

Calendar No. 113

108TH CONGRESS
1ST SESSION**S. 1149****[Report No. 108-54]**

To amend the Internal Revenue Code of 1986 to provide energy tax incentives,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2003

Mr. GRASSLEY, from the Committee on Finance, reported the following
original bill; which was read twice and placed on the calendar

A BILL

To amend the Internal Revenue Code of 1986 to provide
energy tax incentives, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Energy Tax Incentives Act of 2003”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this division an
8 amendment or repeal is expressed in terms of an amend-

1 ment to, or repeal of, a section or other provision, the ref-
 2 erence shall be considered to be made to a section or other
 3 provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; etc.

TITLE I—RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT

Sec. 101. Extension and expansion of credit for electricity produced from cer-
 tain renewable resources.

TITLE II—ALTERNATIVE MOTOR VEHICLES AND FUELS INCENTIVES

- Sec. 201. Alternative motor vehicle credit.
- Sec. 202. Modification of credit for qualified electric vehicles.
- Sec. 203. Credit for installation of alternative fueling stations.
- Sec. 204. Credit for retail sale of alternative fuels as motor vehicle fuel.
- Sec. 205. Small ethanol producer credit.
- Sec. 206. Increased flexibility in alcohol fuels tax credit.
- Sec. 207. Incentives for biodiesel.
- Sec. 208. Alcohol fuel and biodiesel mixtures excise tax credit.
- Sec. 209. Sale of gasoline and diesel fuel at duty-free sales enterprises.

TITLE III—CONSERVATION AND ENERGY EFFICIENCY PROVISIONS

- Sec. 301. Credit for construction of new energy efficient home.
- Sec. 302. Credit for energy efficient appliances.
- Sec. 303. Credit for residential energy efficient property.
- Sec. 304. Credit for business installation of qualified fuel cells and stationary
 microturbine power plants.
- Sec. 305. Energy efficient commercial buildings deduction.
- Sec. 306. Three-year applicable recovery period for depreciation of qualified en-
 ergy management devices.
- Sec. 307. Three-year applicable recovery period for depreciation of qualified
 water submetering devices.
- Sec. 308. Energy credit for combined heat and power system property.
- Sec. 309. Credit for energy efficiency improvements to existing homes.

TITLE IV—CLEAN COAL INCENTIVES

Subtitle A—Credit for Emission Reductions and Efficiency Improvements in Existing Coal-Based Electricity Generation Facilities

Sec. 401. Credit for production from a qualifying clean coal technology unit.

Subtitle B—Incentives for Early Commercial Applications of Advanced Clean Coal Technologies

Sec. 411. Credit for investment in qualifying advanced clean coal technology.

Sec. 412. Credit for production from a qualifying advanced clean coal technology unit.

Subtitle C—Treatment of Persons Not Able To Use Entire Credit

Sec. 421. Treatment of persons not able to use entire credit.

TITLE V—OIL AND GAS PROVISIONS

- Sec. 501. Oil and gas from marginal wells.
 Sec. 502. Natural gas gathering lines treated as 7-year property.
 Sec. 503. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
 Sec. 504. Environmental tax credit.
 Sec. 505. Determination of small refiner exception to oil depletion deduction.
 Sec. 506. Marginal production income limit extension.
 Sec. 507. Amortization of delay rental payments.
 Sec. 508. Amortization of geological and geophysical expenditures.
 Sec. 509. Extension and modification of credit for producing fuel from a non-conventional source.
 Sec. 510. Natural gas distribution lines treated as 15-year property.
 Sec. 511. Credit for Alaska natural gas.
 Sec. 512. Certain Alaska natural gas pipeline property treated as 7-year property.
 Sec. 513. Arbitrage rules not to apply to prepayments for natural gas.

TITLE VI—ELECTRIC UTILITY RESTRUCTURING PROVISIONS

- Sec. 601. Modifications to special rules for nuclear decommissioning costs.
 Sec. 602. Treatment of certain income of cooperatives.
 Sec. 603. Sales or dispositions to implement Federal Energy Regulatory Commission or State electric restructuring policy.

TITLE VII—ADDITIONAL PROVISIONS

- Sec. 701. Extension of accelerated depreciation and wage credit benefits on Indian reservations.
 Sec. 702. Study of effectiveness of certain provisions by GAO.
 Sec. 703. Repeal of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
 Sec. 704. Expansion of research credit.

TITLE VIII—REVENUE PROVISIONS

Subtitle A—Provisions Designed To Curtail Tax Shelters

- Sec. 801. Penalty for failing to disclose reportable transaction.
 Sec. 802. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
 Sec. 803. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
 Sec. 804. Disclosure of reportable transactions.
 Sec. 805. Modifications to penalty for failure to register tax shelters.
 Sec. 806. Modification of penalty for failure to maintain lists of investors.
 Sec. 807. Penalty on promoters of tax shelters.

Subtitle B—Provisions to Discourage Corporate Expatriation

- Sec. 821. Tax treatment of inverted corporate entities.
 Sec. 822. Excise tax on stock compensation of insiders in inverted corporations.
 Sec. 823. Reinsurance of United States risks in foreign jurisdictions.

Subtitle C—Other Revenue Provisions

- Sec. 831. Extension of Internal Revenue Service user fees.
 Sec. 832. Addition of vaccines against hepatitis A to list of taxable vaccines.
 Sec. 833. Individual expatriation to avoid tax.

1 **TITLE I—RENEWABLE ELECTRICITY PRODUCTION TAX CREDIT**

4 **SEC. 101. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.**

7 (a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources) is amended to read as follows:

11 “(c) QUALIFIED ENERGY RESOURCES.—For purposes of this section—

13 “(1) IN GENERAL.—The term ‘qualified energy resources’ means—

15 “(A) wind,

16 “(B) closed-loop biomass,

17 “(C) biomass (other than closed-loop biomass),

19 “(D) geothermal energy,

20 “(E) solar energy,

21 “(F) small irrigation power,

1 “(G) biosolids and sludge, and

2 “(H) municipal solid waste.”.

3 “(2) CLOSED-LOOP BIOMASS.—The term
4 ‘closed-loop biomass’ means any organic material
5 from a plant which is planted exclusively for pur-
6 poses of being used at a qualified facility to produce
7 electricity.

8 “(3) BIOMASS.—

9 “(A) IN GENERAL.—The term ‘biomass’
10 means—

11 “(i) any agricultural livestock waste
12 nutrients, or

13 “(ii) any solid, nonhazardous, cel-
14 lulosic waste material which is segregated
15 from other waste materials and which is
16 derived from—

17 “(I) any of the following forest-
18 related resources: mill and harvesting
19 residues, precommercial thinnings,
20 slash, and brush,

21 “(II) solid wood waste materials,
22 including waste pallets, crates,
23 dunnage, manufacturing and con-
24 struction wood wastes (other than
25 pressure-treated, chemically-treated,

1 or painted wood wastes), and land-
 2 scape or right-of-way tree trimmings,
 3 but not including municipal solid
 4 waste, gas derived from the bio-
 5 degradation of solid waste, or paper
 6 which is commonly recycled, or

7 “(III) agriculture sources, includ-
 8 ing orchard tree crops, vineyard,
 9 grain, legumes, sugar, and other crop
 10 by-products or residues.

11 “(B) AGRICULTURAL LIVESTOCK WASTE
 12 NUTRIENTS.—

13 “(i) IN GENERAL.—The term ‘agricul-
 14 tural livestock waste nutrients’ means agri-
 15 cultural livestock manure and litter, includ-
 16 ing wood shavings, straw, rice hulls, and
 17 other bedding material for the disposition
 18 of manure.

19 “(ii) AGRICULTURAL LIVESTOCK.—
 20 The term ‘agricultural livestock’ includes
 21 bovine, swine, poultry, and sheep.

22 “(4) GEOTHERMAL ENERGY.—The term ‘geo-
 23 thermal energy’ means energy derived from a geo-
 24 thermal deposit (within the meaning of section
 25 613(e)(2)).

1 “(5) SMALL IRRIGATION POWER.—The term
2 ‘small irrigation power’ means power—

3 “(A) generated without any dam or im-
4 poundment of water through an irrigation sys-
5 tem canal or ditch, and

6 “(B) the installed capacity of which is less
7 than 5 megawatts.

8 “(6) BIOSOLIDS AND SLUDGE.—The term ‘bio-
9 solids and sludge’ means the residue or solids re-
10 moved in the treatment of commercial, industrial, or
11 municipal wastewater.

12 “(7) MUNICIPAL SOLID WASTE.—The term
13 ‘municipal solid waste’ has the meaning given the
14 term ‘solid waste’ under section 2(27) of the Solid
15 Waste Disposal Act (42 U.S.C. 6903).”.

16 (b) EXTENSION AND EXPANSION OF QUALIFIED FA-
17 CILITIES.—

18 (1) IN GENERAL.—Section 45 is amended by
19 redesignating subsection (d) as subsection (e) and by
20 inserting after subsection (e) the following new sub-
21 section:

22 “(d) QUALIFIED FACILITIES.—For purposes of this
23 section—

24 “(1) WIND FACILITY.—In the case of a facility
25 using wind to produce electricity, the term ‘qualified

1 facility' means any facility owned by the taxpayer
2 which is originally placed in service after December
3 31, 1993, and before January 1, 2007.

4 “(2) CLOSED-LOOP BIOMASS FACILITY.—

5 “(A) IN GENERAL.—In the case of a facil-
6 ity using closed-loop biomass to produce elec-
7 tricity, the term ‘qualified facility’ means any
8 facility—

9 “(i) owned by the taxpayer which is
10 originally placed in service after December
11 31, 1992, and before January 1, 2007, or

12 “(ii) owned by the taxpayer which be-
13 fore January 1, 2007, is originally placed
14 in service and modified to use closed-loop
15 biomass to co-fire with coal, with other bio-
16 mass, or with both, but only if the modi-
17 fication is approved under the Biomass
18 Power for Rural Development Programs or
19 is part of a pilot project of the Commodity
20 Credit Corporation as described in 65 Fed.
21 Reg. 63052.

22 “(B) SPECIAL RULES.—In the case of a
23 qualified facility described in subparagraph
24 (A)(ii)—

1 “(i) the 10-year period referred to in
2 subsection (a) shall be treated as beginning
3 no earlier than the date of the enactment
4 of the Energy Tax Incentives Act of 2003,

5 “(ii) the amount of the credit deter-
6 mined under subsection (a) with respect to
7 the facility shall be an amount equal to the
8 amount determined without regard to this
9 clause multiplied by the ratio of the ther-
10 mal content of the closed-loop biomass
11 used in such facility to the thermal content
12 of all fuels used in such facility, and

13 “(iii) if the owner of such facility is
14 not the producer of the electricity, the per-
15 son eligible for the credit allowable under
16 subsection (a) shall be the lessee or the op-
17 erator of such facility.

18 “(3) BIOMASS FACILITY.—

19 “(A) IN GENERAL.—In the case of a facil-
20 ity using biomass (other than closed-loop bio-
21 mass) to produce electricity, the term ‘qualified
22 facility’ means any facility owned by the tax-
23 payer which—

24 “(i) in the case of a facility using ag-
25 ricultural livestock waste nutrients, is

1 originally placed in service after the date of
2 the enactment of the Energy Tax Incen-
3 tives Act of 2003 and before January 1,
4 2007, and

5 “(ii) in the case of any other facility,
6 is originally placed in service before Janu-
7 ary 1, 2005.

8 “(B) SPECIAL RULES FOR PREEFFECTIVE
9 DATE FACILITIES.—In the case of any facility
10 described in subparagraph (A)(ii) which is
11 placed in service before the date of the enact-
12 ment of such Act—

13 “(i) subsection (a)(1) shall be applied
14 by substituting ‘1.2 cents’ for ‘1.5 cents’,
15 and

16 “(ii) the 5-year period beginning on
17 January 1, 2004, shall be substituted for
18 the 10-year period in subsection
19 (a)(2)(A)(ii).

20 “(C) CREDIT ELIGIBILITY.—In the case of
21 any facility described in subparagraph (A), if
22 the owner of such facility is not the producer of
23 the electricity, the person eligible for the credit
24 allowable under subsection (a) shall be the les-
25 see or the operator of such facility.

1 “(4) GEOTHERMAL OR SOLAR ENERGY FACIL-
2 ITY.—

3 “(A) IN GENERAL.—In the case of a facil-
4 ity using geothermal or solar energy to produce
5 electricity, the term ‘qualified facility’ means
6 any facility owned by the taxpayer which is
7 originally placed in service after the date of the
8 enactment of the Energy Tax Incentives Act of
9 2003 and before January 1, 2007.

10 “(B) SPECIAL RULE.—In the case of any
11 facility described in subparagraph (A), the 5-
12 year period beginning on the date the facility
13 was originally placed in service shall be sub-
14 stituted for the 10-year period in subsection
15 (a)(2)(A)(ii).

16 “(5) SMALL IRRIGATION POWER FACILITY.—In
17 the case of a facility using small irrigation power to
18 produce electricity, the term ‘qualified facility’
19 means any facility owned by the taxpayer which is
20 originally placed in service after the date of the en-
21 actment of the Energy Tax Incentives Act of 2003
22 and before January 1, 2007.

23 “(6) BIOSOLIDS AND SLUDGE FACILITY.—In
24 the case of a facility using waste heat from the in-
25 cineration of biosolids and sludge to produce elec-

1 tricity, the term ‘qualified facility’ means any facility
2 owned by the taxpayer which is originally placed in
3 service after the date of the enactment of the En-
4 ergy Tax Incentives Act of 2003 and before January
5 1, 2007. Such term shall not include any property
6 described in section 48(a)(5) the basis of which is
7 taken into account for purposes of the energy credit
8 under section 46.

9 “(7) MUNICIPAL SOLID WASTE FACILITY.—

10 “(A) IN GENERAL.—In the case of a facil-
11 ity or unit incinerating municipal solid waste to
12 produce electricity, the term ‘qualified facility’
13 means any facility or unit owned by the tax-
14 payer which is originally placed in service after
15 the date of the enactment of the Energy Tax
16 Incentives Act of 2003 and before January 1,
17 2007.

18 “(B) SPECIAL RULE.—In the case of any
19 facility or unit described in subparagraph (A),
20 the 5-year period beginning on the date the fa-
21 cility or unit was originally placed in service
22 shall be substituted for the 10-year period in
23 subsection (a)(2)(A)(ii).

24 “(C) CREDIT ELIGIBILITY.—In the case of
25 any qualified facility described in subparagraph

1 (A), if the owner of such facility is not the pro-
2 ducer of the electricity, the person eligible for
3 the credit allowable under subsection (a) shall
4 be the lessee or the operator of such facility.”.

5 (2) NO CREDIT FOR CERTAIN PRODUCTION.—
6 Section 45(e) (relating to definitions and special
7 rules), as redesignated by paragraph (1), is amended
8 by striking paragraph (6) and inserting the following
9 new paragraph:

10 “(6) OPERATIONS INCONSISTENT WITH SOLID
11 WASTE DISPOSAL ACT.—In the case of a qualified fa-
12 cility described in subsection (d)(6)(A), subsection
13 (a) shall not apply to electricity produced at such fa-
14 cility during any taxable year if, during a portion of
15 such year, there is a certification in effect by the
16 Administrator of the Environmental Protection
17 Agency that such facility was permitted to operate
18 in a manner inconsistent with section 4003(d) of the
19 Solid Waste Disposal Act (42 U.S.C. 6943(d)).”.

20 (3) CONFORMING AMENDMENT.—Section 45(e),
21 as so redesignated, is amended by striking “sub-
22 section (c)(3)(A)” in paragraph (7)(A)(i) and insert-
23 ing “subsection (d)(1)”.

24 (c) CREDIT RATE FOR ELECTRICITY PRODUCED
25 FROM NEW FACILITIES.—

1 (1) IN GENERAL.—Section 45(a) is amended by
2 adding at the end the following new flush sentence:
3 “In the case of electricity produced after 2003 at any
4 qualified facility originally placed in service after the date
5 of the enactment of the Energy Tax Incentives Act of
6 2003, paragraph (1) shall be applied by substituting ‘1.8
7 cents’ for ‘1.5 cents.’”.

8 (2) NEW RATE NOT SUBJECT TO INFLATION
9 ADJUSTMENT.—Section 45(b)(2) (relating to credit
10 and phaseout adjustment based on inflation) is
11 amended by adding at the end the following new
12 sentence: “This paragraph shall not apply to any
13 amount which is substituted for the 1.5 cent amount
14 in subsection (a) by reason of any provision of this
15 section.”.

16 (d) ELIMINATION OF CERTAIN CREDIT REDUC-
17 TIONS.—Section 45(b)(3)(A) (relating to credit reduced
18 for grants, tax-exempt bonds, subsidized energy financing,
19 and other credits) is amended—

20 (1) by striking clause (ii),

21 (2) by redesignating clauses (iii) and (iv) as
22 clauses (ii) and (iii),

23 (3) by inserting “(other than proceeds of an
24 issue of State or local government obligations the in-
25 terest on which is exempt from tax under section

1 103, or any loan, debt, or other obligation incurred
 2 under subchapter I of chapter 31 of title 7 of the
 3 Rural Electrification Act of 1936 (7 U.S.C. 901 et
 4 seq.), as in effect on the date of the enactment of
 5 the Energy Tax Incentives Act of 2003)” after
 6 “project” in clause (ii) (as so redesignated),

7 (4) by adding at the end the following new sen-
 8 tence: “This paragraph shall not apply with respect
 9 to any facility described in subsection (d)(2)(A)(ii).”,
 10 and

11 (5) by striking “TAX-EXEMPT BONDS,” in the
 12 heading and inserting “CERTAIN”.

13 (e) TREATMENT OF PERSONS NOT ABLE TO USE
 14 ENTIRE CREDIT.—Section 45(e) (relating to definitions
 15 and special rules), as redesignated by subsection (b)(1),
 16 is amended by adding at the end the following new para-
 17 graph:

18 “(8) TREATMENT OF PERSONS NOT ABLE TO
 19 USE ENTIRE CREDIT.—

20 “(A) ALLOWANCE OF CREDIT.—

21 “(i) IN GENERAL.—Except as other-
 22 wise provided in this subsection—

23 “(I) any credit allowable under
 24 subsection (a) with respect to a quali-
 25 fied facility owned by a person de-

1 scribed in clause (ii) may be trans-
2 ferred or used as provided in this
3 paragraph, and

4 “(II) the determination as to
5 whether the credit is allowable shall
6 be made without regard to the tax-ex-
7 empt status of the person.

8 “(ii) PERSONS DESCRIBED.—A person
9 is described in this clause if the person
10 is—

11 “(I) an organization described in
12 section 501(c)(12)(C) and exempt
13 from tax under section 501(a),

14 “(II) an organization described
15 in section 1381(a)(2)(C),

16 “(III) a public utility (as defined
17 in section 136(c)(2)(B)), which is ex-
18 empt from income tax under this sub-
19 title,

20 “(IV) any State or political sub-
21 division thereof, the District of Co-
22 lumbia, any possession of the United
23 States, or any agency or instrumen-
24 tality of any of the foregoing, or

1 “(V) any Indian tribal govern-
2 ment (within the meaning of section
3 7871) or any agency or instrumen-
4 tality thereof.

5 “(B) TRANSFER OF CREDIT.—

6 “(i) IN GENERAL.—A person de-
7 scribed in subparagraph (A)(ii) may trans-
8 fer any credit to which subparagraph
9 (A)(i) applies through an assignment to
10 any other person not described in subpara-
11 graph (A)(ii). Such transfer may be re-
12 voked only with the consent of the Sec-
13 retary.

14 “(ii) REGULATIONS.—The Secretary
15 shall prescribe such regulations as nec-
16 essary to ensure that any credit described
17 in clause (i) is assigned once and not reas-
18 signed by such other person.

19 “(iii) TRANSFER PROCEEDS TREATED
20 AS ARISING FROM ESSENTIAL GOVERN-
21 MENT FUNCTION.—Any proceeds derived
22 by a person described in subclause (III),
23 (IV), or (V) of subparagraph (A)(ii) from
24 the transfer of any credit under clause (i)

1 shall be treated as arising from the exer-
2 cise of an essential government function.

3 “(C) USE OF CREDIT AS AN OFFSET.—

4 Notwithstanding any other provision of law, in
5 the case of a person described in subclause (I),
6 (II), or (V) of subparagraph (A)(ii), any credit
7 to which subparagraph (A)(i) applies may be
8 applied by such person, to the extent provided
9 by the Secretary of Agriculture, as a prepay-
10 ment of any loan, debt, or other obligation the
11 entity has incurred under subchapter I of chap-
12 ter 31 of title 7 of the Rural Electrification Act
13 of 1936 (7 U.S.C. 901 et seq.), as in effect on
14 the date of the enactment of the Energy Tax
15 Incentives Act of 2003.

16 “(D) CREDIT NOT INCOME.—Any transfer
17 under subparagraph (B) or use under subpara-
18 graph (C) of any credit to which subparagraph
19 (A)(i) applies shall not be treated as income for
20 purposes of section 501(c)(12).

21 “(E) TREATMENT OF UNRELATED PER-
22 SONS.—For purposes of subsection (a)(2)(B),
23 sales of electricity among and between persons
24 described in subparagraph (A)(ii) shall be treat-
25 ed as sales between unrelated parties.”.

1 (f) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as otherwise pro-
3 vided in this subsection, the amendments made by
4 this section shall apply to electricity produced and
5 sold after the date of the enactment of this Act, in
6 taxable years ending after such date.

7 (2) CERTAIN BIOMASS FACILITIES.—With re-
8 spect to any facility described in section
9 45(d)(3)(A)(ii) of the Internal Revenue Code of
10 1986, as added by subsection (b)(1), which is placed
11 in service before the date of the enactment of this
12 Act, the amendments made by this section shall
13 apply to electricity produced and sold after Decem-
14 ber 31, 2003, in taxable years ending after such
15 date.

16 (3) CREDIT RATE FOR NEW FACILITIES.—The
17 amendments made by subsection (c) shall apply to
18 electricity produced and sold after December 31,
19 2003, in taxable years ending after such date.

20 (4) NONAPPLICATION OF AMENDMENTS TO
21 PREEFFECTIVE DATE POULTRY WASTE FACILI-
22 TIES.—The amendments made by this section shall
23 not apply with respect to any poultry waste facility
24 (within the meaning of section 45(c)(3)(C), as in ef-
25 fect on the day before the date of the enactment of

1 this Act) placed in service on or before such date of
2 enactment.

3 **TITLE II—ALTERNATIVE MOTOR**
4 **VEHICLES AND FUELS INCEN-**
5 **TIVES**

6 **SEC. 201. ALTERNATIVE MOTOR VEHICLE CREDIT.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
8 chapter A of chapter 1 (relating to foreign tax credit, etc.)
9 is amended by adding at the end the following new section:

10 **“SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.**

11 “(a) ALLOWANCE OF CREDIT.—There shall be al-
12 lowed as a credit against the tax imposed by this chapter
13 for the taxable year an amount equal to the sum of—

14 “(1) the new qualified fuel cell motor vehicle
15 credit determined under subsection (b),

16 “(2) the new qualified hybrid motor vehicle
17 credit determined under subsection (c), and

18 “(3) the new qualified alternative fuel motor ve-
19 hicle credit determined under subsection (d).

20 “(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE
21 CREDIT.—

22 “(1) IN GENERAL.—For purposes of subsection
23 (a), the new qualified fuel cell motor vehicle credit
24 determined under this subsection with respect to a

1 new qualified fuel cell motor vehicle placed in service
2 by the taxpayer during the taxable year is—

3 “(A) \$4,000, if such vehicle has a gross ve-
4 hicle weight rating of not more than 8,500
5 pounds,

6 “(B) \$10,000, if such vehicle has a gross
7 vehicle weight rating of more than 8,500
8 pounds but not more than 14,000 pounds,

9 “(C) \$20,000, if such vehicle has a gross
10 vehicle weight rating of more than 14,000
11 pounds but not more than 26,000 pounds, and

12 “(D) \$40,000, if such vehicle has a gross
13 vehicle weight rating of more than 26,000
14 pounds.

15 “(2) INCREASE FOR FUEL EFFICIENCY.—

16 “(A) IN GENERAL.—The amount deter-
17 mined under paragraph (1)(A) with respect to
18 a new qualified fuel cell motor vehicle which is
19 a passenger automobile or light truck shall be
20 increased by—

21 “(i) \$1,000, if such vehicle achieves at
22 least 150 percent but less than 175 per-
23 cent of the 2002 model year city fuel econ-
24 omy,

1 “(ii) \$1,500, if such vehicle achieves
2 at least 175 percent but less than 200 per-
3 cent of the 2002 model year city fuel econ-
4 omy,

5 “(iii) \$2,000, if such vehicle achieves
6 at least 200 percent but less than 225 per-
7 cent of the 2002 model year city fuel econ-
8 omy,

9 “(iv) \$2,500, if such vehicle achieves
10 at least 225 percent but less than 250 per-
11 cent of the 2002 model year city fuel econ-
12 omy,

13 “(v) \$3,000, if such vehicle achieves
14 at least 250 percent but less than 275 per-
15 cent of the 2002 model year city fuel econ-
16 omy,

17 “(vi) \$3,500, if such vehicle achieves
18 at least 275 percent but less than 300 per-
19 cent of the 2002 model year city fuel econ-
20 omy, and

21 “(vii) \$4,000, if such vehicle achieves
22 at least 300 percent of the 2002 model
23 year city fuel economy.

24 “(B) 2002 MODEL YEAR CITY FUEL ECON-
25 OMY.—For purposes of subparagraph (A), the

1 2002 model year city fuel economy with respect
 2 to a vehicle shall be determined in accordance
 3 with the following tables:

4 “(i) In the case of a passenger auto-
 5 mobile:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

6 “(ii) In the case of a light truck:

“If vehicle inertia weight class is:	The 2002 model year city fuel economy is:
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

7 “(C) VEHICLE INERTIA WEIGHT CLASS.—

8 For purposes of subparagraph (B), the term
 9 ‘vehicle inertia weight class’ has the same
 10 meaning as when defined in regulations pre-

1 scribed by the Administrator of the Environ-
2 mental Protection Agency for purposes of the
3 administration of title II of the Clean Air Act
4 (42 U.S.C. 7521 et seq.).

5 “(3) NEW QUALIFIED FUEL CELL MOTOR VEHI-
6 CLE.—For purposes of this subsection, the term
7 ‘new qualified fuel cell motor vehicle’ means a motor
8 vehicle—

9 “(A) which is propelled by power derived
10 from 1 or more cells which convert chemical en-
11 ergy directly into electricity by combining oxy-
12 gen with hydrogen fuel which is stored on board
13 the vehicle in any form and may or may not re-
14 quire reformation prior to use,

15 “(B) which, in the case of a passenger
16 automobile or light truck—

17 “(i) for 2002 and later model vehicles,
18 has received a certificate of conformity
19 under the Clean Air Act and meets or ex-
20 ceeds the equivalent qualifying California
21 low emission vehicle standard under sec-
22 tion 243(e)(2) of the Clean Air Act for
23 that make and model year, and

24 “(ii) for 2004 and later model vehi-
25 cles, has received a certificate that such ve-

1 hicle meets or exceeds the Bin 5 Tier II
 2 emission level established in regulations
 3 prescribed by the Administrator of the En-
 4 vironmental Protection Agency under sec-
 5 tion 202(i) of the Clean Air Act for that
 6 make and model year vehicle,

7 “(C) the original use of which commences
 8 with the taxpayer,

9 “(D) which is acquired for use or lease by
 10 the taxpayer and not for resale, and

11 “(E) which is made by a manufacturer.

12 “(c) NEW QUALIFIED HYBRID MOTOR VEHICLE
 13 CREDIT.—

14 “(1) IN GENERAL.—For purposes of subsection
 15 (a), the new qualified hybrid motor vehicle credit de-
 16 termined under this subsection with respect to a new
 17 qualified hybrid motor vehicle placed in service by
 18 the taxpayer during the taxable year is the credit
 19 amount determined under paragraph (2).

20 “(2) CREDIT AMOUNT.—

21 “(A) IN GENERAL.—The credit amount de-
 22 termined under this paragraph shall be deter-
 23 mined in accordance with the following tables:

24 “(i) In the case of a new qualified hy-
 25 brid motor vehicle which is a passenger

1 automobile, medium duty passenger vehi-
 2 cle, or light truck and which provides the
 3 following percentage of the maximum
 4 available power:

“If percentage of the maximum available power is:	The credit amount is:
At least 4 percent but less than 10 percent	\$250
At least 10 percent but less than 20 percent	\$500
At least 20 percent but less than 30 percent	\$750
At least 30 percent	\$1,000.

5 “(ii) In the case of a new qualified hy-
 6 brid motor vehicle which is a heavy duty
 7 hybrid motor vehicle and which provides
 8 the following percentage of the maximum
 9 available power:

10 “(I) If such vehicle has a gross
 11 vehicle weight rating of not more than
 12 14,000 pounds:

“If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	\$1,000
At least 30 percent but less than 40 percent	\$1,750
At least 40 percent but less than 50 percent	\$2,000
At least 50 percent but less than 60 percent	\$2,250
At least 60 percent	\$2,500.

13 “(II) If such vehicle has a gross
 14 vehicle weight rating of more than
 15 14,000 but not more than 26,000
 16 pounds:

“If percentage of the maximum available power is:	The credit amount is:
At least 20 percent but less than 30 percent	\$4,000
At least 30 percent but less than 40 percent	\$4,500
At least 40 percent but less than 50 percent	\$5,000

“If percentage of the maximum available power is:

The credit amount is:

At least 50 percent but less than 60 percent	\$5,500
At least 60 percent	\$6,000.

1 “(III) If such vehicle has a gross
 2 vehicle weight rating of more than
 3 26,000 pounds:

“If percentage of the maximum available power is:

The credit amount is:

At least 20 percent but less than 30 percent	\$6,000
At least 30 percent but less than 40 percent	\$7,000
At least 40 percent but less than 50 percent	\$8,000
At least 50 percent but less than 60 percent	\$9,000
At least 60 percent	\$10,000.

4 “(B) INCREASE FOR FUEL EFFICIENCY.—

5 “(i) AMOUNT.—The amount deter-
 6 mined under subparagraph (A)(i) with re-
 7 spect to a new qualified hybrid motor vehi-
 8 cle which is a passenger automobile or
 9 light truck shall be increased by—

10 “(I) \$500, if such vehicle
 11 achieves at least 125 percent but less
 12 than 150 percent of the 2002 model
 13 year city fuel economy,

14 “(II) \$1,000, if such vehicle
 15 achieves at least 150 percent but less
 16 than 175 percent of the 2002 model
 17 year city fuel economy,

18 “(III) \$1,500, if such vehicle
 19 achieves at least 175 percent but less

1 than 200 percent of the 2002 model
2 year city fuel economy,

3 “(IV) \$2,000, if such vehicle
4 achieves at least 200 percent but less
5 than 225 percent of the 2002 model
6 year city fuel economy,

7 “(V) \$2,500, if such vehicle
8 achieves at least 225 percent but less
9 than 250 percent of the 2002 model
10 year city fuel economy, and

11 “(VI) \$3,000, if such vehicle
12 achieves at least 250 percent of the
13 2002 model year city fuel economy.

14 “(ii) 2002 MODEL YEAR CITY FUEL
15 ECONOMY.—For purposes of clause (i), the
16 2002 model year city fuel economy with re-
17 spect to a vehicle shall be determined on a
18 gasoline gallon equivalent basis as deter-
19 mined by the Administrator of the Envi-
20 ronmental Protection Agency using the ta-
21 bles provided in subsection (b)(2)(B) with
22 respect to such vehicle.

23 “(C) INCREASE FOR ACCELERATED EMIS-
24 SIONS PERFORMANCE.—The amount deter-
25 mined under subparagraph (A)(ii) with respect

1 to an applicable heavy duty hybrid motor vehi-
2 cle shall be increased by the increased credit
3 amount determined in accordance with the fol-
4 lowing tables:

5 “(i) In the case of a vehicle which has
6 a gross vehicle weight rating of not more
7 than 14,000 pounds:

“If the model year is:	The increased credit amount is:
2003	\$3,000
2004	\$2,500
2005	\$2,000
2006	\$1,500.

8 “(ii) In the case of a vehicle which
9 has a gross vehicle weight rating of more
10 than 14,000 pounds but not more than
11 26,000 pounds:

“If the model year is:	The increased credit amount is:
2003	\$7,750
2004	\$6,500
2005	\$5,250
2006	\$4,000.

12 “(iii) In the case of a vehicle which
13 has a gross vehicle weight rating of more
14 than 26,000 pounds:

“If the model year is:	The increased credit amount is:
2003	\$12,000
2004	\$10,000
2005	\$8,000
2006	\$6,000.

15 “(D) DEFINITIONS RELATING TO CREDIT
16 AMOUNT.—

1 “(i) APPLICABLE HEAVY DUTY HY-
2 BRID MOTOR VEHICLE.—For purposes of
3 subparagraph (C), the term ‘applicable
4 heavy duty hybrid motor vehicle’ means a
5 heavy duty hybrid motor vehicle which is
6 powered by an internal combustion or heat
7 engine which is certified as meeting the
8 emission standards set in the regulations
9 prescribed by the Administrator of the En-
10 vironmental Protection Agency for 2007
11 and later model year diesel heavy duty en-
12 gines, or for 2008 and later model year
13 ottocycle heavy duty engines, as applicable.

14 “(ii) MAXIMUM AVAILABLE POWER.—

15 “(I) PASSENGER AUTOMOBILE,
16 MEDIUM DUTY PASSENGER VEHICLE,
17 OR LIGHT TRUCK.—For purposes of
18 subparagraph (A)(i), the term ‘max-
19 imum available power’ means the
20 maximum power available from the re-
21 chargeable energy storage system,
22 during a standard 10 second pulse
23 power or equivalent test, divided by
24 such maximum power and the SAE
25 net power of the heat engine.

1 “(II) HEAVY DUTY HYBRID
2 MOTOR VEHICLE.—For purposes of
3 subparagraph (A)(ii), the term ‘max-
4 imum available power’ means the
5 maximum power available from the re-
6 chargeable energy storage system,
7 during a standard 10 second pulse
8 power or equivalent test, divided by
9 the vehicle’s total traction power. The
10 term ‘total traction power’ means the
11 sum of the peak power from the re-
12 chargeable energy storage system and
13 the heat engine peak power of the ve-
14 hicle, except that if such storage sys-
15 tem is the sole means by which the ve-
16 hicle can be driven, the total traction
17 power is the peak power of such stor-
18 age system.

19 “(3) NEW QUALIFIED HYBRID MOTOR VEHI-
20 CLE.—For purposes of this subsection—

21 “(A) IN GENERAL.—The term ‘new quali-
22 fied hybrid motor vehicle’ means a motor
23 vehicle—

1 “(i) which draws propulsion energy
2 from onboard sources of stored energy
3 which are both—

4 “(I) an internal combustion or
5 heat engine using consumable fuel,
6 and

7 “(II) a rechargeable energy stor-
8 age system,

9 “(ii) which, in the case of a passenger
10 automobile, medium duty passenger vehi-
11 cle, or light truck—

12 “(I) for 2002 and later model ve-
13 hicles, has received a certificate of
14 conformity under the Clean Air Act
15 and meets or exceeds the equivalent
16 qualifying California low emission ve-
17 hicle standard under section 243(e)(2)
18 of the Clean Air Act for that make
19 and model year, and

20 “(II) for 2004 and later model
21 vehicles, has received a certificate that
22 such vehicle meets or exceeds the Bin
23 5 Tier II emission level established in
24 regulations prescribed by the Adminis-
25 trator of the Environmental Protec-

1 tion Agency under section 202(i) of
2 the Clean Air Act for that make and
3 model year vehicle,

4 “(iii) which, in the case of a heavy
5 duty hybrid motor vehicle, has an internal
6 combustion or heat engine which has re-
7 ceived a certificate of conformity under the
8 Clean Air Act as meeting the emission
9 standards set in the regulations prescribed
10 by the Administrator of the Environmental
11 Protection Agency for 2004 through 2007
12 model year diesel heavy duty engines or
13 ottocycle heavy duty engines, as applicable,

14 “(iv) the original use of which com-
15 mences with the taxpayer,

16 “(v) which is acquired for use or lease
17 by the taxpayer and not for resale, and

18 “(vi) which is made by a manufac-
19 turer.

20 “(B) CONSUMABLE FUEL.—For purposes
21 of subparagraph (A)(i)(I), the term ‘consumable
22 fuel’ means any solid, liquid, or gaseous matter
23 which releases energy when consumed by an
24 auxiliary power unit.

1 “(4) HEAVY DUTY HYBRID MOTOR VEHICLE.—
2 For purposes of this subsection, the term ‘heavy
3 duty hybrid motor vehicle’ means a new qualified hy-
4 brid motor vehicle which has a gross vehicle weight
5 rating of more than 8,500 pounds. Such term does
6 not include a medium duty passenger vehicle.

7 “(d) NEW QUALIFIED ALTERNATIVE FUEL MOTOR
8 VEHICLE CREDIT.—

9 “(1) ALLOWANCE OF CREDIT.—Except as pro-
10 vided in paragraph (5), the new qualified alternative
11 fuel motor vehicle credit determined under this sub-
12 section is an amount equal to the applicable percent-
13 age of the incremental cost of any new qualified al-
14 ternative fuel motor vehicle placed in service by the
15 taxpayer during the taxable year.

