations), and

19 (C) a donor from changing the form of the
20 patent or similar property to property of a form
21 for which different deduction rules would apply,
22 and

23 (2) shall prescribe guidance on appraisal stand-
24 ards for contributions of property described in sec-

1 tion 170(e)(1)(B)(iii) of the Internal Revenue Code
2 of 1986 (as added by this section).

3 (h) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to contributions made after the
5 date of the enactment of this Act.

6 Beginning on page 363, line 22, strike all through
7 page 364, line 3.

8 On page 420, strike lines 1 through 8, and insert the
9 following:

10 “(A) IN GENERAL.—The term ‘motor-
11 sports entertainment complex’ means a racing
12 track facility which—

13 “(i) is permanently situated on land,
14 and

15 “(ii) during the 36-month period fol-
16 lowing the first day of the month in which
17 the asset is placed in service, is scheduled
18 to host 1 or more racing events for auto-
19 mobiles (of any type), trucks, or motor-
20 cycles which are open to the public for the
21 price of admission.

1 On page 421, at the end of line 9, add end quotation
2 marks and a period.

3 On page 421, strike lines 10 through 20.

4 On page 421, line 24, strike “Act.” and insert “Act
5 and before January 1, 2008.”.

6 On page 425, line 19, strike “45E” and insert
7 “45D”.

8 On page 425, line 20, strike “**45D**” and insert “**45E**”.

9 On page 438, in the matter following line 22, strike
10 “Native American new markets tax credit” and insert
11 “New markets tax credit for Native American reserva-
12 tions”.

13 On page 440, line 1, strike “(f)” and insert “(h)”.

14 On page 484, line 4, strike “45F” and insert “45H”.

15 On page 488, line 2, strike “grade” and insert “at
16 grade”.

1 On page 488, line 5, strike “rail” and insert “train”.

2 On page 502, line 19, strike “3(20)” and insert
3 “103(20)”.

4 On page 502, line 20, strike “1974” and insert
5 “1994”.

6 On page 504, between lines 6 and 7, insert the fol-
7 lowing:

8 **SEC. 639. CREDIT FOR INVESTMENT IN TECHNOLOGY TO**
9 **MAKE MOTION PICTURES MORE ACCESSIBLE**
10 **TO THE DEAF AND HARD OF HEARING.**

11 (a) IN GENERAL.—

12 (1) ALLOWANCE OF CREDIT.—Subpart D of
13 part IV of subchapter A of chapter 1 (relating to
14 business related credits), as amended by this Act, is
15 amended by adding at the end the following new sec-
16 tion:

17 **“SEC. 45T. EXPENDITURES TO PROVIDE ACCESS TO MO-**
18 **TION PICTURES FOR THE DEAF AND HARD OF**
19 **HEARING.**

20 “(a) GENERAL RULE.—For purposes of section 38,
21 in the case of an eligible taxpayer, the motion picture ac-
22 cessibility credit for any taxable year shall be an amount

1 equal to 50 percent of the qualified expenditures made by
2 the eligible taxpayer during the taxable year.

3 “(b) ELIGIBLE TAXPAYER.—For purposes of this
4 section, the term ‘eligible taxpayer’ means a taxpayer who
5 is in the business of—

6 “(1) showing motion pictures to the public in
7 theaters, or

8 “(2) producing or distributing such motion pic-
9 tures.

10 “(c) QUALIFIED EXPENDITURES.—For purposes of
11 this section, the term ‘qualified expenditures’ means
12 amounts paid or incurred by the taxpayer for the purpose
13 of making motion pictures accessible to individuals who
14 are deaf or hard of hearing through the use of captioning
15 technology.

16 “(d) BASIS ADJUSTMENT.—For purposes of this sub-
17 title, if a credit is allowed under this section with respect
18 to any property, the basis of such property shall be re-
19 duced by the amount of the credit so allowed.

20 “(e) NO DOUBLE BENEFIT.—In the case of the cred-
21 it determined under this section, no deduction or credit
22 shall be allowed for such amount under any other provi-
23 sion of this chapter.”.

24 (2) CONFORMING AMENDMENTS.—

1 (A) Section 38(b) (relating to general busi-
2 ness credit), as amended by this Act, is amend-
3 ed by striking “plus” at the end of paragraph
4 (30), by striking the period at the end of para-
5 graph (31) and inserting “, plus”, and by add-
6 ing at the end the following new paragraph:

7 “(32) the motion picture accessibility credit de-
8 termined under section 45T(a).”.

9 (B) Subsection (a) of section 1016, as
10 amended by this Act, is amended by striking
11 “and” at the end of paragraph (38), by striking
12 the period at the end of paragraph (39) and in-
13 serting “, and”, and by adding at the end the
14 following new paragraph:

15 “(40) in the case of property with respect to
16 which a credit was allowed under section 45T, to the
17 extent provided in section 45T(d).”.

18 (b) LIMITATION ON CARRYBACK.—Section 39(d) (re-
19 lating to transition rules) is amended by adding at the
20 end the following new paragraph:

21 “(16) NO CARRYBACK OF MOTION PICTURE AC-
22 CESSIBILITY CREDIT BEFORE EFFECTIVE DATE.—
23 No portion of the unused business credit for any
24 taxable year which is attributable to the motion pic-
25 ture accessibility credit determined under section

1 45T may be carried to a taxable year beginning be-
2 fore January 1, 2004.”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for subpart D of part IV of subchapter A of chapter 1,
5 as amended by this Act, is amended by inserting after the
6 item relating to section 45S the following new item:

“Sec. 45T. Expenditures to provide access to motion pictures for
the deaf and hard of hearing.”.

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

10 On page 504, line 14, insert “, as amended by this
11 Act,” after “income)”.

12 On page 504, line 16, strike “(18)” and insert
13 “(19)”.

14 On page 522, line 17, strike “(18)” and insert
15 “(19)”.

16 On page 524, line 18, insert “or a claim made under
17 section 1862(b)(3)(A) of the Social Security Act (42
18 U.S.C. 1395y(b)(3)(A))” after “Code”.

1 On page 535, line 8, strike “December 31, 2003” and
2 insert “December 31, 2001”.

3 On page 557, between lines 9 and 10, insert the fol-
4 lowing:

5 **SEC. 660. REPEAL OF APPLICATION OF BELOW-MARKET**
6 **LOAN RULES TO AMOUNTS PAID TO CERTAIN**
7 **CONTINUING CARE FACILITIES.**

8 (a) IN GENERAL.—Section 7872(c)(1) (relating to
9 below-market loans to which section applies) is amended—

10 (1) by striking subparagraph (F), and

11 (2) by striking “(C), or (F)” in subparagraph
12 (E) and inserting “or (C)”.

