AMENDMENT NO. ___  Calendar No. ___

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


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 “by”.

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

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

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


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

(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.

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

On page 98, between lines 3 and 4, insert the following:

**SECTION 237. INTEREST PAYMENTS DEDUCTIBLE WHERE DISQUALIFIED GUARANTEE HAS NO ECONOMIC EFFECT.**

(a) *in general.*—Section 163(j)(6)(D)(ii) (relating to exceptions to disqualified guarantee) is amended—
(1) by striking “or” at the end of subclause (I),
(2) by striking the period at the end of sub-
clause (II) and inserting “, or”,
(3) by inserting after subclause (II) the fol-
lowing new subclause:

“(III) in the case of a guarantee
by a foreign person, to the extent of
the amount that the taxpayer estab-
lishes to the satisfaction of the Sec-
retary that the taxpayer could have
borrowed from an unrelated person
without the guarantee.”.

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

On page 125, line 25, strike “December 31, 2003”
and insert “the date which is 30 days after the date of
the enactment of this Act”.

Beginning on page 135, line 17, strike all through
page 136, line 2, and insert the following:

“(i) which is—

“(I) described in section

501(c)(3) or 501(c)(6) and is exempt
from tax under section 501(a) and is organized and operated primarily to conduct research, or “(II) organized and operated primarily to conduct research in the public interest (within the meaning of section 501(c)(3)),

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

On page 139, lines 9 and 10, strike “Energy Tax Incentives Act of 2003” and insert “Jumpstart Our Business Strength (JOBS) Act”.

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

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

Beginning on page 212, line 9, strike all through page 213, line 3, and insert the following:
(1) IN GENERAL.—Section 162(g) (relating to treble damage payments under the antitrust laws) is amended—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(B) by striking “If” and inserting:

“(1) TREBLE DAMAGES.—If”, and

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

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

(2) CONFORMING AMENDMENT.—The heading for section 162(g) is amended by inserting “OR PUNITIVE DAMAGES” after “LAWS”.

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

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

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

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

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

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

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

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

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

(2) Paragraph (2) of section 6724(d) (relating to definitions) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:
On page 301, line 7, strike “168(j)” and insert “163(j)”.

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

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

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

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

“(c) FEES AND EXPENSES.—The Secretary may retain and use—

“(1) 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, and
“(2) an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service.

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.

On page 346, between lines 4 and 5, insert the following:

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

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

On page 349, between lines 11 and 12, insert the following:

(e) BIENNIAL REPORT.—The Secretary of the Treasury shall biennially submit (beginning in 2005) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with respect to qualified tax collection contracts
under section 6306 of the Internal Revenue Code of 1986 (as added by this section) which includes—

(1) a complete cost benefit analysis,
(2) the impact of such contracts on collection enforcement staff levels in the Internal Revenue Service,
(3) the amounts collected and the collection costs incurred (directly and indirectly),
(4) an evaluation of contractor performance,
(5) a disclosure safeguard report in a form similar to that required under section 6103(p)(5) of such Code, and
(6) a measurement plan which includes a comparison of the best practices used by the private collectors with the Internal Revenue Service’s own collection techniques) and mechanisms to identify and capture information on successful collection techniques used by the contractors which could be adopted by the Internal Revenue Service.

On page 349, line 12, strike “(e)” and insert “(f)”. Beginning on page 349, line 15, strike all through page 353, line 24, and insert the following:
SEC. 488. WHISTLEBLOWER REFORMS.

(a) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

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

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

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

(4) by adding at the end the following new subsections:

“(b) AWARDS TO WHISTLEBLOWERS.—

“(1) IN GENERAL.—If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary’s attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.
“(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION.—

“(A) IN GENERAL.—In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than information provided by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action, taking into account the significance of the individual’s information and the role of such individual and any legal representative of such individual in contributing to such action.

“(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—Subparagraph (A) shall not
apply if the information resulting in the initia-
tion of the action described in paragraph (1) was originally provided by the individual des-
cribed in paragraph (1).

“(3) **Appeal of Award Determination.**—Any determination regarding an award under para-
graph (1) or (2) shall be subject to the filing by the individual described in such paragraph of a petition for review with the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute) and such review shall be subject to the rules under section 7461(b)(1).