16 “(2) APPLICABLE PERCENTAGE.—For purposes
17 of paragraph (1), the applicable percentage with re-
18 spect to any new qualified alternative fuel motor ve-
19 hicle is—

20 “(A) 40 percent, plus

21 “(B) 30 percent, if such vehicle—

22 “(i) has received a certificate of con-
23 formity under the Clean Air Act and meets
24 or exceeds the most stringent standard
25 available for certification under the Clean

1 Air Act for that make and model year vehi-
2 cle (other than a zero emission standard),
3 or

4 “(ii) has received an order certifying
5 the vehicle as meeting the same require-
6 ments as vehicles which may be sold or
7 leased in California and meets or exceeds
8 the most stringent standard available for
9 certification under the State laws of Cali-
10 fornia (enacted in accordance with a waiv-
11 er granted under section 209(b) of the
12 Clean Air Act) for that make and model
13 year vehicle (other than a zero emission
14 standard).

15 For purposes of the preceding sentence, in the case
16 of any new qualified alternative fuel motor vehicle
17 which weighs more than 14,000 pounds gross vehicle
18 weight rating, the most stringent standard available
19 shall be such standard available for certification on
20 the date of the enactment of the Energy Tax Incen-
21 tives Act of 2003.

22 “(3) INCREMENTAL COST.—For purposes of
23 this subsection, the incremental cost of any new
24 qualified alternative fuel motor vehicle is equal to
25 the amount of the excess of the manufacturer’s sug-

1 gested retail price for such vehicle over such price
2 for a gasoline or diesel fuel motor vehicle of the
3 same model, to the extent such amount does not
4 exceed—

5 “(A) \$5,000, if such vehicle has a gross ve-
6 hicle weight rating of not more than 8,500
7 pounds,

8 “(B) \$10,000, if such vehicle has a gross
9 vehicle weight rating of more than 8,500
10 pounds but not more than 14,000 pounds,

11 “(C) \$25,000, if such vehicle has a gross
12 vehicle weight rating of more than 14,000
13 pounds but not more than 26,000 pounds, and

14 “(D) \$40,000, if such vehicle has a gross
15 vehicle weight rating of more than 26,000
16 pounds.

17 “(4) NEW QUALIFIED ALTERNATIVE FUEL
18 MOTOR VEHICLE.—For purposes of this
19 subsection—

20 “(A) IN GENERAL.—The term ‘new quali-
21 fied alternative fuel motor vehicle’ means any
22 motor vehicle—

23 “(i) which is only capable of operating
24 on an alternative fuel,

1 “(ii) the original use of which com-
2 mences with the taxpayer,

3 “(iii) which is acquired by the tax-
4 payer for use or lease, but not for resale,
5 and

6 “(iv) which is made by a manufac-
7 turer.

8 “(B) ALTERNATIVE FUEL.—The term ‘al-
9 ternative fuel’ means compressed natural gas,
10 liquefied natural gas, liquefied petroleum gas,
11 hydrogen, and any liquid at least 85 percent of
12 the volume of which consists of methanol.

13 “(5) CREDIT FOR MIXED-FUEL VEHICLES.—

14 “(A) IN GENERAL.—In the case of a
15 mixed-fuel vehicle placed in service by the tax-
16 payer during the taxable year, the credit deter-
17 mined under this subsection is an amount equal
18 to—

19 “(i) in the case of a 75/25 mixed-fuel
20 vehicle, 70 percent of the credit which
21 would have been allowed under this sub-
22 section if such vehicle was a qualified alter-
23 native fuel motor vehicle, and

24 “(ii) in the case of a 90/10 mixed-fuel
25 vehicle, 90 percent of the credit which

1 would have been allowed under this sub-
2 section if such vehicle was a qualified alter-
3 native fuel motor vehicle.

4 “(B) MIXED-FUEL VEHICLE.—For pur-
5 poses of this subsection, the term ‘mixed-fuel
6 vehicle’ means any motor vehicle described in
7 subparagraph (C) or (D) of paragraph (3),
8 which—

9 “(i) is certified by the manufacturer
10 as being able to perform efficiently in nor-
11 mal operation on a combination of an al-
12 ternative fuel and a petroleum-based fuel,

13 “(ii) either—

14 “(I) has received a certificate of
15 conformity under the Clean Air Act,
16 or

17 “(II) has received an order certi-
18 fying the vehicle as meeting the same
19 requirements as vehicles which may be
20 sold or leased in California and meets
21 or exceeds the low emission vehicle
22 standard under section 88.105–94 of
23 title 40, Code of Federal Regulations,
24 for that make and model year vehicle,

1 “(iii) the original use of which com-
2 mences with the taxpayer,

3 “(iv) which is acquired by the tax-
4 payer for use or lease, but not for resale,
5 and

6 “(v) which is made by a manufac-
7 turer.

8 “(C) 75/25 MIXED-FUEL VEHICLE.—For
9 purposes of this subsection, the term ‘75/25
10 mixed-fuel vehicle’ means a mixed-fuel vehicle
11 which operates using at least 75 percent alter-
12 native fuel and not more than 25 percent petro-
13 leum-based fuel.

14 “(D) 90/10 MIXED-FUEL VEHICLE.—For
15 purposes of this subsection, the term ‘90/10
16 mixed-fuel vehicle’ means a mixed-fuel vehicle
17 which operates using at least 90 percent alter-
18 native fuel and not more than 10 percent petro-
19 leum-based fuel.

20 “(e) APPLICATION WITH OTHER CREDITS.—The
21 credit allowed under subsection (a) for any taxable year
22 shall not exceed the excess (if any) of—

23 “(1) the regular tax for the taxable year re-
24 duced by the sum of the credits allowable under sub-
25 part A and sections 27, 29, and 30, over

1 “(2) the tentative minimum tax for the taxable
2 year.

3 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—

4 For purposes of this section—

5 “(1) MOTOR VEHICLE.—The term ‘motor vehi-
6 cle’ has the meaning given such term by section
7 30(c)(2).

8 “(2) CITY FUEL ECONOMY.—The city fuel econ-
9 omy with respect to any vehicle shall be measured in
10 a manner which is substantially similar to the man-
11 ner city fuel economy is measured in accordance
12 with procedures under part 600 of subchapter Q of
13 chapter I of title 40, Code of Federal Regulations,
14 as in effect on the date of the enactment of this sec-
15 tion.

16 “(3) OTHER TERMS.—The terms ‘automobile’,
17 ‘passenger automobile’, ‘medium duty passenger ve-
18 hicle’, ‘light truck’, and ‘manufacturer’ have the
19 meanings given such terms in regulations prescribed
20 by the Administrator of the Environmental Protec-
21 tion Agency for purposes of the administration of
22 title II of the Clean Air Act (42 U.S.C. 7521 et
23 seq.).

24 “(4) REDUCTION IN BASIS.—For purposes of
25 this subtitle, the basis of any property for which a

1 credit is allowable under subsection (a) shall be re-
2 duced by the amount of such credit so allowed (de-
3 termined without regard to subsection (e)).

4 “(5) NO DOUBLE BENEFIT.—The amount of
5 any deduction or other credit allowable under this
6 chapter—

7 “(A) for any incremental cost taken into
8 account in computing the amount of the credit
9 determined under subsection (d) shall be re-
10 duced by the amount of such credit attributable
11 to such cost, and

12 “(B) with respect to a vehicle described
13 under subsection (b) or (c), shall be reduced by
14 the amount of credit allowed under subsection
15 (a) for such vehicle for the taxable year.

16 “(6) PROPERTY USED BY TAX-EXEMPT ENTI-
17 TIES.—In the case of a credit amount which is al-
18 lowable with respect to a motor vehicle which is ac-
19 quired by an entity exempt from tax under this
20 chapter, the person which sells or leases such vehicle
21 to the entity shall be treated as the taxpayer with
22 respect to the vehicle for purposes of this section
23 and the credit shall be allowed to such person, but
24 only if the person clearly discloses to the entity at
25 the time of any sale or lease the specific amount of

1 any credit otherwise allowable to the entity under
2 this section.

3 “(7) RECAPTURE.—The Secretary shall, by reg-
4 ulations, provide for recapturing the benefit of any
5 credit allowable under subsection (a) with respect to
6 any property which ceases to be property eligible for
7 such credit (including recapture in the case of a
8 lease period of less than the economic life of a vehi-
9 cle).

10 “(8) PROPERTY USED OUTSIDE UNITED
11 STATES, ETC., NOT QUALIFIED.—No credit shall be
12 allowed under subsection (a) with respect to any
13 property referred to in section 50(b) or with respect
14 to the portion of the cost of any property taken into
15 account under section 179.

16 “(9) ELECTION TO NOT TAKE CREDIT.—No
17 credit shall be allowed under subsection (a) for any
18 vehicle if the taxpayer elects to not have this section
19 apply to such vehicle.

20 “(10) CARRYBACK AND CARRYFORWARD AL-
21 LOWED.—

22 “(A) IN GENERAL.—If the credit allowable
23 under subsection (a) for a taxable year exceeds
24 the amount of the limitation under subsection
25 (e) for such taxable year (in this paragraph re-

1 ferred to as the ‘unused credit year’), such ex-
2 cess shall be a credit carryback to each of the
3 3 taxable years preceding the unused credit
4 year and a credit carryforward to each of the
5 20 taxable years following the unused credit
6 year, except that no excess may be carried to a
7 taxable year beginning before the date of the
8 enactment of this paragraph.

9 “(B) RULES.—Rules similar to the rules of
10 section 39 shall apply with respect to the credit
11 carryback and credit carryforward under sub-
12 paragraph (A).

13 “(11) INTERACTION WITH AIR QUALITY AND
14 MOTOR VEHICLE SAFETY STANDARDS.—Unless oth-
15 erwise provided in this section, a motor vehicle shall
16 not be considered eligible for a credit under this sec-
17 tion unless such vehicle is in compliance with—

18 “(A) the applicable provisions of the Clean
19 Air Act for the applicable make and model year
20 of the vehicle (or applicable air quality provi-
21 sions of State law in the case of a State which
22 has adopted such provision under a waiver
23 under section 209(b) of the Clean Air Act), and

1 “(B) the motor vehicle safety provisions of
2 sections 30101 through 30169 of title 49,
3 United States Code.

4 “(g) REGULATIONS.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2), the Secretary shall promulgate such regu-
7 lations as necessary to carry out the provisions of
8 this section.

9 “(2) COORDINATION IN PRESCRIPTION OF CER-
10 TAIN REGULATIONS.—The Secretary of the Treas-
11 ury, in coordination with the Secretary of Transpor-
12 tation and the Administrator of the Environmental
13 Protection Agency, shall prescribe such regulations
14 as necessary to determine whether a motor vehicle
15 meets the requirements to be eligible for a credit
16 under this section.

17 “(h) TERMINATION.—This section shall not apply to
18 any property purchased after—

19 “(1) in the case of a new qualified fuel cell
20 motor vehicle (as described in subsection (b)), De-
21 cember 31, 2011, and

22 “(2) in the case of any other property, Decem-
23 ber 31, 2006.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 1016(a) is amended by striking
 2 “and” at the end of paragraph (27), by striking the
 3 period at the end of paragraph (28) and inserting “,
 4 and”, and by adding at the end the following new
 5 paragraph:

6 “(29) to the extent provided in section
 7 30B(f)(4).”.

8 (2) Section 55(c)(2) is amended by inserting
 9 “30B(e),” after “30(b)(3),”.

10 (3) Section 6501(m) is amended by inserting
 11 “30B(f)(9),” after “30(d)(4),”.

12 (4) The table of sections for subpart B of part
 13 IV of subchapter A of chapter 1 is amended by in-
 14 serting after the item relating to section 30A the fol-
 15 lowing new item:

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

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to property placed in service after
 18 the date of the enactment of this Act, in taxable years
 19 ending after such date.

20 **SEC. 202. MODIFICATION OF CREDIT FOR QUALIFIED ELEC-**
 21 **TRIC VEHICLES.**

22 (a) AMOUNT OF CREDIT.—

23 (1) IN GENERAL.—Section 30(a) (relating to al-
 24 lowance of credit) is amended by striking “10 per-
 25 cent of”.

1 (2) LIMITATION OF CREDIT ACCORDING TO
2 TYPE OF VEHICLE.—Section 30(b) (relating to limi-
3 tations) is amended—

4 (A) by striking paragraphs (1) and (2) and
5 inserting the following new paragraph:

6 “(1) LIMITATION ACCORDING TO TYPE OF VE-
7 HICLE.—The amount of the credit allowed under
8 subsection (a) for any vehicle shall not exceed the
9 greatest of the following amounts applicable to such
10 vehicle:

11 “(A) In the case of a vehicle with a gross
12 vehicle weight rating not exceeding 8,500
13 pounds—

14 “(i) except as provided in clause (ii)
15 or (iii), \$3,500,

16 “(ii) \$6,000, if such vehicle is—

17 “(I) capable of a driving range of
18 at least 100 miles on a single charge
19 of the vehicle’s rechargeable batteries
20 as measured pursuant to the urban
21 dynamometer schedules under appen-
22 dix I to part 86 of title 40, Code of
23 Federal Regulations, or

24 “(II) capable of a payload capac-
25 ity of at least 1,000 pounds, and

1 “(iii) if such vehicle is a low-speed ve-
2 hicle which conforms to Standard 500 pre-
3 scribed by the Secretary of Transportation
4 (49 C.F.R. 571.500), as in effect on the
5 date of the enactment of the Energy Tax
6 Incentives Act of 2003, the lesser of—

7 “(I) 10 percent of the manufac-
8 turer’s suggested retail price of the
9 vehicle, or

10 “(II) \$1,500.

11 “(B) In the case of a vehicle with a gross
12 vehicle weight rating exceeding 8,500 but not
13 exceeding 14,000 pounds, \$10,000.

14 “(C) In the case of a vehicle with a gross
15 vehicle weight rating exceeding 14,000 but not
16 exceeding 26,000 pounds, \$20,000.

17 “(D) In the case of a vehicle with a gross
18 vehicle weight rating exceeding 26,000 pounds,
19 \$40,000.”, and

20 (B) by redesignating paragraph (3) as
21 paragraph (2).

22 (3) CONFORMING AMENDMENTS.—

23 (A) Section 53(d)(1)(B)(iii) is amended by
24 striking “section 30(b)(3)(B)” and inserting
25 “section 30(b)(2)(B)”.

1 (B) Section 55(c)(2), as amended by this
2 Act, is amended by striking “30(b)(3)” and in-
3 serting “30(b)(2)”.

4 (b) QUALIFIED BATTERY ELECTRIC VEHICLE.—

5 (1) IN GENERAL.—Section 30(c)(1)(A) (defin-
6 ing qualified electric vehicle) is amended to read as
7 follows:

8 “(A) which is—

9 “(i) operated solely by use of a bat-
10 tery or battery pack, or

11 “(ii) powered primarily through the
12 use of an electric battery or battery pack
13 using a flywheel or capacitor which stores
14 energy produced by an electric motor
15 through regenerative braking to assist in
16 vehicle operation,”.

17 (2) LEASED VEHICLES.—Section 30(c)(1)(C) is
18 amended by inserting “or lease” after “use”.

19 (3) CONFORMING AMENDMENTS.—

20 (A) Subsections (a), (b)(2), and (c) of sec-
21 tion 30 are each amended by inserting “bat-
22 tery” after “qualified” each place it appears.

23 (B) The heading of subsection (c) of sec-
24 tion 30 is amended by inserting “BATTERY”
25 after “QUALIFIED”.

1 (C) The heading of section 30 is amended
2 by inserting “**BATTERY**” after “**QUALIFIED**”.

3 (D) The item relating to section 30 in the
4 table of sections for subpart B of part IV of
5 subchapter A of chapter 1 is amended by in-
6 serting “battery” after “qualified”.

7 (E) Section 179A(e)(3) is amended by in-
8 serting “battery” before “electric”.

9 (F) The heading of paragraph (3) of sec-
10 tion 179A(c) is amended by inserting “BAT-
11 TERY” before “ELECTRIC”.

12 (c) **ADDITIONAL SPECIAL RULES.**—Section 30(d)
13 (relating to special rules) is amended by adding at the end
14 the following new paragraphs:

15 “(5) **NO DOUBLE BENEFIT.**—The amount of
16 any deduction or other credit allowable under this
17 chapter for any cost taken into account in com-
18 puting the amount of the credit determined under
19 subsection (a) shall be reduced by the amount of
20 such credit attributable to such cost.

21 “(6) **PROPERTY USED BY TAX-EXEMPT ENTI-**
22 **TIES.**—In the case of a credit amount which is al-
23 lowable with respect to a vehicle which is acquired
24 by an entity exempt from tax under this chapter, the
25 person which sells or leases such vehicle to the entity

1 shall be treated as the taxpayer with respect to the
2 vehicle for purposes of this section and the credit
3 shall be allowed to such person, but only if the per-
4 son clearly discloses to the entity at the time of any
5 sale or lease the specific amount of any credit other-
6 wise allowable to the entity under this section.

7 “(7) CARRYBACK AND CARRYFORWARD AL-
8 LOWED.—

9 “(A) IN GENERAL.—If the credit allowable
10 under subsection (a) for a taxable year exceeds
11 the amount of the limitation under subsection
12 (b)(2) for such taxable year (in this paragraph
13 referred to as the ‘unused credit year’), such
14 excess shall be a credit carryback to each of the
15 3 taxable years preceding the unused credit
16 year and a credit carryforward to each of the
17 20 taxable years following the unused credit
18 year, except that no excess may be carried to a
19 taxable year beginning before the date of the
20 enactment of this paragraph.

21 “(B) RULES.—Rules similar to the rules of
22 section 39 shall apply with respect to the credit
23 carryback and credit carryforward under sub-
24 paragraph (A).”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to property placed in service after
3 the date of the enactment of this Act, in taxable years
4 ending after such date.

5 **SEC. 203. CREDIT FOR INSTALLATION OF ALTERNATIVE**
6 **FUELING STATIONS.**

7 (a) IN GENERAL.—Subpart B of part IV of sub-
8 chapter A of chapter 1 (relating to foreign tax credit, etc.),
9 as amended by this Act, is amended by adding at the end
10 the following new section:

11 **“SEC. 30C. CLEAN-FUEL VEHICLE REFUELING PROPERTY**
12 **CREDIT.**

13 “(a) CREDIT ALLOWED.—There shall be allowed as
14 a credit against the tax imposed by this chapter for the
15 taxable year an amount equal to 50 percent of the amount
16 paid or incurred by the taxpayer during the taxable year
17 for the installation of qualified clean-fuel vehicle refueling
18 property.

19 “(b) LIMITATION.—The credit allowed under sub-
20 section (a)—

21 “(1) with respect to any retail clean-fuel vehicle
22 refueling property, shall not exceed \$30,000, and

23 “(2) with respect to any residential clean-fuel
24 vehicle refueling property, shall not exceed \$1,000.

1 “(c) YEAR CREDIT ALLOWED.—Notwithstanding
2 subsection (a), no credit shall be allowed under subsection
3 (a) with respect to any qualified clean-fuel vehicle refuel-
4 ing property before the taxable year in which the property
5 is placed in service by the taxpayer.

6 “(d) DEFINITIONS.—For purposes of this section—

7 “(1) QUALIFIED CLEAN-FUEL VEHICLE RE-
8 FUELING PROPERTY.—The term ‘qualified clean-fuel
9 vehicle refueling property’ has the same meaning
10 given such term by section 179A(d).

11 “(2) RESIDENTIAL CLEAN-FUEL VEHICLE RE-
12 FUELING PROPERTY.—The term ‘residential clean-
13 fuel vehicle refueling property’ means qualified
14 clean-fuel vehicle refueling property which is in-
15 stalled on property which is used as the principal
16 residence (within the meaning of section 121) of the
17 taxpayer.

18 “(3) RETAIL CLEAN-FUEL VEHICLE REFUELING
19 PROPERTY.—The term ‘retail clean-fuel vehicle re-
20 fueling property’ means qualified clean-fuel vehicle
21 refueling property which is installed on property
22 (other than property described in paragraph (2))
23 used in a trade or business of the taxpayer.

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

4 “(1) the regular tax for the taxable year re-
5 duced by the sum of the credits allowable under sub-
6 part A and sections 27, 29, 30, and 30B, over

7 “(2) the tentative minimum tax for the taxable
8 year.

9 “(f) BASIS REDUCTION.—For purposes of this title,
10 the basis of any property shall be reduced by the portion
11 of the cost of such property taken into account under sub-
12 section (a).

13 “(g) NO DOUBLE BENEFIT.—

14 “(1) COORDINATION WITH OTHER DEDUCTIONS
15 AND CREDITS.—Except as provided in paragraph
16 (2), the amount of any deduction or other credit al-
17 lowable under this chapter for any cost taken into
18 account in computing the amount of the credit de-
19 termined under subsection (a) shall be reduced by
20 the amount of such credit attributable to such cost.

21 “(2) NO DEDUCTION ALLOWED UNDER SECTION
22 179A.—No deduction shall be allowed under section
23 179A with respect to any property with respect to
24 which a credit is allowed under subsection (a).

1 “(h) REFUELING PROPERTY INSTALLED FOR TAX-
2 EXEMPT ENTITIES.—In the case of qualified clean-fuel ve-
3 hicle refueling property installed on property owned or
4 used by an entity exempt from tax under this chapter, the
5 person which installs such refueling property for the entity
6 shall be treated as the taxpayer with respect to the refuel-
7 ing property for purposes of this section (and such refuel-
8 ing property shall be treated as retail clean-fuel vehicle
9 refueling property) and the credit shall be allowed to such
10 person, but only if the person clearly discloses to the entity
11 in any installation contract the specific amount of the
12 credit allowable under this section.

13 “(i) CARRYFORWARD ALLOWED.—

14 “(1) IN GENERAL.—If the credit allowable
15 under subsection (a) for a taxable year exceeds the
16 amount of the limitation under subsection (e) for
17 such taxable year, such excess shall be a credit
18 carryforward to each of the 20 taxable years fol-
19 lowing such taxable year.

20 “(2) RULES.—Rules similar to the rules of sec-
21 tion 39 shall apply with respect to the credit
22 carryforward under paragraph (1).

23 “(j) SPECIAL RULES.—Rules similar to the rules of
24 paragraphs (4) and (5) of section 179A(e) shall apply.

1 “(k) REGULATIONS.—The Secretary shall prescribe
2 such regulations as necessary to carry out the provisions
3 of this section.

4 “(l) TERMINATION.—This section shall not apply to
5 any property placed in service—

6 “(1) in the case of property relating to hydro-
7 gen, after December 31, 2011, and

8 “(2) in the case of any other property, after
9 December 31, 2007.”.

10 (b) MODIFICATIONS TO EXTENSION OF DEDUCTION
11 FOR CERTAIN REFUELING PROPERTY.—

12 (1) IN GENERAL.—Subsection (f) of section
13 179A is amended to read as follows:

14 “(f) TERMINATION.—This section shall not apply to
15 any property placed in service—

16 “(1) in the case of property relating to hydro-
17 gen, after December 31, 2011, and

18 “(2) in the case of any other property, after
19 December 31, 2007.”.

20 (2) EXTENSION OF PHASEOUT.—Section
21 179A(b)(1)(B) is amended—

22 (A) by striking “calendar year 2004” in
23 clause (i) and inserting “calendar years 2004
24 and 2005 (calendar years 2004 through 2009
25 in the case of property relating to hydrogen) ”,

1 (B) by striking “2005” in clause (ii) and
2 inserting “2006 (calendar year 2010 in the case
3 of property relating to hydrogen)”, and

4 (C) by striking “2006” in clause (iii) and
5 inserting “2007 (calendar year 2011 in the case
6 of property relating to hydrogen)”.

7 (c) INCENTIVE FOR PRODUCTION OF HYDROGEN AT
8 QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROP-
9 erty.—Section 179A(d) (defining qualified clean-fuel ve-
10 hicle refueling property) is amended by adding at the end
11 the following new flush sentence:

12 “In the case of clean-burning fuel which is hydrogen pro-
13 duced from another clean-burning fuel, paragraph (3)(A)
14 shall be applied by substituting ‘production, storage, or
15 dispensing’ for ‘storage or dispensing’ both places it ap-
16 pears.”.

17 (d) CONFORMING AMENDMENTS.—

18 (1) Section 1016(a), as amended by this Act, is
19 amended by striking “and” at the end of paragraph
20 (28), by striking the period at the end of paragraph
21 (29) and inserting “, and”, and by adding at the
22 end the following new paragraph:

23 “(30) to the extent provided in section
24 30C(f).”.

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

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

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

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to property placed in service after
9 the date of the enactment of this Act, in taxable years
10 ending after such date.

11 **SEC. 204. CREDIT FOR RETAIL SALE OF ALTERNATIVE**
12 **FUELS AS MOTOR VEHICLE FUEL.**

13 (a) IN GENERAL.—Subpart D of part IV of sub-
14 chapter A of chapter 1 (relating to business related cred-
15 its) is amended by inserting after section 40 the following
16 new section:

17 **“SEC. 40A. CREDIT FOR RETAIL SALE OF ALTERNATIVE**
18 **FUELS AS MOTOR VEHICLE FUEL.**

19 “(a) GENERAL RULE.—For purposes of section 38,
20 the alternative fuel retail sales credit for any taxable year
21 is the applicable amount for each gasoline gallon equiva-
22 lent of alternative fuel sold at retail by the taxpayer during
23 such year as a fuel to propel any qualified motor vehicle.

24 “(b) DEFINITIONS.—For purposes of this section—

1 “(1) APPLICABLE AMOUNT.—The term ‘applica-
 2 ble amount’ means the amount determined in ac-
 3 cordance with the following table:

“In the case of any taxable year ending in—	The applicable amount is—
2003	30 cents
2004	40 cents
2005 and 2006	50 cents.

4 “(2) ALTERNATIVE FUEL.—The term ‘alter-
 5 native fuel’ means compressed natural gas, liquefied
 6 natural gas, liquefied petroleum gas, hydrogen, or
 7 any liquid at least 85 percent of the volume of which
 8 consists of methanol or ethanol.

9 “(3) GASOLINE GALLON EQUIVALENT.—The
 10 term ‘gasoline gallon equivalent’ means, with respect
 11 to any alternative fuel, the amount (determined by
 12 the Secretary) of such fuel having a Btu content of
 13 114,000.

14 “(4) QUALIFIED MOTOR VEHICLE.—The term
 15 ‘qualified motor vehicle’ means any motor vehicle (as
 16 defined in section 30(c)(2)) which meets any appli-
 17 cable Federal or State emissions standards with re-
 18 spect to each fuel by which such vehicle is designed
 19 to be propelled.

20 “(5) SOLD AT RETAIL.—

21 “(A) IN GENERAL.—The term ‘sold at re-
 22 tail’ means the sale, for a purpose other than

1 resale, after manufacture, production, or impor-
2 tation.

3 “(B) USE TREATED AS SALE.—If any per-
4 son uses alternative fuel (including any use
5 after importation) as a fuel to propel any new
6 qualified alternative fuel motor vehicle (as de-
7 fined in section 30B(d)(4)) before such fuel is
8 sold at retail, then such use shall be treated in
9 the same manner as if such fuel were sold at
10 retail as a fuel to propel such a vehicle by such
11 person.

12 “(c) NO DOUBLE BENEFIT.—The amount of any de-
13 duction or other credit allowable under this chapter for
14 any fuel taken into account in computing the amount of
15 the credit determined under subsection (a) shall be re-
16 duced by the amount of such credit attributable to such
17 fuel.

18 “(d) PASS-THRU IN THE CASE OF ESTATES AND
19 TRUSTS.—Under regulations prescribed by the Secretary,
20 rules similar to the rules of subsection (d) of section 52
21 shall apply.

22 “(e) TERMINATION.—This section shall not apply to
23 any fuel sold at retail after December 31, 2006.”.

24 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
25 tion 38(b) (relating to current year business credit) is

1 amended by striking “plus” at the end of paragraph (14),
2 by striking the period at the end of paragraph (15) and
3 inserting “, plus”, and by adding at the end the following
4 new paragraph:

5 “(16) the alternative fuel retail sales credit de-
6 termined under section 40A(a).”.

7 (c) TRANSITIONAL RULE.—Section 39(d) (relating to
8 transitional rules) is amended by adding at the end the
9 following new paragraph:

10 “(11) NO CARRYBACK OF SECTION 40A CREDIT
11 BEFORE EFFECTIVE DATE.—No portion of the un-
12 used business credit for any taxable year which is
13 attributable to the alternative fuel retail sales credit
14 determined under section 40A(a) may be carried
15 back to a taxable year ending on or before the date
16 of the enactment of such section.”.

17 (d) CLERICAL AMENDMENT.—The table of sections
18 for subpart D of part IV of subchapter A of chapter 1
19 is amended by inserting after the item relating to section
20 40 the following new item:

 “Sec. 40A. Credit for retail sale of alternative fuels as motor vehicle fuel.”.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to fuel sold at retail after the date
23 of the enactment of this Act, in taxable years ending after
24 such date.

1 **SEC. 205. SMALL ETHANOL PRODUCER CREDIT.**

2 (a) ALLOCATION OF ALCOHOL FUELS CREDIT TO
3 PATRONS OF A COOPERATIVE.—Section 40(g) (relating to
4 definitions and special rules for eligible small ethanol pro-
5 ducer credit) is amended by adding at the end the fol-
6 lowing new paragraph:

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

9 “(A) ELECTION TO ALLOCATE.—

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

19 “(ii) FORM AND EFFECT OF ELEC-
20 TION.—An election under clause (i) for any
21 taxable year shall be made on a timely
22 filed return for such year. Such election,
23 once made, shall be irrevocable for such
24 taxable year.

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

4 “(i) shall not be included in the
5 amount determined under subsection (a)
6 with respect to the organization for the
7 taxable year, and

8 “(ii) shall be included in the amount
9 determined under subsection (a) for the
10 taxable year of each patron for which the
11 patronage dividends for the taxable year
12 described in subparagraph (A) are included
13 in gross income.

14 “(C) SPECIAL RULES FOR DECREASE IN
15 CREDITS FOR TAXABLE YEAR.—If the amount
16 of the credit of a cooperative organization de-
17 termined under subsection (a)(3) for a taxable
18 year is less than the amount of such credit
19 shown on the return of the cooperative organi-
20 zation for such year, an amount equal to the
21 excess of—

22 “(i) such reduction, over

23 “(ii) the amount not apportioned to
24 such patrons under subparagraph (A) for
25 the taxable year,

1 shall be treated as an increase in tax imposed
2 by this chapter on the organization. Such in-
3 crease shall not be treated as tax imposed by
4 this chapter for purposes of determining the
5 amount of any credit under this chapter or for
6 purposes of section 55.”.

7 (b) IMPROVEMENTS TO SMALL ETHANOL PRODUCER
8 CREDIT.—

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

14 (2) SMALL ETHANOL PRODUCER CREDIT NOT A
15 PASSIVE ACTIVITY CREDIT.—Clause (i) of section
16 469(d)(2)(A) is amended by striking “subpart D”
17 and inserting “subpart D, other than section
18 40(a)(3),”.

19 (3) ALLOWING CREDIT AGAINST ENTIRE REG-
20 ULAR TAX AND MINIMUM TAX.—

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

1 “(4) SPECIAL RULES FOR SMALL ETHANOL
2 PRODUCER CREDIT.—

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

5 “(i) this section and section 39 shall
6 be applied separately with respect to the
7 credit, and

8 “(ii) in applying paragraph (1) to the
9 credit—

10 “(I) the amounts in subpara-
11 graphs (A) and (B) thereof shall be
12 treated as being zero, and

13 “(II) the limitation under para-
14 graph (1) (as modified by subclause
15 (I)) shall be reduced by the credit al-
16 lowed under subsection (a) for the
17 taxable year (other than the small
18 ethanol producer credit).

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

24 “(B) CONFORMING AMENDMENTS.—Sub-
25 clause (II) of section 38(c)(2)(A)(ii) and sub-

1 clause (II) of section 38(c)(3)(A)(ii) are each
2 amended by inserting “or the small ethanol pro-
3 ducer credit” after “employee credit”.

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

8 **“SEC. 87. ALCOHOL FUEL CREDIT.**

9 “Gross income includes an amount equal to the sum
10 of—

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

14 “(2) the alcohol credit determined with respect
15 to the taxpayer for the taxable year under section
16 40(a)(2).”.

17 (c) CONFORMING AMENDMENT.—Section 1388 (re-
18 lating to definitions and special rules for cooperative orga-
19 nizations) is amended by adding at the end the following
20 new subsection:

21 “(k) CROSS REFERENCE.—For provisions relating to
22 the apportionment of the alcohol fuels credit between coop-
23 erative organizations and their patrons, see section
24 40(g)(6).”.

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

4 **SEC. 206. INCREASED FLEXIBILITY IN ALCOHOL FUELS TAX**
5 **CREDIT.**

6 (a) ALCOHOL FUELS CREDIT MAY BE TRANS-
7 FERRED.—Section 40 (relating to alcohol used as fuel) is
8 amended by adding at the end the following new sub-
9 section:

10 “(i) CREDIT MAY BE TRANSFERRED.—

11 “(1) IN GENERAL.—A taxpayer may transfer
12 any credit allowable under paragraph (1) or (2) of
13 subsection (a) with respect to alcohol used in the
14 production of ethyl tertiary butyl ether through an
15 assignment to a qualified assignee. Such transfer
16 may be revoked only with the consent of the Sec-
17 retary.

18 “(2) QUALIFIED ASSIGNEE.—For purposes of
19 this subsection, the term ‘qualified assignee’ means
20 any person who—

21 “(A) is liable for taxes imposed under sec-
22 tion 4081,

23 “(B) is registered under section 4101, and

24 “(C) obtains a certificate from the tax-
25 payer described in paragraph (1) which identi-

1 fies the amount of alcohol used in such produc-
2 tion.

3 “(3) REGULATIONS.—The Secretary shall pre-
4 scribe such regulations as necessary to insure that
5 any credit described in paragraph (1) is claimed
6 once and not reassigned by a qualified assignee.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply on and after the date of the enact-
9 ment of this Act.

10 **SEC. 207. INCENTIVES FOR BIODIESEL.**

11 (a) IN GENERAL.—Subpart D of part IV of sub-
12 chapter A of chapter 1 (relating to business related cred-
13 its), as amended by this Act, is amended by inserting after
14 section 40A the following new section:

15 **“SEC. 40B. BIODIESEL USED AS FUEL.**

16 “(a) GENERAL RULE.—For purposes of section 38,
17 the biodiesel fuels credit determined under this section for
18 the taxable year is an amount equal to the biodiesel mix-
19 ture credit.

20 “(b) DEFINITION OF BIODIESEL MIXTURE CRED-
21 IT.—For purposes of this section—

22 “(1) BIODIESEL MIXTURE CREDIT.—

23 “(A) IN GENERAL.—The biodiesel mixture
24 credit of any taxpayer for any taxable year is
25 the sum of the products of the biodiesel mixture

1 rate for each qualified biodiesel mixture and the
2 number of gallons of such mixture of the tax-
3 payer for the taxable year.

4 “(B) BIODIESEL MIXTURE RATE.—For
5 purposes of subparagraph (A), the biodiesel
6 mixture rate for each qualified biodiesel mixture
7 shall be—

8 “(i) in the case of a mixture with only
9 agri-biodiesel, 1 cent for each whole per-
10 centage point (not exceeding 20 percentage
11 points) of agri-biodiesel in such mixture,
12 and

13 “(ii) in the case of a mixture with re-
14 cycled biodiesel, or a combination of agri-
15 biodiesel and recycled biodiesel, 0.5 cent
16 for each whole percentage point (not ex-
17 ceeding 20 percentage points) of such bio-
18 diesel in such mixture.

19 “(2) QUALIFIED BIODIESEL MIXTURE.—

20 “(A) IN GENERAL.—The term ‘qualified
21 biodiesel mixture’ means a mixture of diesel
22 fuel and biodiesel which—

23 “(i) is sold by the taxpayer producing
24 such mixture to any person for use as a
25 fuel in a diesel-powered engine, or

1 “(ii) is used as a fuel in a diesel-pow-
2 ered engine by the taxpayer producing
3 such mixture.

4 “(B) SALE OR USE MUST BE IN TRADE OR
5 BUSINESS, ETC.—

6 “(i) IN GENERAL.—The production of
7 a qualified biodiesel mixture shall be taken
8 into account—

9 “(I) only if the sale or use de-
10 scribed in subparagraph (A) is in a
11 trade or business of the taxpayer, and

12 “(II) for the taxable year in
13 which such sale or use occurs.

14 “(ii) CERTIFICATION FOR AGRI-BIO-
15 DIESEL.—Agri-biodiesel used in the pro-
16 duction of a qualified biodiesel mixture
17 shall be taken into account only if the tax-
18 payer described in subparagraph (A) ob-
19 tains a certification from the producer of
20 the agri-biodiesel which identifies the prod-
21 uct produced.

22 “(C) CASUAL OFF-FARM PRODUCTION NOT
23 ELIGIBLE.—No credit shall be allowed under
24 this section with respect to any casual off-farm
25 production of a qualified biodiesel mixture.

1 “(c) COORDINATION WITH CREDIT AGAINST EXCISE
2 TAX.—The amount of the credit determined under this
3 section with respect to any agri-biodiesel shall, under regu-
4 lations prescribed by the Secretary, be properly reduced
5 to take into account any benefit provided with respect to
6 such agri-biodiesel solely by reason of the application of
7 section 6426 or 6427(e).

8 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
9 poses of this section—

10 “(1) BIODIESEL.—The term ‘biodiesel’ means
11 the monoalkyl esters of long chain fatty acids for use
12 in diesel-powered engines which meet—

13 “(A) the registration requirements for
14 fuels and fuel additives established by the Envi-
15 ronmental Protection Agency under section 211
16 of the Clean Air Act (42 U.S.C. 7545), and

17 “(B) the requirements of the American So-
18 ciety of Testing and Materials D6751.