13 (b) FULL EXCEPTION.—Section 7872(g) (relating to
14 exception for certain loans to qualified continuing care fa-
15 cilities) is amended—

16 (1) by striking “made by a lender to a qualified
17 continuing care facility pursuant to a continuing
18 care contract” in paragraph (1) and inserting “owed
19 by a facility which on the last day of such year is
20 a qualified continuing care facility, if such loan was
21 made pursuant to a continuing care contract and”,

22 (2) by striking “increased personal care services
23 or” in paragraph (3)(C),

1 (3) by adding at the end of paragraph (3) the
2 following new flush sentence:

3 “The Secretary shall issue guidance which limits
4 such term to contracts which provide to an indi-
5 vidual or individual’s spouse only facilities, care, and
6 services described in this paragraph which are cus-
7 tomarily offered by continuing care facilities.”,

8 (4) by inserting “independent living unit” after
9 “all of the” in paragraph (4)(A)(ii),

10 (5) by striking paragraphs (2) and (5),

11 (6) by redesignating paragraphs (3) and (4) as
12 paragraphs (2) and (3), respectively, and

13 (7) by striking “CERTAIN” in the heading
14 thereof.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to calendar years beginning after
17 2004.

18 On page 559, strike lines 6 through 17, and insert
19 the following:

20 **SEC. 663. FREEZE OF PROVISIONS REGARDING SUSPEN-**
21 **SION OF INTEREST WHERE SECRETARY FAILS**
22 **TO CONTACT TAXPAYER.**

23 (a) IN GENERAL.—Section 6404(g) (relating to sus-
24 pension of interest and certain penalties where Secretary

1 fails to contact taxpayer) is amended by striking “1-year
2 period (18-month period in the case of taxable years begin-
3 ning before January 1, 2004)” both places it appears and
4 inserting “18-month period”.

5 (b) EXCEPTION FOR GROSS MISSTATEMENT.—Sec-
6 tion 6404(g)(2) (relating to exceptions) is amended by
7 striking “or” at the end of subparagraph (C), by redesignig-
8 nating subparagraph (D) as subparagraph (E), and by in-
9 serting after subparagraph (C) the following new subpara-
10 graph:

11 “(D) any interest, penalty, addition to tax,
12 or additional amount with respect to any gross
13 misstatement; or”.

14 (c) EXCEPTION FOR LISTED AND REPORTABLE
15 TRANSACTIONS.—Section 6404(g)(2) (relating to excep-
16 tions), as amended by subsection (b), is amended by strik-
17 ing “or” at the end of subparagraph (D), by redesignating
18 subparagraph (E) as subparagraph (F), and by inserting
19 after subparagraph (D) the following new subparagraph:

20 “(E) any interest, penalty, addition to tax,
21 or additional amount with respect to any re-
22 portable transaction or listed transaction (as
23 defined in 6707A(c)); or”.

24 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this section
3 shall apply to taxable years beginning after Decem-
4 ber 31, 2003.

5 (2) EXCEPTION FOR REPORTABLE OR LISTED
6 TRANSACTIONS.—The amendments made by sub-
7 section (c) shall apply with respect to interest accru-
8 ing after May 5, 2004.

9 Beginning on page 559, line 20, strike all through
10 page 578, line 16, and insert the following:

11 **SEC. 671. TREATMENT OF NONQUALIFIED DEFERRED COM-**
12 **PENSATION PLANS.**

13 (a) IN GENERAL.—Subpart A of part I of subchapter
14 D of chapter 1 is amended by adding at the end the fol-
15 lowing new section:

16 **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED**
17 **COMPENSATION UNDER NONQUALIFIED DE-**
18 **FERRED COMPENSATION PLANS.**

19 “(a) RULES RELATING TO CONSTRUCTIVE RE-
20 CEIPT.—

21 “(1) IN GENERAL.—

22 “(A) GROSS INCOME INCLUSION.—If at
23 any time during a taxable year a nonqualified
24 deferred compensation plan—

1 “(ii) INTEREST.—For purposes of
2 clause (i), the interest determined under
3 this clause for any taxable year is the
4 amount of interest at the underpayment
5 rate on the underpayments that would
6 have occurred had the deferred compensa-
7 tion been includible in gross income for the
8 taxable year in which first deferred or, if
9 later, the first taxable year in which such
10 deferred compensation is not subject to a
11 substantial risk of forfeiture.

12 “(2) DISTRIBUTIONS.—

13 “(A) IN GENERAL.—The requirements of
14 this paragraph are met if the plan provides that
15 compensation deferred under the plan may not
16 be distributed earlier than—

17 “(i) except as provided in subpara-
18 graph (B)(i), separation from service (as
19 determined by the Secretary),

20 “(ii) the date the participant becomes
21 disabled (within the meaning of subpara-
22 graph (C)),

23 “(iii) death,

24 “(iv) a specified time (or pursuant to
25 a fixed schedule) specified under the plan

1 as of the date of the deferral of such com-
2 pensation,

3 “(v) to the extent provided by the
4 Secretary, a change in the ownership or ef-
5 fective control of the corporation, or in the
6 ownership of a substantial portion of the
7 assets of the corporation, or

8 “(vi) the occurrence of an unforesee-
9 able emergency.

10 “(B) SPECIAL RULES.—

11 “(i) SEPARATION FROM SERVICE OF
12 SPECIFIED EMPLOYEES.—In the case of
13 specified employees, the requirement of
14 subparagraph (A)(i) is met only if distribu-
15 tions may not be made earlier than 6
16 months after the date of separation from
17 service. For purposes of the preceding sen-
18 tence, a specified employee is a key em-
19 ployee (as defined in section 416(i)) of a
20 corporation the stock in which is publicly
21 traded on an established securities market
22 or otherwise.

23 “(ii) CHANGES IN OWNERSHIP OR
24 CONTROL.—In the case of a participant
25 who is subject to the requirements of sec-

1 tion 16(a) of the Securities Exchange Act
2 of 1934, the requirement of subparagraph
3 (A)(v) is met only if distributions may not
4 be made earlier than 1 year after the date
5 of the change in ownership or effective
6 control.