“(4) **Application of This Subsection.**—This subsection shall apply with respect to any action—

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

“(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $20,000.

“(5) **Additional Rules.**—

“(A) **No Contract Necessary.**—No con-
tract with the Internal Revenue Service is nec-
necessary for any individual to receive an award under this subsection.

“(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented by counsel.

“(C) AWARD NOT SUBJECT TO INDIVIDUAL ALTERNATIVE MINIMUM TAX.—No award received under this subsection shall be included in gross income for purposes of determining alternative minimum taxable income.

“(c) WHISTLEBLOWER OFFICE.—

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

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

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

“(C) shall inform such individual that it has accepted the individual’s information for further review,
“(D) may require such individual and any legal representative of such individual to not disclose any information so provided,

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

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

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

“(3) REQUEST FOR ASSISTANCE.—

“(A) IN GENERAL.—Any assistance requested under paragraph (1)(E) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under subparagraph (A). To the extent the disclosure of any returns or return information to the individual or legal representative is
required for the performance of such assistance,
such disclosure shall be pursuant to a contract
entered into between the Secretary and the re-
ipients of such disclosure subject to section
6103(n).

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

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

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

Beginning on page 355, line 17, strike all through
page 357, line 24, and insert the following:
SEC. 493. MODIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

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

(b) LIMITATION ON NET WRITTEN PREMIUMS INCREASED.—Section 831(b)(2) (relating to companies to which this subsection applies) is amended—

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

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

“(C) INFLATION ADJUSTMENTS.—

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

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

“(II) the cost-of-living adjust-
ment determined under section 1(f)(3) for the calendar year in which the tax-
able year begins, by substituting ‘cal-
end year 2004’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(ii) Rounding.—If the amount in subparagraph (A)(i) as increased under clause (i) is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.”.

(c) Effective Date.—

(1) In General.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2004.

(2) Transition Rule for Companies in Receivership or Liquidation.—In the case of a company or association which—

(A) for the taxable year which includes April 1, 2004, meets the requirements of section 501(c)(15)(A) of the Internal Revenue Code of 1986, as in effect for the last taxable year beginning before January 1, 2004, and

(B) on April 1, 2004, is in a receivership, liquidation, or similar proceeding under the supervision of a State court,

the amendments made by this section shall apply to taxable years beginning after the earlier of the date
such proceeding ends (or, if later, December 31, 2004) or December 31, 2007.

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

SEC. 494. TREATMENT OF CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

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

“(iii) of any patent, copyright, 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) ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—Section 170(e)(3)(B)(iv) is amended by adding at the end the following new paragraph:

“(7) ADDITIONAL DEDUCTION FOR CERTAIN CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.—
“(A) IN GENERAL.—In the case of a charitable contribution of any property described in paragraph (1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in paragraph (1)(B)(ii)), if—

“(i) the lesser of—

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

“(II) $1,000,000, exceeds

“(ii) the amount of such contribution as determined under paragraph (1),

then the amount of the charitable contribution of such property otherwise taken into account under this section shall equal the amount determined under clause (i).”.

(c) 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) 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.

“(3) 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.
“(4) 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.

“(5) 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.

“(6) 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:

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<tr>
<th>Taxable Year of Donor Ending On or After Date of Contribution</th>
<th>Applicable Percentage</th>
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</thead>
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<tr>
<td>1st or 2d</td>
<td>100</td>
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<tr>
<td>3rd</td>
<td>90</td>
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<td>11th or 12th</td>
<td>10.</td>
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</tbody>
</table>
“(7) 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—

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

“(ii) determined under subsection (e)(7), 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.

“(8) Qualified intellectual property.—

For purposes of this subsection, the term ‘qualified intellectual property’ means property described in subsection (e)(1)(B)(iii) (other than copyrights described in section 1221(a)(3) or 1231(b)(1)(C) or property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

“(9) Other special rules.—
“(A) Application of limitations on charitable contributions.—Any increase under this subsection of the deduction provided under subparagraph (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 (2) 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.”.

(d) REPORTING REQUIREMENTS.—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 accord-
ance 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 (9)(B) of section 170(m) and with the modifications described in paragraphs (4) and (5) 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 re-
spect to any qualified intellectual property con-
tribution, 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 regula-
tions prescribe.”.