19 “(2) AGRI-BIODIESEL.—The term ‘agri-bio-
20 diesel’ means biodiesel derived solely from virgin oils.
21 Such term shall include esters derived from vege-
22 table oils from corn, soybeans, sunflower seeds, cot-
23 tonseeds, canola, crambe, rapeseeds, safflowers,
24 flaxseeds, rice bran, and mustard seeds, and from
25 animal fats.

1 “(3) RECYCLED BIODIESEL.—The term ‘recy-
2 cled biodiesel’ means biodiesel derived from non-
3 virgin vegetable oils or nonvirgin animal fats.

4 “(4) BIODIESEL MIXTURE NOT USED AS A
5 FUEL, ETC.—

6 “(A) IMPOSITION OF TAX.—If—

7 “(i) any credit was determined under
8 this section with respect to biodiesel used
9 in the production of any qualified biodiesel
10 mixture, and

11 “(ii) any person—

12 “(I) separates such biodiesel
13 from the mixture, or

14 “(II) without separation, uses the
15 mixture other than as a fuel,

16 then there is hereby imposed on such per-
17 son a tax equal to the product of the bio-
18 diesel mixture rate applicable under sub-
19 section (b)(1)(B) and the number of gal-
20 lons of the mixture.

21 “(B) APPLICABLE LAWS.—All provisions of
22 law, including penalties, shall, insofar as appli-
23 cable and not inconsistent with this section,
24 apply in respect of any tax imposed under sub-

1 paragraph (A) as if such tax were imposed by
2 section 4081 and not by this chapter.

3 “(5) PASS-THRU IN THE CASE OF ESTATES AND
4 TRUSTS.—Under regulations prescribed by the Sec-
5 retary, rules similar to the rules of subsection (d) of
6 section 52 shall apply.

7 “(e) TERMINATION.—This section shall not apply to
8 any fuel sold after December 31, 2005.”.

9 (b) CREDIT TREATED AS PART OF GENERAL BUSI-
10 NESS CREDIT.—Section 38(b) (relating to current year
11 business credit), as amended by this Act, is amended by
12 striking “plus” at the end of paragraph (15), by striking
13 the period at the end of paragraph (16) and inserting “,
14 plus”, and by adding at the end the following new para-
15 graph:

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

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 39(d), as amended by this Act, is
20 amended by adding at the end the following new
21 paragraph:

22 “(12) NO CARRYBACK OF BIODIESEL FUELS
23 CREDIT BEFORE EFFECTIVE DATE.—No portion of
24 the unused business credit for any taxable year
25 which is attributable to the biodiesel fuels credit de-

1 terminated under section 40B may be carried back to
2 a taxable year ending on or before the date of the
3 enactment of section 40B.”.

4 (2) Section 196(e) is amended by striking
5 “and” at the end of paragraph (9), by striking the
6 period at the end of paragraph (10) and inserting “,
7 and”, and by adding at the end the following new
8 paragraph:

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

11 (3) The table of sections for subpart D of part
12 IV of subchapter A of chapter 1, as amended by this
13 Act, is amended by adding after the item relating to
14 section 40A the following new item:

 “Sec. 40B. Biodiesel used as fuel.”.

15 (d) **EFFECTIVE DATE.**—The amendments made by
16 this section shall apply to fuel sold after the date of the
17 enactment of this Act, in taxable years ending after such
18 date.

19 **SEC. 208. ALCOHOL FUEL AND BIODIESEL MIXTURES EX-**
20 **CISE TAX CREDIT.**

21 (a) **IN GENERAL.**—Subchapter B of chapter 65 (re-
22 lating to rules of special application) is amended by insert-
23 ing after section 6425 the following new section:

1 **“SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL**
2 **MIXTURES.**

3 “(a) ALLOWANCE OF CREDITS.—There shall be al-
4 lowed as a credit against the tax imposed by section 4081
5 an amount equal to the sum of—

6 “(1) the alcohol fuel mixture credit, plus

7 “(2) the biodiesel mixture credit.

8 “(b) ALCOHOL FUEL MIXTURE CREDIT.—

9 “(1) IN GENERAL.—For purposes of this sec-
10 tion, the alcohol fuel mixture credit is the applicable
11 amount for each gallon of alcohol used by the tax-
12 payer in producing an alcohol fuel mixture.

13 “(2) APPLICABLE AMOUNT.—For purposes of
14 this subsection—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), the applicable amount is 52
17 cents (51 cents in the case of any sale or use
18 after 2004).

19 “(B) MIXTURES NOT CONTAINING ETH-
20 ANOL.—In the case of an alcohol fuel mixture
21 in which none of the alcohol consists of ethanol,
22 the applicable amount is 60 cents.

23 “(3) ALCOHOL FUEL MIXTURE.—For purposes
24 of this subsection, the term ‘alcohol fuel mixture’ is
25 a mixture which—

1 “(A) consists of alcohol and a taxable fuel,
2 and

3 “(B) is sold for use or used as a fuel by
4 the taxpayer producing the mixture.

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

7 “(A) ALCOHOL.—The term ‘alcohol’ in-
8 cludes methanol and ethanol but does not
9 include—

10 “(i) alcohol produced from petroleum,
11 natural gas, or coal (including peat), or

12 “(ii) alcohol with a proof of less than
13 190 (determined without regard to any
14 added denaturants).

15 Such term also includes an alcohol gallon equiv-
16 alent of ethyl tertiary butyl ether or other
17 ethers produced from such alcohol.

18 “(B) TAXABLE FUEL.—The term ‘taxable
19 fuel’ has the meaning given such term by sec-
20 tion 4083(a)(1).

21 “(5) TERMINATION.—This subsection shall not
22 apply to any sale or use for any period after Decem-
23 ber 31, 2010.

24 “(c) BIODIESEL MIXTURE CREDIT.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, the biodiesel mixture credit is the product of
3 the applicable amount and the number of gallons of
4 agri-biodiesel used by the taxpayer in producing any
5 qualified biodiesel mixture containing only agri-bio-
6 diesel, except that the number of gallons of agri-bio-
7 diesel taken into account in determining the credit
8 shall not exceed 1 gallon for each 5 gallons of quali-
9 fied biodiesel mixture produced.

10 “(2) APPLICABLE AMOUNT.—For purposes of
11 this subsection, the applicable amount is \$1.00.

12 “(3) DEFINITIONS.—Any term used in this sub-
13 section which is also used in section 40B shall have
14 the meaning given such term by section 40B.

15 “(4) TERMINATION.—This subsection shall not
16 apply to any sale or use for any period after Decem-
17 ber 31, 2005.

18 “(d) MIXTURE NOT USED AS A FUEL, ETC.—

19 “(1) IMPOSITION OF TAX.—If—

20 “(A) any credit was determined under this
21 section with respect to alcohol or agri-biodiesel
22 used in the production of any alcohol fuel mix-
23 ture or qualified biodiesel mixture, respectively,
24 and

25 “(B) any person—

1 “(i) separates such alcohol or agri-bio-
2 diesel from the mixture, or

3 “(ii) without separation, uses the mix-
4 ture other than as a fuel,

5 then there is hereby imposed on such person a
6 tax equal to the product of the applicable
7 amount and the number of gallons of such alco-
8 hol or agri-biodiesel.

9 “(2) APPLICABLE LAWS.—All provisions of law,
10 including penalties, shall, insofar as applicable and
11 not inconsistent with this section, apply in respect of
12 any tax imposed under paragraph (1) as if such tax
13 were imposed by section 4081 and not by this sec-
14 tion.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 40(c) is amended by striking “sec-
17 tion 4081(c), or section 4091(c)” and inserting “sec-
18 tion 4091(c), section 6426, section 6427(e), or sec-
19 tion 6427(f)”.

20 (2) Section 40(d)(4)(B) is amended by striking
21 “or 4081(c)”.

22 (3) Section 40(e)(1) is amended—

23 (A) by striking “2007” in subparagraph

24 (A) and inserting “2010”, and

1 (B) by striking “2008” in subparagraph
2 (B) and inserting “2011”.

3 (4) Section 40(h) is amended—

4 (A) by striking “2007” in paragraph (1)
5 and inserting “2010”, and

6 (B) by striking “, 2006, or 2007” in the
7 table contained in paragraph (2) and inserting
8 “through 2010”.

9 (5) Section 4041(b)(2)(B) is amended by strik-
10 ing “a substance other than petroleum or natural
11 gas” and inserting “coal (including peat)”.

12 (6) Paragraph (1) of section 4041(k) is amend-
13 ed to read as follows:

14 “(1) IN GENERAL.—Under regulations pre-
15 scribed by the Secretary, in the case of the sale or
16 use of any liquid at least 10 percent of which con-
17 sists of alcohol (as defined in section
18 6426(b)(4)(A)), the rate of the tax imposed by sub-
19 section (c)(1) shall be the comparable rate under
20 section 4091(c).”.

21 (7) Section 4081 is amended by striking sub-
22 section (c).

23 (8) Paragraph (2) of section 4083(a) is amend-
24 ed to read as follows:

25 “(2) GASOLINE.—The term ‘gasoline’—

1 “(A) includes any gasoline blend, other
 2 than qualified methanol or ethanol fuel (as de-
 3 fined in section 4041(b)(2)(B)) or a denaturant
 4 of alcohol (as defined in section 6426(b)(4)(A)),
 5 and

6 “(B) includes, to the extent prescribed in
 7 regulations—

8 “(i) any gasoline blend stock, and

9 “(ii) any product commonly used as
 10 an additive in gasoline.

11 For purposes of subparagraph (B)(i), the term ‘gas-
 12 oline blend stock’ means any petroleum product
 13 component of gasoline.”.

14 (9) Section 6427 is amended by inserting after
 15 subsection (d) the following new subsection:

16 “(e) GASOLINE, DIESEL FUEL, AND KEROSENE
 17 USED TO PRODUCE CERTAIN ALCOHOL FUEL AND BIO-
 18 DIESEL MIXTURES.—

19 “(1) IN GENERAL.—Except as provided in sub-
 20 section (k), if any gasoline, diesel fuel, or kerosene
 21 on which tax was imposed by section 4081 is used
 22 by any person in producing a mixture described in
 23 section 6426 which is sold or used in such person’s
 24 trade or business, the Secretary shall pay (without
 25 interest) to such person an amount equal to the al-

1 cohol fuel mixture credit or the biodiesel mixture
2 credit with respect to such gasoline, diesel fuel, or
3 kerosene.

4 “(2) COORDINATION WITH OTHER REPAYMENT
5 PROVISIONS.—No amount shall be payable under
6 paragraph (1) with respect to any gasoline, diesel
7 fuel, or kerosene with respect to which an amount
8 is payable under subsection (b), (d), or (l) or under
9 section 6416(b)(2), 6420, 6421, or 6426.

10 “(3) TERMINATION.—This subsection shall not
11 apply with respect to—

12 “(A) any alcohol fuel mixture (as defined
13 in section 6426(b)(3)) sold or used after De-
14 cember 31, 2010, and

15 “(B) any qualified biodiesel mixture (with-
16 in the meaning of section 6426(e)(1)) sold or
17 used after December 31, 2005.”.

18 (10) Subsection (f) of section 6427 is amended
19 to read as follows:

20 “(f) AVIATION FUEL USED TO PRODUCE CERTAIN
21 ALCOHOL FUELS.—

22 “(1) IN GENERAL.—Except as provided in sub-
23 section (k), if any aviation fuel on which tax was im-
24 posed by section 4091 at the regular tax rate is used
25 by any person in producing a mixture described in

1 section 4091(c)(1)(A) which is sold or used in such
2 person's trade or business, the Secretary shall pay
3 (without interest) to such person an amount equal
4 to the excess of the regular tax rate over the incen-
5 tive tax rate with respect to such fuel.

6 “(2) DEFINITIONS.—For purposes of paragraph
7 (1)—

8 “(A) REGULAR TAX RATE.—The term ‘reg-
9 ular tax rate’ means the aggregate rate of tax
10 imposed by section 4091 determined without re-
11 gard to subsection (c) thereof.

12 “(B) INCENTIVE TAX RATE.—The term
13 ‘incentive tax rate’ means the aggregate rate of
14 tax imposed by section 4091 with respect to
15 fuel described in subsection (c)(2) thereof.

16 “(3) COORDINATION WITH OTHER REPAYMENT
17 PROVISIONS.—No amount shall be payable under
18 paragraph (1) with respect to any aviation fuel with
19 respect to which an amount is payable under sub-
20 section (d) or (l).

21 “(4) TERMINATION.—This subsection shall not
22 apply with respect to any mixture sold or used after
23 September 30, 2007.”.

24 (11) Paragraphs (1) and (2) of section 6427(i)
25 are amended by inserting “(f),” after “(d),”.

1 (12) Section 6427(i)(3) is amended—

2 (A) by striking “subsection (f)” both
3 places it appears in subparagraph (A) and in-
4 serting “subsection (e)”,

5 (B) by striking “gasoline, diesel fuel, or
6 kerosene used to produce a qualified alcohol
7 mixture (as defined in section 4081(e)(3))” in
8 subparagraph (A) and inserting “a mixture de-
9 scribed in section 6426”,

10 (C) by striking “subsection (f)(1)” in sub-
11 paragraph (B) and inserting “subsection
12 (e)(1)”,

13 (D) by striking “20 days of the date of the
14 filing of such claim” in subparagraph (B) and
15 inserting “45 days of the date of the filing of
16 such claim (20 days in the case of an electronic
17 claim)”, and

18 (E) by striking “ALCOHOL MIXTURE” in
19 the heading and inserting “ALCOHOL FUEL AND
20 BIODIESEL MIXTURE”.

21 (13) Section 6427(o) is amended—

22 (A) by striking paragraph (1) and insert-
23 ing the following new paragraph:

24 “(1) any tax is imposed by section 4081, and”,

1 (B) by striking “such gasohol” in para-
2 graph (2) and inserting “the alcohol fuel mix-
3 ture (as defined in section 6426(b)(3))”,

4 (C) by striking “gasohol” both places it
5 appears in the matter following paragraph (2)
6 and inserting “alcohol fuel mixture”, and

7 (D) by striking “GASOHOL” in the heading
8 and inserting “ALCOHOL FUEL MIXTURE”.

9 (14) Section 9503(b)(1) is amended by adding at the
10 end the following new flush sentence:

11 “For purposes of this paragraph, taxes received
12 under sections 4041 and 4081 shall be determined
13 without reduction for credits under section 6426.”.

14 (15) Section 9503(b)(4) is amended—

15 (A) by adding “or” at the end of subpara-
16 graph (C),

17 (B) by striking the comma at the end of
18 subparagraph (D)(iii) and inserting a period,
19 and

20 (C) by striking subparagraphs (E) and
21 (F).

22 (16) Section 9503(c)(2)(A)(i)(III) is amended
23 by inserting “(other than subsection (e) thereof)”
24 after “section 6427”.

1 (17) Section 9503(e)(2) is amended by striking
 2 subparagraph (B) and by redesignating subpara-
 3 graphs (C), (D), and (E) as subparagraphs (B), (C),
 4 and (D), respectively.

5 (18) The table of sections for subchapter B of
 6 chapter 65 is amended by inserting after the item
 7 relating to section 6425 the following new item:

“Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.”.

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to fuel sold or used after Sep-
 10 tember 30, 2003.

11 (d) FORMAT FOR FILING.—The Secretary of the
 12 Treasury shall describe the electronic format for filing
 13 claims described in section 6427(i)(3)(B) of the Internal
 14 Revenue Code of 1986 (as amended by subsection
 15 (b)(12)(D)) not later than September 30, 2003.

16 **SEC. 209. SALE OF GASOLINE AND DIESEL FUEL AT DUTY-
 17 FREE SALES ENTERPRISES.**

18 (a) PROHIBITION.—Section 555(b) of the Tariff Act
 19 of 1930 (19 U.S.C. 1555(b)) is amended—

20 (1) by redesignating paragraphs (6) through
 21 (8) as paragraphs (7) through (9), respectively; and

22 (2) by inserting after paragraph (5) the fol-
 23 lowing:

24 “(6) Any gasoline or diesel fuel sold at a duty-
 25 free sales enterprise shall be considered to be en-

1 tered for consumption into the customs territory of
2 the United States.”.

3 (b) CONSTRUCTION.—The amendments made by this
4 section shall not be construed to create any inference with
5 respect to the interpretation of any provision of law as
6 such provision was in effect on the day before the date
7 of enactment of this Act.

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

11 **TITLE III—CONSERVATION AND**
12 **ENERGY EFFICIENCY PROVI-**
13 **SIONS**

14 **SEC. 301. CREDIT FOR CONSTRUCTION OF NEW ENERGY EF-**
15 **FICIENT HOME.**

16 (a) IN GENERAL.—Subpart D of part IV of sub-
17 chapter A of chapter 1 (relating to business related cred-
18 its), as amended by this Act, is amended by adding at
19 the end the following new section:

20 **“SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.**

21 “(a) IN GENERAL.—For purposes of section 38, in
22 the case of an eligible contractor, the credit determined
23 under this section for the taxable year is an amount equal
24 to the aggregate adjusted bases of all energy efficient

1 property installed in a qualifying new home during con-
2 struction of such home.

3 “(b) LIMITATIONS.—

4 “(1) MAXIMUM CREDIT.—

5 “(A) IN GENERAL.—The credit allowed by
6 this section with respect to a qualifying new
7 home shall not exceed—

8 “(i) in the case of a 30-percent home,
9 \$1,000, and

10 “(ii) in the case of a 50-percent home,
11 \$2,000.

12 “(B) 30- OR 50-PERCENT HOME.—For pur-
13 poses of subparagraph (A)—

14 “(i) 30-PERCENT HOME.—The term
15 ‘30-percent home’ means—

16 “(I) a qualifying new home which
17 is certified to have a projected level of
18 annual heating and cooling energy
19 consumption, measured in terms of
20 average annual energy cost to the
21 homeowner, which is at least 30 per-
22 cent less than the annual level of
23 heating and cooling energy consump-
24 tion of a qualifying new home con-
25 structed in accordance with the stand-

1 ards of chapter 4 of the 2000 Inter-
2 national Energy Conservation Code,
3 or

4 “(II) in the case of a qualifying
5 new home which is a manufactured
6 home, a home which meets the appli-
7 cable standards required by the Ad-
8 ministrators of the Environmental Pro-
9 tection Agency under the Energy Star
10 Labeled Homes program.

11 “(ii) 50-PERCENT HOME.—The term
12 ‘50-percent home’ means a qualifying new
13 home which would be described in clause
14 (i)(I) if 50 percent were substituted for 30
15 percent.

16 “(C) PRIOR CREDIT AMOUNTS ON SAME
17 HOME TAKEN INTO ACCOUNT.—The amount of
18 the credit otherwise allowable for the taxable
19 year with respect to a qualifying new home
20 under clause (i) or (ii) of subparagraph (A)
21 shall be reduced by the sum of the credits al-
22 lowed under subsection (a) to any taxpayer with
23 respect to the home for all preceding taxable
24 years.

1 “(2) COORDINATION WITH CERTAIN CREDITS.—

2 For purposes of this section—

3 “(A) the basis of any property referred to
4 in subsection (a) shall be reduced by that por-
5 tion of the basis of any property which is attrib-
6 utable to the rehabilitation credit (as deter-
7 mined under section 47(a)) or to the energy
8 credit (as determined under section 48(a)), and

9 “(B) expenditures taken into account
10 under section 25D, 47, or 48(a) shall not be
11 taken into account under this section.

12 “(c) DEFINITIONS.—For purposes of this section—

13 “(1) ELIGIBLE CONTRACTOR.—The term ‘eligi-
14 ble contractor’ means—

15 “(A) the person who constructed the quali-
16 fying new home, or

17 “(B) in the case of a qualifying new home
18 which is a manufactured home, the manufac-
19 tured home producer of such home.

20 If more than 1 person is described in subparagraph
21 (A) or (B) with respect to any qualifying new home,
22 such term means the person designated as such by
23 the owner of such home.

24 “(2) ENERGY EFFICIENT PROPERTY.—The
25 term ‘energy efficient property’ means any energy

1 efficient building envelope component, and any en-
2 ergy efficient heating or cooling equipment which
3 can, individually or in combination with other com-
4 ponents, meet the requirements of this section.

5 “(3) QUALIFYING NEW HOME.—

6 “(A) IN GENERAL.—The term ‘qualifying
7 new home’ means a dwelling—

8 “(i) located in the United States,

9 “(ii) the construction of which is sub-
10 stantially completed after the date of the
11 enactment of this section, and

12 “(iii) the first use of which after con-
13 struction is as a principal residence (within
14 the meaning of section 121).

15 “(B) MANUFACTURED HOME INCLUDED.—

16 The term ‘qualifying new home’ includes a
17 manufactured home conforming to Federal
18 Manufactured Home Construction and Safety
19 Standards (24 C.F.R. 3280).

20 “(4) CONSTRUCTION.—The term ‘construction’
21 includes reconstruction and rehabilitation.

22 “(5) BUILDING ENVELOPE COMPONENT.—The
23 term ‘building envelope component’ means—

24 “(A) any insulation material or system
25 which is specifically and primarily designed to

1 reduce the heat loss or gain of a qualifying new
2 home when installed in or on such home,

3 “(B) exterior windows (including sky-
4 lights), and

5 “(C) exterior doors.

6 “(d) CERTIFICATION.—

7 “(1) METHOD OF CERTIFICATION.—

8 “(A) IN GENERAL.—A certification de-
9 scribed in subsection (b)(1)(B) shall be deter-
10 mined either by a component-based method or
11 a performance-based method, or, in the case of
12 a qualifying new home which is a manufactured
13 home, by a method prescribed by the Adminis-
14 trator of the Environmental Protection Agency
15 under the Energy Star Labeled Homes pro-
16 gram.

17 “(B) COMPONENT-BASED METHOD.—A
18 component-based method is a method which
19 uses the applicable technical energy efficiency
20 specifications or ratings (including product la-
21 beling requirements) for the energy efficient
22 building envelope component or energy efficient
23 heating or cooling equipment. The Secretary
24 shall, in consultation with the Administrator of
25 the Environmental Protection Agency, develop

1 prescriptive component-based packages which
2 are equivalent in energy performance to prop-
3 erties which qualify under subparagraph (C).

4 “(C) PERFORMANCE-BASED METHOD.—

5 “(i) IN GENERAL.—A performance-
6 based method is a method which calculates
7 projected energy usage and cost reductions
8 in the qualifying new home in relation to
9 a new home—

10 “(I) heated by the same fuel
11 type, and

12 “(II) constructed in accordance
13 with the standards of chapter 4 of the
14 2000 International Energy Conserva-
15 tion Code.

16 “(ii) COMPUTER SOFTWARE.—Com-
17 puter software shall be used in support of
18 a performance-based method certification
19 under clause (i). Such software shall meet
20 procedures and methods for calculating en-
21 ergy and cost savings in regulations pro-
22 mulgated by the Secretary of Energy. Such
23 regulations on the specifications for soft-
24 ware and verification protocols shall be
25 based on the 2001 California Residential

1 Alternative Calculation Method Approval
2 Manual.

3 “(2) PROVIDER.—A certification described in
4 subsection (b)(1)(B) shall be provided by—

5 “(A) in the case of a component-based
6 method, a local building regulatory authority, a
7 utility, or a home energy rating organization,

8 “(B) in the case of a performance-based
9 method, an individual recognized by an organi-
10 zation designated by the Secretary for such
11 purposes, or

12 “(C) in the case of a qualifying new home
13 which is a manufactured home, a manufactured
14 home primary inspection agency.

15 “(3) FORM.—

16 “(A) IN GENERAL.—A certification de-
17 scribed in subsection (b)(1)(B) shall be made in
18 writing in a manner which specifies in readily
19 verifiable fashion the energy efficient building
20 envelope components and energy efficient heat-
21 ing or cooling equipment installed and their re-
22 spective rated energy efficiency performance,
23 and

24 “(i) in the case of a performance-
25 based method, accompanied by a written

1 analysis documenting the proper applica-
2 tion of a permissible energy performance
3 calculation method to the specific cir-
4 cumstances of such qualifying new home,
5 and

6 “(ii) in the case of a qualifying new
7 home which is a manufactured home, ac-
8 companied by such documentation as re-
9 quired by the Administrator of the Envi-
10 ronmental Protection Agency under the
11 Energy Star Labeled Homes program.

12 “(B) FORM PROVIDED TO BUYER.—A form
13 documenting the energy efficient building enve-
14 lope components and energy efficient heating or
15 cooling equipment installed and their rated en-
16 ergy efficiency performance shall be provided to
17 the buyer of the qualifying new home. The form
18 shall include labeled R-value for insulation
19 products, NFRC-labeled U-factor and solar
20 heat gain coefficient for windows, skylights, and
21 doors, labeled annual fuel utilization efficiency
22 (AFUE) ratings for furnaces and boilers, la-
23 beled heating seasonal performance factor
24 (HSPF) ratings for electric heat pumps, and la-

1 beled seasonal energy efficiency ratio (SEER)
2 ratings for air conditioners.

3 “(C) RATINGS LABEL AFFIXED IN DWELL-
4 ING.—A permanent label documenting the rat-
5 ings in subparagraph (B) shall be affixed to the
6 front of the electrical distribution panel of the
7 qualifying new home, or shall be otherwise per-
8 manently displayed in a readily inspectable loca-
9 tion in such home.

10 “(4) REGULATIONS.—

11 “(A) IN GENERAL.—In prescribing regula-
12 tions under this subsection for performance-
13 based certification methods, the Secretary shall
14 prescribe procedures for calculating annual en-
15 ergy usage and cost reductions for heating and
16 cooling and for the reporting of the results.
17 Such regulations shall—

18 “(i) provide that any calculation pro-
19 cedures be fuel neutral such that the same
20 energy efficiency measures allow a quali-
21 fying new home to be eligible for the credit
22 under this section regardless of whether
23 such home uses a gas or oil furnace or
24 boiler or an electric heat pump, and

1 “(ii) require that any computer soft-
2 ware allow for the printing of the Federal
3 tax forms necessary for the credit under
4 this section and for the printing of forms
5 for disclosure to the homebuyer.

6 “(B) PROVIDERS.—For purposes of para-
7 graph (2)(B), the Secretary shall establish re-
8 quirements for the designation of individuals
9 based on the requirements for energy consult-
10 ants and home energy raters specified by the
11 Mortgage Industry National Home Energy Rat-
12 ing Standards.

13 “(e) APPLICATION.—Subsection (a) shall apply to
14 qualifying new homes the construction of which is substan-
15 tially completed after the date of the enactment of this
16 section and purchased during the period beginning on
17 such date and ending on—

18 “(1) in the case of any 30-percent home, De-
19 cember 31, 2005, and

20 “(2) in the case of any 50-percent home, De-
21 cember 31, 2007.”.

22 (b) CREDIT MADE PART OF GENERAL BUSINESS
23 CREDIT.—Section 38(b) (relating to current year business
24 credit), as amended by this Act, is amended by striking
25 “plus” at the end of paragraph (16), by striking the period

1 at the end of paragraph (17) and inserting “, plus”, and
2 by adding at the end the following new paragraph:

3 “(18) the new energy efficient home credit de-
4 termined under section 45G(a).”.

5 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C
6 (relating to certain expenses for which credits are allow-
7 able) is amended by adding at the end the following new
8 subsection:

9 “(d) NEW ENERGY EFFICIENT HOME EXPENSES.—
10 No deduction shall be allowed for that portion of expenses
11 for a qualifying new home otherwise allowable as a deduc-
12 tion for the taxable year which is equal to the amount
13 of the credit determined for such taxable year under sec-
14 tion 45G(a).”.

15 (d) LIMITATION ON CARRYBACK.—Section 39(d) (re-
16 lating to transition rules), as amended by this Act, is
17 amended by adding at the end the following new para-
18 graph:

19 “(13) NO CARRYBACK OF NEW ENERGY EFFI-
20 CIENT HOME CREDIT BEFORE EFFECTIVE DATE.—
21 No portion of the unused business credit for any
22 taxable year which is attributable to the credit deter-
23 mined under section 45G may be carried back to any
24 taxable year ending on or before the date of the en-
25 actment of such section.”.

1 (e) DEDUCTION FOR CERTAIN UNUSED BUSINESS
 2 CREDITS.—Section 196(c) (defining qualified business
 3 credits), as amended by this Act, is amended by striking
 4 “and” at the end of paragraph (10), by striking the period
 5 at the end of paragraph (11) and inserting “, and”, and
 6 by adding after paragraph (11) the following new para-
 7 graph:

8 “(12) the new energy efficient home credit de-
 9 termined under section 45G(a).”.

10 (f) CLERICAL AMENDMENT.—The table of sections
 11 for subpart D of part IV of subchapter A of chapter 1,
 12 as amended by this Act, is amended by adding at the end
 13 the following new item:

“Sec. 45G. New energy efficient home credit.”.

14 (g) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to homes the construction of which
 16 is substantially completed after the date of the enactment
 17 of this Act.

18 **SEC. 302. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

19 (a) IN GENERAL.—Subpart D of part IV of sub-
 20 chapter A of chapter 1 (relating to business-related cred-
 21 its), as amended by this Act, is amended by adding at
 22 the end the following new section:

23 **“SEC. 45H. ENERGY EFFICIENT APPLIANCE CREDIT.**

24 “(a) ALLOWANCE OF CREDIT.—

1 “(1) IN GENERAL.—For purposes of section 38,
2 the energy efficient appliance credit determined
3 under this section for the taxable year is an amount
4 equal to the sum of the amounts determined under
5 paragraph (2) for qualified energy efficient appli-
6 ances produced by the taxpayer during the calendar
7 year ending with or within the taxable year.

8 “(2) AMOUNT.—The amount determined under
9 this paragraph for any category described in sub-
10 section (b)(2)(B) shall be the product of the applica-
11 ble amount for appliances in the category and the el-
12 igible production for the category.

13 “(b) APPLICABLE AMOUNT; ELIGIBLE PRODUC-
14 TION.—For purposes of subsection (a)—

15 “(1) APPLICABLE AMOUNT.—The applicable
16 amount is—

17 “(A) \$50, in the case of—

18 “(i) a clothes washer which is manu-
19 factured with at least a 1.42 MEF, or

20 “(ii) a refrigerator which consumes at
21 least 10 percent less kilowatt hours per
22 year than the energy conservation stand-
23 ards for refrigerators promulgated by the
24 Department of Energy and effective on
25 July 1, 2001,

1 “(B) \$100, in the case of—

2 “(i) a clothes washer which is manu-
3 factured with at least a 1.50 MEF, or

4 “(ii) a refrigerator which consumes at
5 least 15 percent (20 percent in the case of
6 a refrigerator manufactured after 2006)
7 less kilowatt hours per year than such en-
8 ergy conservation standards, and

9 “(C) \$150, in the case of a refrigerator
10 manufactured before 2007 which consumes at
11 least 20 percent less kilowatt hours per year
12 than such energy conservation standards.

13 “(2) ELIGIBLE PRODUCTION.—

14 “(A) IN GENERAL.—The eligible produc-
15 tion of each category of qualified energy effi-
16 cient appliances is the excess of—

17 “(i) the number of appliances in such
18 category which are produced by the tax-
19 payer during such calendar year, over

20 “(ii) the average number of appliances
21 in such category which were produced by
22 the taxpayer during calendar years 2000,
23 2001, and 2002.

24 “(B) CATEGORIES.—For purposes of sub-
25 paragraph (A), the categories are—

1 “(i) clothes washers described in para-
2 graph (1)(A)(i),

3 “(ii) clothes washers described in
4 paragraph (1)(B)(i),

5 “(iii) refrigerators described in para-
6 graph (1)(A)(ii),

7 “(iv) refrigerators described in para-
8 graph (1)(B)(ii), and

9 “(v) refrigerators described in para-
10 graph (1)(C).

11 “(c) LIMITATION ON MAXIMUM CREDIT.—

12 “(1) IN GENERAL.—The amount of credit al-
13 lowed under subsection (a) with respect to a tax-
14 payer for all taxable years shall not exceed
15 \$60,000,000, of which not more than \$30,000,000
16 may be allowed with respect to the credit determined
17 by using the applicable amount under subsection
18 (b)(1)(A).

19 “(2) LIMITATION BASED ON GROSS RE-
20 CEIPTS.—The credit allowed under subsection (a)
21 with respect to a taxpayer for the taxable year shall
22 not exceed an amount equal to 2 percent of the aver-
23 age annual gross receipts of the taxpayer for the 3
24 taxable years preceding the taxable year in which
25 the credit is determined.

1 “(3) GROSS RECEIPTS.—For purposes of this
2 subsection, the rules of paragraphs (2) and (3) of
3 section 448(c) shall apply.

4 “(d) DEFINITIONS.—For purposes of this section—

5 “(1) QUALIFIED ENERGY EFFICIENT APPLI-
6 ANCE.—The term ‘qualified energy efficient appli-
7 ance’ means—

8 “(A) a clothes washer described in sub-
9 paragraph (A)(i) or (B)(i) of subsection (b)(1),
10 or

11 “(B) a refrigerator described in subpara-
12 graph (A)(ii), (B)(ii), or (C) of subsection
13 (b)(1).

14 “(2) CLOTHES WASHER.—The term ‘clothes
15 washer’ means a residential clothes washer, includ-
16 ing a residential style coin operated washer.

17 “(3) REFRIGERATOR.—The term ‘refrigerator’
18 means an automatic defrost refrigerator-freezer
19 which has an internal volume of at least 16.5 cubic
20 feet.

21 “(4) MEF.—The term ‘MEF’ means Modified
22 Energy Factor (as determined by the Secretary of
23 Energy).

24 “(e) SPECIAL RULES.—

1 “(1) IN GENERAL.—Rules similar to the rules
2 of subsections (c), (d), and (e) of section 52 shall
3 apply for purposes of this section.

4 “(2) AGGREGATION RULES.—All persons treat-
5 ed as a single employer under subsection (a) or (b)
6 of section 52 or subsection (m) or (o) of section 414
7 shall be treated as 1 person for purposes of sub-
8 section (a).

9 “(f) VERIFICATION.—The taxpayer shall submit such
10 information or certification as the Secretary, in consulta-
11 tion with the Secretary of Energy, determines necessary
12 to claim the credit amount under subsection (a).

13 “(g) TERMINATION.—This section shall not apply—

14 “(1) with respect to refrigerators described in
15 subsection (b)(1)(A)(ii) produced after December 31,
16 2004, and

17 “(2) with respect to all other qualified energy
18 efficient appliances produced after December 31,
19 2007.”.

20 (b) CREDIT MADE PART OF GENERAL BUSINESS
21 CREDIT.—Section 38(b) (relating to current year business
22 credit), as amended by this Act, is amended by striking
23 “plus” at the end of paragraph (17), by striking the period
24 at the end of paragraph (18) and inserting “, plus”, and
25 by adding at the end the following new paragraph:

1 “(19) the energy efficient appliance credit de-
2 termined under section 45H(a).”.

3 (c) **LIMITATION ON CARRYBACK.**—Section 39(d) (re-
4 relating to transition rules), as amended by this Act, is
5 amended by adding at the end the following new para-
6 graph:

7 “(14) **NO CARRYBACK OF ENERGY EFFICIENT**
8 **APPLIANCE CREDIT BEFORE EFFECTIVE DATE.**—No
9 portion of the unused business credit for any taxable
10 year which is attributable to the energy efficient ap-
11 pliance credit determined under section 45H may be
12 carried to a taxable year ending on or before the
13 date of the enactment of such section.”.

14 (d) **CLERICAL AMENDMENT.**—The table of sections
15 for subpart D of part IV of subchapter A of chapter 1,
16 as amended by this Act, is amended by adding at the end
17 the following new item:

 “Sec. 45H. Energy efficient appliance credit.”.

18 (e) **EFFECTIVE DATE.**—The amendments made by
19 this section shall apply to appliances produced after the
20 date of the enactment of this Act, in taxable years ending
21 after such date.

22 **SEC. 303. CREDIT FOR RESIDENTIAL ENERGY EFFICIENT**
23 **PROPERTY.**

24 (a) **IN GENERAL.**—Subpart A of part IV of sub-
25 chapter A of chapter 1 (relating to nonrefundable personal

1 credits) is amended by inserting after section 25B the fol-
2 lowing new section:

3 **“SEC. 25C. RESIDENTIAL ENERGY EFFICIENT PROPERTY.**

4 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
5 dividual, there shall be allowed as a credit against the tax
6 imposed by this chapter for the taxable year an amount
7 equal to the sum of—

8 “(1) 15 percent of the qualified photovoltaic
9 property expenditures made by the taxpayer during
10 such year,

11 “(2) 15 percent of the qualified solar water
12 heating property expenditures made by the taxpayer
13 during such year,

14 “(3) 30 percent of the qualified fuel cell prop-
15 erty expenditures made by the taxpayer during such
16 year,

17 “(4) 30 percent of the qualified wind energy
18 property expenditures made by the taxpayer during
19 such year, and

20 “(5) the sum of the qualified Tier 2 energy effi-
21 cient building property expenditures made by the
22 taxpayer during such year.

23 “(b) LIMITATIONS.—

24 “(1) MAXIMUM CREDIT.—The credit allowed
25 under subsection (a) shall not exceed—

1 “(A) \$2,000 for property described in
2 paragraph (1), (2), or (5) of subsection (d),

3 “(B) \$500 for each 0.5 kilowatt of capac-
4 ity of property described in subsection (d)(4),
5 and

6 “(C) for property described in subsection
7 (d)(6)—

8 “(i) \$75 for each electric heat pump
9 water heater,

10 “(ii) \$250 for each electric heat
11 pump,

12 “(iii) \$250 for each advanced natural
13 gas, oil, or propane furnace,

14 “(iv) \$250 for each central air condi-
15 tioner,

16 “(v) \$75 for each natural gas, oil, or
17 propane water heater, and

18 “(vi) \$250 for each geothermal heat
19 pump.