7 “(iii) UNFORESEEABLE EMER-
8 GENCY.—For purposes of subparagraph
9 (A)(vi)—

10 “(I) IN GENERAL.—The term
11 ‘unforeseeable emergency’ means a se-
12 vere financial hardship to the partici-
13 pant or beneficiary resulting from a
14 sudden and unexpected illness or acci-
15 dent of the participant or beneficiary,
16 the participant’s or beneficiary’s
17 spouse, or the participant’s or bene-
18 ficiary’s dependent (as defined in sec-
19 tion 152(a)), loss of the participant’s
20 or beneficiary’s property due to cas-
21 ualty, or other similar extraordinary
22 and unforeseeable circumstances aris-
23 ing as a result of events beyond the
24 control of the participant or bene-
25 ficiary.

1 “(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 or beneficiary’s assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

19 “(C) DISABLED.—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

22 “(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

1 in death or can be expected to last for a
2 continuous period of not less than 12
3 months, or

4 “(ii) is, by reason of any medically de-
5 terminable physical or mental impairment
6 which can be expected to result in death or
7 can be expected to last for a continuous
8 period of not less than 12 months, receiv-
9 ing income replacement benefits for a pe-
10 riod of not less than 3 months under an
11 accident and health plan covering employ-
12 ees of the participant’s employer.

13 “(3) INVESTMENT OPTIONS.—The requirements
14 of this paragraph are met if the plan provides that
15 the investment options a participant may elect under
16 the plan—

17 “(A) are comparable to the investment op-
18 tions which a participant may elect under the
19 defined contribution plan of the employer
20 which—

21 “(i) meets the requirement of section
22 401(a) and includes a trust exempt from
23 taxation under section 501(a), and

24 “(ii) has the fewest investment op-
25 tions, or

1 “(B) if there is no such defined contribu-
2 tion plan, meet such requirements as the Sec-
3 retary may prescribe (including requirements
4 limiting such options to permissible investment
5 options specified by the Secretary).

6 “(4) ACCELERATION OF BENEFITS.—The re-
7 quirements of this paragraph are met if the plan
8 does not permit the acceleration of the time or
9 schedule of any payment under the plan, except as
10 provided by the Secretary in regulations.

11 “(5) ELECTIONS.—

12 “(A) IN GENERAL.—The requirements of
13 this paragraph are met if the requirements of
14 subparagraphs (B) and (C) are met.

15 “(B) INITIAL DEFERRAL DECISION.—The
16 requirements of this subparagraph are met if
17 the plan provides that compensation for services
18 performed during a taxable year may be de-
19 ferred at the participant’s election only if the
20 election to defer such compensation is made
21 during the preceding taxable year or at such
22 other time as provided in regulations. In the
23 case of the first year in which a participant be-
24 comes eligible to participate in the plan, such
25 election may be made with respect to services to

1 be performed subsequent to the election within
2 30 days after the date the participant becomes
3 eligible to participate in such plan.

4 “(C) CHANGES IN TIME AND FORM OF DIS-
5 TRIBUTION.—The requirements of this subpara-
6 graph are met if, in the case of a plan which
7 permits under a subsequent election a delay in
8 a payment or a change in the form of
9 payment—

10 “(i) the plan requires that such elec-
11 tion may not take effect until at least 12
12 months after the date on which the elec-
13 tion is made,

14 “(ii) in the case an election related to
15 a payment not described in clause (ii), (iii),
16 or (vi) of paragraph (2)(A), the plan re-
17 quires that the first payment with respect
18 to which such election is made be deferred
19 for a period of not less than 5 years from
20 the date such payment would otherwise
21 have been made, and

22 “(iii) the plan requires that any elec-
23 tion related to a payment described in
24 paragraph (2)(A)(iv) may not be made less
25 than 12 months prior to the date of the

1 first scheduled payment under such para-
2 graph.

3 A plan shall be treated as failing to meet the
4 requirements of this subparagraph if the plan
5 permits more than 1 subsequent election to
6 delay any payment.

7 “(b) RULES RELATING TO FUNDING.—

8 “(1) OFFSHORE PROPERTY IN A TRUST.—In
9 the case of assets set aside (directly or indirectly) in
10 a trust (or other arrangement determined by the
11 Secretary) for purposes of paying deferred com-
12 pensation under a nonqualified deferred compensa-
13 tion plan, such assets shall be treated for purposes
14 of section 83 as property transferred in connection
15 with the performance of services whether or not such
16 assets are available to satisfy claims of general
17 creditors—

18 “(A) at the time set aside if such assets
19 are located outside of the United States, or

20 “(B) at the time transferred if such assets
21 are subsequently transferred outside of the
22 United States.

23 This paragraph shall not apply to assets located in
24 a foreign jurisdiction if substantially all of the serv-

1 ices to which the nonqualified deferred compensation
2 relates are performed in such jurisdiction.

3 “(2) EMPLOYER’S FINANCIAL HEALTH.—In the
4 case of a nonqualified deferred compensation plan,
5 there is a transfer of property within the meaning
6 of section 83 as of the earlier of—

7 “(A) the date on which the plan first pro-
8 vides that assets will become restricted to the
9 provision of benefits under the plan in connec-
10 tion with a change in the employer’s financial
11 health, or

12 “(B) the date on which assets are so re-
13 stricted.

14 “(3) INCOME INCLUSION FOR OFFSHORE
15 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For
16 each taxable year that assets treated as transferred
17 under this subsection remain set aside in a trust or
18 other arrangement subject to paragraph (1) or (2),
19 any increase in value in, or earnings with respect to,
20 such assets shall be treated as an additional transfer
21 of property under this subsection (to the extent not
22 previously included in income).

23 “(4) INTEREST ON TAX LIABILITY PAYABLE
24 WITH RESPECT TO TRANSFERRED PROPERTY.—

1 “(A) IN GENERAL.—If amounts are re-
2 quired to be included in gross income by reason
3 of paragraph (1) or (2) for a taxable year, the
4 tax imposed by this chapter for such taxable
5 year shall be increased by the sum of—

6 “(i) the amount of interest determined
7 under subparagraph (B), and

8 “(ii) an amount equal to 10 percent of
9 the amounts required to be included in
10 gross income.

11 “(B) INTEREST.—For purposes of sub-
12 paragraph (A), the interest determined under
13 this subparagraph for any taxable year is the
14 amount of interest at the underpayment rate on
15 the underpayments that would have occurred
16 had the amounts so required to be included in
17 gross income by paragraph (1) or (2) been in-
18 cludible in gross income for the taxable year in
19 which first deferred or, if later, the first taxable
20 year in which such amounts are not subject to
21 a substantial risk of forfeiture.