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

“(n) PROCESSING FEE.—In the case of a deduction
allowed for any taxable year under this section with re-
spect to a charitable contribution of any property de-
scribed in subsection (e)(1)(B)(iii) (other than copyrights
described in section 1221(a)(3) or 1231(b)(1)(C) or prop-
erty contributed to or for the use of an organization de-
scribed in subsection (e)(1)(B)(ii)), the taxpayer shall in-
clude, with the taxpayer’s return of tax including such de-
duction, a fee equal to 1 percent of the amount of such
deduction. Such fee shall be credited by the Secretary to
the operations of the Exempt Organizations unit within
the Internal Revenue Service.”.

(f) Modification of Substantial Valuations

Misstatement Penalty for Charitable Contributions of Property.—

(1) Substantial Misstatements.—Section

6662(e)(1)(A) (relating to substantial valuation
misstatements under chapter 1) is amended by in-
serting “(50 percent or more in the case of a chari-
table contribution of any property described in sec-
tion 170(e)(1)(B)(iii))” after “200 percent or
more”.

(2) Gross Misstatements.—Section

6662(h)(2)(A) (defining gross valuation
misstatements) is amended by striking clause (ii)
and inserting the following new clauses:

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

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

(g) Anti-Abuse Rules.—The Secretary of the

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

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

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

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

(2) shall prescribe guidance on appraisal stand-
ards for contributions of property described in sec-
tion 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by this section).

(h) Effective Date.—The amendments made by this section shall apply to contributions made after the date of the enactment of this Act.

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

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

“(A) In general.—The term ‘motor-sports entertainment complex’ means a racing track facility which—

“(i) is permanently situated on land, and

“(ii) during the 36-month period following the first day of the month in which the asset is placed in service, is scheduled to host 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.”
On page 421, at the end of line 9, add end quotation marks and a period.

On page 421, strike lines 10 through 20.

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

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

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

On page 438, in the matter following line 22, strike “Native American new markets tax credit” and insert “New markets tax credit for Native American reservations”.

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

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

On page 488, line 2, strike “grade” and insert “at grade”.
On page 488, line 5, strike “rail” and insert “train”.

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

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

On page 504, between lines 6 and 7, insert the following:

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

(a) IN GENERAL.—

(1) ALLOWANCE OF CREDIT.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by adding at the end the following new section:

“SEC. 45T. EXPENDITURES TO PROVIDE ACCESS TO MOTION PICTURES FOR THE DEAF AND HARD OF HEARING.

“(a) General Rule.—For purposes of section 38, in the case of an eligible taxpayer, the motion picture accessibility credit for any taxable year shall be an amount
equal to 50 percent of the qualified expenditures made by
the eligible taxpayer during the taxable year.

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

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

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

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

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

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

(2) CONFORMING AMENDMENTS.—
(A) Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking “plus” at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting “, plus”, and by adding at the end the following new paragraph:

“(32) the motion picture accessibility credit determined under section 45T(a).”.

(B) Subsection (a) of section 1016, as amended by this Act, is amended by striking “and” at the end of paragraph (38), by striking the period at the end of paragraph (39) and inserting “, and”, and by adding at the end the following new paragraph:

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

(b) LIMITATION ON CARRYBACK.—Section 39(d) (relating to transition rules) is amended by adding at the end the following new paragraph:

“(16) No carryback of motion picture accessibility credit before effective date.— No portion of the unused business credit for any taxable year which is attributable to the motion picture accessibility credit determined under section
45T may be carried to a taxable year beginning before January 1, 2004.”.

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

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

(d) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

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

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

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

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

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

On page 557, between lines 9 and 10, insert the following:

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

(a) In General.—Section 7872(c)(1) (relating to below-market loans to which section applies) is amended—

(1) by striking subparagraph (F), and

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

(b) Full Exception.—Section 7872(g) (relating to exception for certain loans to qualified continuing care facilities) is amended—

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

(2) by striking “increased personal care services or” in paragraph (3)(C),
(3) by adding at the end of paragraph (3) the following new flush sentence:

“The Secretary shall issue guidance which limits such term to contracts which provide to an individual or individual’s spouse only facilities, care, and services described in this paragraph which are customarily offered by continuing care facilities.”,

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

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

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

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

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

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

SEC. 663. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary
fails to contact taxpayer) is amended by striking “1-year period (18-month period in the case of taxable years beginning before January 1, 2004)” both places it appears and inserting “18-month period”.