20 “(2) SAFETY CERTIFICATIONS.—No credit shall
21 be allowed under this section for an item of property
22 unless—

23 “(A) in the case of solar water heating
24 property, such property is certified for perform-
25 ance and safety by the non-profit Solar Rating

1 Certification Corporation or a comparable enti-
2 ty endorsed by the government of the State in
3 which such property is installed,

4 “(B) in the case of a photovoltaic property,
5 a fuel cell property, or a wind energy property,
6 such property meets appropriate fire and elec-
7 tric code requirements, and

8 “(C) in the case of property described in
9 subsection (d)(6), such property meets the per-
10 formance and quality standards, and the certifi-
11 cation requirements (if any), which—

12 “(i) have been prescribed by the Sec-
13 retary by regulations (after consultation
14 with the Secretary of Energy or the Ad-
15 ministrator of the Environmental Protec-
16 tion Agency, as appropriate),

17 “(ii) in the case of the energy effi-
18 ciency ratio (EER)—

19 “(I) require measurements to be
20 based on published data which is test-
21 ed by manufacturers at 95 degrees
22 Fahrenheit, and

23 “(II) do not require ratings to be
24 based on certified data of the Air

1 Conditioning and Refrigeration Insti-
2 tute, and

3 “(iii) are in effect at the time of the
4 acquisition of the property.

5 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
6 credit allowable under subsection (a) exceeds the limita-
7 tion imposed by section 26(a) for such taxable year re-
8 duced by the sum of the credits allowable under this sub-
9 part (other than this section and section 25D), such excess
10 shall be carried to the succeeding taxable year and added
11 to the credit allowable under subsection (a) for such suc-
12 ceeding taxable year.

13 “(d) DEFINITIONS.—For purposes of this section—

14 “(1) QUALIFIED SOLAR WATER HEATING PROP-
15 ERTY EXPENDITURE.—The term ‘qualified solar
16 water heating property expenditure’ means an ex-
17 penditure for property to heat water for use in a
18 dwelling unit located in the United States and used
19 as a residence by the taxpayer if at least half of the
20 energy used by such property for such purpose is de-
21 rived from the sun.

22 “(2) QUALIFIED PHOTOVOLTAIC PROPERTY EX-
23 PENDITURE.—The term ‘qualified photovoltaic prop-
24 erty expenditure’ means an expenditure for property
25 which uses solar energy to generate electricity for

1 use in a dwelling unit located in the United States
2 and used as a residence by the taxpayer.

3 “(3) SOLAR PANELS.—No expenditure relating
4 to a solar panel or other property installed as a roof
5 (or portion thereof) shall fail to be treated as prop-
6 erty described in paragraph (1) or (2) solely because
7 it constitutes a structural component of the struc-
8 ture on which it is installed.

9 “(4) QUALIFIED FUEL CELL PROPERTY EX-
10 PENDITURE.—The term ‘qualified fuel cell property
11 expenditure’ means an expenditure for qualified fuel
12 cell property (as defined in section 48(a)(4)) in-
13 stalled on or in connection with a dwelling unit lo-
14 cated in the United States and used as a principal
15 residence (within the meaning of section 121) by the
16 taxpayer.

17 “(5) QUALIFIED WIND ENERGY PROPERTY EX-
18 PENDITURE.—The term ‘qualified wind energy prop-
19 erty expenditure’ means an expenditure for property
20 which uses wind energy to generate electricity for
21 use in a dwelling unit located in the United States
22 and used as a residence by the taxpayer.

23 “(6) QUALIFIED TIER 2 ENERGY EFFICIENT
24 BUILDING PROPERTY EXPENDITURE.—

1 “(A) IN GENERAL.—The term ‘qualified
2 Tier 2 energy efficient building property ex-
3 penditure’ means an expenditure for any Tier 2
4 energy efficient building property.

5 “(B) TIER 2 ENERGY EFFICIENT BUILDING
6 PROPERTY.—The term ‘Tier 2 energy efficient
7 building property’ means—

8 “(i) an electric heat pump water heat-
9 er which yields an energy factor of at least
10 1.7 in the standard Department of Energy
11 test procedure,

12 “(ii) an electric heat pump which has
13 a heating seasonal performance factor
14 (HSPF) of at least 9, a seasonal energy ef-
15 ficiency ratio (SEER) of at least 15, and
16 an energy efficiency ratio (EER) of at
17 least 12.5,

18 “(iii) an advanced natural gas, oil, or
19 propane furnace which achieves at least 95
20 percent annual fuel utilization efficiency
21 (AFUE),

22 “(iv) a central air conditioner which
23 has a seasonal energy efficiency ratio
24 (SEER) of at least 15 and an energy effi-
25 ciency ratio (EER) of at least 12.5,

1 “(v) a natural gas, oil, or propane
2 water heater which has an energy factor of
3 at least 0.80 in the standard Department
4 of Energy test procedure, and

5 “(vi) a geothermal heat pump which
6 has an energy efficiency ratio (EER) of at
7 least 21.

8 “(7) LABOR COSTS.—Expenditures for labor
9 costs properly allocable to the onsite preparation, as-
10 sembly, or original installation of the property de-
11 scribed in paragraph (1), (2), (4), (5), or (6) and for
12 piping or wiring to interconnect such property to the
13 dwelling unit shall be taken into account for pur-
14 poses of this section.

15 “(8) SWIMMING POOLS, ETC., USED AS STOR-
16 AGE MEDIUM.—Expenditures which are properly al-
17 locable to a swimming pool, hot tub, or any other
18 energy storage medium which has a function other
19 than the function of such storage shall not be taken
20 into account for purposes of this section.

21 “(e) SPECIAL RULES.—For purposes of this
22 section—

23 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-
24 CUPANCY.—In the case of any dwelling unit which is
25 jointly occupied and used during any calendar year

1 as a residence by 2 or more individuals the following
2 rules shall apply:

3 “(A) The amount of the credit allowable,
4 under subsection (a) by reason of expenditures
5 (as the case may be) made during such cal-
6 endar year by any of such individuals with re-
7 spect to such dwelling unit shall be determined
8 by treating all of such individuals as 1 taxpayer
9 whose taxable year is such calendar year.

10 “(B) There shall be allowable, with respect
11 to such expenditures to each of such individ-
12 uals, a credit under subsection (a) for the tax-
13 able year in which such calendar year ends in
14 an amount which bears the same ratio to the
15 amount determined under subparagraph (A) as
16 the amount of such expenditures made by such
17 individual during such calendar year bears to
18 the aggregate of such expenditures made by all
19 of such individuals during such calendar year.

20 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
21 HOUSING CORPORATION.—In the case of an indi-
22 vidual who is a tenant-stockholder (as defined in sec-
23 tion 216) in a cooperative housing corporation (as
24 defined in such section), such individual shall be
25 treated as having made his tenant-stockholder’s pro-

1 portionate share (as defined in section 216(b)(3)) of
2 any expenditures of such corporation.

3 “(3) CONDOMINIUMS.—

4 “(A) IN GENERAL.—In the case of an indi-
5 vidual who is a member of a condominium man-
6 agement association with respect to a condo-
7 minium which the individual owns, such indi-
8 vidual shall be treated as having made the indi-
9 vidual’s proportionate share of any expenditures
10 of such association.

11 “(B) CONDOMINIUM MANAGEMENT ASSO-
12 CIATION.—For purposes of this paragraph, the
13 term ‘condominium management association’
14 means an organization which meets the require-
15 ments of paragraph (1) of section 528(c) (other
16 than subparagraph (E) thereof) with respect to
17 a condominium project substantially all of the
18 units of which are used as residences.

19 “(4) ALLOCATION IN CERTAIN CASES.—Except
20 in the case of qualified wind energy property expend-
21 itures, if less than 80 percent of the use of an item
22 is for nonbusiness purposes, only that portion of the
23 expenditures for such item which is properly allo-
24 cable to use for nonbusiness purposes shall be taken
25 into account.

1 “(5) WHEN EXPENDITURE MADE; AMOUNT OF
2 EXPENDITURE.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), an expenditure with respect
5 to an item shall be treated as made when the
6 original installation of the item is completed.

7 “(B) EXPENDITURES PART OF BUILDING
8 CONSTRUCTION.—In the case of an expenditure
9 in connection with the construction or recon-
10 struction of a structure, such expenditure shall
11 be treated as made when the original use of the
12 constructed or reconstructed structure by the
13 taxpayer begins.

14 “(C) AMOUNT.—The amount of any ex-
15 penditure shall be the cost thereof.

16 “(6) PROPERTY FINANCED BY SUBSIDIZED EN-
17 ERGY FINANCING.—For purposes of determining the
18 amount of expenditures made by any individual with
19 respect to any dwelling unit, there shall not be taken
20 into account expenditures which are made from sub-
21 sidized energy financing (as defined in section
22 48(a)(5)(C)).

23 “(f) BASIS ADJUSTMENTS.—For purposes of this
24 subtitle, if a credit is allowed under this section for any
25 expenditure with respect to any property, the increase in

1 the basis of such property which would (but for this sub-
2 section) result from such expenditure shall be reduced by
3 the amount of the credit so allowed.

4 “(g) TERMINATION.—The credit allowed under this
5 section shall not apply to expenditures after December 31,
6 2007.”.

7 (b) CREDIT ALLOWED AGAINST REGULAR TAX AND
8 ALTERNATIVE MINIMUM TAX.—

9 (1) IN GENERAL.—Section 25C(b), as added by
10 subsection (a), is amended by adding at the end the
11 following new paragraph:

12 “(3) LIMITATION BASED ON AMOUNT OF
13 TAX.—The credit allowed under subsection (a) for
14 the taxable year shall not exceed the excess of—

15 “(A) the sum of the regular tax liability
16 (as defined in section 26(b)) plus the tax im-
17 posed by section 55, over

18 “(B) the sum of the credits allowable
19 under this subpart (other than this section and
20 section 25D) and section 27 for the taxable
21 year.”.

22 (2) CONFORMING AMENDMENTS.—

23 (A) Section 25C(c), as added by subsection
24 (a), is amended by striking “section 26(a) for
25 such taxable year reduced by the sum of the

1 credits allowable under this subpart (other than
2 this section and section 25D)” and inserting
3 “subsection (b)(3)”.

4 (B) Section 23(b)(4)(B) is amended by in-
5 serting “and section 25C” after “this section”.

6 (C) Section 24(b)(3)(B) is amended by
7 striking “23 and 25B” and inserting “23, 25B,
8 and 25C”.

9 (D) Section 25(e)(1)(C) is amended by in-
10 serting “25C,” after “25B,”.

11 (E) Section 25B(g)(2) is amended by
12 striking “section 23” and inserting “sections 23
13 and 25C”.

14 (F) Section 26(a)(1) is amended by strik-
15 ing “and 25B” and inserting “25B, and 25C”.

16 (G) Section 904(h) is amended by striking
17 “and 25B” and inserting “25B, and 25C”.

18 (H) Section 1400C(d) is amended by strik-
19 ing “and 25B” and inserting “25B, and 25C”.

20 (e) ADDITIONAL CONFORMING AMENDMENTS.—

21 (1) Section 23(e), as in effect for taxable years
22 beginning before January 1, 2004, is amended by
23 striking “section 1400C” and inserting “sections
24 25C and 1400C”.

1 (2) Section 25(e)(1)(C), as in effect for taxable
2 years beginning before January 1, 2004, is amended
3 by inserting “, 25C,” after “sections 23”.

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

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

12 (4) Section 1400C(d), as in effect for taxable
13 years beginning before January 1, 2004, is amended
14 by inserting “and section 25C” after “this section”.

15 (5) The table of sections for subpart A of part
16 IV of subchapter A of chapter 1 is amended by in-
17 serting after the item relating to section 25B the fol-
18 lowing new item:

 “Sec. 25C. Residential energy efficient property.”.

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—Except as provided by para-
21 graph (2), the amendments made by this section
22 shall apply to expenditures after the date of the en-
23 actment of this Act, in taxable years ending after
24 such date.

1 (2) SUBSECTION (b).—The amendments made
2 by subsection (b) shall apply to taxable years begin-
3 ning after December 31, 2003.

4 **SEC. 304. CREDIT FOR BUSINESS INSTALLATION OF QUALI-**
5 **FIED FUEL CELLS AND STATIONARY MICRO-**
6 **TURBINE POWER PLANTS.**

7 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-
8 ergy property) is amended by striking “or” at the end of
9 clause (i), by adding “or” at the end of clause (ii), and
10 by inserting after clause (ii) the following new clause:

11 “(iii) qualified fuel cell property or
12 qualified microturbine property,”.

13 (b) QUALIFIED FUEL CELL PROPERTY; QUALIFIED
14 MICROTURBINE PROPERTY.—Section 48(a) (relating to
15 energy credit) is amended by redesignating paragraphs (4)
16 and (5) as paragraphs (5) and (6), respectively, and by
17 inserting after paragraph (3) the following new paragraph:

18 “(4) QUALIFIED FUEL CELL PROPERTY; QUALI-
19 FIED MICROTURBINE PROPERTY.—For purposes of
20 this subsection—

21 “(A) QUALIFIED FUEL CELL PROPERTY.—

22 “(i) IN GENERAL.—The term ‘quali-
23 fied fuel cell property’ means a fuel cell
24 power plant which—

1 “(I) generates at least 0.5 kilo-
2 watt of electricity using an electro-
3 chemical process, and

4 “(II) has an electricity-only gen-
5 eration efficiency greater than 30 per-
6 cent.

7 “(ii) LIMITATION.—In the case of
8 qualified fuel cell property placed in service
9 during the taxable year, the credit other-
10 wise determined under paragraph (1) for
11 such year with respect to such property
12 shall not exceed an amount equal to \$500
13 for each 0.5 kilowatt of capacity of such
14 property.

15 “(iii) FUEL CELL POWER PLANT.—
16 The term ‘fuel cell power plant’ means an
17 integrated system comprised of a fuel cell
18 stack assembly and associated balance of
19 plant components which converts a fuel
20 into electricity using electrochemical
21 means.

22 “(iv) TERMINATION.—The term
23 ‘qualified fuel cell property’ shall not in-
24 clude any property placed in service after
25 December 31, 2007.

1 “(B) QUALIFIED MICROTURBINE PROP-
2 ERTY.—

3 “(i) IN GENERAL.—The term ‘quali-
4 fied microturbine property’ means a sta-
5 tionary microturbine power plant which—

6 “(I) has a capacity of less than
7 2,000 kilowatts, and

8 “(II) has an electricity-only gen-
9 eration efficiency of not less than 26
10 percent at International Standard Or-
11 ganization conditions.

12 “(ii) LIMITATION.—In the case of
13 qualified microturbine property placed in
14 service during the taxable year, the credit
15 otherwise determined under paragraph (1)
16 for such year with respect to such property
17 shall not exceed an amount equal \$200 for
18 each kilowatt of capacity of such property.

19 “(iii) STATIONARY MICROTURBINE
20 POWER PLANT.—The term ‘stationary
21 microturbine power plant’ means an inte-
22 grated system comprised of a gas turbine
23 engine, a combustor, a recuperator or re-
24 generator, a generator or alternator, and
25 associated balance of plant components

1 which converts a fuel into electricity and
2 thermal energy. Such term also includes all
3 secondary components located between the
4 existing infrastructure for fuel delivery and
5 the existing infrastructure for power dis-
6 tribution, including equipment and controls
7 for meeting relevant power standards, such
8 as voltage, frequency, and power factors.

9 “(iv) TERMINATION.—The term
10 ‘qualified microturbine property’ shall not
11 include any property placed in service after
12 December 31, 2006.”.

13 (c) ENERGY PERCENTAGE.—Section 48(a)(2)(A) (re-
14 lating to energy percentage) is amended to read as follows:

15 “(A) IN GENERAL.—The energy percent-
16 age is—

17 “(i) in the case of qualified fuel cell
18 property, 30 percent, and

19 “(ii) in the case of any other energy
20 property, 10 percent.”.

21 (d) CONFORMING AMENDMENTS.—

22 (A) Section 29(b)(3)(A)(i)(III) is amended
23 by striking “section 48(a)(4)(C)” and inserting
24 “section 48(a)(5)(C)”.

1 (B) Section 48(a)(1) is amended by insert-
2 ing “except as provided in subparagraph (A)(ii)
3 or (B)(ii) of paragraph (4),” before “the en-
4 ergy”.

5 (e) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to property placed in service after
7 the date of the enactment of this Act, in taxable years
8 ending after such date, under rules similar to the rules
9 of section 48(m) of the Internal Revenue Code of 1986
10 (as in effect on the day before the date of the enactment
11 of the Revenue Reconciliation Act of 1990).

12 **SEC. 305. ENERGY EFFICIENT COMMERCIAL BUILDINGS DE-**
13 **DUCTION.**

14 (a) IN GENERAL.—Part VI of subchapter B of chap-
15 ter 1 (relating to itemized deductions for individuals and
16 corporations) is amended by inserting after section 179A
17 the following new section:

18 **“SEC. 179B. ENERGY EFFICIENT COMMERCIAL BUILDINGS**
19 **DEDUCTION.**

20 “(a) IN GENERAL.—There shall be allowed as a de-
21 duction for the taxable year in which a building is placed
22 in service by a taxpayer, an amount equal to the energy
23 efficient commercial building property expenditures made
24 by such taxpayer with respect to the construction or recon-

1 construction of such building for the taxable year or any pre-
2 ceding taxable year.

3 “(b) MAXIMUM AMOUNT OF DEDUCTION.—The
4 amount of energy efficient commercial building property
5 expenditures taken into account under subsection (a) shall
6 not exceed an amount equal to the product of—

7 “(1) \$2.25, and

8 “(2) the square footage of the building with re-
9 spect to which the expenditures are made.

10 “(c) ENERGY EFFICIENT COMMERCIAL BUILDING
11 PROPERTY EXPENDITURES.—For purposes of this
12 section—

13 “(1) IN GENERAL.—The term ‘energy efficient
14 commercial building property expenditures’ means
15 amounts paid or incurred for energy efficient prop-
16 erty installed on or in connection with the construc-
17 tion or reconstruction of a building—

18 “(A) for which depreciation is allowable
19 under section 167,

20 “(B) which is located in the United States,
21 and

22 “(C) which is the type of structure to
23 which the Standard 90.1–2001 of the American
24 Society of Heating, Refrigerating, and Air Con-

1 conditioning Engineers and the Illuminating Engi-
2 neering Society of North America is applicable.
3 Such term includes expenditures for labor costs
4 properly allocable to the onsite preparation, assem-
5 bly, or original installation of the property.

6 “(2) ENERGY EFFICIENT PROPERTY.—For pur-
7 poses of paragraph (1)—

8 “(A) IN GENERAL.—The term ‘energy effi-
9 cient property’ means any property which re-
10 duces total annual energy and power costs with
11 respect to the lighting, heating, cooling, ventila-
12 tion, and hot water supply systems of the build-
13 ing by 50 percent or more in comparison to a
14 building which meets the minimum require-
15 ments of Standard 90.1–2001 of the American
16 Society of Heating, Refrigerating, and Air Con-
17 ditioning Engineers and the Illuminating Engi-
18 neering Society of North America, using meth-
19 ods of calculation described in subparagraph
20 (B) and certified by qualified individuals as
21 provided under paragraph (5).

22 “(B) METHODS OF CALCULATION.—The
23 Secretary, in consultation with the Secretary of
24 Energy, shall promulgate regulations which de-

1 scribe in detail methods for calculating and
2 verifying energy and power costs.

3 “(C) COMPUTER SOFTWARE.—

4 “(i) IN GENERAL.—Any calculation
5 described in subparagraph (B) shall be
6 prepared by qualified computer software.

7 “(ii) QUALIFIED COMPUTER SOFT-
8 WARE.—For purposes of this subpara-
9 graph, the term ‘qualified computer soft-
10 ware’ means software—

11 “(I) for which the software de-
12 signer has certified that the software
13 meets all procedures and detailed
14 methods for calculating energy and
15 power costs as required by the Sec-
16 retary,

17 “(II) which provides such forms
18 as required to be filed by the Sec-
19 retary in connection with energy effi-
20 ciency of property and the deduction
21 allowed under this section, and

22 “(III) which provides a notice
23 form which summarizes the energy ef-
24 ficiency features of the building and
25 its projected annual energy costs.

1 “(3) ALLOCATION OF DEDUCTION FOR PUBLIC
2 PROPERTY.—In the case of energy efficient commer-
3 cial building property expenditures made by a public
4 entity with respect to the construction or reconstruc-
5 tion of a public building, the Secretary shall promul-
6 gate regulations under which the value of the deduc-
7 tion with respect to such expenditures which would
8 be allowable to the public entity under this section
9 (determined without regard to the tax-exempt status
10 of such entity) may be allocated to the person pri-
11 marily responsible for designing the energy efficient
12 property. Such person shall be treated as the tax-
13 payer for purposes of this section.

14 “(4) NOTICE TO OWNER.—Any qualified indi-
15 vidual providing a certification under paragraph (5)
16 shall provide an explanation to the owner of the
17 building regarding the energy efficiency features of
18 the building and its projected annual energy costs as
19 provided in the notice under paragraph
20 (2)(C)(ii)(III).

21 “(5) CERTIFICATION.—

22 “(A) IN GENERAL.—The Secretary shall
23 prescribe procedures for the inspection and test-
24 ing for compliance of buildings by qualified in-

1 individuals described in subparagraph (B). Such
2 procedures shall be—

3 “(i) comparable, given the difference
4 between commercial and residential build-
5 ings, to the requirements in the Mortgage
6 Industry National Home Energy Rating
7 Standards, and

8 “(ii) fuel neutral such that the same
9 energy efficiency measures allow a building
10 to be eligible for the credit under this sec-
11 tion regardless of whether such building
12 uses a gas or oil furnace or boiler or an
13 electric heat pump.

14 “(B) QUALIFIED INDIVIDUALS.—Individ-
15 uals qualified to determine compliance shall be
16 only those individuals who are recognized by an
17 organization certified by the Secretary for such
18 purposes. The Secretary may qualify a home
19 energy ratings organization, a local building
20 regulatory authority, a State or local energy of-
21 fice, a utility, or any other organization which
22 meets the requirements prescribed under this
23 paragraph.

24 “(C) PROFICIENCY OF QUALIFIED INDIVID-
25 UALS.—The Secretary shall consult with non-

1 profit organizations and State agencies with ex-
2 pertise in energy efficiency calculations and in-
3 spections to develop proficiency tests and train-
4 ing programs to qualify individuals to determine
5 compliance.

6 “(d) BASIS REDUCTION.—For purposes of this sub-
7 title, if a deduction is allowed under this section with re-
8 spect to any energy efficient property, the basis of such
9 property shall be reduced by the amount of the deduction
10 so allowed.

11 “(e) REGULATIONS.—The Secretary shall promulgate
12 such regulations as necessary to take into account new
13 technologies regarding energy efficiency and renewable en-
14 ergy for purposes of determining energy efficiency and
15 savings under this section.

16 “(f) TERMINATION.—This section shall not apply
17 with respect to any energy efficient commercial building
18 property expenditures in connection with a building the
19 construction of which is not completed on or before De-
20 cember 31, 2009.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 1016(a), as amended by this Act, is
23 amended by striking “and” at the end of paragraph
24 (30), by striking the period at the end of paragraph

1 (31) and inserting “, and”, and by adding at the
2 end the following new paragraph:

3 “(32) to the extent provided in section
4 179B(d).”.

5 (2) Section 1245(a) is amended by inserting
6 “179B,” after “179A,” both places it appears in
7 paragraphs (2)(C) and (3)(C).

8 (3) Section 1250(b)(3) is amended by inserting
9 before the period at the end of the first sentence “or
10 by section 179B”.

11 (4) Section 263(a)(1) is amended by striking
12 “or” at the end of subparagraph (G), by striking the
13 period at the end of subparagraph (H) and inserting
14 “, or”, and by inserting after subparagraph (H) the
15 following new subparagraph:

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

18 (5) Section 312(k)(3)(B) is amended by strik-
19 ing “or 179A” each place it appears in the heading
20 and text and inserting “, 179A, or 179B”.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 for part VI of subchapter B of chapter 1 is amended by
23 inserting after section 179A the following new item:

“Sec. 179B. Energy efficient commercial buildings deduction.”.

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

4 **SEC. 306. THREE-YEAR APPLICABLE RECOVERY PERIOD**
 5 **FOR DEPRECIATION OF QUALIFIED ENERGY**
 6 **MANAGEMENT DEVICES.**

7 (a) IN GENERAL.—Section 168(e)(3)(A) (defining 3-
 8 year property) is amended by striking “and” at the end
 9 of clause (ii), by striking the period at the end of clause
 10 (iii) and inserting “, and”, and by adding at the end the
 11 following new clause:

12 “(iv) any qualified energy manage-
 13 ment device.”.

14 (b) DEFINITION OF QUALIFIED ENERGY MANAGE-
 15 MENT DEVICE.—Section 168(i) (relating to definitions
 16 and special rules) is amended by inserting at the end the
 17 following new paragraph:

18 “(15) QUALIFIED ENERGY MANAGEMENT DE-
 19 VICE.—

20 “(A) IN GENERAL.—The term ‘qualified
 21 energy management device’ means any energy
 22 management device which is placed in service
 23 before January 1, 2008, by a taxpayer who is
 24 a supplier of electric energy or a provider of
 25 electric energy services.

1 “(B) ENERGY MANAGEMENT DEVICE.—
2 For purposes of subparagraph (A), the term
3 ‘energy management device’ means any meter
4 or metering device which is used by the
5 taxpayer—

6 “(i) to measure and record electricity
7 usage data on a time-differentiated basis
8 in at least 4 separate time segments per
9 day, and

10 “(ii) to provide such data on at least
11 a monthly basis to both consumers and the
12 taxpayer.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to property placed in service after
15 the date of the enactment of this Act, in taxable years
16 ending after such date.

17 **SEC. 307. THREE-YEAR APPLICABLE RECOVERY PERIOD**
18 **FOR DEPRECIATION OF QUALIFIED WATER**
19 **SUBMETERING DEVICES.**

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

1 “(v) any qualified water submetering
2 device.”.

3 (b) DEFINITION OF QUALIFIED WATER SUB-
4 METERING DEVICE.—Section 168(i) (relating to defini-
5 tions and special rules), as amended by this Act, is amend-
6 ed by inserting at the end the following new paragraph:

7 “(16) QUALIFIED WATER SUBMETERING DE-
8 VICE.—

9 “(A) IN GENERAL.—The term ‘qualified
10 water submetering device’ means any water
11 submetering device which is placed in service
12 before January 1, 2008, by a taxpayer who is
13 an eligible resupplier with respect to the unit
14 for which the device is placed in service.

15 “(B) WATER SUBMETERING DEVICE.—For
16 purposes of this paragraph, the term ‘water
17 submetering device’ means any submetering de-
18 vice which is used by the taxpayer—

19 “(i) to measure and record water
20 usage data, and

21 “(ii) to provide such data on at least
22 a monthly basis to both consumers and the
23 taxpayer.

24 “(C) ELIGIBLE RESUPPLIER.—For pur-
25 poses of subparagraph (A), the term ‘eligible re-

1 supplier’ means any taxpayer who purchases
2 and installs qualified water submetering devices
3 in every unit in any multi-unit property.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to property placed in service after
6 the date of the enactment of this Act, in taxable years
7 ending after such date.

8 **SEC. 308. ENERGY CREDIT FOR COMBINED HEAT AND**
9 **POWER SYSTEM PROPERTY.**

10 (a) IN GENERAL.—Section 48(a)(3)(A) (defining en-
11 ergy property), as amended by this Act, is amended by
12 striking “or” at the end of clause (ii), by adding “or” at
13 the end of clause (iii), and by inserting after clause (iii)
14 the following new clause:

15 “(iv) combined heat and power system
16 property,”.

17 (b) COMBINED HEAT AND POWER SYSTEM PROP-
18 erty.—Section 48(a) (relating to energy credit), as
19 amended by this Act, is amended by redesignating para-
20 graphs (5) and (6) as paragraphs (6) and (7), respectively,
21 and by inserting after paragraph (4) the following new
22 paragraph:

23 “(5) COMBINED HEAT AND POWER SYSTEM
24 PROPERTY.—For purposes of this subsection—

1 “(A) COMBINED HEAT AND POWER SYS-
2 TEM PROPERTY.—The term ‘combined heat and
3 power system property’ means property com-
4 prising a system—

5 “(i) which uses the same energy
6 source for the simultaneous or sequential
7 generation of electrical power, mechanical
8 shaft power, or both, in combination with
9 the generation of steam or other forms of
10 useful thermal energy (including heating
11 and cooling applications),

12 “(ii) which has an electrical capacity
13 of more than 50 kilowatts or a mechanical
14 energy capacity of more than 67 horse-
15 power or an equivalent combination of elec-
16 trical and mechanical energy capacities,

17 “(iii) which produces—

18 “(I) at least 20 percent of its
19 total useful energy in the form of
20 thermal energy which is not used to
21 produce electrical or mechanical power
22 (or combination thereof), and

23 “(II) at least 20 percent of its
24 total useful energy in the form of elec-

1 trical or mechanical power (or com-
2 bination thereof),

3 “(iv) the energy efficiency percentage
4 of which exceeds 60 percent (70 percent in
5 the case of a system with an electrical ca-
6 pacity in excess of 50 megawatts or a me-
7 chanical energy capacity in excess of
8 67,000 horsepower, or an equivalent com-
9 bination of electrical and mechanical en-
10 ergy capacities), and

11 “(v) which is placed in service before
12 January 1, 2007.

13 “(B) SPECIAL RULES.—

14 “(i) ENERGY EFFICIENCY PERCENT-
15 AGE.—For purposes of subparagraph
16 (A)(iv), the energy efficiency percentage of
17 a system is the fraction—

18 “(I) the numerator of which is
19 the total useful electrical, thermal,
20 and mechanical power produced by
21 the system at normal operating rates,
22 and expected to be consumed in its
23 normal application, and

1 “(II) the denominator of which is
2 the lower heating value of the primary
3 fuel source for the system.

4 “(ii) DETERMINATIONS MADE ON BTU
5 BASIS.—The energy efficiency percentage
6 and the percentages under subparagraph
7 (A)(iii) shall be determined on a Btu basis.

8 “(iii) INPUT AND OUTPUT PROPERTY
9 NOT INCLUDED.—The term ‘combined heat
10 and power system property’ does not in-
11 clude property used to transport the en-
12 ergy source to the facility or to distribute
13 energy produced by the facility.

14 “(iv) PUBLIC UTILITY PROPERTY.—

15 “(I) ACCOUNTING RULE FOR
16 PUBLIC UTILITY PROPERTY.—If the
17 combined heat and power system
18 property is public utility property (as
19 defined in section 168(i)(10)), the
20 taxpayer may only claim the credit
21 under this subsection if, with respect
22 to such property, the taxpayer uses a
23 normalization method of accounting.

24 “(II) CERTAIN EXCEPTION NOT
25 TO APPLY.—The matter following

1 paragraph (3)(D) shall not apply to
2 combined heat and power system
3 property.

4 “(v) NONAPPLICATION OF CERTAIN
5 RULES.—For purposes of determining if
6 the term ‘combined heat and power system
7 property’ includes technologies which gen-
8 erate electricity or mechanical power using
9 back-pressure steam turbines in place of
10 existing pressure-reducing valves or which
11 make use of waste heat from industrial
12 processes such as by using organic rankin,
13 stirling, or kalina heat engine systems,
14 subparagraph (A) shall be applied without
15 regard to clauses (i), (iii), and (iv) thereof.

16 “(C) EXTENSION OF DEPRECIATION RE-
17 COVERY PERIOD.—If a taxpayer is allowed a
18 credit under this section for a combined heat
19 and power system property which has a class
20 life of 15 years or less under section 168, such
21 property shall be treated as having a 22-year
22 class life for purposes of section 168.”.

23 (e) LIMITATION ON CARRYBACK.—Section 39(d) (re-
24 lating to transition rules), as amended by this Act, is

1 amended by adding at the end the following new para-
2 graph:

3 “(15) NO CARRYBACK OF ENERGY CREDIT BE-
4 FORE EFFECTIVE DATE.—No portion of the unused
5 business credit for any taxable year which is attrib-
6 utable to the energy credit with respect to property
7 described in section 48(a)(5) may be carried back to
8 a taxable year ending on or before the date of the
9 enactment of such section.”.

10 (d) CONFORMING AMENDMENTS.—

11 (A) Section 25C(e)(6), as added by this
12 Act, is amended by striking “section
13 48(a)(5)(C)” and inserting “section
14 48(a)(6)(C)”.

15 (B) Section 29(b)(3)(A)(i)(III), as amend-
16 ed by this Act, is amended by striking “section
17 48(a)(5)(C)” and inserting “section
18 48(a)(6)(C)”.

19 (e) EFFECTIVE DATE.—The amendments made by
20 this subsection shall apply to property placed in service
21 after the date of the enactment of this Act, in taxable
22 years ending after such date, under rules similar to the
23 rules of section 48(m) of the Internal Revenue Code of
24 1986 (as in effect on the day before the date of the enact-
25 ment of the Revenue Reconciliation Act of 1990).

1 **SEC. 309. CREDIT FOR ENERGY EFFICIENCY IMPROVE-**
2 **MENTS TO EXISTING HOMES.**

3 (a) IN GENERAL.—Subpart A of part IV of sub-
4 chapter A of chapter 1 (relating to nonrefundable personal
5 credits), as amended by this Act, is amended by inserting
6 after section 25C the following new section:

7 **“SEC. 25D. ENERGY EFFICIENCY IMPROVEMENTS TO EXIST-**
8 **ING HOMES.**

9 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
10 dividual, there shall be allowed as a credit against the tax
11 imposed by this chapter for the taxable year an amount
12 equal to 10 percent of the amount paid or incurred by
13 the taxpayer for qualified energy efficiency improvements
14 installed during such taxable year.

15 “(b) LIMITATION.—The credit allowed by this section
16 with respect to a dwelling for any taxable year shall not
17 exceed \$300, reduced (but not below zero) by the sum of
18 the credits allowed under subsection (a) to the taxpayer
19 with respect to the dwelling for all preceding taxable years.

20 “(c) CARRYFORWARD OF UNUSED CREDIT.—If the
21 credit allowable under subsection (a) exceeds the limita-
22 tion imposed by section 26(a) for such taxable year re-
23 duced by the sum of the credits allowable under this sub-
24 part (other than this section) for such taxable year, such
25 excess shall be carried to the succeeding taxable year and

1 added to the credit allowable under subsection (a) for such
2 succeeding taxable year.

3 “(d) QUALIFIED ENERGY EFFICIENCY IMPROVE-
4 MENTS.—For purposes of this section, the term ‘qualified
5 energy efficiency improvements’ means any energy effi-
6 cient building envelope component which is certified to
7 meet or exceed the prescriptive criteria for such compo-
8 nent in the 2000 International Energy Conservation Code,
9 or any combination of energy efficiency measures which
10 are certified as achieving at least a 30 percent reduction
11 in heating and cooling energy usage for the dwelling (as
12 measured in terms of energy cost to the taxpayer), if—

13 “(1) such component or combination of meas-
14 ures is installed in or on a dwelling which—

15 “(A) is located in the United States,

16 “(B) has not been treated as a qualifying
17 new home for purposes of any credit allowed
18 under section 45G, and

19 “(C) is owned and used by the taxpayer as
20 the taxpayer’s principal residence (within the
21 meaning of section 121),

22 “(2) the original use of such component or com-
23 bination of measures commences with the taxpayer,
24 and

1 “(3) such component or combination of meas-
2 ures reasonably can be expected to remain in use for
3 at least 5 years.

4 “(e) CERTIFICATION.—

5 “(1) METHODS OF CERTIFICATION.—

6 “(A) COMPONENT-BASED METHOD.—The
7 certification described in subsection (d) for any
8 component described in such subsection shall be
9 determined on the basis of applicable energy ef-
10 ficiency ratings (including product labeling re-
11 quirements) for affected building envelope com-
12 ponents.

13 “(B) PERFORMANCE-BASED METHOD.—

14 “(i) IN GENERAL.—The certification
15 described in subsection (d) for any com-
16 bination of measures described in such
17 subsection shall be—

18 “(I) determined by comparing
19 the projected heating and cooling en-
20 ergy usage for the dwelling to such
21 usage for such dwelling in its original
22 condition, and

23 “(II) accompanied by a written
24 analysis documenting the proper ap-
25 plication of a permissible energy per-

1 performance calculation method to the
2 specific circumstances of such dwell-
3 ing.

4 “(ii) COMPUTER SOFTWARE.—Com-
5 puter software shall be used in support of
6 a performance-based method certification
7 under clause (i). Such software shall meet
8 procedures and methods for calculating en-
9 ergy and cost savings in regulations pro-
10 mulgated by the Secretary of Energy. Such
11 regulations on the specifications for soft-
12 ware and verification protocols shall be
13 based on the 2001 California Residential
14 Alternative Calculation Method Approval
15 Manual.

16 “(2) PROVIDER.—A certification described in
17 subsection (d) shall be provided by—

18 “(A) in the case of the method described
19 in paragraph (1)(A), by a third party, such as
20 a local building regulatory authority, a utility,
21 a manufactured home primary inspection agen-
22 cy, or a home energy rating organization, or

23 “(B) in the case of the method described
24 in paragraph (1)(B), an individual recognized

1 by an organization designated by the Secretary
2 for such purposes.