22 “(c) NO INFERENCE ON EARLIER INCOME INCLU-
23 SION.—Nothing in this section shall be construed to pre-
24 vent the inclusion of amounts in gross income under any
25 other provision of this chapter or any other rule of law

1 earlier than the time provided in this section. Any amount
2 included in gross income under this section shall not be
3 required to be included in gross income under any other
4 provision of this chapter or any other rule of law later
5 than the time provided in this section.

6 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
7 For purposes of this section—

8 “(1) NONQUALIFIED DEFERRED COMPENSA-
9 TION PLAN.—The term ‘nonqualified deferred com-
10 pensation plan’ means any plan that provides for the
11 deferral of compensation, other than—

12 “(A) a qualified employer plan, and

13 “(B) any bona fide vacation leave, sick
14 leave, compensatory time, disability pay, or
15 death benefit plan.

16 “(2) QUALIFIED EMPLOYER PLAN.—The term
17 ‘qualified employer plan’ means—

18 “(A) any plan, contract, pension, account,
19 or trust described in subparagraph (A) or (B)
20 of section 219(g)(5), and

21 “(B) any eligible deferred compensation
22 plan (within the meaning of section 457(b)) of
23 an employer described in section 457(e)(1)(A).

24 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
25 The term ‘plan’ includes any agreement or arrange-

1 ment, including an agreement or arrangement that
2 includes one person.

3 “(4) SUBSTANTIAL RISK OF FORFEITURE.—The
4 rights of a person to compensation are subject to a
5 substantial risk of forfeiture if such person’s rights
6 to such compensation are conditioned upon the fu-
7 ture performance of substantial services by any indi-
8 vidual.

9 “(5) TREATMENT OF EARNINGS.—References to
10 deferred compensation shall be treated as including
11 references to income (whether actual or notional) at-
12 tributable to such compensation or such income.

13 “(6) EXCEPTION FOR NONELECTIVE DEFERRED
14 COMPENSATION.—This section shall not apply to any
15 nonelective deferred compensation to which section
16 457 does not apply by reason of section 457(e)(12),
17 but only if such compensation is provided under a
18 nonqualified deferred compensation plan which was
19 in existence on May 1, 2004, and which was pro-
20 viding nonelective deferred compensation described
21 in section 457(e)(12) on such date. If, after May 1,
22 2004, a plan described in the preceding sentence
23 adopts a plan amendment which provides a material
24 change in the classes of individuals eligible to par-
25 ticipate in the plan, this paragraph shall not apply

1 to any nonelective deferred compensation provided
2 under the plan on or after the date of the adoption
3 of the amendment.

4 “(e) REGULATIONS.—The Secretary shall prescribe
5 such regulations as may be necessary or appropriate to
6 carry out the purposes of this section, including
7 regulations—

8 “(1) providing for the determination of
9 amounts of deferral in the case of a nonqualified de-
10 ferred compensation plan which is a defined benefit
11 plan,

12 “(2) relating to changes in the ownership and
13 control of a corporation or assets of a corporation
14 for purposes of subsection (a)(2)(A)(v),

15 “(3) exempting arrangements from the applica-
16 tion of subsection (b) if such arrangements will not
17 result in an improper deferral of United States tax
18 and will not result in assets being effectively beyond
19 the reach of creditors,

20 “(4) defining financial health for purposes of
21 subsection (b)(2), and

22 “(5) disregarding a substantial risk of for-
23 feiture in cases where necessary to carry out the
24 purposes of this section.”.

1 (b) APPLICATION OF GOLDEN PARACHUTE PAYMENT
2 PROVISIONS.—Section 280G of such Code (relating to
3 golden parachute payments) is amended by redesignating
4 subsection (e) as subsection (f) and by inserting after sub-
5 section (d) the following new subsection:

6 “(e) SPECIAL RULES FOR CERTAIN PAYMENTS FROM
7 NONQUALIFIED DEFERRED COMPENSATION PLANS.—

8 “(1) IN GENERAL.—Notwithstanding any other
9 provision of this section, an applicable payment shall
10 be treated as an excess parachute payment for pur-
11 poses of this section and section 4999.

12 “(2) COORDINATION WITH OTHER PAY-
13 MENTS.—

14 “(A) APPLICABLE PAYMENTS WHICH ARE
15 PARACHUTE PAYMENTS.—If any applicable pay-
16 ment is a parachute payment (determined with-
17 out regard to subsection (b)(2)(A)(ii))—

18 “(i) except as provided in paragraph
19 (4), this section shall be applied to such
20 payment in the same manner as if this
21 subsection had not been enacted, and

22 “(ii) if such application results in an
23 excess parachute payment, any tax under
24 section 4999 on the excess parachute pay-

1 ment shall be in addition to the tax im-
2 posed by reason of paragraph (1).

3 “(B) APPLICABLE PAYMENTS WHICH ARE
4 NOT PARACHUTE PAYMENTS.—An applicable
5 payment not described in subparagraph (A)
6 shall be taken into account in determining
7 whether any payment described in subpara-
8 graph (A) or any payment which is not an ap-
9 plicable payment is a parachute payment under
10 subsection (b)(2).

11 “(3) APPLICABLE PAYMENT.—For purposes of
12 this subsection, the term ‘applicable payment’ means
13 any distribution (including any distribution treated
14 as a parachute payment without regard to this sub-
15 section) from a nonqualified deferred compensation
16 plan (as defined in section 409A(d)) which is
17 made—

18 “(A) to a participant who is subject to the
19 requirements of section 16(a) of the Securities
20 Exchange Act of 1934, and

21 “(B) during the 1-year period following a
22 change in the ownership or effective control of
23 the corporation or in the ownership of a sub-
24 stantial portion of the assets of the corporation.

1 Such terms shall not include any distribution by rea-
2 son of the death of the participant or the participant
3 becoming disabled (within the meaning of section
4 409A(a)(2)(C)).

5 “(4) NO DOUBLE COUNTING.—Under regula-
6 tions, proper adjustments shall be made in the appli-
7 cation of this subsection to prevent a deduction from
8 being disallowed more than once.”.

9 (c) W-2 FORMS.—

10 (1) IN GENERAL.—Subsection (a) of section
11 6051 (relating to receipts for employees) is amended
12 by striking “and” at the end of paragraph (11), by
13 striking the period at the end of paragraph (12) and
14 inserting “, and”, and by inserting after paragraph
15 (12) the following new paragraph:

16 “(13) the total amount of deferrals under a
17 nonqualified deferred compensation plan (within the
18 meaning of section 409A(d)).”.

19 (2) THRESHOLD.—Subsection (a) of section
20 6051 is amended by adding at the end the following:
21 “In the case of the amounts required to be shown
22 by paragraph (13), the Secretary may (by regula-
23 tion) establish a minimum amount of deferrals below
24 which paragraph (13) does not apply.”.