(b) Exception for Gross Misstatement.—Section 6404(g)(2) (relating to exceptions) is amended by striking “or” at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

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

(e) Exception for Listed and Reportable Transactions.—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking “or” at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

“(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction or listed transaction (as defined in 6707A(c)); or”.

(d) 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, 2003.

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after May 5, 2004.

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

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.—If at any time during a taxable year a nonqualified deferred compensation plan—
“(i) fails to meet the requirements of paragraphs (2), (3), (4), and (5), or

“(ii) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

“(B) INTEREST AND ADDITIONAL TAX 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 the taxable year of inclusion shall be increased by the sum of—

“(I) the amount of interest determined under clause (ii), and

“(II) an amount equal to 10 percent of the compensation which is required to be included in gross income.
“(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 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) except as provided in subparagraph (B)(i), separation from service (as determined by the Secretary),

“(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
as of 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) SEPARATION FROM SERVICE OF 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) CHANGES IN OWNERSHIP OR CONTROL.—In the case of a participant who is subject to the requirements of sec-
tion 16(a) of the Securities Exchange Act of 1934, the requirement of subparagraph (A)(v) is met only if distributions may not be made earlier than 1 year after the date of the change in ownership or effective control.

“(iii) UNFORESEEABLE EMERGENCY.—For purposes of subparagraph (A)(vi)—

“(I) IN GENERAL.—The term ‘unforeseeable emergency’ means a severe financial hardship to the participant or beneficiary resulting from a sudden and unexpected illness or accident of the participant or beneficiary, the participant’s or beneficiary’s spouse, or the participant’s or beneficiary’s dependent (as defined in section 152(a)), loss of the participant’s or beneficiary’s property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary.
“(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).

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

“(A) are comparable to the investment options which a participant may elect under the defined contribution plan of the employer which—

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

“(ii) has the fewest investment options, or
“(B) if there is no such defined contribution plan, meet such requirements as the Secretary may prescribe (including requirements limiting such options to permissible investment options specified by the Secretary).

“(4) 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 by the Secretary in regulations.

“(5) 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 during 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 DIS-
TRIBUTION.—The requirements of this subpara-
graph 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 elec-
nion may not take effect until at least 12
months after the date on which the elec-
tion 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 re-
quires 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 elec-
tion 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 para-

graph.

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

“(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 compen-
sation under a nonqualified deferred compensa-
tion plan, such assets shall be treated for purposes
of section 83 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.

This paragraph shall not apply to assets located in
a foreign jurisdiction if substantially all of the serv-
ices to which the nonqualified deferred compensation
relates are performed in such jurisdiction.

“(2) Employer’s financial health.—In the
case of a nonqualified deferred compensation plan,
there is a transfer of property within the meaning
of section 83 as of the earlier of—

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

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

“(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 sum of—

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

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

“(B) INTEREST.—For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate 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 amounts are not subject to a substantial risk of forfeiture.

“(c) NO INFERENCE ON EARLIER INCOME 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 arrange-
ment, 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.

“(6) Exception for nonelective deferred compensation.—This section shall not apply to any nonelective deferred compensation to which section 457 does not apply by reason of section 457(e)(12), but only if such compensation is provided under a nonqualified deferred compensation plan which was in existence on May 1, 2004, and which was providing nonelective deferred compensation described in section 457(e)(12) on such date. If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply
to any nonelective deferred compensation provided
under the plan on or after the date of the adoption
of the amendment.

“(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 de-
ferred 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 applica-
tion 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 for-
feiture in cases where necessary to carry out the
purposes of this section.”.
(b) Application of Golden Parachute Payment Provisions.—Section 280G of such Code (relating to golden parachute payments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) Special Rules for Certain Payments From Nonqualified Deferred Compensation Plans.—

"(1) In general.—Notwithstanding any other provision of this section, an applicable payment shall be treated as an excess parachute payment for purposes of this section and section 4999.

"(2) Coordination with other payments.—

"(A) Applicable payments which are parachute payments.—If any applicable payment is a parachute payment (determined without regard to subsection (b)(2)(A)(ii))—

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

"(ii) if such application results in an excess parachute payment, any tax under section 4999 on the excess parachute pay-
ment shall be in addition to the tax imposed by reason of paragraph (1).