3 “(3) FORM.—A certification described in sub-
4 section (d) shall be made in writing on forms which
5 specify in readily inspectable fashion the energy effi-
6 cient components and other measures and their re-
7 spective efficiency ratings, and which include a per-
8 manent label affixed to the electrical distribution
9 panel of the dwelling.

10 “(4) REGULATIONS.—

11 “(A) IN GENERAL.—In prescribing regula-
12 tions under this subsection for certification
13 methods described in paragraph (1)(B), the
14 Secretary, after examining the requirements for
15 energy consultants and home energy ratings
16 providers specified by the Mortgage Industry
17 National Home Energy Rating Standards, shall
18 prescribe procedures for calculating annual en-
19 ergy usage and cost reductions for heating and
20 cooling and for the reporting of the results.
21 Such regulations shall—

22 “(i) provide that any calculation pro-
23 cedures be fuel neutral such that the same
24 energy efficiency measures allow a dwelling
25 to be eligible for the credit under this sec-

1 tion regardless of whether such dwelling
2 uses a gas or oil furnace or boiler or an
3 electric heat pump, and

4 “(ii) require that any computer soft-
5 ware allow for the printing of the Federal
6 tax forms necessary for the credit under
7 this section and for the printing of forms
8 for disclosure to the owner of the dwelling.

9 “(B) PROVIDERS.—For purposes of para-
10 graph (2)(B), the Secretary shall establish re-
11 quirements for the designation of individuals
12 based on the requirements for energy consult-
13 ants and home energy raters specified by the
14 Mortgage Industry National Home Energy Rat-
15 ing Standards.

16 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-
17 poses of this section—

18 “(1) DOLLAR AMOUNTS IN CASE OF JOINT OC-
19 CUPANCY.—In the case of any dwelling unit which is
20 jointly occupied and used during any calendar year
21 as a residence by 2 or more individuals the following
22 rules shall apply:

23 “(A) The amount of the credit allowable
24 under subsection (a) by reason of expenditures
25 for the qualified energy efficiency improvements

1 made during such calendar year by any of such
2 individuals with respect to such dwelling unit
3 shall be determined by treating all of such indi-
4 viduals as 1 taxpayer whose taxable year is
5 such calendar year.

6 “(B) There shall be allowable, with respect
7 to such expenditures to each of such individ-
8 uals, a credit under subsection (a) for the tax-
9 able year in which such calendar year ends in
10 an amount which bears the same ratio to the
11 amount determined under subparagraph (A) as
12 the amount of such expenditures made by such
13 individual during such calendar year bears to
14 the aggregate of such expenditures made by all
15 of such individuals during such calendar year.

16 “(2) TENANT-STOCKHOLDER IN COOPERATIVE
17 HOUSING CORPORATION.—In the case of an indi-
18 vidual who is a tenant-stockholder (as defined in sec-
19 tion 216) in a cooperative housing corporation (as
20 defined in such section), such individual shall be
21 treated as having paid his tenant-stockholder’s pro-
22 portionate share (as defined in section 216(b)(3)) of
23 the cost of qualified energy efficiency improvements
24 made by such corporation.

25 “(3) CONDOMINIUMS.—

1 “(A) IN GENERAL.—In the case of an indi-
2 vidual who is a member of a condominium man-
3 agement association with respect to a condo-
4 minium which the individual owns, such indi-
5 vidual shall be treated as having paid the indi-
6 vidual’s proportionate share of the cost of quali-
7 fied energy efficiency improvements made by
8 such association.

9 “(B) CONDOMINIUM MANAGEMENT ASSO-
10 CIATION.—For purposes of this paragraph, the
11 term ‘condominium management association’
12 means an organization which meets the require-
13 ments of paragraph (1) of section 528(c) (other
14 than subparagraph (E) thereof) with respect to
15 a condominium project substantially all of the
16 units of which are used as residences.

17 “(4) BUILDING ENVELOPE COMPONENT.—The
18 term ‘building envelope component’ means—

19 “(A) any insulation material or system
20 which is specifically and primarily designed to
21 reduce the heat loss or gain of a dwelling when
22 installed in or on such dwelling,

23 “(B) exterior windows (including sky-
24 lights), and

25 “(C) exterior doors.

1 “(5) MANUFACTURED HOMES INCLUDED.—For
2 purposes of this section, the term ‘dwelling’ includes
3 a manufactured home which conforms to Federal
4 Manufactured Home Construction and Safety Stand-
5 ards (24 C.F.R. 3280).

6 “(g) BASIS ADJUSTMENT.—For purposes of this sub-
7 title, if a credit is allowed under this section for any ex-
8 penditure with respect to any property, the increase in the
9 basis of such property which would (but for this sub-
10 section) result from such expenditure shall be reduced by
11 the amount of the credit so allowed.

12 “(h) TERMINATION.—Subsection (a) shall not apply
13 to qualified energy efficiency improvements installed after
14 December 31, 2006.”.

15 (b) CREDIT ALLOWED AGAINST REGULAR TAX AND
16 ALTERNATIVE MINIMUM TAX.—

17 (1) IN GENERAL.—Section 25D(b), as added by
18 subsection (a), is amended by adding at the end the
19 following new paragraph:

20 “(3) LIMITATION BASED ON AMOUNT OF
21 TAX.—The credit allowed under subsection (a) for
22 the taxable year shall not exceed the excess of—

23 “(A) the sum of the regular tax liability
24 (as defined in section 26(b)) plus the tax im-
25 posed by section 55, over

1 “(B) the sum of the credits allowable
2 under this subpart (other than this section) and
3 section 27 for the taxable year.”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 25D(c), as added by subsection
6 (a), is amended by striking “section 26(a) for
7 such taxable year reduced by the sum of the
8 credits allowable under this subpart (other than
9 this section)” and inserting “subsection (b)(3)”.

10 (B) Section 23(b)(4)(B), as amended by
11 this Act, is amended by striking “section 25C”
12 and inserting “sections 25C and 25D”.

13 (C) Section 24(b)(3)(B), as amended by
14 this Act, is amended by striking “and 25C” and
15 inserting “25C, and 25D”.

16 (D) Section 25(e)(1)(C), as amended by
17 this Act, is amended by inserting “25D,” after
18 “25C,”.

19 (E) Section 25B(g)(2), as amended by this
20 Act, is amended by striking “23 and 25C” and
21 inserting “23, 25C, and 25D”.

22 (F) Section 26(a)(1), as amended by this
23 Act, is amended by striking “and 25C” and in-
24 serting “25C, and 25D”.

1 (G) Section 904(h), as amended by this
2 Act, is amended by striking “and 25C” and in-
3 serting “25C, and 25D”.

4 (H) Section 1400C(d), as amended by this
5 Act, is amended by striking “and 25C” and in-
6 serting “25C, and 25D”.

7 (c) ADDITIONAL CONFORMING AMENDMENTS.—

8 (1) Section 23(e), as in effect for taxable years
9 beginning before January 1, 2004, and as amended
10 by this Act, is amended by inserting “, 25D,” after
11 “sections 25C”.

12 (2) Section 25(e)(1)(C), as in effect for taxable
13 years beginning before January 1, 2004, and as
14 amended by this Act, is amended by inserting
15 “25D,” after “25C,”.

16 (3) Section 1016(a), as amended by this Act, is
17 amended by striking “and” at the end of paragraph
18 (31), by striking the period at the end of paragraph
19 (32) and inserting “; and”, and by adding at the
20 end the following new paragraph:

21 “(33) to the extent provided in section 25D(g),
22 in the case of amounts with respect to which a credit
23 has been allowed under section 25D.”.

24 (4) Section 1400C(d), as in effect for taxable
25 years beginning before January 1, 2004, and as

1 amended by this Act, is amended by striking “sec-
2 tion 25C” and inserting “sections 25C and 25D”.

3 (5) The table of sections for subpart A of part
4 IV of subchapter A of chapter 1, as amended by this
5 Act, is amended by inserting after the item relating
6 to section 25C the following new item:

“Sec. 25D. Energy efficiency improvements to existing homes.”.

7 (d) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided by para-
9 graph (2), the amendments made by this section
10 shall apply to property installed after the date of the
11 enactment of this Act, in taxable years ending after
12 such date.

13 (2) SUBSECTION (b).—The amendments made
14 by subsection (b) shall apply to taxable years begin-
15 ning after December 31, 2003.

1 **TITLE IV—CLEAN COAL**
 2 **INCENTIVES**
 3 **Subtitle A—Credit for Emission Re-**
 4 **ductions and Efficiency Im-**
 5 **provements in Existing Coal-**
 6 **Based Electricity Generation**
 7 **Facilities**

8 **SEC. 401. CREDIT FOR PRODUCTION FROM A QUALIFYING**
 9 **CLEAN COAL TECHNOLOGY UNIT.**

10 (a) CREDIT FOR PRODUCTION FROM A QUALIFYING
 11 CLEAN COAL TECHNOLOGY UNIT.—Subpart D of part IV
 12 of subchapter A of chapter 1 (relating to business related
 13 credits), as amended by this Act, is amended by adding
 14 at the end the following new section:

15 **“SEC. 45I. CREDIT FOR PRODUCTION FROM A QUALIFYING**
 16 **CLEAN COAL TECHNOLOGY UNIT.**

17 “(a) GENERAL RULE.—For purposes of section 38,
 18 the qualifying clean coal technology production credit of
 19 any taxpayer for any taxable year is equal to—

20 “(1) the applicable amount of clean coal tech-
 21 nology production credit, multiplied by

22 “(2) the applicable percentage of the sum of—

23 “(A) the kilowatt hours of electricity, plus

24 “(B) each 3,413 Btu of fuels or chemicals,

1 produced by the taxpayer during such taxable year
2 at a qualifying clean coal technology unit, but only
3 if such production occurs during the 10-year period
4 beginning on the date the unit was returned to serv-
5 ice after becoming a qualifying clean coal technology
6 unit.

7 “(b) APPLICABLE AMOUNT.—

8 “(1) IN GENERAL.—For purposes of this sec-
9 tion, the applicable amount of clean coal technology
10 production credit is equal to \$0.0034.

11 “(2) INFLATION ADJUSTMENT.—For calendar
12 years after 2004, the applicable amount of clean coal
13 technology production credit shall be adjusted by
14 multiplying such amount by the inflation adjustment
15 factor for the calendar year in which the amount is
16 applied. If any amount as increased under the pre-
17 ceding sentence is not a multiple of 0.01 cent, such
18 amount shall be rounded to the nearest multiple of
19 0.01 cent.

20 “(c) APPLICABLE PERCENTAGE.—For purposes of
21 this section, with respect to any qualifying clean coal tech-
22 nology unit, the applicable percentage is the percentage
23 equal to the ratio which the portion of the national mega-
24 watt capacity limitation allocated to the taxpayer with re-

1 spect to such unit under subsection (e) bears to the total
2 megawatt capacity of such unit.

3 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section—

5 “(1) QUALIFYING CLEAN COAL TECHNOLOGY
6 UNIT.—The term ‘qualifying clean coal technology
7 unit’ means a clean coal technology unit of the tax-
8 payer which—

9 “(A) on the date of the enactment of this
10 section—

11 “(i) was a coal-based electricity gener-
12 ating steam generator-turbine unit which
13 was not a clean coal technology unit, and

14 “(ii) had a nameplate capacity rating
15 of not more than 300 megawatts,

16 “(B) becomes a clean coal technology unit
17 as the result of the retrofitting, repowering, or
18 replacement of the unit with clean coal tech-
19 nology during the 10-year period beginning on
20 the date of the enactment of this section,

21 “(C) is not receiving nor is scheduled to
22 receive funding under the Clean Coal Tech-
23 nology Program, the Power Plant Improvement
24 Initiative, or the Clean Coal Power Initiative
25 administered by the Secretary of Energy, and

1 “(D) receives an allocation of a portion of
2 the national megawatt capacity limitation under
3 subsection (e).

4 “(2) CLEAN COAL TECHNOLOGY UNIT.—The
5 term ‘clean coal technology unit’ means a unit
6 which—

7 “(A) uses clean coal technology, including
8 advanced pulverized coal or atmospheric fluid-
9 ized bed combustion, pressurized fluidized bed
10 combustion, integrated gasification combined
11 cycle, or any other technology, for the produc-
12 tion of electricity,

13 “(B) uses coal to produce 75 percent or
14 more of its thermal output as electricity,

15 “(C) has a design net heat rate of at least
16 500 less than that of such unit as described in
17 paragraph (1)(A),

18 “(D) has a maximum design net heat rate
19 of not more than 9,500, and

20 “(E) meets the pollution control require-
21 ments of paragraph (3).

22 “(3) POLLUTION CONTROL REQUIREMENTS.—

23 “(A) IN GENERAL.—A unit meets the re-
24 quirements of this paragraph if—

1 “(i) its emissions of sulfur dioxide, ni-
2 trogen oxide, or particulates meet the
3 lower of the emission levels for each such
4 emission specified in—

5 “(I) subparagraph (B), or

6 “(II) the new source performance
7 standards of the Clean Air Act (42
8 U.S.C. 7411) which are in effect for
9 the category of source at the time of
10 the retrofitting, repowering, or re-
11 placement of the unit, and

12 “(ii) its emissions do not exceed any
13 relevant emission level specified by regula-
14 tion pursuant to the hazardous air pollut-
15 ant requirements of the Clean Air Act (42
16 U.S.C. 7412) in effect at the time of the
17 retrofitting, repowering, or replacement.

18 “(B) SPECIFIC LEVELS.—The levels speci-
19 fied in this subparagraph are—

20 “(i) in the case of sulfur dioxide emis-
21 sions, 50 percent of the sulfur dioxide
22 emission levels specified in the new source
23 performance standards of the Clean Air
24 Act (42 U.S.C. 7411) in effect on the date

1 of the enactment of this section for the
2 category of source,

3 “(ii) in the case of nitrogen oxide
4 emissions—

5 “(I) 0.1 pound per million Btu of
6 heat input if the unit is not a cyclone-
7 fired boiler, and

8 “(II) if the unit is a cyclone-fired
9 boiler, 15 percent of the uncontrolled
10 nitrogen oxide emissions from such
11 boilers, and

12 “(iii) in the case of particulate emis-
13 sions, 0.02 pound per million Btu of heat
14 input.

15 “(4) DESIGN NET HEAT RATE.—The design net
16 heat rate with respect to any unit, measured in Btu
17 per kilowatt hour (HHV)—

18 “(A) shall be based on the design annual
19 heat input to and the design annual net elec-
20 trical power, fuels, and chemicals output from
21 such unit (determined without regard to such
22 unit’s co-generation of steam),

23 “(B) shall be adjusted for the heat content
24 of the design coal to be used by the unit if it

1 is less than 12,000 Btu per pound according to
2 the following formula:

3 Design net heat rate = Unit net heat rate \times [1–
4 {((12,000–design coal heat content, Btu per pound)/
5 1,000) \times 0.013}],

6 “(C) shall be corrected for the site ref-
7 erence conditions of—

8 “(i) elevation above sea level of 500
9 feet,

10 “(ii) air pressure of 14.4 pounds per
11 square inch absolute (psia),

12 “(iii) temperature, dry bulb of 63°F,

13 “(iv) temperature, wet bulb of 54°F,

14 and

15 “(v) relative humidity of 55 percent,

16 and

17 “(D) if carbon capture controls have been
18 installed with respect to any qualifying unit and
19 such controls remove at least 50 percent of the
20 unit’s carbon dioxide emissions, shall be ad-
21 justed up to the design heat rate level which
22 would have resulted without the installation of
23 such controls.

24 “(5) HHV.—The term ‘HHV’ means higher
25 heating value.

1 “(6) APPLICATION OF CERTAIN RULES.—The
2 rules of paragraphs (3), (4), and (5) of section 45(d)
3 shall apply.

4 “(7) INFLATION ADJUSTMENT FACTOR.—

5 “(A) IN GENERAL.—The term ‘inflation
6 adjustment factor’ means, with respect to a cal-
7 endar year, a fraction the numerator of which
8 is the GDP implicit price deflator for the pre-
9 ceding calendar year and the denominator of
10 which is the GDP implicit price deflator for the
11 calendar year 2003.

12 “(B) GDP IMPLICIT PRICE DEFLATOR.—

13 The term ‘GDP implicit price deflator’ means,
14 for any calendar year, the most recent revision
15 of the implicit price deflator for the gross do-
16 mestic product as of June 30 of such calendar
17 year as computed by the Department of Com-
18 merce before October 1 of such calendar year.

19 “(8) NONCOMPLIANCE WITH POLLUTION
20 LAWS.—For purposes of this section, a unit which is
21 not in compliance with the applicable State and Fed-
22 eral pollution prevention, control, and permit re-
23 quirements for any period of time shall not be con-
24 sidered to be a qualifying clean coal technology unit
25 during such period.

1 “(e) NATIONAL LIMITATION ON THE AGGREGATE CA-
2 PACITY OF QUALIFYING CLEAN COAL TECHNOLOGY
3 UNITS.—

4 “(1) IN GENERAL.—For purposes of this sec-
5 tion, the national megawatt capacity limitation for
6 qualifying clean coal technology units is 4,000
7 megawatts.

8 “(2) ALLOCATION OF LIMITATION.—The Sec-
9 retary shall allocate the national megawatt capacity
10 limitation for qualifying clean coal technology units
11 in such manner as the Secretary may prescribe
12 under the regulations under paragraph (3).

13 “(3) REGULATIONS.—Not later than 6 months
14 after the date of the enactment of this section, the
15 Secretary shall prescribe such regulations as may be
16 necessary or appropriate—

17 “(A) to carry out the purposes of this sub-
18 section,

19 “(B) to limit the capacity of any qualifying
20 clean coal technology unit to which this section
21 applies so that the megawatt capacity allocated
22 to any unit under this subsection does not ex-
23 ceed 300 megawatts and the combined mega-
24 watt capacity allocated to all such units when
25 all such units are placed in service during the

1 10-year period described in subsection
2 (d)(1)(B), does not exceed 4,000 megawatts,

3 “(C) to provide a certification process
4 under which the Secretary, in consultation with
5 the Secretary of Energy, shall approve and allo-
6 cate the national megawatt capacity
7 limitation—

8 “(i) to encourage that units with the
9 highest thermal efficiencies, when adjusted
10 for the heat content of the design coal and
11 site reference conditions described in sub-
12 section (d)(4)(C), and environmental per-
13 formance, be placed in service as soon as
14 possible, and

15 “(ii) to allocate capacity to taxpayers
16 which have a definite and credible plan for
17 placing into commercial operation a quali-
18 fying clean coal technology unit,
19 including—

20 “(I) a site,

21 “(II) contractual commitments
22 for procurement and construction or,
23 in the case of regulated utilities, the
24 agreement of the State utility commis-
25 sion,

1 “(III) filings for all necessary
2 preconstruction approvals,
3 “(IV) a demonstrated record of
4 having successfully completed com-
5 parable projects on a timely basis, and
6 “(V) such other factors that the
7 Secretary determines are appropriate,
8 “(D) to allocate the national megawatt ca-
9 pacity limitation to a portion of the capacity of
10 a qualifying clean coal technology unit if the
11 Secretary determines that such an allocation
12 would maximize the amount of efficient produc-
13 tion encouraged with the available tax credits,
14 “(E) to set progress requirements and con-
15 ditional approvals so that capacity allocations
16 for clean coal technology units which become
17 unlikely to meet the necessary conditions for
18 qualifying can be reallocated by the Secretary
19 to other clean coal technology units, and
20 “(F) to provide taxpayers with opportuni-
21 ties to correct administrative errors and omis-
22 sions with respect to allocations and record
23 keeping within a reasonable period after dis-
24 covery, taking into account the availability of

1 regulations and other administrative guidance
2 from the Secretary.”.

3 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
4 tion 38(b) (relating to current year business credit), as
5 amended by this Act, is amended by striking “plus” at
6 the end of paragraph (18), by striking the period at the
7 end of paragraph (19) and inserting “, plus”, and by add-
8 ing at the end the following new paragraph:

9 “(20) the qualifying clean coal technology pro-
10 duction credit determined under section 45I(a).”.

11 (c) TRANSITIONAL RULE.—Section 39(d) (relating to
12 transitional rules), as amended by this Act, is amended
13 by adding at the end the following new paragraph:

14 “(16) NO CARRYBACK OF SECTION 45I CREDIT
15 BEFORE EFFECTIVE DATE.—No portion of the un-
16 used business credit for any taxable year which is
17 attributable to the qualifying clean coal technology
18 production credit determined under section 45I may
19 be carried back to a taxable year ending on or before
20 the date of the enactment of such section.”.

21 (d) CLERICAL AMENDMENT.—The table of sections
22 for subpart D of part IV of subchapter A of chapter 1,
23 as amended by this Act, is amended by adding at the end
24 the following new item:

“Sec. 45I. Credit for production from a qualifying clean coal technology unit.”.

1 (e) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to production after the date of the
 3 enactment of this Act, in taxable years ending after such
 4 date.

5 **Subtitle B—Incentives for Early**
 6 **Commercial Applications of Ad-**
 7 **vanced Clean Coal Technologies**

8 **SEC. 411. CREDIT FOR INVESTMENT IN QUALIFYING AD-**
 9 **VANCED CLEAN COAL TECHNOLOGY.**

10 (a) ALLOWANCE OF QUALIFYING ADVANCED CLEAN
 11 COAL TECHNOLOGY UNIT CREDIT.—Section 46 (relating
 12 to amount of credit) is amended by striking “and” at the
 13 end of paragraph (2), by striking the period at the end
 14 of paragraph (3) and inserting “, and”, and by adding
 15 at the end the following new paragraph:

16 “(4) the qualifying advanced clean coal tech-
 17 nology unit credit.”.

18 (b) AMOUNT OF QUALIFYING ADVANCED CLEAN
 19 COAL TECHNOLOGY UNIT CREDIT.—Subpart E of part
 20 IV of subchapter A of chapter 1 (relating to rules for com-
 21 puting investment credit) is amended by inserting after
 22 section 48 the following new section:

1 **“SEC. 48A. QUALIFYING ADVANCED CLEAN COAL TECH-**
2 **NOLOGY UNIT CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 46, the
4 qualifying advanced clean coal technology unit credit for
5 any taxable year is an amount equal to 10 percent of the
6 applicable percentage of the qualified investment in a
7 qualifying advanced clean coal technology unit for such
8 taxable year.

9 “(b) QUALIFYING ADVANCED CLEAN COAL TECH-
10 NOLOGY UNIT.—

11 “(1) IN GENERAL.—For purposes of subsection
12 (a), the term ‘qualifying advanced clean coal tech-
13 nology unit’ means an advanced clean coal tech-
14 nology unit of the taxpayer—

15 “(A)(i) in the case of a unit first placed in
16 service after the date of the enactment of this
17 section, the original use of which commences
18 with the taxpayer, or

19 “(ii) in the case of the retrofitting or
20 repowering of a unit first placed in service be-
21 fore such date of enactment, the retrofitting or
22 repowering of which is completed by the tax-
23 payer after such date, or

24 “(B) which is depreciable under section
25 167,

1 “(C) which has a useful life of not less
2 than 4 years,

3 “(D) which is located in the United States,

4 “(E) which is not receiving nor is sched-
5 uled to receive funding under the Clean Coal
6 Technology Program, the Power Plant Improve-
7 ment Initiative, or the Clean Coal Power Initia-
8 tive administered by the Secretary of Energy,

9 “(F) which is not a qualifying clean coal
10 technology unit, and

11 “(G) which receives an allocation of a por-
12 tion of the national megawatt capacity limita-
13 tion under subsection (f).

14 “(2) SPECIAL RULE FOR SALE-LEASEBACKS.—
15 For purposes of subparagraph (A) of paragraph (1),
16 in the case of a unit which—

17 “(A) is originally placed in service by a
18 person, and

19 “(B) is sold and leased back by such per-
20 son, or is leased to such person, within 3
21 months after the date such unit was originally
22 placed in service, for a period of not less than
23 12 years,

24 such unit shall be treated as originally placed in
25 service not earlier than the date on which such unit

1 is used under the leaseback (or lease) referred to in
2 subparagraph (B). The preceding sentence shall not
3 apply to any property if the lessee and lessor of such
4 property make an election under this sentence. Such
5 an election, once made, may be revoked only with
6 the consent of the Secretary.

7 “(3) NONCOMPLIANCE WITH POLLUTION
8 LAWS.—For purposes of this subsection, a unit
9 which is not in compliance with the applicable State
10 and Federal pollution prevention, control, and per-
11 mit requirements for any period of time shall not be
12 considered to be a qualifying advanced clean coal
13 technology unit during such period.

14 “(c) APPLICABLE PERCENTAGE.—For purposes of
15 this section, with respect to any qualifying advanced clean
16 coal technology unit, the applicable percentage is the per-
17 centage equal to the ratio which the portion of the national
18 megawatt capacity limitation allocated to the taxpayer
19 with respect to such unit under subsection (f) bears to
20 the total megawatt capacity of such unit.

21 “(d) ADVANCED CLEAN COAL TECHNOLOGY UNIT.—
22 For purposes of this section—

23 “(1) IN GENERAL.—The term ‘advanced clean
24 coal technology unit’ means a new, retrofit, or
25 repowering unit of the taxpayer which—

1 “(A) is—

2 “(i) an eligible advanced pulverized
3 coal or atmospheric fluidized bed combus-
4 tion technology unit,

5 “(ii) an eligible pressurized fluidized
6 bed combustion technology unit,

7 “(iii) an eligible integrated gasifi-
8 cation combined cycle technology unit, or

9 “(iv) an eligible other technology unit,

10 and

11 “(B) meets the carbon emission rate re-
12 quirements of paragraph (6).

13 “(2) ELIGIBLE ADVANCED PULVERIZED COAL
14 OR ATMOSPHERIC FLUIDIZED BED COMBUSTION
15 TECHNOLOGY UNIT.—The term ‘eligible advanced
16 pulverized coal or atmospheric fluidized bed combus-
17 tion technology unit’ means a clean coal technology
18 unit using advanced pulverized coal or atmospheric
19 fluidized bed combustion technology which—

20 “(A) is placed in service after the date of
21 the enactment of this section and before Janu-
22 ary 1, 2013, and

23 “(B) has a design net heat rate of not
24 more than 8,500 (8,900 in the case of units
25 placed in service before 2009).

1 “(3) ELIGIBLE PRESSURIZED FLUIDIZED BED
2 COMBUSTION TECHNOLOGY UNIT.—The term ‘eligi-
3 ble pressurized fluidized bed combustion technology
4 unit’ means a clean coal technology unit using pres-
5 surized fluidized bed combustion technology which—

6 “(A) is placed in service after the date of
7 the enactment of this section and before Janu-
8 ary 1, 2017, and

9 “(B) has a design net heat rate of not
10 more than 7,720 (8,900 in the case of units
11 placed in service before 2009, and 8,500 in the
12 case of units placed in service after 2008 and
13 before 2013).

14 “(4) ELIGIBLE INTEGRATED GASIFICATION
15 COMBINED CYCLE TECHNOLOGY UNIT.—The term
16 ‘eligible integrated gasification combined cycle tech-
17 nology unit’ means a clean coal technology unit
18 using integrated gasification combined cycle tech-
19 nology, with or without fuel or chemical co-produce-
20 tion, which—

21 “(A) is placed in service after the date of
22 the enactment of this section and before Janu-
23 ary 1, 2017,

24 “(B) has a design net heat rate of not
25 more than 7,720 (8,900 in the case of units

1 placed in service before 2009, and 8,500 in the
2 case of units placed in service after 2008 and
3 before 2013), and

4 “(C) has a net thermal efficiency (HHV)
5 using coal with fuel or chemical co-production
6 of not less than 44.2 percent (38.4 percent in
7 the case of units placed in service before 2009,
8 and 40.2 percent in the case of units placed in
9 service after 2008 and before 2013).

10 “(5) ELIGIBLE OTHER TECHNOLOGY UNIT.—

11 The term ‘eligible other technology unit’ means a
12 clean coal technology unit using any other tech-
13 nology for the production of electricity which is
14 placed in service after the date of the enactment of
15 this section and before January 1, 2017.

16 “(6) CARBON EMISSION RATE REQUIRE-
17 MENTS.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), a unit meets the require-
20 ments of this paragraph if—

21 “(i) in the case of a unit using design
22 coal with a heat content of not more than
23 9,000 Btu per pound, the carbon emission
24 rate is less than 0.60 pound of carbon per
25 kilowatt hour, and

1 “(ii) in the case of a unit using design
2 coal with a heat content of more than
3 9,000 Btu per pound, the carbon emission
4 rate is less than 0.54 pound of carbon per
5 kilowatt hour.

6 “(B) ELIGIBLE OTHER TECHNOLOGY
7 UNIT.—In the case of an eligible other tech-
8 nology unit, subparagraph (A) shall be applied
9 by substituting ‘0.51’ and ‘0.459’ for ‘0.60’ and
10 ‘0.54’, respectively.

11 “(e) GENERAL DEFINITIONS.—Any term used in this
12 section which is also used in section 45I shall have the
13 meaning given such term in section 45I.

14 “(f) NATIONAL LIMITATION ON THE AGGREGATE CA-
15 PACITY OF ADVANCED CLEAN COAL TECHNOLOGY
16 UNITS.—

17 “(1) IN GENERAL.—For purposes of subsection
18 (b)(1)(G), the national megawatt capacity limitation
19 is—

20 “(A) for qualifying advanced clean coal
21 technology units using advanced pulverized coal
22 or atmospheric fluidized bed combustion tech-
23 nology, not more than 1,000 megawatts (not
24 more than 500 megawatts in the case of units
25 placed in service before 2009),

1 “(B) for such units using pressurized flu-
2 idized bed combustion technology, not more
3 than 500 megawatts (not more than 250
4 megawatts in the case of units placed in service
5 before 2009),

6 “(C) for such units using integrated gasifi-
7 cation combined cycle technology, with or with-
8 out fuel or chemical co-production, not more
9 than 2,000 megawatts (not more than 750
10 megawatts in the case of units placed in service
11 before 2009), and

12 “(D) for such units using other technology
13 for the production of electricity, not more than
14 500 megawatts (not more than 250 megawatts
15 in the case of units placed in service before
16 2009).

17 “(2) ALLOCATION OF LIMITATION.—The Sec-
18 retary shall allocate the national megawatt capacity
19 limitation for qualifying advanced clean coal tech-
20 nology units in such manner as the Secretary may
21 prescribe under the regulations under paragraph (3).

22 “(3) REGULATIONS.—Not later than 6 months
23 after the date of the enactment of this section, the
24 Secretary shall prescribe such regulations as may be
25 necessary or appropriate—

1 “(A) to carry out the purposes of this sub-
2 section and section 45J,

3 “(B) to limit the capacity of any qualifying
4 advanced clean coal technology unit to which
5 this section applies so that the combined mega-
6 watt capacity of all such units to which this sec-
7 tion applies does not exceed 4,000 megawatts,

8 “(C) to provide a certification process de-
9 scribed in section 45I(e)(3)(C),

10 “(D) to carry out the purposes described
11 in subparagraphs (D), (E), and (F) of section
12 45I(e)(3), and

13 “(E) to reallocate capacity which is not al-
14 located to any technology described in subpara-
15 graphs (A) through (D) of paragraph (1) be-
16 cause an insufficient number of qualifying units
17 request an allocation for such technology, to an-
18 other technology described in such subpara-
19 graphs in order to maximize the amount of en-
20 ergy efficient production encouraged with the
21 available tax credits.

22 “(4) SELECTION CRITERIA.—For purposes of
23 this subsection, the selection criteria for allocating
24 the national megawatt capacity limitation to quali-
25 fying advanced clean coal technology units—

1 “(A) shall be established by the Secretary
2 of Energy as part of a competitive solicitation,

3 “(B) shall include primary criteria of min-
4 imum design net heat rate, maximum design
5 thermal efficiency, environmental performance,
6 and lowest cost to the Government, and

7 “(C) shall include supplemental criteria as
8 determined appropriate by the Secretary of En-
9 ergy.

10 “(g) QUALIFIED INVESTMENT.—For purposes of
11 subsection (a), the term ‘qualified investment’ means, with
12 respect to any taxable year, the basis of a qualifying ad-
13 vanced clean coal technology unit placed in service by the
14 taxpayer during such taxable year (in the case of a unit
15 described in subsection (b)(1)(A)(ii), only that portion of
16 the basis of such unit which is properly attributable to
17 the retrofitting or repowering of such unit).

18 “(h) QUALIFIED PROGRESS EXPENDITURES.—

19 “(1) INCREASE IN QUALIFIED INVESTMENT.—
20 In the case of a taxpayer who has made an election
21 under paragraph (5), the amount of the qualified in-
22 vestment of such taxpayer for the taxable year (de-
23 termined under subsection (g) without regard to this
24 subsection) shall be increased by an amount equal to
25 the aggregate of each qualified progress expenditure

1 for the taxable year with respect to progress expend-
2 iture property.

3 “(2) PROGRESS EXPENDITURE PROPERTY DE-
4 FINED.—For purposes of this subsection, the term
5 ‘progress expenditure property’ means any property
6 being constructed by or for the taxpayer and which
7 it is reasonable to believe will qualify as a qualifying
8 advanced clean coal technology unit which is being
9 constructed by or for the taxpayer when it is placed
10 in service.

11 “(3) QUALIFIED PROGRESS EXPENDITURES DE-
12 FINED.—For purposes of this subsection—

13 “(A) SELF-CONSTRUCTED PROPERTY.—In
14 the case of any self-constructed property, the
15 term ‘qualified progress expenditures’ means
16 the amount which, for purposes of this subpart,
17 is properly chargeable (during such taxable
18 year) to capital account with respect to such
19 property.

20 “(B) NONSELF-CONSTRUCTED PROP-
21 ERTY.—In the case of nonself-constructed prop-
22 erty, the term ‘qualified progress expenditures’
23 means the amount paid during the taxable year
24 to another person for the construction of such
25 property.

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

3 “(A) SELF-CONSTRUCTED PROPERTY.—

4 The term ‘self-constructed property’ means
5 property for which it is reasonable to believe
6 that more than half of the construction expendi-
7 tures will be made directly by the taxpayer.

8 “(B) NONSELF-CONSTRUCTED PROP-

9 ERTY.—The term ‘nonself-constructed property’
10 means property which is not self-constructed
11 property.

12 “(C) CONSTRUCTION, ETC.—The term

13 ‘construction’ includes reconstruction and erec-
14 tion, and the term ‘constructed’ includes recon-
15 structed and erected.

16 “(D) ONLY CONSTRUCTION OF QUALI-

17 FYING ADVANCED CLEAN COAL TECHNOLOGY
18 UNIT TO BE TAKEN INTO ACCOUNT.—Construc-
19 tion shall be taken into account only if, for pur-
20 poses of this subpart, expenditures therefor are
21 properly chargeable to capital account with re-
22 spect to the property.

23 “(5) ELECTION.—An election under this sub-
24 section may be made at such time and in such man-
25 ner as the Secretary may by regulations prescribe.

1 Such an election shall apply to the taxable year for
2 which made and to all subsequent taxable years.

3 Such an election, once made, may not be revoked ex-
4 cept with the consent of the Secretary.

5 “(i) COORDINATION WITH OTHER CREDITS.—This
6 section shall not apply to any property with respect to
7 which the rehabilitation credit under section 47 or the en-
8 ergy credit under section 48 is allowed unless the taxpayer
9 elects to waive the application of such credit to such prop-
10 erty.”.

11 (c) RECAPTURE.—Section 50(a) (relating to other
12 special rules) is amended by adding at the end the fol-
13 lowing new paragraph:

14 “(6) SPECIAL RULES RELATING TO QUALIFYING
15 ADVANCED CLEAN COAL TECHNOLOGY UNIT.—For
16 purposes of applying this subsection in the case of
17 any credit allowable by reason of section 48A, the
18 following rules shall apply:

19 “(A) GENERAL RULE.—In lieu of the
20 amount of the increase in tax under paragraph
21 (1), the increase in tax shall be an amount
22 equal to the investment tax credit allowed under
23 section 38 for all prior taxable years with re-
24 spect to a qualifying advanced clean coal tech-
25 nology unit (as defined by section 48A(b)(1))

1 multiplied by a fraction the numerator of which
2 is the number of years remaining to fully depre-
3 ciate under this title the qualifying advanced
4 clean coal technology unit disposed of, and the
5 denominator of which is the total number of
6 years over which such unit would otherwise
7 have been subject to depreciation. For purposes
8 of the preceding sentence, the year of disposi-
9 tion of the qualifying advanced clean coal tech-
10 nology unit shall be treated as a year of re-
11 maining depreciation.

12 “(B) PROPERTY CEASES TO QUALIFY FOR
13 PROGRESS EXPENDITURES.—Rules similar to
14 the rules of paragraph (2) shall apply in the
15 case of qualified progress expenditures for a
16 qualifying advanced clean coal technology unit
17 under section 48A, except that the amount of
18 the increase in tax under subparagraph (A) of
19 this paragraph shall be substituted for the
20 amount described in such paragraph (2).

21 “(C) APPLICATION OF PARAGRAPH.—This
22 paragraph shall be applied separately with re-
23 spect to the credit allowed under section 38 re-
24 garding a qualifying advanced clean coal tech-
25 nology unit.”.

1 (d) TRANSITIONAL RULE.—Section 39(d) (relating to
2 transitional rules), as amended by this Act, is amended
3 by adding at the end the following new paragraph:

4 “(17) NO CARRYBACK OF SECTION 48A CREDIT
5 BEFORE EFFECTIVE DATE.—No portion of the un-
6 used business credit for any taxable year which is
7 attributable to the qualifying advanced clean coal
8 technology unit credit determined under section 48A
9 may be carried back to a taxable year ending on or
10 before the date of the enactment of such section.”.