25 (d) CONFORMING AND CLERICAL AMENDMENTS.—

1 (1) Section 414(b) is amended by inserting
2 “409A,” after “408(p),”.

3 (2) Section 414(c) is amended by inserting
4 “409A,” after “408(p),”.

5 (3) The table of sections for such subpart A is
6 amended by adding at the end the following new
7 item:

“Sec. 409A. Inclusion in gross income of deferred compensation
under nonqualified deferred compensation plans.”.

8 (e) EFFECTIVE DATE.—

9 (1) IN GENERAL.—The amendments made by
10 this section shall apply to amounts deferred in tax-
11 able years beginning after December 31, 2004.

12 (2) EARNINGS ATTRIBUTABLE TO AMOUNT PRE-
13 VIOUSLY DEFERRED.—The amendments made by
14 this section shall apply to earnings on deferred com-
15 pensation only to the extent that such amendments
16 apply to such compensation.

17 (f) GUIDANCE RELATING TO CHANGE OF OWNER-
18 SHIP OR CONTROL.—Not later than 90 days after the date
19 of the enactment of this Act, the Secretary of the Treasury
20 shall issue guidance on what constitutes a change in own-
21 ership or effective control for purposes of section 409A
22 of the Internal Revenue Code of 1986, as added by this
23 section.

1 (g) GUIDANCE RELATING TO TERMINATION OF CER-
2 TAIN EXISTING ARRANGEMENTS.—Not later than 90 days
3 after the date of the enactment of this Act, the Secretary
4 of the Treasury shall issue guidance providing a limited
5 period during which an individual participating in a non-
6 qualified deferred compensation plan adopted on or before
7 December 31, 2004, may, without violating the require-
8 ments of paragraphs (2), (3), (4), and (5) of section
9 409A(a) of the Internal Revenue Code of 1986 (as added
10 by this section), terminate participation or cancel an out-
11 standing deferral election with regard to amounts earned
12 after December 31, 2004, if such amounts are includible
13 in income as earned.

14 **SEC. 672. PROHIBITION ON DEFERRAL OF GAIN FROM THE**
15 **EXERCISE OF STOCK OPTIONS AND RE-**
16 **STRICTED STOCK GAINS THROUGH DE-**
17 **FERRED COMPENSATION ARRANGEMENTS.**

18 (a) IN GENERAL.—Section 83 (relating to property
19 transferred in connection with performance of services) is
20 amending by adding at the end the following new sub-
21 section:

22 “(i) PROHIBITION ON ADDITIONAL DEFERRAL
23 THROUGH DEFERRED COMPENSATION ARRANGE-
24 MENTS.—If a taxpayer exchanges—

1 “(1) an option to purchase employer
2 securities—

3 “(A) to which subsection (a) applies, or

4 “(B) which is described in subsection
5 (e)(3), or

6 “(2) employer securities or any other property
7 based on employer securities transferred to the tax-
8 payer,

9 for a right to receive future payments, then, notwith-
10 standing any other provision of this title, there shall be
11 included in gross income for the taxable year of the ex-
12 change an amount equal to the present value of such right
13 (or such other amount as the Secretary may by regulations
14 specify). For purposes of this subsection, the term ‘em-
15 ployer securities’ includes any security issued by the em-
16 ployer.”.

17 (b) CONTROLLED GROUP RULES.—Section 414(t)(2)
18 is amended by inserting “83(i),” after “79,”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to any exchange after December
21 31, 2004.

22 On page 581, strike lines 1 through 20, and insert
23 the following:

1 **SEC. 675. APPLICATION OF BASIS RULES TO EMPLOYER**
2 **AND EMPLOYEE CONTRIBUTIONS ON BEHALF**
3 **OF NONRESIDENT ALIENS.**

4 (a) IN GENERAL.—Section 72 (relating to annuities
5 and certain proceeds of endowment and life insurance con-
6 tracts) is amended by redesignating subsection (w) as sub-
7 section (x) and by inserting after subsection (v) the fol-
8 lowing new subsection:

9 “(w) APPLICATION OF BASIS RULES TO EMPLOYER
10 AND EMPLOYEE CONTRIBUTIONS MADE ON BEHALF OF
11 NONRESIDENT ALIENS.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of this section, for purposes of determining
14 the portion of any distribution which is includible in
15 gross income of a distributee who is a citizen or resi-
16 dent of the United States, the investment in the con-
17 tract shall not include any applicable nontaxable
18 contributions.

19 “(2) APPLICABLE NONTAXABLE CONTRIBU-
20 TION.—For purposes of this subsection, the term
21 ‘applicable nontaxable contribution’ means any em-
22 ployer or employee contribution—

23 “(A) which was made with respect to com-
24 pensation for labor or personal services by an
25 employee who, at the time the services were
26 performed, was a nonresident alien for purposes

1 of the laws of the United States in effect at
2 such time, but only if such compensation is
3 treated as from sources without the United
4 States, and

5 “(B) which was not subject to income tax
6 under the laws of the United States or any for-
7 eign country.

8 “(3) REGULATIONS.—The Secretary shall pre-
9 scribe such regulations as may be necessary to carry
10 out the provisions of this subsection, including regu-
11 lations treating contributions as not subject to tax
12 under the laws of any foreign country where appro-
13 priate to carry out the purposes of this subsection.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to distributions on or after the date
16 of the enactment of this Act.

17 On page 596, strike lines 8 through 10, and insert
18 the following:

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall take effect on the date of the enactment
21 of this Act.

22 On page 596, line 22, strike “Section 904(h)” and
23 insert “Section 904(i), as redesignated by this Act,”.

1 Beginning on page 598, line 17, strike all through
2 601, line 7, and insert the following:

3 (a) AMENDMENTS OF ERISA.—

4 (1) Section 101(e)(3) of the Employee Retirement
5 Income Security Act of 1974 (29 U.S.C.
6 1021(e)(3)) is amended by striking “Pension Fund-
7 ing Equity Act of 2004” and inserting “Jumpstart
8 Our Business Strength (JOBS) Act”.

9 (2) Section 403(c)(1) of such Act (29 U.S.C.
10 1103(c)(1)) is amended by striking “Pension Fund-
11 ing Equity Act of 2004” and inserting “Jumpstart
12 Our Business Strength (JOBS) Act”.

13 (3) Paragraph (13) of section 408(b) of such
14 Act (29 U.S.C. 1108(b)(3)) is amended by striking
15 “Pension Funding Equity Act of 2004” and insert-
16 ing “Jumpstart Our Business Strength (JOBS)
17 Act”.