“(B) Applicable payments which are not parachute payments.—An applicable payment not described in subparagraph (A) shall be taken into account in determining whether any payment described in subparagraph (A) or any payment which is not an applicable payment is a parachute payment under subsection (b)(2).

“(3) Applicable payment.—For purposes of this subsection, the term ‘applicable payment’ means any distribution (including any distribution treated as a parachute payment without regard to this subsection) from a nonqualified deferred compensation plan (as defined in section 409A(d)) which is made—

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

“(B) during the 1-year period following 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.
Such terms shall not include any distribution by reason of the death of the participant or the participant becoming disabled (within the meaning of section 409A(a)(2)(C)).

“(4) No double counting.—Under regulations, proper adjustments shall be made in the application of this subsection to prevent a deduction from being disallowed more than once.”.

(e) 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 may (by regulation) establish a minimum amount of deferrals below which paragraph (13) does not apply.”.

(d) 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 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.”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to amounts deferred in taxable years beginning after December 31, 2004.

(2) EARNINGS ATTRIBUTABLE TO AMOUNT PREVIOUSLY DEFERRED.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

(f) 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.
(g) **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 non-qualified deferred compensation plan adopted on or before December 31, 2004, may, without violating the requirements of paragraphs (2), (3), (4), and (5) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), terminate participation or cancel an outstanding deferral election with regard to amounts earned after December 31, 2004, if such amounts are includible in income as earned.

**SEC. 672. Prohibition on Deferral of Gain from the Exercise of Stock Options and Restricted Stock Gains Through Deferred Compensation Arrangements.**

(a) **In General.**—Section 83 (relating to property transferred in connection with performance of services) is amending by adding at the end the following new subsection:

“(i) Prohibition on Additional Deferral Through Deferred Compensation Arrangements.**—If a taxpayer exchanges—
“(1) an option to purchase employer securities—

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

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

“(2) employer securities or any other property based on employer securities transferred to the taxpayer,

for a right to receive future payments, then, notwithstanding any other provision of this title, there shall be included in gross income for the taxable year of the exchange an amount equal to the present value of such right (or such other amount as the Secretary may by regulations specify). For purposes of this subsection, the term ‘employer securities’ includes any security issued by the employer.”.

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

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

On page 581, strike lines 1 through 20, and insert the following:
SEC. 675. APPLICATION OF BASIS RULES TO EMPLOYER
AND EMPLOYEE CONTRIBUTIONS ON BEHALF
OF NONRESIDENT ALIENS.

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

“(w) Application of Basis Rules to Employer
and Employee Contributions Made on Behalf of
Nonresident Aliens.—

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

“(2) Applicable Nontaxable Contribution.—For purposes of this subsection, the term
‘applicable nontaxable contribution’ means any em-
ployer or employee contribution—

“(A) which was made with respect to com-
pensation for labor or personal services by an
employee who, at the time the services were
performed, was a nonresident alien for purposes
of the laws of the United States in effect at such time, but only if such compensation is treated as from sources without the United States, and

“(B) which was not subject to income tax under the laws of the United States or any foreign country.

“(3) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.”.

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

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

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

On page 596, line 22, strike “Section 904(h)” and insert “Section 904(i), as redesignated by this Act,”.
Beginning on page 598, line 17, strike all through 601, line 7, and insert the following:

(a) AMENDMENTS OF ERISA.—


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

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

(b) MINIMUM COST REQUIREMENTS.—

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

“(ii) INSIGNIFICANT COST REDUCTIONS PERMITTED.—

“(I) IN GENERAL.—An eligible employer shall not be treated as fail-
ing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

“(II) ELIGIBLE EMPLOYER.—For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer.
For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer’s gross receipts.”.

(2) **CONFORMING AMENDMENT.**—Section 420(c)(3)(E) is amended by striking “The Secretary” and inserting:

“(i) **IN GENERAL.**—The Secretary”.

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

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

On page 606, line 21, strike “6717” and insert “6720A”.

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

On page 607, in the matter after line 20, strike “6717” and insert “6720A”.
On page 608, line 4, insert “, as amended by this Act,” after “vaccine)”.

On page 608, line 6, strike “(M)” and insert “(N)”.