11 (e) TECHNICAL AMENDMENTS.—

12 (1) Section 49(a)(1)(C) is amended by striking
13 “and” at the end of clause (ii), by striking the pe-
14 riod at the end of clause (iii) and inserting “, and”,
15 and by adding at the end the following new clause:

16 “(iv) the portion of the basis of any
17 qualifying advanced clean coal technology
18 unit attributable to any qualified invest-
19 ment (as defined by section 48A(g)).”.

20 (2) Section 50(a)(4) is amended by striking
21 “and (2)” and inserting “(2), and (6)”.

22 (3) Section 50(c) is amended by adding at the
23 end the following new paragraph:

1 “(6) NONAPPLICATION.—Paragraphs (1) and
2 (2) shall not apply to any qualifying advanced clean
3 coal technology unit credit under section 48A.”.

4 (4) The table of sections for subpart E of part
5 IV of subchapter A of chapter 1 is amended by in-
6 serting after the item relating to section 48 the fol-
7 lowing new item:

“Sec. 48A. Qualifying advanced clean coal technology unit credit.”.

8 (f) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to periods after the date of the
10 enactment of this Act, under rules similar to the rules of
11 section 48(m) of the Internal Revenue Code of 1986 (as
12 in effect on the day before the date of the enactment of
13 the Revenue Reconciliation Act of 1990).

14 **SEC. 412. CREDIT FOR PRODUCTION FROM A QUALIFYING**
15 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

16 (a) IN GENERAL.—Subpart D of part IV of sub-
17 chapter A of chapter 1 (relating to business related cred-
18 its), as amended by this Act, is amended by adding at
19 the end the following new section:

20 **“SEC. 45J. CREDIT FOR PRODUCTION FROM A QUALIFYING**
21 **ADVANCED CLEAN COAL TECHNOLOGY UNIT.**

22 “(a) GENERAL RULE.—For purposes of section 38,
23 the qualifying advanced clean coal technology production
24 credit of any taxpayer for any taxable year is equal to—

1 “(1) the applicable amount of advanced clean
2 coal technology production credit, multiplied by

3 “(2) the applicable percentage (as determined
4 under section 48A(c)) of the sum of—

5 “(A) the kilowatt hours of electricity, plus

6 “(B) each 3,413 Btu of fuels or chemicals,
7 produced by the taxpayer during such taxable year
8 at a qualifying advanced clean coal technology unit,
9 but only if such production occurs during the 10-
10 year period beginning on the date the unit was origi-
11 nally placed in service (or returned to service after
12 becoming a qualifying advanced clean coal tech-
13 nology unit).

14 “(b) APPLICABLE AMOUNT.—For purposes of this
15 section—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2), the applicable amount of advanced clean
18 coal technology production credit with respect to
19 production from a qualifying advanced clean coal
20 technology unit shall be determined as follows:

21 “(A) If the qualifying advanced clean coal
22 technology unit is producing electricity only:

23 “(i) In the case of a unit originally
24 placed in service before 2009, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 8,500	\$.0060	\$.0038
More than 8,500 but not more than 8,750	\$.0025	\$.0010
More than 8,750 but less than 8,900	\$.0010	\$.0010.

- 1 “(ii) In the case of a unit originally
2 placed in service after 2008 and before
3 2013, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,770	\$.0105	\$.0090
More than 7,770 but not more than 8,125	\$.0085	\$.0068
More than 8,125 but less than 8,500	\$.0075	\$.0055.

- 4 “(iii) In the case of a unit originally
5 placed in service after 2012 and before
6 2017, if—

“The design net heat rate is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not more than 7,380	\$.0140	\$.0115
More than 7,380 but not more than 7,720	\$.0120	\$.0090.

- 7 “(B) If the qualifying advanced clean coal
8 technology unit is producing fuel or chemicals:
9 “(i) In the case of a unit originally
10 placed in service before 2009, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 40.6 percent	\$.0060	\$.0038
Less than 40.6 but not less than 40 percent	\$.0025	\$.0010
Less than 40 but not less than 38.4 percent	\$.0010	\$.0010.

1 “(ii) In the case of a unit originally
 2 placed in service after 2008 and before
 3 2013, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 43.6 percent	\$.0105	\$.0090
Less than 43.6 but not less than 42 percent	\$.0085	\$.0068
Less than 42 but not less than 40.2 percent	\$.0075	\$.0055.

4 “(iii) In the case of a unit originally
 5 placed in service after 2012 and before
 6 2017, if—

“The unit design net thermal efficiency (HHV) is:	The applicable amount is:	
	For 1st 5 years of such service	For 2d 5 years of such service
Not less than 44.2 percent	\$.0140	\$.0115
Less than 44.2 but not less than 43.9 percent	\$.0120	\$.0090.

7 “(2) SPECIAL RULE FOR UNITS QUALIFYING
 8 FOR GREATER APPLICABLE AMOUNT WHEN PLACED
 9 IN SERVICE.—If, at the time a qualifying advanced
 10 clean coal technology unit is placed in service, pro-
 11 duction from the unit would be entitled to a greater
 12 applicable amount if such unit had been placed in
 13 service at a later date, the applicable amount for
 14 such unit shall be such greater amount.

15 “(c) INFLATION ADJUSTMENT.—For calendar years
 16 after 2004, each dollar amount in subsection (b)(1) shall
 17 be adjusted by multiplying such amount by the inflation
 18 adjustment factor for the calendar year in which the

1 amount is applied. If any amount as increased under the
2 preceding sentence is not a multiple of 0.01 cent, such
3 amount shall be rounded to the nearest multiple of 0.01
4 cent.

5 “(d) DEFINITIONS AND SPECIAL RULES.—For pur-
6 poses of this section—

7 “(1) IN GENERAL.—Any term used in this sec-
8 tion which is also used in section 45I or 48A shall
9 have the meaning given such term in such section.

10 “(2) APPLICABLE RULES.—The rules of para-
11 graphs (3), (4), and (5) of section 45(d) shall
12 apply.”.

13 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
14 tion 38(b) (relating to current year business credit), as
15 amended by this Act, is amended by striking “plus” at
16 the end of paragraph (19), by striking the period at the
17 end of paragraph (20) and inserting “, plus”, and by add-
18 ing at the end the following new paragraph:

19 “(21) the qualifying advanced clean coal tech-
20 nology production credit determined under section
21 45J(a).”.

22 (c) TRANSITIONAL RULE.—Section 39(d) (relating to
23 transitional rules), as amended by this Act, is amended
24 by adding at the end the following new paragraph:

1 “(18) NO CARRYBACK OF SECTION 45J CREDIT
2 BEFORE EFFECTIVE DATE.—No portion of the un-
3 used business credit for any taxable year which is
4 attributable to the qualifying advanced clean coal
5 technology production credit determined under sec-
6 tion 45J may be carried back to a taxable year end-
7 ing on or before the date of the enactment of such
8 section.”.

9 (d) DENIAL OF DOUBLE BENEFIT.—Section 29(d)
10 (relating to other definitions and special rules) is amended
11 by adding at the end the following new paragraph:

12 “(9) DENIAL OF DOUBLE BENEFIT.—This sec-
13 tion shall not apply with respect to any qualified fuel
14 the production of which may be taken into account
15 for purposes of determining the credit under section
16 45J.”.

17 (e) CLERICAL AMENDMENT.—The table of sections
18 for subpart D of part IV of subchapter A of chapter 1,
19 as amended by this Act, is amended by adding at the end
20 the following new item:

“Sec. 45J. Credit for production from a qualifying advanced clean coal tech-
 nology unit.”.

21 (f) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to production after the date of the
23 enactment of this Act, in taxable years ending after such
24 date.

1 **Subtitle C—Treatment of Persons**
 2 **Not Able To Use Entire Credit**

3 **SEC. 421. TREATMENT OF PERSONS NOT ABLE TO USE EN-**
 4 **TIRE CREDIT.**

5 (a) IN GENERAL.—Section 45I, as added by this Act,
 6 is amended by adding at the end the following new sub-
 7 section:

8 “(f) TREATMENT OF PERSON NOT ABLE TO USE
 9 ENTIRE CREDIT.—

10 “(1) ALLOWANCE OF CREDITS.—

11 “(A) IN GENERAL.—Any credit allowable
 12 under this section, section 45J, or section 48A
 13 with respect to a facility owned by a person de-
 14 scribed in subparagraph (B) may be transferred
 15 or used as provided in this subsection, and the
 16 determination as to whether the credit is allow-
 17 able shall be made without regard to the tax-
 18 exempt status of the person.

19 “(B) PERSONS DESCRIBED.—A person is
 20 described in this subparagraph if the person
 21 is—

22 “(i) an organization described in sec-
 23 tion 501(c)(12)(C) and exempt from tax
 24 under section 501(a),

1 “(ii) an organization described in sec-
2 tion 1381(a)(2)(C),

3 “(iii) a public utility (as defined in
4 section 136(c)(2)(B)),

5 “(iv) any State or political subdivision
6 thereof, the District of Columbia, or any
7 agency or instrumentality of any of the
8 foregoing,

9 “(v) any Indian tribal government
10 (within the meaning of section 7871) or
11 any agency or instrumentality thereof, or

12 “(vi) the Tennessee Valley Authority.

13 “(2) TRANSFER OF CREDIT.—

14 “(A) IN GENERAL.—A person described in
15 clause (i), (ii), (iii), (iv), or (v) of paragraph
16 (1)(B) may transfer any credit to which para-
17 graph (1)(A) applies through an assignment to
18 any other person not described in paragraph
19 (1)(B). Such transfer may be revoked only with
20 the consent of the Secretary.

21 “(B) REGULATIONS.—The Secretary shall
22 prescribe such regulations as necessary to en-
23 sure that any credit described in subparagraph
24 (A) is claimed once and not reassigned by such
25 other person.

1 “(C) TRANSFER PROCEEDS TREATED AS
2 ARISING FROM ESSENTIAL GOVERNMENT FUNC-
3 TION.—Any proceeds derived by a person de-
4 scribed in clause (iii), (iv), or (v) of paragraph
5 (1)(B) from the transfer of any credit under
6 subparagraph (A) shall be treated as arising
7 from the exercise of an essential government
8 function.

9 “(3) USE OF CREDIT AS AN OFFSET.—Notwith-
10 standing any other provision of law, in the case of
11 a person described in clause (i), (ii), or (v) of para-
12 graph (1)(B), any credit to which paragraph (1)(A)
13 applies may be applied by such person, to the extent
14 provided by the Secretary of Agriculture, as a pre-
15 payment of any loan, debt, or other obligation the
16 entity has incurred under subchapter I of chapter 31
17 of title 7 of the Rural Electrification Act of 1936 (7
18 U.S.C. 901 et seq.), as in effect on the date of the
19 enactment of this section.

20 “(4) USE BY TVA.—

21 “(A) IN GENERAL.—Notwithstanding any
22 other provision of law, in the case of a person
23 described in paragraph (1)(B)(vi), any credit to
24 which paragraph (1)(A) applies may be applied
25 as a credit against the payments required to be

1 made in any fiscal year under section 15d(e) of
2 the Tennessee Valley Authority Act of 1933 (16
3 U.S.C. 831n-4(e)) as an annual return on the
4 appropriations investment and an annual repay-
5 ment sum.

6 “(B) TREATMENT OF CREDITS.—The ag-
7 gregate amount of credits described in para-
8 graph (1)(A) with respect to such person shall
9 be treated in the same manner and to the same
10 extent as if such credits were a payment in cash
11 and shall be applied first against the annual re-
12 turn on the appropriations investment.

13 “(C) CREDIT CARRYOVER.—With respect
14 to any fiscal year, if the aggregate amount of
15 credits described paragraph (1)(A) with respect
16 to such person exceeds the aggregate amount of
17 payment obligations described in subparagraph
18 (A), the excess amount shall remain available
19 for application as credits against the amounts
20 of such payment obligations in succeeding fiscal
21 years in the same manner as described in this
22 paragraph.

23 “(5) CREDIT NOT INCOME.—Any transfer
24 under paragraph (2) or use under paragraph (3) of
25 any credit to which paragraph (1)(A) applies shall

1 not be treated as income for purposes of section
2 501(c)(12).

3 “(6) TREATMENT OF UNRELATED PERSONS.—
4 For purposes of this subsection, transfers among
5 and between persons described in clauses (i), (ii),
6 (iii), (iv), and (v) of paragraph (1)(B) shall be treat-
7 ed as transfers between unrelated parties.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to production after the date of the
10 enactment of this Act, in taxable years ending after such
11 date.

12 TITLE V—OIL AND GAS 13 PROVISIONS

14 SEC. 501. OIL AND GAS FROM MARGINAL WELLS.

15 (a) IN GENERAL.—Subpart D of part IV of sub-
16 chapter A of chapter 1 (relating to business credits), as
17 amended by this Act, is amended by adding at the end
18 the following new section:

19 “SEC. 45K. CREDIT FOR PRODUCING OIL AND GAS FROM 20 MARGINAL WELLS.

21 “(a) GENERAL RULE.—For purposes of section 38,
22 the marginal well production credit for any taxable year
23 is an amount equal to the product of—

24 “(1) the credit amount, and

1 “(2) the qualified crude oil production and the
2 qualified natural gas production which is attrib-
3 utable to the taxpayer.

4 “(b) CREDIT AMOUNT.—For purposes of this
5 section—

6 “(1) IN GENERAL.—The credit amount is—

7 “(A) \$3 per barrel of qualified crude oil
8 production, and

9 “(B) 50 cents per 1,000 cubic feet of
10 qualified natural gas production.

11 “(2) REDUCTION AS OIL AND GAS PRICES IN-
12 CREASE.—

13 “(A) IN GENERAL.—The \$3 and 50 cents
14 amounts under paragraph (1) shall each be re-
15 duced (but not below zero) by an amount which
16 bears the same ratio to such amount (deter-
17 mined without regard to this paragraph) as—

18 “(i) the excess (if any) of the applica-
19 ble reference price over \$15 (\$1.67 for
20 qualified natural gas production), bears to

21 “(ii) \$3 (\$0.33 for qualified natural
22 gas production).

23 The applicable reference price for a taxable
24 year is the reference price of the calendar year

1 preceding the calendar year in which the tax-
2 able year begins.

3 “(B) INFLATION ADJUSTMENT.—

4 “(i) IN GENERAL.—In the case of any
5 taxable year beginning in a calendar year
6 after 2003, each of the dollar amounts
7 contained in subparagraph (A) shall be in-
8 creased to an amount equal to such dollar
9 amount multiplied by the inflation adjust-
10 ment factor for such calendar year.

11 “(ii) INFLATION ADJUSTMENT FAC-
12 TOR.—For purposes of clause (i)—

13 “(I) IN GENERAL.—The term ‘in-
14 flation adjustment factor’ means, with
15 respect to a calendar year, a fraction
16 the numerator of which is the GDP
17 implicit price deflator for the pre-
18 ceding calendar year and the denomi-
19 nator of which is the GDP implicit
20 price deflator for the calendar year
21 2002.

22 “(II) GDP IMPLICIT PRICE
23 DEFLATOR.—The term ‘GDP implicit
24 price deflator’ means, for any cal-
25 endar year, the most recent revision of

1 the implicit price deflator for the
2 gross domestic product as of June 30
3 of such calendar year as computed by
4 the Department of Commerce before
5 October 1 of such calendar year.

6 “(C) REFERENCE PRICE.—For purposes of
7 this paragraph, the term ‘reference price’
8 means, with respect to any calendar year—

9 “(i) in the case of qualified crude oil
10 production, the reference price determined
11 under section 29(d)(2)(C), and

12 “(ii) in the case of qualified natural
13 gas production, the Secretary’s estimate of
14 the annual average wellhead price per
15 1,000 cubic feet for all domestic natural
16 gas.

17 “(c) QUALIFIED CRUDE OIL AND NATURAL GAS
18 PRODUCTION.—For purposes of this section—

19 “(1) IN GENERAL.—The terms ‘qualified crude
20 oil production’ and ‘qualified natural gas production’
21 mean domestic crude oil or domestic natural gas
22 which is produced from a qualified marginal well.

23 “(2) LIMITATION ON AMOUNT OF PRODUCTION
24 WHICH MAY QUALIFY.—

1 “(A) IN GENERAL.—Crude oil or natural
2 gas produced during any taxable year from any
3 well shall not be treated as qualified crude oil
4 production or qualified natural gas production
5 to the extent production from the well during
6 the taxable year exceeds 1,095 barrels or barrel
7 equivalents.

8 “(B) PROPORTIONATE REDUCTIONS.—

9 “(i) SHORT TAXABLE YEARS.—In the
10 case of a short taxable year, the limitations
11 under this paragraph shall be proportion-
12 ately reduced to reflect the ratio which the
13 number of days in such taxable year bears
14 to 365.

15 “(ii) WELLS NOT IN PRODUCTION EN-
16 TIRE YEAR.—In the case of a well which is
17 not capable of production during each day
18 of a taxable year, the limitations under
19 this paragraph applicable to the well shall
20 be proportionately reduced to reflect the
21 ratio which the number of days of produc-
22 tion bears to the total number of days in
23 the taxable year.

24 “(3) NONCOMPLIANCE WITH POLLUTION
25 LAWS.—Production from any well during any period

1 in which such well is not in compliance with applica-
2 ble Federal pollution prevention, control, and permit
3 requirements shall not be treated as qualified crude
4 oil production or qualified natural gas production.

5 “(4) DEFINITIONS.—

6 “(A) QUALIFIED MARGINAL WELL.—The
7 term ‘qualified marginal well’ means a domestic
8 well—

9 “(i) the production from which during
10 the taxable year is treated as marginal
11 production under section 613A(c)(6), or

12 “(ii) which, during the taxable year—

13 “(I) has average daily production
14 of not more than 25 barrel equiva-
15 lents, and

16 “(II) produces water at a rate
17 not less than 95 percent of total well
18 effluent.

19 “(B) CRUDE OIL, ETC.—The terms ‘crude
20 oil’, ‘natural gas’, ‘domestic’, and ‘barrel’ have
21 the meanings given such terms by section
22 613A(e).

23 “(C) BARREL EQUIVALENT.—The term
24 ‘barrel equivalent’ means, with respect to nat-

1 ural gas, a conversion ratio of 6,000 cubic
2 feet of natural gas to 1 barrel of crude oil.

3 “(D) DOMESTIC NATURAL GAS.—The term
4 ‘domestic natural gas’ does not include Alaska
5 natural gas (as defined in section 45M(c)(1)).

6 “(d) OTHER RULES.—

7 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
8 PAYER.—In the case of a qualified marginal well in
9 which there is more than 1 owner of operating inter-
10 ests in the well and the crude oil or natural gas pro-
11 duction exceeds the limitation under subsection
12 (c)(2), qualifying crude oil production or qualifying
13 natural gas production attributable to the taxpayer
14 shall be determined on the basis of the ratio which
15 taxpayer’s revenue interest in the production bears
16 to the aggregate of the revenue interests of all oper-
17 ating interest owners in the production.

18 “(2) OPERATING INTEREST REQUIRED.—Any
19 credit under this section may be claimed only on
20 production which is attributable to the holder of an
21 operating interest.

22 “(3) PRODUCTION FROM NONCONVENTIONAL
23 SOURCES EXCLUDED.—In the case of production
24 from a qualified marginal well which is eligible for
25 the credit allowed under section 29 for the taxable

1 year, no credit shall be allowable under this section
2 unless the taxpayer elects not to claim the credit
3 under section 29 with respect to the well.”.

4 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
5 tion 38(b) (relating to current year business credit), as
6 amended by this Act, is amended by striking “plus” at
7 the end of paragraph (20), by striking the period at the
8 end of paragraph (21) and inserting “, plus”, and by add-
9 ing at the end the following new paragraph:

10 “(22) the marginal oil and gas well production
11 credit determined under section 45K(a).”.

12 (c) NO CARRYBACK OF MARGINAL OIL AND GAS
13 WELL PRODUCTION CREDIT BEFORE EFFECTIVE
14 DATE.—Section 39(d) (relating to transition rules), as
15 amended by this Act, is amended by adding at the end
16 the following new paragraph:

17 “(19) NO CARRYBACK OF MARGINAL OIL AND
18 GAS WELL PRODUCTION CREDIT BEFORE EFFECTIVE
19 DATE.—No portion of the unused business credit for
20 any taxable year which is attributable to the mar-
21 ginal oil and gas well production credit determined
22 under section 45K may be carried back to a taxable
23 year ending on or before the date of the enactment
24 of such section.”.

1 (d) COORDINATION WITH SECTION 29.—Section
 2 29(a) (relating to allowance of credit) is amended by strik-
 3 ing “There” and inserting “At the election of the tax-
 4 payer, there”.

5 (e) CLERICAL AMENDMENT.—The table of sections
 6 for subpart D of part IV of subchapter A of chapter 1,
 7 as amended by this Act, is amended by adding at the end
 8 the following new item:

“Sec. 45K. Credit for producing oil and gas from marginal
wells.”.

9 (f) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to production in taxable years be-
 11 ginning after the date of the enactment of this Act.

12 **SEC. 502. NATURAL GAS GATHERING LINES TREATED AS 7-**
 13 **YEAR PROPERTY.**

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

18 “(ii) any natural gas gathering line,
 19 and”.

20 (b) NATURAL GAS GATHERING LINE.—Section
 21 168(i) (relating to definitions and special rules), as
 22 amended by this Act, is amended by adding at the end
 23 the following new paragraph:

1 “(17) NATURAL GAS GATHERING LINE.—The
2 term ‘natural gas gathering line’ means—

3 “(A) the pipe, equipment, and appur-
4 tenances used to deliver natural gas from the
5 wellhead or a commonpoint to the point at
6 which such gas first reaches—

7 “(i) a gas processing plant,

8 “(ii) an interconnection with a trans-
9 mission pipeline certificated by the Federal
10 Energy Regulatory Commission as an
11 interstate transmission pipeline,

12 “(iii) an interconnection with an
13 intrastate transmission pipeline, or

14 “(iv) a direct interconnection with a
15 local distribution company, a gas storage
16 facility, or an industrial consumer, or

17 “(B) any other pipe, equipment, or appur-
18 tenances determined to be a gathering line by
19 the Federal Energy Regulatory Commission.

20 (c) ALTERNATIVE SYSTEM.—The table contained in
21 section 168(g)(3)(B) (relating to special rule for certain
22 property assigned to classes) is amended by inserting after
23 the item relating to subparagraph (C)(i) the following new
24 item:

“ (C)(ii) 10”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to property placed in service after
 3 the date of the enactment of this Act, in taxable years
 4 ending after such date.

5 **SEC. 503. EXPENSING OF CAPITAL COSTS INCURRED IN**
 6 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
 7 **TION AGENCY SULFUR REGULATIONS.**

8 (a) IN GENERAL.—Part VI of subchapter B of chap-
 9 ter 1 (relating to itemized deductions for individuals and
 10 corporations), as amended by this Act, is amended by in-
 11 serting after section 179B the following new section:

12 **“SEC. 179C. DEDUCTION FOR CAPITAL COSTS INCURRED IN**
 13 **COMPLYING WITH ENVIRONMENTAL PROTEC-**
 14 **TION AGENCY SULFUR REGULATIONS.**

15 “(a) TREATMENT AS EXPENSE.—

16 “(1) IN GENERAL.—A small business refiner
 17 may elect to treat any qualified capital costs as an
 18 expense which is not chargeable to capital account.
 19 Any qualified cost which is so treated shall be al-
 20 lowed as a deduction for the taxable year in which
 21 the cost is paid or incurred.

22 “(2) LIMITATION.—

23 “(A) IN GENERAL.—The aggregate costs
 24 which may be taken into account under this
 25 subsection for any taxable year may not exceed

1 the applicable percentage of the qualified cap-
2 ital costs paid or incurred for the taxable year.

3 “(B) APPLICABLE PERCENTAGE.—For
4 purposes of subparagraph (A)—

5 “(i) IN GENERAL.—Except as pro-
6 vided in clause (ii), the applicable percent-
7 age is 75 percent.

8 “(ii) REDUCED PERCENTAGE.—In the
9 case of a small business refiner with aver-
10 age daily refinery runs or average retained
11 production for the period described in sub-
12 section (b)(2) in excess of 155,000 barrels,
13 the percentage described in clause (i) shall
14 be reduced (but not below zero) by the
15 product of—

16 “(I) such percentage (before the
17 application of this clause), and

18 “(II) the ratio of such excess to
19 50,000 barrels.

20 “(b) DEFINITIONS.—For purposes of this section—

21 “(1) QUALIFIED CAPITAL COSTS.—The term
22 ‘qualified capital costs’ means any costs which—

23 “(A) are otherwise chargeable to capital
24 account, and

1 “(B) are paid or incurred for the purpose
2 of complying with the Highway Diesel Fuel Sul-
3 fur Control Requirement of the Environmental
4 Protection Agency, as in effect on the date of
5 the enactment of this section, with respect to a
6 facility placed in service by the taxpayer before
7 such date.

8 “(2) SMALL BUSINESS REFINER.—The term
9 ‘small business refiner’ means, with respect to any
10 taxable year, a refiner of crude oil—

11 “(A) which, within the refinery operations
12 of the business, employs not more than 1,500
13 employees on any day during such taxable year,
14 and

15 “(B) the average daily refinery run or av-
16 erage retained production of which for the 1-
17 year period ending on the date of the enactment
18 of this section did not exceed 205,000 barrels.

19 “(c) COORDINATION WITH OTHER PROVISIONS.—
20 Section 280B shall not apply to amounts which are treated
21 as expenses under this section.

22 “(d) BASIS REDUCTION.—For purposes of this title,
23 the basis of any property shall be reduced by the portion
24 of the cost of such property taken into account under sub-
25 section (a).

1 “(e) CONTROLLED GROUPS.—For purposes of this
2 section, all persons treated as a single employer under sub-
3 section (b), (c), (m), or (o) of section 414 shall be treated
4 as a single employer.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 263(a)(1), as amended by this Act,
7 is amended by striking “or” at the end of subpara-
8 graph (H), by striking the period at the end of sub-
9 paragraph (I) and inserting “, or”, and by inserting
10 after subparagraph (I) the following new subpara-
11 graph:

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

14 (2) Section 263A(c)(3) is amended by inserting
15 “179C,” after “section”.

16 (3) Section 312(k)(3)(B), as amended by this
17 Act, is amended by striking “or 179B” each place
18 it appears in the heading and text and inserting
19 “179B, or 179C”.

20 (4) Section 1016(a), as amended by this Act, is
21 amended by striking “and” at the end of paragraph
22 (32), by striking the period at the end of paragraph
23 (33) and inserting “, and”, and by adding at the
24 end the following new paragraph:

1 “(34) to the extent provided in section
2 179C(d).”.

3 (5) Section 1245(a), as amended by this Act, is
4 amended by inserting “179C,” after “179B,” both
5 places it appears in paragraphs (2)(C) and (3)(C).

6 (6) The table of sections for part VI of sub-
7 chapter B of chapter 1, as amended by this Act, is
8 amended by inserting after the item relating to sec-
9 tion 179B the following new item:

 “Sec. 179C. Deduction for capital costs incurred in complying with Environ-
 mental Protection Agency sulfur regulations.”.

10 (c) **EFFECTIVE DATE.**—The amendment made by
11 this section shall apply to expenses paid or incurred after
12 December 31, 2002, in taxable years ending after such
13 date.

14 **SEC. 504. ENVIRONMENTAL TAX CREDIT.**

15 (a) **IN GENERAL.**—Subpart D of part IV of sub-
16 chapter A of chapter 1 (relating to business-related cred-
17 its), as amended by this Act, is amended by adding at
18 the end the following new section:

19 **“SEC. 45L. ENVIRONMENTAL TAX CREDIT.**

20 “(a) **IN GENERAL.**—For purposes of section 38, the
21 amount of the environmental tax credit determined under
22 this section with respect to any small business refiner for
23 any taxable year is an amount equal to 5 cents for every

1 gallon of low-sulfur diesel fuel produced at a facility by
2 such small business refiner during such taxable year.

3 “(b) MAXIMUM CREDIT.—

4 “(1) IN GENERAL.—For any small business re-
5 finer, the aggregate amount determined under sub-
6 section (a) for any taxable year with respect to any
7 facility shall not exceed the applicable percentage of
8 the qualified capital costs paid or incurred by such
9 small business refiner with respect to such facility
10 during the applicable period, reduced by the credit
11 allowed under subsection (a) with respect to such fa-
12 cility for any preceding year.

13 “(2) APPLICABLE PERCENTAGE.—For purposes
14 of paragraph (1)—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), the applicable percentage is
17 25 percent.

18 “(B) REDUCED PERCENTAGE.—The per-
19 centage described in subparagraph (A) shall be
20 reduced in the same manner as under section
21 179C(a)(2)(B)(ii).

22 “(c) DEFINITIONS.—For purposes of this section—

23 “(1) IN GENERAL.—The terms ‘small business
24 refiner’ and ‘qualified capital costs’ have the same
25 meaning as given in section 179C.

1 “(2) LOW-SULFUR DIESEL FUEL.—The term
2 ‘low-sulfur diesel fuel’ means diesel fuel containing
3 not more than 15 parts per million of sulfur.

4 “(3) APPLICABLE PERIOD.—The term ‘applica-
5 ble period’ means, with respect to any facility, the
6 period beginning on the day after the date of the en-
7 actment of this section and ending with the date
8 which is 1 year after the date on which the taxpayer
9 must comply with the applicable EPA regulations
10 with respect to such facility.

11 “(4) APPLICABLE EPA REGULATIONS.—The
12 term ‘applicable EPA regulations’ means the High-
13 way Diesel Fuel Sulfur Control Requirements of the
14 Environmental Protection Agency, as in effect on
15 the date of the enactment of this section.

16 “(d) CERTIFICATION.—

17 “(1) REQUIRED.—Not later than the date
18 which is 30 months after the first day of the first
19 taxable year in which a credit is allowed under this
20 section with respect to a facility, the small business
21 refiner shall obtain a certification from the Sec-
22 retary, in consultation with the Administrator of the
23 Environmental Protection Agency, that the tax-
24 payer’s qualified capital costs with respect to such

1 facility will result in compliance with the applicable
2 EPA regulations.

3 “(2) CONTENTS OF APPLICATION.—An applica-
4 tion for certification shall include relevant informa-
5 tion regarding unit capacities and operating charac-
6 teristics sufficient for the Secretary, in consultation
7 with the Administrator of the Environmental Protec-
8 tion Agency, to determine that such qualified capital
9 costs are necessary for compliance with the applica-
10 ble EPA regulations.

11 “(3) REVIEW PERIOD.—Any application shall
12 be reviewed and notice of certification, if applicable,
13 shall be made within 60 days of receipt of such ap-
14 plication. In the event the Secretary does not notify
15 the taxpayer of the results of such certification with-
16 in such period, the taxpayer may presume the cer-
17 tification to be issued until so notified.

18 “(4) STATUTE OF LIMITATIONS.—With respect
19 to the credit allowed under this section—

20 “(A) the statutory period for the assess-
21 ment of any deficiency attributable to such
22 credit shall not expire before the end of the 3-
23 year period ending on the date that the period
24 described in paragraph (3) ends with respect to
25 the taxpayer, and

1 “(B) such deficiency may be assessed be-
2 fore the expiration of such 3-year period not-
3 withstanding the provisions of any other law or
4 rule of law which would otherwise prevent such
5 assessment.

6 “(e) CONTROLLED GROUPS.—For purposes of this
7 section, all persons treated as a single employer under sub-
8 section (b), (c), (m), or (o) of section 414 shall be treated
9 as a single employer.

10 “(f) COOPERATIVE ORGANIZATIONS.—

11 “(1) APPORTIONMENT OF CREDIT.—

12 “(A) IN GENERAL.—In the case of a coop-
13 erative organization described in section
14 1381(a), any portion of the credit determined
15 under subsection (a) for the taxable year may,
16 at the election of the organization, be appor-
17 tioned among patrons eligible to share in pa-
18 tronage dividends on the basis of the quantity
19 or value of business done with or for such pa-
20 trons for the taxable year.

21 “(B) FORM AND EFFECT OF ELECTION.—

22 An election under subparagraph (A) for any
23 taxable year shall be made on a timely filed re-
24 turn for such year. Such election, once made,
25 shall be irrevocable for such taxable year.

1 “(2) TREATMENT OF ORGANIZATIONS AND PA-
2 TRONS.—

3 “(A) ORGANIZATIONS.—The amount of the
4 credit not apportioned to patrons pursuant to
5 paragraph (1) shall be included in the amount
6 determined under subsection (a) for the taxable
7 year of the organization.

8 “(B) PATRONS.—The amount of the credit
9 apportioned to patrons pursuant to paragraph
10 (1) shall be included in the amount determined
11 under subsection (a) for the first taxable year
12 of each patron ending on or after the last day
13 of the payment period (as defined in section
14 1382(d)) for the taxable year of the organiza-
15 tion or, if earlier, for the taxable year of each
16 patron ending on or after the date on which the
17 patron receives notice from the cooperative of
18 the apportionment.

19 “(3) SPECIAL RULES FOR DECREASE IN CRED-
20 ITS FOR TAXABLE YEAR.—If the amount of the cred-
21 it of a cooperative organization determined under
22 subsection (a) for a taxable year is less than the
23 amount of such credit shown on the return of the co-
24 operative organization for such year, an amount
25 equal to the excess of—

1 “(A) such reduction, over

2 “(B) the amount not apportioned to such
3 patrons under paragraph (1) for the taxable
4 year,

5 shall be treated as an increase in tax imposed by
6 this chapter on the organization. Such increase shall
7 not be treated as tax imposed by this chapter for
8 purposes of determining the amount of any credit
9 under this chapter or for purposes of section 55.”.

10 (b) CREDIT MADE PART OF GENERAL BUSINESS

11 CREDIT.—Section 38(b) (relating to current year business
12 credit), as amended by this Act, is amended by striking
13 “plus” at the end of paragraph (21), by striking the period
14 at the end of paragraph (22) and inserting “, plus”, and
15 by adding at the end the following new paragraph:

16 “(23) in the case of a small business refiner,
17 the environmental tax credit determined under sec-
18 tion 45L(a).”.

19 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C

20 (relating to certain expenses for which credits are allow-
21 able), as amended by this Act, is amended by adding at
22 the end the following new subsection:

23 “(e) ENVIRONMENTAL TAX CREDIT.—No deduction
24 shall be allowed for that portion of the expenses otherwise
25 allowable as a deduction for the taxable year which is

1 equal to the amount of the credit determined for the tax-
2 able year under section 45L(a).”.

3 (d) 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 adding at the end
6 the following new item:

“Sec. 45L. Environmental tax credit.”.

7 (e) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to expenses paid or incurred after
9 December 31, 2002, in taxable years ending after such
10 date.

11 **SEC. 505. DETERMINATION OF SMALL REFINER EXCEPTION**
12 **TO OIL DEPLETION DEDUCTION.**

13 (a) IN GENERAL.—Paragraph (4) of section 613A(d)
14 (relating to limitations on application of subsection (e))
15 is amended to read as follows:

16 “(4) CERTAIN REFINERS EXCLUDED.—If the
17 taxpayer or 1 or more related persons engages in the
18 refining of crude oil, subsection (e) shall not apply
19 to the taxpayer for a taxable year if the average
20 daily refinery runs of the taxpayer and such persons
21 for the taxable year exceed 60,000 barrels. For pur-
22 poses of this paragraph, the average daily refinery
23 runs for any taxable year shall be determined by di-
24 viding the aggregate refinery runs for the taxable
25 year by the number of days in the taxable year.”.

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

4 **SEC. 506. MARGINAL PRODUCTION INCOME LIMIT EXTEN-**
5 **SION.**

6 Section 613A(c)(6)(H) (relating to temporary sus-
7 pension of taxable income limit with respect to marginal
8 production) is amended by striking “2004” and inserting
9 “2007”.

10 **SEC. 507. AMORTIZATION OF DELAY RENTAL PAYMENTS.**

11 (a) IN GENERAL.—Section 167 (relating to deprecia-
12 tion) is amended by redesignating subsection (h) as sub-
13 section (i) and by inserting after subsection (g) the fol-
14 lowing new subsection:

15 “(h) AMORTIZATION OF DELAY RENTAL PAYMENTS
16 FOR DOMESTIC OIL AND GAS WELLS.—

17 “(1) IN GENERAL.—Any delay rental payment
18 paid or incurred in connection with the development
19 of oil or gas wells within the United States (as de-
20 fined in section 638) shall be allowed as a deduction
21 ratably over the 24-month period beginning on the
22 date that such payment was paid or incurred.

23 “(2) HALF-YEAR CONVENTION.—For purposes
24 of paragraph (1), any payment paid or incurred dur-

1 ing the taxable year shall be treated as paid or in-
2 curred on the mid-point of such taxable year.

3 “(3) EXCLUSIVE METHOD.—Except as provided
4 in this subsection, no depreciation or amortization
5 deduction shall be allowed with respect to such pay-
6 ments.

7 “(4) TREATMENT UPON ABANDONMENT.—If
8 any property to which a delay rental payment relates
9 is retired or abandoned during the 24-month period
10 described in paragraph (1), no deduction shall be al-
11 lowed on account of such retirement or abandon-
12 ment and the amortization deduction under this sub-
13 section shall continue with respect to such payment.

14 “(5) DELAY RENTAL PAYMENTS.—For purposes
15 of this subsection, the term ‘delay rental payment’
16 means an amount paid for the privilege of deferring
17 development of an oil or gas well under an oil or gas
18 lease.”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to amounts paid or incurred in tax-
21 able years beginning after the date of the enactment of
22 this Act.