18 (b) MINIMUM COST REQUIREMENTS.—

19 (1) IN GENERAL.—Section 420(e)(3)(E) is
20 amended by adding at the end the following new
21 clause:

22 “(ii) INSIGNIFICANT COST REDUC-
23 TIONS PERMITTED.—

24 “(I) IN GENERAL.—An eligible
25 employer shall not be treated as fail-

1 ing to meet the requirements of this
2 paragraph for any taxable year if, in
3 lieu of any reduction of retiree health
4 coverage permitted under the regula-
5 tions prescribed under clause (i), the
6 employer reduces applicable employer
7 cost by an amount not in excess of the
8 reduction in costs which would have
9 occurred if the employer had made the
10 maximum permissible reduction in re-
11 tiree health coverage under such regu-
12 lations. In applying such regulations
13 to any subsequent taxable year, any
14 reduction in applicable employer cost
15 under this clause shall be treated as if
16 it were an equivalent reduction in re-
17 tiree health coverage.

18 “(II) ELIGIBLE EMPLOYER.—For
19 purposes of subclause (I), an employer
20 shall be treated as an eligible em-
21 ployer for any taxable year if, for the
22 preceding taxable year, the qualified
23 current retiree health liabilities of the
24 employer were at least 5 percent of
25 the gross receipts of the employer.

1 For purposes of this subclause, the
2 rules of paragraphs (2), (3)(B), and
3 (3)(C) of section 448(c) shall apply in
4 determining the amount of an employ-
5 er's gross receipts."

6 (2) CONFORMING AMENDMENT.—Section
7 420(c)(3)(E) is amended by striking "The Sec-
8 retary" and inserting:

9 "(i) IN GENERAL.—The Secretary".

10 (3) EFFECTIVE DATE.—The amendments made
11 by this subsection shall apply to taxable years end-
12 ing after the date of the enactment of this Act.

13 On page 606, line 18, insert ", as amended by section
14 882(c) of this Act," after "penalties)".

15 On page 606, line 21, strike "**6717**" and insert
16 "**6720A**".

17 On page 607, line 18, insert ", as amended by section
18 882(c) of this Act," after "chapter 68".

19 On page 607, in the matter after line 20, strike
20 "6717" and insert "6720A".

1 (A)(i) with respect to such person exceeds
2 the aggregate amount of payment obliga-
3 tions described in clause (i), the excess
4 amount shall remain available for applica-
5 tion as credits against the amounts of such
6 payment obligations in succeeding fiscal
7 years in the same manner as described in
8 this subparagraph.

9 On page 625, line 22, strike “(D)” and insert “(E)”.

10 On page 626, line 3, strike “(E)” and insert “(F)”.

11 On page 626, line 8, strike “(g)” and insert “(f)”.

12 On page 627, line 14, insert “, as amended by this
13 Act,” after “etc.”.

14 On page 627, line 16, strike “30B” and insert
15 “30C”.

16 On page 652, strike lines 2 through 17, and insert
17 the following:

18 (1) Section 1016(a) is amended by striking
19 “and” at the end of paragraph (31), by striking the

1 period at the end of paragraph (32) and inserting “,
2 and”, and by adding at the end the following new
3 paragraph:

4 “(33) to the extent provided in section
5 30C(f)(4).”.

6 (2) Section 55(c)(2), as amended by this Act, is
7 amended by inserting “30C(e),” after “30(b)(2),”.

8 (3) Section 6501(m) is amended by inserting
9 “30C(f)(9),” after “30(d)(4),”.

10 (4) The table of sections for subpart B of part
11 IV of subchapter A of chapter 1, as amended by this
12 Act, is amended by inserting after the item relating
13 to section 30B the following new item:

“Sec. 30C. Alternative motor vehicle credit.”.

14 (c) EFFECTIVE DATE.—The amendments made by

15 On page 658, line 3, strike “30C” and insert “30D”.

16 On page 659, line 21, strike “30B” and insert
17 “30C”.

18 Beginning on page 662, line 21, strike all through
19 page 663, line 9, and insert the following:

20 (1) Section 1016(a), as amended by this Act, is
21 amended by striking “and” at the end of paragraph

1 (32), by striking the period at the end of paragraph
2 (33) and inserting “, and”, and by adding at the
3 end the following new paragraph:

4 “(34) to the extent provided in section
5 30D(f).”.

6 (2) Section 55(c)(2), as amended by this Act, is
7 amended by inserting “30D(e),” after “30C(e),”.

8 (3) The table of sections for subpart B of part
9 IV of subchapter A of chapter 1, as amended by this
10 Act, is amended by inserting after the item relating
11 to section 30C the following new item:

“Sec. 30D. Clean-fuel vehicle refueling property credit.”.

12 (e) EFFECTIVE DATE.—The amendments made by

13 On page 665, line 7, strike “section 30B(d)(4)” and
14 insert “section 30C(d)(4)”.

15 On page 670, line 12, insert “, as amended by this
16 Act,” after the end parenthetical.

17 On page 670, line 14, strike “(k)” and insert “(l)”.

18 On page 702, line 3, strike “Section 904(h)” and in-
19 sert “Section 904(i), as redesignated and amended by this
20 Act,”.

1 On page 702, strike lines 8 through 15, and insert
2 the following:

3 (1) Section 1016(a), as amended by this Act, is
4 amended by striking “and” at the end of paragraph
5 (33), by striking the period at the end of paragraph
6 (34) and inserting “, and”, and by adding at the
7 end the following new paragraph:

8 “(35) to the extent provided in section 25C(f),
9 in the case of amounts with respect to which a credit
10 has been allowed under section 25C.”.

11 On page 715, line 22, strike “(30)” and insert
12 “(34)”.

13 On page 715, line 23, strike “(31)” and insert
14 “(35)”.

15 On page 716, line 1, strike “(32)” and insert “(36)”.

16 On page 716, strike lines 9 through 15, and insert
17 the following:

18 (4) Section 263(a)(1), as amended by this Act,
19 is amended by striking “or” at the end of subpara-
20 graph (H), by striking the period at the end of sub-
21 paragraph (I) and inserting “, or”, and by inserting

1 after subparagraph (I) the following new subpara-
2 graph:

3 “(J) expenditures for which a deduction is
4 allowed under section 179B.”.

5 On page 717, line 13, insert “, as amended by this
6 Act,” after “rules)”.

7 On page 717, line 15, strike “(15)” and insert
8 “(16)”.

9 On page 719, line 7, strike “(16)” and insert “(17)”.

10 On page 734, lines 16 and 17, strike “Section 904(h),
11 as amended by this Act,” and insert “Section 904(i), as
12 redesignated and amended by this Act,”.