On page 608, strike lines 8 through 11.

On page 612, line 10, strike the end quotation marks and second period.

On page 624, line 7, strike “or”.

On page 624, line 11, strike the period and insert “, or”.

On page 624, between lines 11 and 12, insert the following:

“(VI) the Tennessee Valley Authority.

On page 624, lines 13 and 14, strike “A person described in subparagraph (A)(ii)” and insert “A person described in subclause (I), (II), (III), (IV), or (V) of subparagraph (A)(ii)”.
On page 625, between lines 21 and 22, insert the following:

“(D) Use by TVA.—

“(i) In general.—Notwithstanding any other provision of law, in the case of a person described in subparagraph (A)(ii)(VI), any credit to which subparagraph (A)(i) applies may be applied as a credit against the payments required to be made in any fiscal year under section 15d(e) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4(e)) as an annual return on the appropriations investment and an annual repayment sum.

“(ii) Treatment of credits.—The aggregate amount of credits described in subparagraph (A)(i) with respect to such person shall be treated in the same manner and to the same extent as if such credits were a payment in cash and shall be applied first against the annual return on the appropriations investment.

“(iii) Credit carryover.—With respect to any fiscal year, if the aggregate amount of credits described subparagraph
(A)(i) with respect to such person exceeds
the aggregate amount of payment obliga-
tions described in clause (i), the excess
amount shall remain available for applica-
tion as credits against the amounts of such
payment obligations in succeeding fiscal
years in the same manner as described in
this subparagraph.

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

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

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

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

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

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

(1) Section 1016(a) is amended by striking
“and” at the end of paragraph (31), by striking the
period at the end of paragraph (32) and inserting “, and”, and by adding at the end the following new paragraph:

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

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

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

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

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

(c) EFFECTIVE DATE.—The amendments made by

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

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

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

(1) Section 1016(a), as amended by this Act, is amended by striking “and” at the end of paragraph
(32), by striking the period at the end of paragraph
(33) and inserting “, and”, and by adding at the
end the following new paragraph:
“(34) to the extent provided in section
30D(f).”.

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

(3) The table of sections for subpart B of part
IV of subchapter A of chapter 1, as amended by this
Act, is amended by inserting after the item relating
to section 30C the following new item:
“See. 30D. Clean-fuel vehicle refueling property credit.”.

(e) EFFECTIVE DATE.—The amendments made by

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

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

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

On page 702, line 3, strike “Section 904(h)” and in-
sert “Section 904(i), as redesignated and amended by this
Act,”.
On page 702, strike lines 8 through 15, and insert the following:

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

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

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

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

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

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

(4) Section 263(a)(1), as amended by this Act, is amended by striking “or” at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting “, or”, and by inserting
after subparagraph (I) the following new subpara-
graph:

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

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

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

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

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

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

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

On page 735, line 3, strike “(33)” and insert “(37)”.
Beginning on page 747, line 23, strike all through page 748, line 5, and insert the following:

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

“(3) the qualifying advanced clean coal technology unit credit.”.

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

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

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

On page 781, line 3, strike “(17)” and insert “(18)”. 
On page 782, in the matter following line 2, strike “(C)(ii)” and insert “(C)(iii)”. 

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

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

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

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

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

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

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

On page 785, line 1, strike “(5)” and insert “(6)”. 
On page 793, line 15, strike “(33)” and insert “(37)”.  

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

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

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

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

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

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

On page 807, line 2, insert “, as amended by this Act,” after “38(b)”.
On page 808, strike lines 8 through 12, and insert the following:

(G) Subsection (a) of section 772, as amended by this Act, is amended by striking paragraph (10) and by redesignating paragraphs (11) and (12) as paragraphs (10) and (11), respectively.

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

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

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

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

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

On page 818, strike lines 19 through 25, and insert the following:
(a) In General.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking “and” at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

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

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

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

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

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

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

On page 840, line 17, strike “(18)” and insert “(20)”.
1 On page 849, line 20, strike “5211 and 5242” and insert “871 and 880”.