1 **SEC. 508. AMORTIZATION OF GEOLOGICAL AND GEO-**
2 **PHYSICAL EXPENDITURES.**

3 (a) IN GENERAL.—Section 167 (relating to deprecia-
4 tion), as amended by this Act, is amended by redesignig-
5 nating subsection (i) as subsection (j) and by inserting
6 after subsection (h) the following new subsection:

7 “(i) AMORTIZATION OF GEOLOGICAL AND GEO-
8 PHYSICAL EXPENDITURES.—

9 “(1) IN GENERAL.—Any geological and geo-
10 physical expenses paid or incurred in connection
11 with the exploration for, or development of, oil or
12 gas within the United States (as defined in section
13 638) shall be allowed as a deduction ratably over the
14 24-month period beginning on the date that such ex-
15 pense was paid or incurred.

16 “(2) SPECIAL RULES.—For purposes of this
17 subsection, rules similar to the rules of paragraphs
18 (2), (3), and (4) of subsection (h) shall apply.”.

19 (b) CONFORMING AMENDMENT.—Section 263A(e)(3)
20 is amended by inserting “167(h), 167(i),” after “under
21 section”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to costs paid or incurred in taxable
24 years beginning after the date of the enactment of this
25 Act.

1 **SEC. 509. EXTENSION AND MODIFICATION OF CREDIT FOR**
2 **PRODUCING FUEL FROM A NONCONVEN-**
3 **TIONAL SOURCE.**

4 (a) IN GENERAL.—Section 29 (relating to credit for
5 producing fuel from a nonconventional source) is amended
6 by adding at the end the following new subsection:

7 “(h) EXTENSION FOR OTHER FACILITIES.—

8 “(1) OIL AND GAS.—In the case of a well or fa-
9 cility for producing qualified fuels described in sub-
10 paragraph (A) or (B) of subsection (c)(1) which was
11 drilled or placed in service after the date of the en-
12 actment of this subsection and before January 1,
13 2007, notwithstanding subsection (f), this section
14 shall apply with respect to such fuels produced at
15 such well or facility before the close of the 3-year pe-
16 riod beginning on the date that such well is drilled
17 or such facility is placed in service.

18 “(2) FACILITIES PRODUCING FUELS FROM AG-
19 RICULTURAL AND ANIMAL WASTE.—

20 “(A) IN GENERAL.—In the case of facility
21 for producing liquid, gaseous, or solid fuels
22 from qualified agricultural and animal wastes,
23 including such fuels when used as feedstocks,
24 which was placed in service after the date of the
25 enactment of this subsection and before Janu-
26 ary 1, 2007, this section shall apply with re-

1 spect to fuel produced at such facility before
2 the close of the 3-year period beginning on the
3 date such facility is placed in service.

4 “(B) QUALIFIED AGRICULTURAL AND ANI-
5 MAL WASTE.—For purposes of this paragraph,
6 the term ‘qualified agricultural and animal
7 waste’ means agriculture and animal waste, in-
8 cluding by-products, packaging, and any mate-
9 rials associated with the processing, feeding,
10 selling, transporting, or disposal of agricultural
11 or animal products or wastes.

12 “(3) WELLS PRODUCING VISCOUS OIL.—

13 “(A) IN GENERAL.—In the case of a well
14 for producing viscous oil which was placed in
15 service after the date of the enactment of this
16 subsection and before January 1, 2007, this
17 section shall apply with respect to fuel produced
18 at such well before the close of the 3-year pe-
19 riod beginning on the date such well is placed
20 in service.

21 “(B) VISCOUS OIL.—The term ‘viscous oil’
22 means heavy oil, as defined in section
23 613A(e)(6), except that—

1 “(i) ‘22 degrees’ shall be substituted
2 for ‘20 degrees’ in applying subparagraph
3 (F) thereof, and

4 “(ii) in all cases, the oil gravity shall
5 be measured from the initial well-head
6 samples, drill cuttings, or down hole sam-
7 ples.

8 “(C) WAIVER OF UNRELATED PERSON RE-
9 QUIREMENT.—In the case of viscous oil, the re-
10 quirement under subsection (a)(2)(A) of a sale
11 to an unrelated person shall not apply to any
12 sale to the extent that the viscous oil is not con-
13 sumed in the immediate vicinity of the wellhead.

14 “(4) FACILITIES PRODUCING REFINED COAL.—

15 “(A) IN GENERAL.—In the case of a facil-
16 ity described in subparagraph (C) for producing
17 refined coal which was placed in service after
18 the date of the enactment of this subsection
19 and before January 1, 2007, this section shall
20 apply with respect to fuel produced at such fa-
21 cility before the close of the 5-year period be-
22 ginning on the date such facility is placed in
23 service.

24 “(B) REFINED COAL.—For purposes of
25 this paragraph, the term ‘refined coal’ means a

1 fuel which is a liquid, gaseous, or solid syn-
2 thetic fuel produced from coal (including lig-
3 nite) or high carbon fly ash, including such fuel
4 used as a feedstock.

5 “(C) COVERED FACILITIES.—

6 “(i) IN GENERAL.—A facility is de-
7 scribed in this subparagraph if such facil-
8 ity produces refined coal using a tech-
9 nology which results in—

10 “(I) a qualified emission reduc-
11 tion, and

12 “(II) a qualified enhanced value.

13 “(ii) QUALIFIED EMISSION REDUC-
14 TION.—For purposes of this subparagraph,
15 the term ‘qualified emission reduction’
16 means a reduction of at least 20 percent of
17 the emissions of nitrogen oxide and either
18 sulfur dioxide or mercury released when
19 burning the refined coal (excluding any di-
20 lution caused by materials combined or
21 added during the production process), as
22 compared to the emissions released when
23 burning the feedstock coal or comparable
24 coal predominantly available in the market-
25 place as of January 1, 2003.

1 “(iii) QUALIFIED ENHANCED
2 VALUE.—For purposes of this subpara-
3 graph, the term ‘qualified enhanced value’
4 means an increase of at least 50 percent in
5 the market value of the refined coal (ex-
6 cluding any increase caused by materials
7 combined or added during the production
8 process), as compared to the value of the
9 feedstock coal.

10 “(iv) QUALIFYING ADVANCED CLEAN
11 COAL TECHNOLOGY UNITS EXCLUDED.—A
12 facility described in this subparagraph
13 shall not include a qualifying advanced
14 clean coal technology unit (as defined in
15 section 48A(b)).

16 “(5) COALMINE GAS.—

17 “(A) IN GENERAL.—This section shall
18 apply to coalmine gas—

19 “(i) captured or extracted by the tax-
20 payer during the period beginning after the
21 date of the enactment of this subsection
22 and ending before January 1, 2007, and

23 “(ii) utilized as a fuel source or sold
24 by or on behalf of the taxpayer to an unre-
25 lated person during such period.

1 “(B) COALMINE GAS.—For purposes of
2 this paragraph, the term ‘coalmine gas’ means
3 any methane gas which is—

4 “(i) liberated during or as a result of
5 coal mining operations, or

6 “(ii) extracted up to 10 years in ad-
7 vance of coal mining operations as part of
8 a specific plan to mine a coal deposit.

9 “(C) SPECIAL RULE FOR ADVANCED EX-
10 TRACTION.—In the case of coalmine gas which
11 is captured in advance of coal mining oper-
12 ations, the credit under subsection (a) shall be
13 allowed only after the date the coal extraction
14 occurs in the immediate area where the
15 coalmine gas was removed.

16 “(D) NONCOMPLIANCE WITH POLLUTION
17 LAWS.—This paragraph shall not apply to the
18 capture or extraction of coalmine gas from coal
19 mining operations with respect to any period in
20 which such coal mining operations are not in
21 compliance with applicable State and Federal
22 pollution prevention, control, and permit re-
23 quirements.

1 “(6) SPECIAL RULES.—In determining the
2 amount of credit allowable under this section solely
3 by reason of this subsection—

4 “(A) FUELS TREATED AS QUALIFIED
5 FUELS.—Any fuel described in paragraph (2),
6 (3), (4), or (5) shall be treated as a qualified
7 fuel for purposes of this section.

8 “(B) DAILY LIMIT.—The amount of quali-
9 fied fuels sold during any taxable year which
10 may be taken into account by reason of this
11 subsection with respect to any project shall not
12 exceed an average barrel-of-oil equivalent of
13 200,000 cubic feet of natural gas per day. Days
14 before the date the project is placed in service
15 shall not be taken into account in determining
16 such average.

17 “(C) CREDIT AMOUNT.—The dollar
18 amount applicable under subsection (a)(1) shall
19 be \$3 (and the inflation adjustment under sub-
20 section (b)(2) shall not apply to such
21 amount).”.

22 (b) CLARIFICATION OF PLACED IN SERVICE DATE
23 FOR CERTAIN LANDFILL GAS FACILITIES.—Section 29(d)
24 (relating to other definitions and special rules) is amended
25 by adding at the end the following new paragraph:

1 “(9) CLARIFICATION OF PLACED IN SERVICE
2 DATE FOR CERTAIN LANDFILL GAS FACILITIES.—

3 “(A) IN GENERAL.—In the case of a land-
4 fill placed in service on or before the date of the
5 enactment of this paragraph—

6 “(i) a facility for producing qualified
7 fuel from such landfill shall include all
8 wells, pipes, and related components used
9 to collect landfill gas, and

10 “(ii) production of landfill gas from
11 such landfill attributable to wells, pipes,
12 and related components placed in service
13 after such date of enactment shall be treat-
14 ed as produced from a facility placed in
15 service on the date such wells, pipes, and
16 related components were placed in service.

17 “(B) LANDFILL GAS.—The term ‘landfill
18 gas’ means gas described in subsection
19 (c)(1)(B)(ii) and derived from the biodegrada-
20 tion of municipal solid waste.”.

21 (c) EXTENSION FOR CERTAIN FUEL PRODUCED AT
22 EXISTING FACILITIES.—Section 29(f)(2) (relating to ap-
23 plication of section) is amended by inserting “(January
24 1, 2006, in the case of any coke, coke gas, or natural gas
25 and byproducts produced by coal gasification from lignite

1 in a facility described in paragraph (1)(B))” after “Janu-
2 ary 1, 2003”.

3 (d) STUDY OF COALBED METHANE.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury shall conduct a study regarding the effect of sec-
6 tion 29 of the Internal Revenue Code of 1986 on the
7 production of coalbed methane.

8 (2) CONTENTS OF STUDY.—The study under
9 paragraph (1) shall estimate the total amount of
10 credits under section 29 of the Internal Revenue
11 Code of 1986 claimed annually and in the aggregate
12 which are related to the production of coalbed meth-
13 ane since the date of the enactment of such section
14 29. Such study shall report the annual value of such
15 credits allowable for coalbed methane compared to
16 the average annual wellhead price of natural gas
17 (per thousand cubic feet of natural gas). Such study
18 shall also estimate the incremental increase in pro-
19 duction of coalbed methane which has resulted from
20 the enactment of such section 29, and the cost to
21 the Federal Government, in terms of the net tax
22 benefits claimed, per thousand cubic feet of incre-
23 mental coalbed methane produced annually and in
24 the aggregate since such enactment.

1 (e) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to fuel sold after the date of the
 3 enactment of this Act, in taxable years ending after such
 4 date.

5 **SEC. 510. NATURAL GAS DISTRIBUTION LINES TREATED AS**
 6 **15-YEAR PROPERTY.**

7 (a) IN GENERAL.—Section 168(e)(3)(E) (defining
 8 15-year property) is amended by striking “and” at the end
 9 of clause (ii), by striking the period at the end of clause
 10 (iii) and by inserting “, and”, and by adding at the end
 11 the following new clause:

12 “(iv) any natural gas distribution
 13 line.”.

14 (b) ALTERNATIVE SYSTEM.—The table contained in
 15 section 168(g)(3)(B) (relating to special rule for certain
 16 property assigned to classes), as amended by this Act, is
 17 amended by adding after the item relating to subpara-
 18 graph (E)(iii) the following new item:

“(E)(iv) 20”.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to property placed in service after
 21 the date of the enactment of this Act, in taxable years
 22 ending after such date.

23 **SEC. 511. CREDIT FOR ALASKA NATURAL GAS.**

24 (a) IN GENERAL.—Subpart D of part IV of sub-
 25 chapter A of chapter 1 (relating to business related cred-

1 its), as amended by this Act, is amended by adding at
 2 the end the following new section:

3 **“SEC. 45M. ALASKA NATURAL GAS.**

4 “(a) IN GENERAL.—For purposes of section 38, the
 5 Alaska natural gas credit for any taxable year is an
 6 amount equal to the product of—

7 “(1) the credit amount, and

8 “(2) Alaska natural gas the production of which
 9 is attributable to the taxpayer.

10 “(b) CREDIT AMOUNT.—For purposes of this
 11 section—

12 “(1) IN GENERAL.—The credit amount is \$0.52
 13 per 1,000,000 Btu of Alaska natural gas.

14 “(2) REDUCTION AS GAS PRICES INCREASE.—

15 “(A) IN GENERAL.—The dollar amount
 16 under paragraph (1) shall be reduced (but not
 17 below zero) by an amount which bears the same
 18 ratio to such amount (determined without re-
 19 gard to this paragraph) as—

20 “(i) the excess (if any) of the applica-
 21 ble reference price over \$0.83, bears to

22 “(ii) \$0.52.

23 “(B) APPLICABLE REFERENCE PRICE.—

24 For purposes of this paragraph—

1 “(i) IN GENERAL.—The applicable
2 reference price for any calendar month in
3 a taxable year is the reference price for the
4 calendar month in which production oc-
5 curs.

6 “(ii) REFERENCE PRICE.—The term
7 ‘reference price’ means, with respect to any
8 calendar month, a published market price
9 for natural gas in United States dollars
10 per 1,000,000 Btu (reduced by any gas
11 transportation costs and gas processing
12 costs as determined by the appropriate na-
13 tional regulatory body for natural gas
14 transportation) as determined under regu-
15 lations by the Secretary.

16 “(C) INFLATION ADJUSTMENT.—

17 “(i) IN GENERAL.—In the case of any
18 taxable year beginning in a calendar year
19 after 2003, each of the dollar amounts
20 contained in paragraph (1) and subpara-
21 graph (A) of this paragraph shall be in-
22 creased to an amount equal to such dollar
23 amount multiplied by the inflation adjust-
24 ment factor for such calendar year.

1 “(ii) INFLATION ADJUSTMENT FAC-
2 TOR.—For purposes of clause (i)—

3 “(I) IN GENERAL.—The term ‘in-
4 flation adjustment factor’ means, with
5 respect to a calendar year, a fraction
6 the numerator of which is the GDP
7 implicit price deflator for the pre-
8 ceding calendar year and the denomi-
9 nator of which is the GDP implicit
10 price deflator for the calendar year
11 2002.

12 “(II) GDP IMPLICIT PRICE
13 DEFLATOR.—The term ‘GDP implicit
14 price deflator’ means, for any cal-
15 endar year, the most recent revision of
16 the implicit price deflator for the
17 gross domestic product as of June 30
18 of such calendar year as computed by
19 the Department of Commerce before
20 October 1 of such calendar year.

21 “(c) ALASKA NATURAL GAS.—For purposes of this
22 section—

23 “(1) IN GENERAL.—The term ‘Alaska natural
24 gas’ means natural gas entering the Alaska natural
25 gas pipeline (as defined in section 168(i)(18) (deter-

1 mined without regard to subparagraph (B) thereof))
2 which is produced from a well—

3 “(A) located in the area of the State of
4 Alaska lying north of 64 degrees North lati-
5 tude, determined by excluding the area of the
6 Alaska National Wildlife Refuge (including the
7 continental shelf thereof within the meaning of
8 section 638(1)), and

9 “(B) pursuant to the applicable State and
10 Federal pollution prevention, control, and per-
11 mit requirements from such area (including the
12 continental shelf thereof within the meaning of
13 section 638(1)).

14 “(2) NATURAL GAS.—The term ‘natural gas’
15 has the meaning given such term by section
16 613A(e)(2).

17 “(d) SPECIAL RULES.—For purposes of this
18 section—

19 “(1) PRODUCTION ATTRIBUTABLE TO THE TAX-
20 PAYER.—

21 “(A) IN GENERAL.—In the case of a well
22 in which there is more than 1 person or
23 entity—

24 “(i) entitled to production of Alaska
25 natural gas, or

1 “(ii) at the election of the taxpayer,
2 entitled to the value of production as either
3 an operating interest owner or a royalty in-
4 terest owner,
5 the portion of such production attributable to
6 such person or entity shall be determined on
7 the basis of the ratio which the person’s or enti-
8 ty’s interest in the production or the value of
9 production bears to the aggregate of the inter-
10 ests of all operating interest owners and royalty
11 interest owners in the production or the value
12 of production.

13 “(B) PARTNERSHIP PROPERTIES.—In the
14 case of a partnership, for purposes of applying
15 subparagraph (A), production shall be attrib-
16 utable to its partners based on each partner’s
17 distributive share of Alaska natural gas which
18 is produced from partnership properties and at-
19 tributable to the partnership or its partners
20 under subparagraph (A).

21 “(2) PASS-THRU IN THE CASE OF ESTATES
22 AND TRUSTS.—Under regulations prescribed by the
23 Secretary, rules similar to the rules of subsection (d)
24 of section 52 shall apply.

1 “(e) APPLICATION OF SECTION.—This section shall
2 apply to Alaska natural gas during the period—

3 “(1) beginning with the later of—

4 “(A) January 1, 2010, or

5 “(B) the initial date for the interstate
6 transportation of such Alaska natural gas, and

7 “(2) ending with the date which is 15 years
8 after the date described in paragraph (1).”.

9 (b) CREDIT TREATED AS BUSINESS CREDIT.—Sec-
10 tion 38(b) (relating to current year business credit), as
11 amended by this Act, is amended by striking “plus” at
12 the end of paragraph (22), by striking the period at the
13 end of paragraph (23) and inserting “, plus”, and by add-
14 ing at the end the following new paragraph:

15 “(24) The Alaska natural gas credit determined
16 under section 45M(a).”.

17 (c) ALLOWING CREDIT AGAINST ENTIRE REGULAR
18 TAX AND MINIMUM TAX.—

19 (1) IN GENERAL.—Section 38(c) (relating to
20 limitation based on amount of tax), as amended by
21 this Act, is amended by redesignating paragraph (5)
22 as paragraph (6) and by inserting after paragraph
23 (4) the following new paragraph:

24 “(5) SPECIAL RULES FOR ALASKA NATURAL
25 GAS CREDIT.—

1 “(A) IN GENERAL.—In the case of the
2 Alaska natural gas credit—

3 “(i) this section and section 39 shall
4 be applied separately with respect to the
5 credit, and

6 “(ii) in applying paragraph (1) to the
7 credit—

8 “(I) the amounts in subpara-
9 graphs (A) and (B) thereof shall be
10 treated as being zero, and

11 “(II) the limitation under para-
12 graph (1) (as modified by subclause
13 (I)) shall be reduced by the credit al-
14 lowed under subsection (a) for the
15 taxable year (other than the Alaska
16 natural gas credit).

17 “(B) ALASKA NATURAL GAS CREDIT.—
18 For purposes of this subsection, the term ‘Alas-
19 ka natural gas credit’ means the credit allow-
20 able under subsection (a) by reason of section
21 45M(a).”.

22 (2) CONFORMING AMENDMENTS.—Subclause
23 (II) of section 38(c)(2)(A)(ii), as amended by this
24 Act, subclause (II) of section 38(c)(3)(A)(ii), as
25 amended by this Act, and subclause (II) of section

1 38(c)(4)(A)(ii), as added by this Act, are each
 2 amended by inserting “or the Alaska natural gas
 3 credit” after “producer credit”.

4 (d) CLERICAL AMENDMENT.—The table of sections
 5 for subpart D of part IV of subchapter A of chapter 1,
 6 as amended by this Act, is amended by adding at the end
 7 the following new item:

“Sec. 45M. Alaska natural gas.”.

8 **SEC. 512. CERTAIN ALASKA NATURAL GAS PIPELINE PROP-**
 9 **ERTY TREATED AS 7-YEAR PROPERTY.**

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

15 “(iii) any Alaska natural gas pipeline,
 16 and”.

17 (b) ALASKA NATURAL GAS PIPELINE.—Section
 18 168(i) (relating to definitions and special rules), as
 19 amended by this Act, is amended by adding at the end
 20 the following new paragraph:

21 “(18) ALASKA NATURAL GAS PIPELINE.—The
 22 term ‘Alaska natural gas pipeline’ means the natural
 23 gas pipeline system located in the State of Alaska
 24 which—

1 “(A) has a capacity of more than
2 500,000,000,000 Btu of natural gas per day,
3 and

4 “(B) is placed in service after December
5 31, 2014.

6 Such term includes the pipe, trunk lines, related
7 equipment, and appurtenances used to carry natural
8 gas, but does not include any gas processing plant.”.

9 (c) ALTERNATIVE SYSTEM.—The table contained in
10 section 168(g)(3)(B) (relating to special rule for certain
11 property assigned to classes), as amended by this Act, is
12 amended by inserting after the item relating to subpara-
13 graph (C)(ii) the following new item:

 “(C)(iii) 10”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to property placed in service after
16 December 31, 2014, in taxable years ending after such
17 date.

18 **SEC. 513. ARBITRAGE RULES NOT TO APPLY TO PREPAY-**
19 **MENTS FOR NATURAL GAS.**

20 (a) IN GENERAL.—Section 148(b) (relating to higher
21 yielding investments) is amended by adding at the end the
22 following new paragraph:

23 “(4) SAFE HARBOR FOR PREPAID NATURAL
24 GAS.—

1 “(A) IN GENERAL.—The term ‘investment-
2 type property’ does not include a prepayment
3 under a qualified natural gas supply contract.

4 “(B) QUALIFIED NATURAL GAS SUPPLY
5 CONTRACT.—For purposes of this paragraph,
6 the term ‘qualified natural gas supply contract’
7 means any contract to acquire natural gas for
8 resale by or for a utility owned by a govern-
9 mental unit if the amount of gas permitted to
10 be acquired under the contract for the utility
11 during any year does not exceed the sum of—

12 “(i) the annual average amount dur-
13 ing the testing period of natural gas pur-
14 chased (other than for resale) by cus-
15 tomers of such utility who are located
16 within the service area of such utility, and

17 “(ii) the amount of natural gas to be
18 used to transport the prepaid natural gas
19 to the utility during such year.

20 “(C) NATURAL GAS USED TO GENERATE
21 ELECTRICITY.—Natural gas used to generate
22 electricity shall be taken into account in deter-
23 mining the average under subparagraph
24 (B)(i)—

1 “(i) only if the electricity is generated
2 by a utility owned by a governmental unit,
3 and

4 “(ii) only to the extent that the elec-
5 tricity is sold (other than for resale) to
6 customers of such utility who are located
7 within the service area of such utility.

8 “(D) ADJUSTMENTS FOR CHANGES IN
9 CUSTOMER BASE.—

10 “(i) NEW BUSINESS CUSTOMERS.—

11 If—

12 “(I) after the close of the testing
13 period and before the date of issuance
14 of the issue, the utility owned by a
15 governmental unit enters into a con-
16 tract to supply natural gas (other
17 than for resale) for use by a business
18 at a property within the service area
19 of such utility, and

20 “(II) the utility did not supply
21 natural gas to such property during
22 the testing period or the ratable
23 amount of natural gas to be supplied
24 under the contract is significantly
25 greater than the ratable amount of

1 gas supplied to such property during
2 the testing period,
3 then a contract shall not fail to be treated
4 as a qualified natural gas supply contract
5 by reason of supplying the additional nat-
6 ural gas under the contract referred to in
7 subclause (I).

8 “(ii) OVERALL LIMITATION.—The av-
9 erage under subparagraph (B)(i) shall not
10 exceed the annual amount of natural gas
11 reasonably expected to be purchased (other
12 than for resale) by persons who are located
13 within the service area of such utility and
14 who, as of the date of issuance of the
15 issue, are customers of such utility.

16 “(E) RULING REQUESTS.—The Secretary
17 may increase the average under subparagraph
18 (B)(i) for any period if the utility owned by the
19 governmental unit establishes to the satisfaction
20 of the Secretary that, based on objective evi-
21 dence of growth in natural gas consumption or
22 population, such average would otherwise be in-
23 sufficient for such period.

24 “(F) ADJUSTMENT FOR NATURAL GAS
25 OTHERWISE ON HAND.—

1 “(i) IN GENERAL.—The amount oth-
2 erwise permitted to be acquired under the
3 contract for any period shall be reduced
4 by—

5 “(I) the applicable share of nat-
6 ural gas held by the utility on the
7 date of issuance of the issue, and

8 “(II) the natural gas (not taken
9 into account under subclause (I))
10 which the utility has a right to ac-
11 quire during such period (determined
12 as of the date of issuance of the
13 issue).

14 “(ii) APPLICABLE SHARE.—For pur-
15 poses of clause (i), the term ‘applicable
16 share’ means, with respect to any period,
17 the natural gas allocable to such period if
18 the gas were allocated ratably over the pe-
19 riod to which the prepayment relates.

20 “(G) INTENTIONAL ACTS.—Subparagraph
21 (A) shall cease to apply to any issue if the util-
22 ity owned by the governmental unit engages in
23 any intentional act to render the volume of nat-
24 ural gas acquired by such prepayment to be in
25 excess of the sum of—

1 “(i) the amount of natural gas needed
2 (other than for resale) by customers of
3 such utility who are located within the
4 service area of such utility, and

5 “(ii) the amount of natural gas used
6 to transport such natural gas to the utility.

7 “(H) TESTING PERIOD.—For purposes of
8 this paragraph, the term ‘testing period’ means,
9 with respect to an issue, the most recent 5 cal-
10 endar years ending before the date of issuance
11 of the issue.

12 “(I) SERVICE AREA.—For purposes of this
13 paragraph, the service area of a utility owned
14 by a governmental unit shall be comprised of—

15 “(i) any area throughout which such
16 utility provided at all times during the
17 testing period—

18 “(I) in the case of a natural gas
19 utility, natural gas transmission or
20 distribution services, and

21 “(II) in the case of an electric
22 utility, electricity distribution services,

23 “(ii) any area within a county contig-
24 uous to the area described in clause (i) in
25 which retail customers of such utility are

1 located if such area is not also served by
 2 another utility providing natural gas or
 3 electricity services, as the case may be, and
 4 “(iii) any area recognized as the serv-
 5 ice area of such utility under State or Fed-
 6 eral law.”.

7 (b) PRIVATE LOAN FINANCING TEST NOT TO APPLY
 8 TO PREPAYMENTS FOR NATURAL GAS.—Section
 9 141(c)(2) (providing exceptions to the private loan financ-
 10 ing test) is amended by striking “or” at the end of sub-
 11 paragraph (A), by striking the period at the end of sub-
 12 paragraph (B) and inserting “, or”, and by adding at the
 13 end the following new subparagraph:

14 “(C) is a qualified natural gas supply con-
 15 tract (as defined in section 148(b)(4)).”.

16 (c) EFFECTIVE DATE.—The amendment made by
 17 this section shall apply to obligations issued after the date
 18 of the enactment of this Act.

19 **TITLE VI—ELECTRIC UTILITY** 20 **RESTRUCTURING PROVISIONS**

21 **SEC. 601. MODIFICATIONS TO SPECIAL RULES FOR NU-** 22 **CLEAR DECOMMISSIONING COSTS.**

23 (a) REPEAL OF LIMITATION ON DEPOSITS INTO
 24 FUND BASED ON COST OF SERVICE; CONTRIBUTIONS
 25 AFTER FUNDING PERIOD.—Subsection (b) of section

1 468A (relating to special rules for nuclear decommis-
2 sioning costs) is amended to read as follows:

3 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—
4 The amount which a taxpayer may pay into the Fund for
5 any taxable year shall not exceed the ruling amount appli-
6 cable to such taxable year.”.

7 (b) CLARIFICATION OF TREATMENT OF FUND
8 TRANSFERS.—Section 468A(e) (relating to Nuclear De-
9 commissioning Reserve Fund) is amended by adding at
10 the end the following new paragraph:

11 “(8) TREATMENT OF FUND TRANSFERS.—If, in
12 connection with the transfer of the taxpayer’s inter-
13 est in a nuclear power plant, the taxpayer transfers
14 the Fund with respect to such power plant to the
15 transferee of such interest and the transferee elects
16 to continue the application of this section to such
17 Fund—

18 “(A) the transfer of such Fund shall not
19 cause such Fund to be disqualified from the ap-
20 plication of this section, and

21 “(B) no amount shall be treated as distrib-
22 uted from such Fund, or be includable in gross
23 income, by reason of such transfer.”.

24 (c) TREATMENT OF CERTAIN DECOMMISSIONING
25 COSTS.—

1 (1) IN GENERAL.—Section 468A is amended by
2 redesignating subsections (f) and (g) as subsections
3 (g) and (h), respectively, and by inserting after sub-
4 section (e) the following new subsection:

5 “(f) TRANSFERS INTO QUALIFIED FUNDS.—

6 “(1) IN GENERAL.—Notwithstanding subsection
7 (b), any taxpayer maintaining a Fund to which this
8 section applies with respect to a nuclear power plant
9 may transfer into such Fund not more than an
10 amount equal to the present value of the excess of
11 the total nuclear decommissioning costs with respect
12 to such nuclear power plant over the portion of such
13 costs taken into account in determining the ruling
14 amount in effect immediately before the transfer.

15 “(2) DEDUCTION FOR AMOUNTS TRANS-
16 FERRED.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (C), the deduction allowed by
19 subsection (a) for any transfer permitted by
20 this subsection shall be allowed ratably over the
21 remaining estimated useful life (within the
22 meaning of subsection (d)(2)(A)) of the nuclear
23 power plant beginning with the taxable year
24 during which the transfer is made.

1 “(B) DENIAL OF DEDUCTION FOR PRE-
2 VIOUSLY DEDUCTED AMOUNTS.—No deduction
3 shall be allowed for any transfer under this sub-
4 section of an amount for which a deduction was
5 previously allowed or a corresponding amount
6 was not included in gross income. For purposes
7 of the preceding sentence, a ratable portion of
8 each transfer shall be treated as being from
9 previously deducted or excluded amounts to the
10 extent thereof.

11 “(C) TRANSFERS OF QUALIFIED FUNDS.—
12 If—

13 “(i) any transfer permitted by this
14 subsection is made to any Fund to which
15 this section applies, and

16 “(ii) such Fund is transferred there-
17 after,

18 any deduction under this subsection for taxable
19 years ending after the date that such Fund is
20 transferred shall be allowed to the transferee
21 and not the transferor. The preceding sentence
22 shall not apply if the transferor is an entity ex-
23 empt from tax under this chapter.

24 “(D) SPECIAL RULES.—

1 “(i) GAIN OR LOSS NOT RECOG-
2 NIZED.—No gain or loss shall be recog-
3 nized on any transfer permitted by this
4 subsection.

5 “(ii) TRANSFERS OF APPRECIATED
6 PROPERTY.—If appreciated property is
7 transferred in a transfer permitted by this
8 subsection, the amount of the deduction
9 shall not exceed the adjusted basis of such
10 property.

11 “(3) NEW RULING AMOUNT REQUIRED.—Para-
12 graph (1) shall not apply to any transfer unless the
13 taxpayer requests from the Secretary a new schedule
14 of ruling amounts in connection with such transfer.

15 “(4) NO BASIS IN QUALIFIED FUNDS.—Not-
16 withstanding any other provision of law, the tax-
17 payer’s basis in any Fund to which this section ap-
18 plies shall not be increased by reason of any transfer
19 permitted by this subsection.”.

20 (2) NEW RULING AMOUNT TO TAKE INTO AC-
21 COUNT TOTAL COSTS.—Subparagraph (A) of section
22 468A(d)(2) (defining ruling amount) is amended to
23 read as follows:

24 “(A) fund the total nuclear decommis-
25 sioning costs with respect to such power plant

1 over the estimated useful life of such power
2 plant, and”.

3 (d) TECHNICAL AMENDMENT.—Section 468A(e)(2)
4 (relating to taxation of Fund) is amended—

5 (1) by striking “rate set forth in subparagraph
6 (B)” in subparagraph (A) and inserting “rate of 20
7 percent”,

8 (2) by striking subparagraph (B), and

9 (3) by redesignating subparagraphs (C) and
10 (D) as subparagraphs (B) and (C), respectively.

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

14 **SEC. 602. TREATMENT OF CERTAIN INCOME OF COOPERA-**
15 **TIVES.**

16 (a) INCOME FROM OPEN ACCESS AND NUCLEAR DE-
17 COMMISSIONING TRANSACTIONS.—

18 (1) IN GENERAL.—Section 501(c)(12)(C) (re-
19 lating to list of exempt organizations) is amended by
20 striking “or” at the end of clause (i), by striking
21 clause (ii), and by adding at the end the following
22 new clauses:

23 “(ii) from any open access transaction
24 (other than income received or accrued di-
25 rectly or indirectly from a member),

1 “(iii) from any nuclear decommis-
2 sioning transaction,

3 “(iv) from any asset exchange or con-
4 version transaction, or

5 “(v) from the prepayment of any loan,
6 debt, or obligation made, insured, or guar-
7 anteed under the Rural Electrification Act
8 of 1936.”.

9 (2) DEFINITIONS AND SPECIAL RULES.—Sec-
10 tion 501(c)(12) is amended by adding at the end the
11 following new subparagraphs:

12 “(E) For purposes of subparagraph
13 (C)(ii)—

14 “(i) The term ‘open access trans-
15 action’ means any transaction meeting the
16 open access requirements of any of the fol-
17 lowing subclauses with respect to a mutual
18 or cooperative electric company:

19 “(I) The provision or sale of elec-
20 tric transmission service or ancillary
21 services meets the open access re-
22 quirements of this subclause only if
23 such services are provided on a non-
24 discriminatory open access basis pur-
25 suant to an open access transmission

1 tariff filed with and approved by
2 FERC, including an acceptable reci-
3 procity tariff, or under a regional
4 transmission organization agreement
5 approved by FERC.

6 “(II) The provision or sale of
7 electric energy distribution services or
8 ancillary services meets the open ac-
9 cess requirements of this subclause
10 only if such services are provided on a
11 nondiscriminatory open access basis to
12 end-users served by distribution facili-
13 ties owned by the mutual or coopera-
14 tive electric company (or its mem-
15 bers).

16 “(III) The delivery or sale of
17 electric energy generated by a genera-
18 tion facility meets the open access re-
19 quirements of this subclause only if
20 such facility is directly connected to
21 distribution facilities owned by the
22 mutual or cooperative electric com-
23 pany (or its members) which owns the
24 generation facility, and such distribu-

1 tion facilities meet the open access re-
2 quirements of subclause (II).

3 “(ii) Clause (i)(I) shall apply in the
4 case of a voluntarily filed tariff only if the
5 mutual or cooperative electric company
6 files a report with FERC within 90 days
7 after the date of the enactment of this sub-
8 paragraph relating to whether or not such
9 company will join a regional transmission
10 organization.

11 “(iii) A mutual or cooperative electric
12 company shall be treated as meeting the
13 open access requirements of clause (i)(I) if
14 a regional transmission organization con-
15 trols the transmission facilities.

16 “(iv) References to FERC in this sub-
17 paragraph shall be treated as including
18 references to the Public Utility Commis-
19 sion of Texas with respect to any ERCOT
20 utility (as defined in section 212(k)(2)(B)
21 of the Federal Power Act (16 U.S.C.
22 824k(k)(2)(B))) or references to the Rural
23 Utilities Service with respect to any other
24 facility not subject to FERC jurisdiction.

1 “(v) For purposes of this
2 subparagraph—

3 “(I) The term ‘transmission facil-
4 ity’ means an electric output facility
5 (other than a generation facility)
6 which operates at an electric voltage
7 of 69 kilovolts or greater. To the ex-
8 tent provided in regulations, such
9 term includes any output facility
10 which FERC determines is a trans-
11 mission facility under standards ap-
12 plied by FERC under the Federal
13 Power Act (as in effect on the date of
14 the enactment of the Energy Tax In-
15 centives Act of 2003).

16 “(II) The term ‘regional trans-
17 mission organization’ includes an
18 independent system operator.

19 “(III) The term ‘FERC’ means
20 the Federal Energy Regulatory Com-
21 mission.

22 “(F) The term ‘nuclear decommissioning
23 transaction’ means—

24 “(i) any transfer into a trust, fund, or
25 instrument established to pay any nuclear

1 decommissioning costs if the transfer is in
2 connection with the transfer of the mutual
3 or cooperative electric company's interest
4 in a nuclear power plant or nuclear power
5 plant unit,

6 “(ii) any distribution from any trust,
7 fund, or instrument established to pay any
8 nuclear decommissioning costs, or

9 “(iii) any earnings from any trust,
10 fund, or instrument established to pay any
11 nuclear decommissioning costs.

12 “(G) The term ‘asset exchange or conver-
13 sion transaction’ means any voluntary exchange
14 or involuntary conversion of any property re-
15 lated to generating, transmitting, distributing,
16 or selling electric energy by a mutual or cooper-
17 ative electric company, the gain from which
18 qualifies for deferred recognition under section
19 1031 or 1033, but only if the replacement prop-
20 erty acquired by such company pursuant to
21 such section constitutes property which is used,
22 or to be used, for—

23 “(i) generating, transmitting, distrib-
24 uting, or selling electric energy, or

1 “(ii) producing, transmitting, distrib-
2 uting, or selling natural gas.”.