13 On page 734, line 25, strike “(31)” and insert
14 “(35)”.

15 On page 735, line 1, strike “(32)” and insert “(36)”.

16 On page 735, line 3, strike “(33)” and insert “(37)”.

1 Beginning on page 747, line 23, strike all through
2 page 748, line 5, and insert the following:

3 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN
4 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating
5 to amount of credit), as amended by this Act, is amended
6 by striking “and” at the end of paragraph (1), by striking
7 the period at the end of paragraph (2) and inserting “,
8 and”, and by adding at the end the following new para-
9 graph:

10 “(3) the qualifying advanced clean coal tech-
11 nology unit credit.”.

12 On page 780, strike lines 16 through 21, and insert
13 the following:

14 (a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-
15 year property), as amended by this Act, is amended by
16 striking “and” at the end of clause (ii), by redesignating
17 clause (iii) as clause (iv), and by inserting after clause (ii)
18 the following new clause:

19 “(iii) any natural gas gathering line,
20 and”.

21 On page 781, line 3, strike “(17)” and insert “(18)”.

1 On page 782, in the matter following line 2, strike
2 “(C)(ii)” and insert “(C)(iii)”.

3 On page 783, line 22, strike the end quotation marks
4 and second period.

5 On page 784, line 4, strike “(H)” and insert “(I)”.

6 On page 784, line 5, strike “(I)” and insert “(J)”.

7 On page 784, line 7, strike “(J)” and insert “(K)”.

8 On page 784, line 17, strike “(32)” and insert
9 “(36)”.

10 On page 784, line 18, strike “(33)” and insert
11 “(37)”.

12 On page 784, line 20, strike “(34)” and insert
13 “(38)”.

14 On page 785, line 1, strike “(5)” and insert “(6)”.

1 On page 793, line 15, strike “(33)” and insert
2 “(37)”.

3 On page 793, line 16, strike “(34)” and insert
4 “(38)”.

5 On page 793, line 19, strike “(35)” and insert
6 “(39)”.

7 On page 795, line 5, insert “, as amended by this
8 Act,” after “production)”.

9 On page 805, line 3, strike the semicolon and insert
10 a colon.

11 On page 805, line 8, insert “of subsection (f)” before
12 “owned”.

13 On page 805, line 11, strike the end quotation marks
14 and second period.

15 On page 807, line 2, insert “, as amended by this
16 Act,” after “38(b)”.

1 On page 808, strike lines 8 through 12, and insert
2 the following:

3 (G) Subsection (a) of section 772, as
4 amended by this Act, is amended by striking
5 paragraph (10) and by redesignating para-
6 graphs (11) and (12) as paragraphs (10) and
7 (11), respectively.

8 On page 810, strike lines 12 through 18, and insert
9 the following:

10 (a) IN GENERAL.—Section 168(e)(3)(E) (defining
11 15-year property), as amended by this Act, is amended
12 by striking “and” at the end of clause (iii), by striking
13 the period at the end of clause (iv) and by inserting “,
14 and”, and by adding at the end the following new clause:

15 “(v) any natural gas distribution
16 line.”.

17 On page 810, in the matter after line 23, strike
18 “(E)(iv)” and insert “(E)(v)”.

19 On page 814, line 5, strike “(18)” and insert “(19)”.

20 On page 818, strike lines 19 through 25, and insert
21 the following:

1 (a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-
2 year property), as amended by this Act, is amended by
3 striking “and” at the end of clause (iii), by redesignating
4 clause (iv) as clause (v), and by inserting after clause (iii)
5 the following new clause:

6 “(iv) any Alaska natural gas pipeline,
7 and”.

8 On page 819, line 5, strike “(18)” and insert “(19)”.

9 On page 820, line 2, strike “(C)(ii)” and insert
10 “(C)(iii)”.

11 On page 820, in the matter following line 2, strike
12 “(C)(iii)” and insert “(C)(iv)”.

13 On page 820, line 3, strike the beginning quotation
14 marks.

15 On page 840, line 14, insert “, as amended by this
16 Act,” after “modifications)”.

17 On page 840, line 17, strike “(18)” and insert
18 “(20)”.

1 On page 849, line 20, strike “5211 and 5242” and
2 insert “871 and 880”.

3 On page 855, lines 1 and 2, strike “, as amended
4 by section 5101 of this Act,”.

5 On page 862, line 3, insert “, as amended by this
6 Act,” after “credit”).

7 On page 862, strike lines 10 through 19, and insert
8 the following:

9 (1)(A) Section 87, as amended by this Act, is
10 amended—

11 (i) by striking “and” at the end of para-
12 graph (1),

13 (ii) by striking the period at the end of
14 paragraph (2) and inserting “, and”,

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

17 “(3) the biodiesel fuels credit determined with
18 respect to the taxpayer for the taxable year under
19 section 40B(a).”, and

20 (iv) by striking “**FUEL CREDIT**” in the head-
21 ing and inserting “**AND BIODIESEL FUELS CRED-**
22 **ITS**”.

1 Beginning on page 862, line 24, strike all through
2 page 863, line 5, and insert the following:

3 (2) Section 196(c), as amended by this Act, is
4 amended by striking “and” at the end of paragraph
5 (11), by striking the period at the end of paragraph
6 (12) and inserting “, and”, and by adding at the
7 end the following new paragraph:

8 “(13) the biodiesel fuels credit determined
9 under section 40B(a).”.

10 On page 872, strike lines 1 through 8, and insert the
11 following:

12 (M) Subparagraph (B) of section
13 6724(d)(1), as amended by this Act, is amend-
14 ed by striking clause (xvi) and by redesignating
15 clauses (xvii), (xviii), and (xix) as clauses (xvi),
16 (xvii), and (xviii), respectively.

17 (N) Paragraph (2) of section 6724(d), as
18 amended by this Act, is amended by striking
19 subparagraph (X) and by redesignating sub-
20 paragraphs (Y), (Z), (AA), (BB), and (CC) as
21 subparagraphs (X), (Y), (Z), (AA), and (BB),
22 respectively.