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

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

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

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

   (i) by striking “and” at the end of paragraph (1),

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

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

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

   (iv) by striking “FUEL CREDIT” in the heading and inserting “AND BIODIESEL FUELS CREDITS”.
Beginning on page 862, line 24, strike all through page 863, line 5, and insert the following:

(2) Section 196(c), as amended by this Act, 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 adding at the end the following new paragraph:

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

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

(M) Subparagraph (B) of section 6724(d)(1), as amended by this Act, is amended by striking clause (xvi) and by redesignating clauses (xvii), (xviii), and (xix) as clauses (xvi), (xvii), and (xviii), respectively.

(N) Paragraph (2) of section 6724(d), as amended by this Act, is amended by striking subparagraph (X) and by redesignating subparagraphs (Y), (Z), (AA), (BB), and (CC) as subparagraphs (X), (Y), (Z), (AA), and (BB), respectively.
On page 878, line 8, strike “PENALTY—” and insert “PENALTY.—”.

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

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

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

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

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

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

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

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

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

On page 890, line 16, strike the second period.
On page 890, line 18, strike “section 5242 of”.

On page 890, line 22, strike the second period.

On page 891, line 22, strike “section 5242 of”.

On page 892, line 17, strike “section 5242 of”.

On page 895, lines 18 and 19, strike “section 5245 of”.

On page 898, lines 20 and 21, strike “section 5102 of”.

On page 902, lines 24 and 25, strike “section 5152 of”.

On page 903, line 10, strike “section 5251 of”.

On page 904, line 15, strike “section 5251 of”.

On page 906, lines 12 and 13, strike “, as amended by section 5001 of this Act,”.
On page 907, lines 12 and 13, strike “, as amended by section 5001 of this Act,”.

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

On page 910, lines 20 and 21, strike “section 5211 of’.

On page 912, lines 9 and 10, strike “section 5243 of’.

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

On page 912, lines 20 and 21, strike “section 5241 of’.

On page 912, line 24, strike the space after the beginning quotation marks.

On page 913, strike lines 1 and 2, and insert the following:
(II) in the heading, by inserting “OR REPORTABLE LIQUIDS” after “TAXABLE FUEL”.

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

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

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

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

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

SEC. 899B. CREDIT FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.

(a) ALLOWANCE OF QUALIFYING POLLUTION CON- TROL EQUIPMENT CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking “and” at the end of paragraph (2), by striking
the period at the end of paragraph (3) and inserting ‘‘, and’’, and by adding at the end the following new paragraph:

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

(b) Amount of Qualifying Pollution Control Equipment Credit.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit), as amended by this Act, is amended by inserting after section 48A the following new section:

“SEC. 48B. QUALIFYING POLLUTION CONTROL EQUIPMENT CREDIT.

“(a) In General.—For purposes of section 46, the qualifying pollution control equipment credit for any taxable year is an amount equal to 15 percent of the basis of the qualifying pollution control equipment placed in service at a qualifying facility during such taxable year.

“(b) Qualifying Pollution Control Equipment.—For purposes of this section, the term ‘qualifying pollution control equipment’ means any technology installed in or on a qualifying facility to reduce air emissions of any pollutant regulated by the Environmental Protection Agency under the Clean Air Act, including thermal oxidizers, regenerative thermal oxidizers, scrubber systems, evaporative control systems, vapor recovery systems,
flair systems, bag houses, cyclones, continuous emissions monitoring systems, and low nitric oxide burners.

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

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

“(e) CERTAIN QUALIFIED PROGRESS EXPENDITURES RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.”.

(e) RECAPTURE OF CREDIT WHERE EMISSIONS REDUCTION OFFSET IS SOLD.—Paragraph (1) of section 50(a) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) SPECIAL RULE FOR QUALIFYING POLLUTION CONTROL EQUIPMENT.—For purposes of subparagraph (A), any investment property which is qualifying pollution control equipment (as defined in section 48B(b)) shall cease to be
investment credit property with respect to a taxpayer if such taxpayer receives a payment in exchange for a credit for emission reductions attributable to such qualifying pollution control equipment for purposes of an offset requirement under part D of title I of the Clean Air Act.”.

(d) Special Rule for Basis Reduction; RecapTURE OF CREDIT.—Paragraph (3) of section 50(c) (relating to basis adjustment to investment credit property), as amended by this Act, is amended by inserting “or qualifying pollution control equipment credit” after “energy credit”.

(e) Effective Date.—The amendments made by this section shall apply to property placed in service after December 31, 2003, in taxable years ending after such date, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).