1 On page 878, line 8, strike “PENALTY—” and insert
2 “PENALTY.—”.

3 On page 883, line 7, strike “section 5211 of”.

4 On page 883, lines 17 and 18, strike “section 5211
5 of”.

6 On page 884, lines 6 and 7, strike “section 5221 of”.

7 On page 885, lines 8 and 9, strike “section 5211 of”.

8 On page 885, lines 21 and 22, strike “section 5221
9 of”.

10 On page 886, line 18, strike “section 5232 of”.

11 On page 888, line 10, strike “section 5232 of”.

12 On page 889, line 13, strike “section 5241 of”.

13 On page 890, line 11, strike “section 5241 of”.

14 On page 890, line 16, strike the second period.

- 1 On page 890, line 18, strike “section 5242 of”.
- 2 On page 890, line 22, strike the second period.
- 3 On page 891, line 22, strike “section 5242 of”.
- 4 On page 892, line 17, strike “section 5242 of”.
- 5 On page 895, lines 18 and 19, strike “section 5245
6 of”.
- 7 On page 898, lines 20 and 21, strike “section 5102
8 of”.
- 9 On page 902, lines 24 and 25, strike “section 5152
10 of”.
- 11 On page 903, line 10, strike “section 5251 of”.
- 12 On page 904, line 15, strike “section 5251 of”.
- 13 On page 906, lines 12 and 13, strike “, as amended
14 by section 5001 of this Act,”.

1 On page 907, lines 12 and 13, strike “, as amended
2 by section 5001 of this Act,”.

3 On page 909, line 19, strike “section 5211 of”.

4 On page 910, lines 20 and 21, strike “section 5211
5 of”.

6 On page 912, lines 9 and 10, strike “section 5243
7 of”.

8 On page 912, lines 12 through 14, strike “as added
9 by section 5242 of this Act and redesignated by section
10 5243 of this Act” and insert “as added and redesignated
11 by this Act”.

12 On page 912, lines 20 and 21, strike “section 5241
13 of”.

14 On page 912, line 24, strike the space after the begin-
15 ning quotation marks.

16 On page 913, strike lines 1 and 2, and insert the fol-
17 lowing:

1 (II) in the heading, by inserting “OR
2 REPORTABLE LIQUIDS” after “TAXABLE
3 FUEL”.

4 On page 913, line 5, strike “section 5241 of”.

5 On page 914, line 8, strike “section 5252 of”.

6 On page 919, strike lines 3 through 9, and insert the
7 following:

8 “(C) SPECIAL RULE FOR USE BY CERTAIN
9 TAX-EXEMPT ORGANIZATIONS.—For purposes
10 of subparagraph (A), the use-based test shall be
11 determined without regard to any use in a vehi-
12 cle by an organization which is described in sec-
13 tion 501(c) and exempt from tax under section
14 501(a).”.

15 On page 931, after line 18, add the following:

16 **SEC. 899B. CREDIT FOR QUALIFYING POLLUTION CONTROL**
17 **EQUIPMENT.**

18 (a) ALLOWANCE OF QUALIFYING POLLUTION CON-
19 TROL EQUIPMENT CREDIT.—Section 46 (relating to
20 amount of credit), as amended by this Act, is amended
21 by striking “and” at the end of paragraph (2), by striking

1 the period at the end of paragraph (3) and inserting “,
2 and”, and by adding at the end the following new para-
3 graph:

4 “(4) the qualifying pollution control equipment
5 credit.”.

6 (b) AMOUNT OF QUALIFYING POLLUTION CONTROL
7 EQUIPMENT CREDIT.—Subpart E of part IV of sub-
8 chapter A of chapter 1 (relating to rules for computing
9 investment credit), as amended by this Act, is amended
10 by inserting after section 48A the following new section:

11 **“SEC. 48B. QUALIFYING POLLUTION CONTROL EQUIPMENT**
12 **CREDIT.**

13 “(a) IN GENERAL.—For purposes of section 46, the
14 qualifying pollution control equipment credit for any tax-
15 able year is an amount equal to 15 percent of the basis
16 of the qualifying pollution control equipment placed in
17 service at a qualifying facility during such taxable year.

18 “(b) QUALIFYING POLLUTION CONTROL EQUIP-
19 MENT.—For purposes of this section, the term ‘qualifying
20 pollution control equipment’ means any technology in-
21 stalled in or on a qualifying facility to reduce air emissions
22 of any pollutant regulated by the Environmental Protec-
23 tion Agency under the Clean Air Act, including thermal
24 oxidizers, regenerative thermal oxidizers, scrubber sys-
25 tems, evaporative control systems, vapor recovery systems,

1 flair systems, bag houses, cyclones, continuous emissions
2 monitoring systems, and low nitric oxide burners.

3 “(c) QUALIFYING FACILITY.—For purposes of this
4 section, the term ‘qualifying facility’ means any facility
5 which produces not less than 1,000,000 gallons of ethanol
6 during the taxable year.

7 “(d) SPECIAL RULE FOR CERTAIN SUBSIDIZED
8 PROPERTY.—Rules similar to section 48(a)(4) shall apply
9 for purposes of this section.

10 “(e) CERTAIN QUALIFIED PROGRESS EXPENDITURES
11 RULES MADE APPLICABLE.—Rules similar to the rules of
12 subsections (c)(4) and (d) of section 46 (as in effect on
13 the day before the enactment of the Revenue Reconcili-
14 ation Act of 1990) shall apply for purposes of this sub-
15 section.”.

16 (c) RECAPTURE OF CREDIT WHERE EMISSIONS RE-
17 Duction Offset is Sold.—Paragraph (1) of section
18 50(a) is amended by redesignating subparagraph (B) as
19 subparagraph (C) and by inserting after subparagraph (A)
20 the following new subparagraph:

21 “(B) SPECIAL RULE FOR QUALIFYING POL-
22 LUTION CONTROL EQUIPMENT.—For purposes
23 of subparagraph (A), any investment property
24 which is qualifying pollution control equipment
25 (as defined in section 48B(b)) shall cease to be

1 investment credit property with respect to a
2 taxpayer if such taxpayer receives a payment in
3 exchange for a credit for emission reductions
4 attributable to such qualifying pollution control
5 equipment for purposes of an offset require-
6 ment under part D of title I of the Clean Air
7 Act.”.

8 (d) SPECIAL RULE FOR BASIS REDUCTION; RECAP-
9 TURE OF CREDIT.—Paragraph (3) of section 50(c) (relat-
10 ing to basis adjustment to investment credit property), as
11 amended by this Act, is amended by inserting “or quali-
12 fying pollution control equipment credit” after “energy
13 credit”.

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to property placed in service after
16 December 31, 2003, in taxable years ending after such
17 date, under rules similar to the rules of section 48(m) of
18 the Internal Revenue Code of 1986 (as in effect on the
19 day before the date of the enactment of the Revenue Rec-
20 onciliation Act of 1990).