3 (b) TREATMENT OF INCOME FROM LOAD LOSS
4 TRANSACTIONS.—Section 501(c)(12), as amended by sub-
5 section (a)(2), is amended by adding after subparagraph
6 (G) the following new subparagraph:

7 “(H)(i) In the case of a mutual or coopera-
8 tive electric company described in this para-
9 graph or an organization described in section
10 1381(a)(2)(C), income received or accrued from
11 a load loss transaction shall be treated as an
12 amount collected from members for the sole
13 purpose of meeting losses and expenses.

14 “(ii) For purposes of clause (i), the term
15 ‘load loss transaction’ means any wholesale or
16 retail sale of electric energy (other than to
17 members) to the extent that the aggregate sales
18 during the recovery period do not exceed the
19 load loss mitigation sales limit for such period.

20 “(iii) For purposes of clause (ii), the load
21 loss mitigation sales limit for the recovery pe-
22 riod is the sum of the annual load losses for
23 each year of such period.

24 “(iv) For purposes of clause (iii), a mutual
25 or cooperative electric company’s annual load

1 loss for each year of the recovery period is the
2 amount (if any) by which—

3 “(I) the megawatt hours of electric
4 energy sold during such year to members
5 of such electric company are less than

6 “(II) the megawatt hours of electric
7 energy sold during the base year to such
8 members.

9 “(v) For purposes of clause (iv)(II), the
10 term ‘base year’ means—

11 “(I) the calendar year preceding the
12 start-up year, or

13 “(II) at the election of the electric
14 company, the second or third calendar
15 years preceding the start-up year.

16 “(vi) For purposes of this subparagraph,
17 the recovery period is the 7-year period begin-
18 ning with the start-up year.

19 “(vii) For purposes of this subparagraph,
20 the start-up year is the calendar year which in-
21 cludes the date of the enactment of this sub-
22 paragraph or, if later, at the election of the mu-
23 tual or cooperative electric company—

1 “(I) the first year that such electric
2 company offers nondiscriminatory open ac-
3 cess, or

4 “(II) the first year in which at least
5 10 percent of such electric company’s sales
6 are not to members of such electric com-
7 pany.

8 “(viii) A company shall not fail to be treat-
9 ed as a mutual or cooperative company for pur-
10 poses of this paragraph or as a corporation op-
11 erating on a cooperative basis for purposes of
12 section 1381(a)(2)(C) by reason of the treat-
13 ment under clause (i).

14 “(ix) In the case of a mutual or coopera-
15 tive electric company, income from any open ac-
16 cess transaction received, or accrued, indirectly
17 from a member shall be treated as an amount
18 collected from members for the sole purpose of
19 meeting losses and expenses.”.

20 (c) EXCEPTION FROM UNRELATED BUSINESS TAX-
21 ABLE INCOME.—Section 512(b) (relating to modifications)
22 is amended by adding at the end the following new para-
23 graph:

24 “(18) TREATMENT OF MUTUAL OR COOPERA-
25 TIVE ELECTRIC COMPANIES.—In the case of a mu-

1 tual or cooperative electric company described in sec-
 2 tion 501(c)(12), there shall be excluded income
 3 which is treated as member income under subpara-
 4 graph (H) thereof.”.

5 (d) CROSS REFERENCE.—Section 1381 is amended
 6 by adding at the end the following new subsection:

7 “(c) CROSS REFERENCE.—

**“For treatment of income from load loss trans-
 actions of organizations described in subsection
 (a)(2)(C), see section 501(c)(12)(H).”.**

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

11 **SEC. 603. SALES OR DISPOSITIONS TO IMPLEMENT FED-
 12 ERAL ENERGY REGULATORY COMMISSION
 13 OR STATE ELECTRIC RESTRUCTURING POL-
 14 ICY.**

15 (a) IN GENERAL.—Section 451 (relating to general
 16 rule for taxable year of inclusion) is amended by adding
 17 at the end the following new subsection:

18 “(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO
 19 IMPLEMENT FEDERAL ENERGY REGULATORY COMMIS-
 20 SION OR STATE ELECTRIC RESTRUCTURING POLICY.—

21 “(1) IN GENERAL.—For purposes of this sub-
 22 title, if a taxpayer elects the application of this sub-
 23 section to a qualifying electric transmission trans-
 24 action in any taxable year—

1 “(A) any ordinary income derived from
2 such transaction which would be required to be
3 recognized under section 1245 or 1250 for such
4 taxable year (determined without regard to this
5 subsection), and

6 “(B) any income derived from such trans-
7 action in excess of such ordinary income which
8 is required to be included in gross income for
9 such taxable year (determined without regard to
10 this subsection),

11 shall be so recognized and included ratably over the
12 8-taxable year period beginning with such taxable
13 year.

14 “(2) QUALIFYING ELECTRIC TRANSMISSION
15 TRANSACTION.—For purposes of this subsection, the
16 term ‘qualifying electric transmission transaction’
17 means any sale or other disposition before January
18 1, 2008, of—

19 “(A) property used by the taxpayer in the
20 trade or business of providing electric trans-
21 mission services, or

22 “(B) any stock or partnership interest in a
23 corporation or partnership, as the case may be,
24 whose principal trade or business consists of
25 providing electric transmission services,

1 but only if such sale or disposition is to an inde-
2 pendent transmission company.

3 “(3) INDEPENDENT TRANSMISSION COM-
4 PANY.—For purposes of this subsection, the term
5 ‘independent transmission company’ means—

6 “(A) a regional transmission organization
7 approved by the Federal Energy Regulatory
8 Commission,

9 “(B) a person—

10 “(i) who the Federal Energy Regu-
11 latory Commission determines in its au-
12 thorization of the transaction under section
13 203 of the Federal Power Act (16 U.S.C.
14 824b) is not a market participant within
15 the meaning of such Commission’s rules
16 applicable to regional transmission organi-
17 zations, and

18 “(ii) whose transmission facilities to
19 which the election under this subsection
20 applies are under the operational control of
21 a Federal Energy Regulatory Commission-
22 approved regional transmission organiza-
23 tion before the close of the period specified
24 in such authorization, but not later than
25 January 1, 2008, or

1 “(C) in the case of facilities subject to the
 2 exclusive jurisdiction of the Public Utility Com-
 3 mission of Texas, a person which is approved by
 4 that Commission as consistent with Texas State
 5 law regarding an independent transmission or-
 6 ganization.

7 “(4) ELECTION.—An election under paragraph
 8 (1), once made, shall be irrevocable.

9 “(5) NONAPPLICATION OF INSTALLMENT SALES
 10 TREATMENT.—Section 453 shall not apply to any
 11 qualifying electric transmission transaction with re-
 12 spect to which an election to apply this subsection
 13 is made.”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 this section shall apply to transactions occurring after the
 16 date of the enactment of this Act.

17 **TITLE VII—ADDITIONAL**
 18 **PROVISIONS**

19 **SEC. 701. EXTENSION OF ACCELERATED DEPRECIATION**
 20 **AND WAGE CREDIT BENEFITS ON INDIAN**
 21 **RESERVATIONS.**

22 (a) SPECIAL RECOVERY PERIOD FOR PROPERTY ON
 23 INDIAN RESERVATIONS.—Section 168(j)(8) (relating to
 24 termination) is amended by striking “2004” and inserting
 25 “2005”.

1 (b) INDIAN EMPLOYMENT CREDIT.—Section 45A(f)
2 (relating to termination) is amended by striking “2004”
3 and inserting “2005”.

4 **SEC. 702. STUDY OF EFFECTIVENESS OF CERTAIN PROVI-**
5 **SIONS BY GAO.**

6 (a) STUDY.—The Comptroller General of the United
7 States shall undertake an ongoing analysis of—

8 (1) the effectiveness of the alternative motor ve-
9 hicles and fuel incentives provisions under title II
10 and the conservation and energy efficiency provisions
11 under title III, and

12 (2) the recipients of the tax benefits contained
13 in such provisions, including an identification of
14 such recipients by income and other appropriate
15 measurements.

16 Such analysis shall quantify the effectiveness of such pro-
17 visions by examining and comparing the Federal Govern-
18 ment’s forgone revenue to the aggregate amount of energy
19 actually conserved and tangible environmental benefits
20 gained as a result of such provisions.

21 (b) REPORTS.—The Comptroller General of the
22 United States shall report the analysis required under sub-
23 section (a) to Congress not later than December 31, 2004,
24 and annually thereafter.

1 **SEC. 703. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES**
2 **ON RAILROADS AND INLAND WATERWAY**
3 **TRANSPORTATION WHICH REMAIN IN GEN-**
4 **ERAL FUND.**

5 (a) TAXES ON TRAINS.—

6 (1) IN GENERAL.—Subparagraph (A) of section
7 4041(a)(1) is amended by striking “or a diesel-pow-
8 ered train” each place it appears and by striking “or
9 train”.

10 (2) CONFORMING AMENDMENTS.—

11 (A) Subparagraph (C) of section
12 4041(a)(1) is amended by striking clause (ii)
13 and by redesignating clause (iii) as clause (ii).

14 (B) Subparagraph (C) of section
15 4041(b)(1) is amended by striking all that fol-
16 lows “section 6421(e)(2)” and inserting a pe-
17 riod.

18 (C) Subsection (d) of section 4041 is
19 amended by redesignating paragraph (3) as
20 paragraph (4) and by inserting after paragraph
21 (2) the following new paragraph:

22 “(3) DIESEL FUEL USED IN TRAINS.—There is
23 hereby imposed a tax of 0.1 cent per gallon on any
24 liquid other than gasoline (as defined in section
25 4083)—

1 “(A) sold by any person to an owner, les-
2 see, or other operator of a diesel-powered train
3 for use as a fuel in such train, or

4 “(B) used by any person as a fuel in a die-
5 sel-powered train unless there was a taxable
6 sale of such fuel under subparagraph (A).

7 No tax shall be imposed by this paragraph on the
8 sale or use of any liquid if tax was imposed on such
9 liquid under section 4081.”

10 (D) Subsection (f) of section 4082 is
11 amended by striking “section 4041(a)(1)” and
12 inserting “subsections (d)(3) and (a)(1) of sec-
13 tion 4041, respectively”.

14 (E) Paragraph (3) of section 4083(a) is
15 amended by striking “or a diesel-powered
16 train”.

17 (F) Paragraph (3) of section 6421(f) is
18 amended to read as follows:

19 “(3) GASOLINE USED IN TRAINS.—In the case
20 of gasoline used as a fuel in a train, this section
21 shall not apply with respect to the Leaking Under-
22 ground Storage Tank Trust Fund financing rate
23 under section 4081.”

24 (G) Paragraph (3) of section 6427(l) is
25 amended to read as follows:

1 “(3) REFUND OF CERTAIN TAXES ON FUEL
2 USED IN DIESEL-POWERED TRAINS.—For purposes
3 of this subsection, the term ‘nontaxable use’ includes
4 fuel used in a diesel-powered train. The preceding
5 sentence shall not apply to the tax imposed by sec-
6 tion 4041(d) and the Leaking Underground Storage
7 Tank Trust Fund financing rate under section 4081
8 except with respect to fuel sold for exclusive use by
9 a State or any political subdivision thereof.”

10 (b) FUEL USED ON INLAND WATERWAYS.—

11 (1) IN GENERAL.—Paragraph (1) of section
12 4042(b) is amended by adding “and” at the end of
13 subparagraph (A), by striking “, and” at the end of
14 subparagraph (B) and inserting a period, and by
15 striking subparagraph (C).

16 (2) CONFORMING AMENDMENT.—Paragraph (2)
17 of section 4042(b) is amended by striking subpara-
18 graph (C).

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect on January 1, 2004.

21 **SEC. 704. EXPANSION OF RESEARCH CREDIT.**

22 (a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CER-
23 TAIN COLLABORATIVE ENERGY RESEARCH CONSORTIA.—

24 (1) IN GENERAL.—Section 41(a) (relating to
25 credit for increasing research activities) is amended

1 by striking “and” at the end of paragraph (1), by
2 striking the period at the end of paragraph (2) and
3 inserting “, and”, and by adding at the end the fol-
4 lowing new paragraph:

5 “(3) 20 percent of the amounts paid or in-
6 curred by the taxpayer in carrying on any trade or
7 business of the taxpayer during the taxable year (in-
8 cluding as contributions) to an energy research con-
9 sortium.”.

10 (2) ENERGY RESEARCH CONSORTIUM DE-
11 FINED.—Section 41(f) (relating to special rules) is
12 amended by adding at the end the following new
13 paragraph:

14 “(6) ENERGY RESEARCH CONSORTIUM.—

15 “(A) IN GENERAL.—The term ‘energy re-
16 search consortium’ means any organization—

17 “(i) which is—

18 “(I) described in section
19 501(c)(3) and is exempt from tax
20 under section 501(a) and is organized
21 and operated primarily to conduct en-
22 ergy research, or

23 “(II) organized and operated pri-
24 marily to conduct energy research in

1 the public interest (within the mean-
2 ing of section 501(c)(3)),

3 “(ii) which is not a private founda-
4 tion,

5 “(iii) to which at least 5 unrelated
6 persons paid or incurred during the cal-
7 endar year in which the taxable year of the
8 organization begins amounts (including as
9 contributions) to such organization for en-
10 ergy research, and

11 “(iv) to which no single person paid
12 or incurred (including as contributions)
13 during such calendar year an amount
14 equal to more than 50 percent of the total
15 amounts received by such organization
16 during such calendar year for energy re-
17 search.

18 “(B) TREATMENT OF PERSONS.—All per-
19 sons treated as a single employer under sub-
20 section (a) or (b) of section 52 shall be treated
21 as related persons for purposes of subparagraph
22 (A)(iii) and as a single person for purposes of
23 subparagraph (A)(iv).”.

1 (3) CONFORMING AMENDMENT.—Section
2 41(b)(3)(C) is amended by inserting “(other than an
3 energy research consortium)” after “organization”.

4 (b) REPEAL OF LIMITATION ON CONTRACT RE-
5 SEARCH EXPENSES PAID TO SMALL BUSINESSES, UNI-
6 VERSITIES, AND FEDERAL LABORATORIES.—Section
7 41(b)(3) (relating to contract research expenses) is
8 amended by adding at the end the following new subpara-
9 graph:

10 “(D) AMOUNTS PAID TO ELIGIBLE SMALL
11 BUSINESSES, UNIVERSITIES, AND FEDERAL
12 LABORATORIES.—

13 “(i) IN GENERAL.—In the case of
14 amounts paid by the taxpayer to—

15 “(I) an eligible small business,

16 “(II) an institution of higher
17 education (as defined in section
18 3304(f)), or

19 “(III) an organization which is a
20 Federal laboratory,

21 for qualified research which is energy re-
22 search, subparagraph (A) shall be applied
23 by substituting ‘100 percent’ for ‘65 per-
24 cent’.

1 “(ii) ELIGIBLE SMALL BUSINESS.—
2 For purposes of this subparagraph, the
3 term ‘eligible small business’ means a
4 small business with respect to which the
5 taxpayer does not own (within the meaning
6 of section 318) 50 percent or more of—

7 “(I) in the case of a corporation,
8 the outstanding stock of the corpora-
9 tion (either by vote or value), and

10 “(II) in the case of a small busi-
11 ness which is not a corporation, the
12 capital and profits interests of the
13 small business.

14 “(iii) SMALL BUSINESS.—For pur-
15 poses of this subparagraph—

16 “(I) IN GENERAL.—The term
17 ‘small business’ means, with respect
18 to any calendar year, any person if
19 the annual average number of employ-
20 ees employed by such person during
21 either of the 2 preceding calendar
22 years was 500 or fewer. For purposes
23 of the preceding sentence, a preceding
24 calendar year may be taken into ac-

1 count only if the person was in exist-
2 ence throughout the year.

3 “(II) STARTUPS, CONTROLLED
4 GROUPS, AND PREDECESSORS.—Rules
5 similar to the rules of subparagraphs
6 (B) and (D) of section 220(c)(4) shall
7 apply for purposes of this clause.

8 “(iv) FEDERAL LABORATORY.—For
9 purposes of this subparagraph, the term
10 ‘Federal laboratory’ has the meaning given
11 such term by section 4(6) of the Steven-
12 son-Wydler Technology Innovation Act of
13 1980 (15 U.S.C. 3703(6)), as in effect on
14 the date of the enactment of the Energy
15 Tax Incentives Act of 2003.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to amounts paid or incurred after
18 the date of the enactment of this Act.

1 **TITLE VIII—REVENUE**
2 **PROVISIONS**
3 **Subtitle A—Provisions Designed To**
4 **Curtail Tax Shelters**

5 **SEC. 801. PENALTY FOR FAILING TO DISCLOSE REPORT-**
6 **ABLE TRANSACTION.**

7 (a) IN GENERAL.—Part I of subchapter B of chapter
8 68 (relating to assessable penalties) is amended by insert-
9 ing after section 6707 the following new section:

10 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**
11 **ABLE TRANSACTION INFORMATION WITH RE-**
12 **TURN OR STATEMENT.**

13 “(a) IMPOSITION OF PENALTY.—Any person who
14 fails to include on any return or statement any informa-
15 tion with respect to a reportable transaction which is re-
16 quired under section 6011 to be included with such return
17 or statement shall pay a penalty in the amount determined
18 under subsection (b).

19 “(b) AMOUNT OF PENALTY.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graphs (2) and (3), the amount of the penalty under
22 subsection (a) shall be \$50,000.

23 “(2) LISTED TRANSACTION.—The amount of
24 the penalty under subsection (a) with respect to a
25 listed transaction shall be \$100,000.

1 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
2 TIES AND HIGH NET WORTH INDIVIDUALS.—

3 “(A) IN GENERAL.—In the case of a fail-
4 ure under subsection (a) by—

5 “(i) a large entity, or

6 “(ii) a high net worth individual,

7 the penalty under paragraph (1) or (2) shall be
8 twice the amount determined without regard to
9 this paragraph.

10 “(B) LARGE ENTITY.—For purposes of
11 subparagraph (A), the term ‘large entity’
12 means, with respect to any taxable year, a per-
13 son (other than a natural person) with gross re-
14 ceipts in excess of \$10,000,000 for the taxable
15 year in which the reportable transaction occurs
16 or the preceding taxable year. Rules similar to
17 the rules of paragraph (2) and subparagraphs
18 (B), (C), and (D) of paragraph (3) of section
19 448(c) shall apply for purposes of this subpara-
20 graph.

21 “(C) HIGH NET WORTH INDIVIDUAL.—For
22 purposes of subparagraph (A), the term ‘high
23 net worth individual’ means, with respect to a
24 reportable transaction, a natural person whose

1 net worth exceeds \$2,000,000 immediately be-
2 fore the transaction.

3 “(c) DEFINITIONS.—For purposes of this section—

4 “(1) REPORTABLE TRANSACTION.—The term
5 ‘reportable transaction’ means any transaction with
6 respect to which information is required to be in-
7 cluded with a return or statement because, as deter-
8 mined under regulations prescribed under section
9 6011, such transaction is of a type which the Sec-
10 retary determines as having a potential for tax
11 avoidance or evasion.

12 “(2) LISTED TRANSACTION.—Except as pro-
13 vided in regulations, the term ‘listed transaction’
14 means a reportable transaction which is the same as,
15 or substantially similar to, a transaction specifically
16 identified by the Secretary as a tax avoidance trans-
17 action for purposes of section 6011.

18 “(d) AUTHORITY TO RESCIND PENALTY.—

19 “(1) IN GENERAL.—The Commissioner of In-
20 ternal Revenue may rescind all or any portion of any
21 penalty imposed by this section with respect to any
22 violation if—

23 “(A) the violation is with respect to a re-
24 portable transaction other than a listed trans-
25 action,

1 “(B) the person on whom the penalty is
2 imposed has a history of complying with the re-
3 quirements of this title,

4 “(C) it is shown that the violation is due
5 to an unintentional mistake of fact;

6 “(D) imposing the penalty would be
7 against equity and good conscience, and

8 “(E) rescinding the penalty would promote
9 compliance with the requirements of this title
10 and effective tax administration.

11 “(2) DISCRETION.—The exercise of authority
12 under paragraph (1) shall be at the sole discretion
13 of the Commissioner and may be delegated only to
14 the head of the Office of Tax Shelter Analysis. The
15 Commissioner, in the Commissioner’s sole discretion,
16 may establish a procedure to determine if a penalty
17 should be referred to the Commissioner or the head
18 of such Office for a determination under paragraph
19 (1).

20 “(3) NO APPEAL.—Notwithstanding any other
21 provision of law, any determination under this sub-
22 section may not be reviewed in any administrative or
23 judicial proceeding.

24 “(4) RECORDS.—If a penalty is rescinded under
25 paragraph (1), the Commissioner shall place in the

1 file in the Office of the Commissioner the opinion of
2 the Commissioner or the head of the Office of Tax
3 Shelter Analysis with respect to the determination,
4 including—

5 “(A) the facts and circumstances of the
6 transaction,

7 “(B) the reasons for the rescission, and

8 “(C) the amount of the penalty rescinded.

9 “(5) REPORT.—The Commissioner shall each
10 year report to the Committee on Ways and Means
11 of the House of Representatives and the Committee
12 on Finance of the Senate—

13 “(A) a summary of the total number and
14 aggregate amount of penalties imposed, and re-
15 scinded, under this section, and

16 “(B) a description of each penalty re-
17 scinded under this subsection and the reasons
18 therefor.

19 “(e) PENALTY REPORTED TO SEC.—In the case of
20 a person—

21 “(1) which is required to file periodic reports
22 under section 13 or 15(d) of the Securities Ex-
23 change Act of 1934 or is required to be consolidated
24 with another person for purposes of such reports,
25 and

1 “(2) which—

2 “(A) is required to pay a penalty under
3 this section with respect to a listed transaction,
4 or

5 “(B) is required to pay a penalty under
6 section 6662A with respect to any reportable
7 transaction at a rate prescribed under section
8 6662A(c),

9 the requirement to pay such penalty shall be disclosed in
10 such reports filed by such person for such periods as the
11 Secretary shall specify. Failure to make a disclosure in
12 accordance with the preceding sentence shall be treated
13 as a failure to which the penalty under subsection (b)(2)
14 applies.

15 “(f) COORDINATION WITH OTHER PENALTIES.—The
16 penalty imposed by this section is in addition to any pen-
17 alty imposed under this title.”.

18 (b) CONFORMING AMENDMENT.—The table of sec-
19 tions for part I of subchapter B of chapter 68 is amended
20 by inserting after the item relating to section 6707 the
21 following:

“Sec. 6707A. Penalty for failure to include reportable transaction
information with return or statement.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to returns and statements the due

1 date for which is after the date of the enactment of this
2 Act.

3 **SEC. 802. ACCURACY-RELATED PENALTY FOR LISTED**
4 **TRANSACTIONS AND OTHER REPORTABLE**
5 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
6 **AVOIDANCE PURPOSE.**

7 (a) IN GENERAL.—Subchapter A of chapter 68 is
8 amended by inserting after section 6662 the following new
9 section:

10 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
11 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
12 **TO REPORTABLE TRANSACTIONS.**

13 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
14 reportable transaction understatement for any taxable
15 year, there shall be added to the tax an amount equal to
16 20 percent of the amount of such understatement.

17 “(b) REPORTABLE TRANSACTION UNDERSTATE-
18 MENT.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘reportable trans-
20 action understatement’ means the sum of—

21 “(A) the product of—

22 “(i) the amount of the increase (if
23 any) in taxable income which results from
24 a difference between the proper tax treat-
25 ment of an item to which this section ap-

1 plies and the taxpayer’s treatment of such
2 item (as shown on the taxpayer’s return of
3 tax), and

4 “(ii) the highest rate of tax imposed
5 by section 1 (section 11 in the case of a
6 taxpayer which is a corporation), and

7 “(B) the amount of the decrease (if any)
8 in the aggregate amount of credits determined
9 under subtitle A which results from a difference
10 between the taxpayer’s treatment of an item to
11 which this section applies (as shown on the tax-
12 payer’s return of tax) and the proper tax treat-
13 ment of such item.

14 For purposes of subparagraph (A), any reduction of
15 the excess of deductions allowed for the taxable year
16 over gross income for such year, and any reduction
17 in the amount of capital losses which would (without
18 regard to section 1211) be allowed for such year,
19 shall be treated as an increase in taxable income.

20 “(2) ITEMS TO WHICH SECTION APPLIES.—This
21 section shall apply to any item which is attributable
22 to—

23 “(A) any listed transaction, and

24 “(B) any reportable transaction (other
25 than a listed transaction) if a significant pur-

1 pose of such transaction is the avoidance or
2 evasion of Federal income tax.

3 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
4 AND OTHER AVOIDANCE TRANSACTIONS.—

5 “(1) IN GENERAL.—Subsection (a) shall be ap-
6 plied by substituting ‘30 percent’ for ‘20 percent’
7 with respect to the portion of any reportable trans-
8 action understatement with respect to which the re-
9 quirement of section 6664(d)(2)(A) is not met.

10 “(2) RULES APPLICABLE TO COMPROMISE OF
11 PENALTY.—

12 “(A) IN GENERAL.—If the 1st letter of
13 proposed deficiency which allows the taxpayer
14 an opportunity for administrative review in the
15 Internal Revenue Service Office of Appeals has
16 been sent with respect to a penalty to which
17 paragraph (1) applies, only the Commissioner
18 of Internal Revenue may compromise all or any
19 portion of such penalty.

20 “(B) APPLICABLE RULES.—The rules of
21 paragraphs (2), (3), (4), and (5) of section
22 6707A(d) shall apply for purposes of subpara-
23 graph (A).

24 “(d) DEFINITIONS OF REPORTABLE AND LISTED
25 TRANSACTIONS.—For purposes of this section, the terms

1 ‘reportable transaction’ and ‘listed transaction’ have the
2 respective meanings given to such terms by section
3 6707A(c).

4 “(e) SPECIAL RULES.—

5 “(1) COORDINATION WITH PENALTIES, ETC.,
6 ON OTHER UNDERSTATEMENTS.—In the case of an
7 understatement (as defined in section 6662(d)(2))—

8 “(A) the amount of such understatement
9 (determined without regard to this paragraph)
10 shall be increased by the aggregate amount of
11 reportable transaction understatements for pur-
12 poses of determining whether such understate-
13 ment is a substantial understatement under
14 section 6662(d)(1), and

15 “(B) the addition to tax under section
16 6662(a) shall apply only to the excess of the
17 amount of the substantial understatement (if
18 any) after the application of subparagraph (A)
19 over the aggregate amount of reportable trans-
20 action understatements.

21 “(2) COORDINATION WITH OTHER PEN-
22 ALTIES.—

23 “(A) APPLICATION OF FRAUD PENALTY.—
24 References to an underpayment in section 6663

1 shall be treated as including references to a re-
2 reportable transaction understatement.

3 “(B) NO DOUBLE PENALTY.—This section
4 shall not apply to any portion of an understate-
5 ment on which a penalty is imposed under sec-
6 tion 6663.

7 “(3) SPECIAL RULE FOR AMENDED RE-
8 TURNS.—Except as provided in regulations, in no
9 event shall any tax treatment included with an
10 amendment or supplement to a return of tax be
11 taken into account in determining the amount of any
12 reportable transaction understatement if the amend-
13 ment or supplement is filed after the earlier of the
14 date the taxpayer is first contacted by the Secretary
15 regarding the examination of the return or such
16 other date as is specified by the Secretary.

17 “(4) CROSS REFERENCE.—

“For reporting of section 6662A(c) penalty to the
Securities and Exchange Commission, see section
6707A(e).”.

18 (b) DETERMINATION OF OTHER UNDERSTATE-
19 MENTS.—Subparagraph (A) of section 6662(d)(2) is
20 amended by adding at the end the following flush sen-
21 tence:

22 “The excess under the preceding sentence shall
23 be determined without regard to items to which
24 section 6662A applies.”.

1 (c) REASONABLE CAUSE EXCEPTION.—

2 (1) IN GENERAL.—Section 6664 is amended by
3 adding at the end the following new subsection:

4 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
5 ABLE TRANSACTION UNDERSTATEMENTS.—

6 “(1) IN GENERAL.—No penalty shall be im-
7 posed under section 6662A with respect to any por-
8 tion of a reportable transaction understatement if it
9 is shown that there was a reasonable cause for such
10 portion and that the taxpayer acted in good faith
11 with respect to such portion.

12 “(2) SPECIAL RULES.—Paragraph (1) shall not
13 apply to any reportable transaction understatement
14 unless—

15 “(A) the relevant facts affecting the tax
16 treatment of the item are adequately disclosed
17 in accordance with the regulations prescribed
18 under section 6011,

19 “(B) there is or was substantial authority
20 for such treatment, and

21 “(C) the taxpayer reasonably believed that
22 such treatment was more likely than not the
23 proper treatment.

24 A taxpayer failing to adequately disclose in accord-
25 ance with section 6011 shall be treated as meeting

1 the requirements of subparagraph (A) if the penalty
2 for such failure was rescinded under section
3 6707A(d).

4 “(3) RULES RELATING TO REASONABLE BE-
5 LIEF.—For purposes of paragraph (2)(C)—

6 “(A) IN GENERAL.—A taxpayer shall be
7 treated as having a reasonable belief with re-
8 spect to the tax treatment of an item only if
9 such belief—

10 “(i) is based on the facts and law that
11 exist at the time the return of tax which
12 includes such tax treatment is filed, and

13 “(ii) relates solely to the taxpayer’s
14 chances of success on the merits of such
15 treatment and does not take into account
16 the possibility that a return will not be au-
17 dited, such treatment will not be raised on
18 audit, or such treatment will be resolved
19 through settlement if it is raised.

20 “(B) CERTAIN OPINIONS MAY NOT BE RE-
21 LIED UPON.—

22 “(i) IN GENERAL.—An opinion of a
23 tax advisor may not be relied upon to es-
24 tablish the reasonable belief of a taxpayer
25 if—

1 “(I) the tax advisor is described
2 in clause (ii), or

3 “(II) the opinion is described in
4 clause (iii).

5 “(ii) DISQUALIFIED TAX ADVISORS.—
6 A tax advisor is described in this clause if
7 the tax advisor—

8 “(I) is a material advisor (within
9 the meaning of section 6111(b)(1))
10 who participates in the organization,
11 management, promotion, or sale of
12 the transaction or who is related
13 (within the meaning of section 267(b)
14 or 707(b)(1)) to any person who so
15 participates,

16 “(II) is compensated directly or
17 indirectly by a material advisor with
18 respect to the transaction,

19 “(III) has a fee arrangement
20 with respect to the transaction which
21 is contingent on all or part of the in-
22 tended tax benefits from the trans-
23 action being sustained, or

24 “(IV) as determined under regu-
25 lations prescribed by the Secretary,

1 has a continuing financial interest
2 with respect to the transaction.

3 “(iii) DISQUALIFIED OPINIONS.—For
4 purposes of clause (i), an opinion is dis-
5 qualified if the opinion—

6 “(I) is based on unreasonable
7 factual or legal assumptions (includ-
8 ing assumptions as to future events),

9 “(II) unreasonably relies on rep-
10 resentations, statements, findings, or
11 agreements of the taxpayer or any
12 other person,

13 “(III) does not identify and con-
14 sider all relevant facts, or

15 “(IV) fails to meet any other re-
16 quirement as the Secretary may pre-
17 scribe.”.

18 (2) CONFORMING AMENDMENT.—The heading
19 for subsection (c) of section 6664 is amended by in-
20 serting “FOR UNDERPAYMENTS” after “EXCEP-
21 TION”.

22 (d) CONFORMING AMENDMENTS.—

23 (1) Subparagraph (C) of section 461(i)(3) is
24 amended by striking “section 6662(d)(2)(C)(iii)”
25 and inserting “section 1274(b)(3)(C)”.

1 (2) Paragraph (3) of section 1274(b) is
2 amended—

3 (A) by striking “(as defined in section
4 6662(d)(2)(C)(iii))” in subparagraph (B)(i),
5 and

6 (B) by adding at the end the following new
7 subparagraph:

8 “(C) TAX SHELTER.—For purposes of sub-
9 paragraph (B), the term ‘tax shelter’ means—

10 “(i) a partnership or other entity,

11 “(ii) any investment plan or arrange-
12 ment, or

13 “(iii) any other plan or arrangement,
14 if a significant purpose of such partnership, en-
15 tity, plan, or arrangement is the avoidance or
16 evasion of Federal income tax.”.

17 (3) Section 6662(d) is amended—

18 (A) by striking subparagraphs (C) and (D)
19 of paragraph (2), and

20 (B) by adding at the end the following:

21 “(3) SECRETARIAL LIST.—For purposes of this
22 subsection, section 6664(d)(2), and section
23 6694(a)(1), the Secretary may prescribe a list of po-
24 sitions for which the Secretary believes there is not
25 substantial authority or there is no reasonable belief

1 that the tax treatment is more likely than not the
2 proper tax treatment. Such list (and any revisions
3 thereof) shall be published in the Federal Register
4 or the Internal Revenue Bulletin.”.

5 (4) Section 6664(c)(1) is amended by striking
6 “this part” and inserting “section 6662 or 6663”.

7 (5) Subsection (b) of section 7525 is amended
8 by striking “section 6662(d)(2)(C)(iii)” and insert-
9 ing “section 1274(b)(3)(C)”.

10 (6)(A) The heading for section 6662 is amend-
11 ed to read as follows:

12 **“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY**
13 **ON UNDERPAYMENTS.”.**

14 (B) The table of sections for part II of sub-
15 chapter A of chapter 68 is amended by striking the
16 item relating to section 6662 and inserting the fol-
17 lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
ments.

“Sec. 6662A. Imposition of accuracy-related penalty on under-
statements with respect to reportable trans-
actions.”.

18 (e) **EFFECTIVE DATE.**—The amendments made by
19 this section shall apply to taxable years ending after the
20 date of the enactment of this Act.

1 **SEC. 803. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
2 **PRIVILEGES RELATING TO TAXPAYER COM-**
3 **MUNICATIONS.**

4 (a) IN GENERAL.—Section 7525(b) (relating to sec-
5 tion not to apply to communications regarding corporate
6 tax shelters) is amended to read as follows:

7 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
8 REGARDING TAX SHELTERS.—The privilege under sub-
9 section (a) shall not apply to any written communication
10 which is—

11 “(1) between a federally authorized tax practi-
12 tioner and—

13 “(A) any person,

14 “(B) any director, officer, employee, agent,
15 or representative of the person, or

16 “(C) any other person holding a capital or
17 profits interest in the person, and

18 “(2) in connection with the promotion of the di-
19 rect or indirect participation of the person in any
20 tax shelter (as defined in section 1274(b)(3)(C)).”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to communications made on or
23 after the date of the enactment of this Act.

24 **SEC. 804. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

25 (a) IN GENERAL.—Section 6111 (relating to registra-
26 tion of tax shelters) is amended to read as follows:

1 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

2 “(a) IN GENERAL.—Each material advisor with re-
3 spect to any reportable transaction shall make a return
4 (in such form as the Secretary may prescribe) setting
5 forth—

6 “(1) information identifying and describing the
7 transaction,

8 “(2) information describing any potential tax
9 benefits expected to result from the transaction, and

10 “(3) such other information as the Secretary
11 may prescribe.

12 Such return shall be filed not later than the date specified
13 by the Secretary.

14 “(b) DEFINITIONS.—For purposes of this section—

15 “(1) MATERIAL ADVISOR.—

16 “(A) IN GENERAL.—The term ‘material
17 advisor’ means any person—

18 “(i) who provides any material aid,
19 assistance, or advice with respect to orga-
20 nizing, promoting, selling, implementing,
21 or carrying out any reportable transaction,
22 and

23 “(ii) who directly or indirectly derives
24 gross income in excess of the threshold
25 amount for such aid, assistance, or advice.

1 “(B) THRESHOLD AMOUNT.—For purposes
2 of subparagraph (A), the threshold amount is—

3 “(i) \$50,000 in the case of a report-
4 able transaction substantially all of the tax
5 benefits from which are provided to nat-
6 ural persons, and

7 “(ii) \$250,000 in any other case.

8 “(2) REPORTABLE TRANSACTION.—The term
9 ‘reportable transaction’ has the meaning given to
10 such term by section 6707A(c).

11 “(c) REGULATIONS.—The Secretary may prescribe
12 regulations which provide—

13 “(1) that only 1 person shall be required to
14 meet the requirements of subsection (a) in cases in
15 which 2 or more persons would otherwise be re-
16 quired to meet such requirements,

17 “(2) exemptions from the requirements of this
18 section, and

19 “(3) such rules as may be necessary or appro-
20 priate to carry out the purposes of this section.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) The item relating to section 6111 in the
23 table of sections for subchapter B of chapter 61 is
24 amended to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”.

1 (2)(A) So much of section 6112 as precedes
2 subsection (c) thereof is amended to read as follows:

3 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
4 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

5 “(a) IN GENERAL.—Each material advisor (as de-
6 fined in section 6111) with respect to any reportable
7 transaction (as defined in section 6707A(e)) shall main-
8 tain, in such manner as the Secretary may by regulations
9 prescribe, a list—

10 “(1) identifying each person with respect to
11 whom such advisor acted as such a material advisor
12 with respect to such transaction, and

13 “(2) containing such other information as the
14 Secretary may by regulations require.

15 This section shall apply without regard to whether a mate-
16 rial advisor is required to file a return under section 6111
17 with respect to such transaction.”.

18 (B) Section 6112 is amended by redesignating
19 subsection (c) as subsection (b).

20 (C) Section 6112(b), as redesignated by sub-
21 paragraph (B), is amended—

22 (i) by inserting “written” before “request”
23 in paragraph (1)(A), and

24 (ii) by striking “shall prescribe” in para-
25 graph (2) and inserting “may prescribe”.

1 (D) The item relating to section 6112 in the
2 table of sections for subchapter B of chapter 61 is
3 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must
keep lists of advisees.”.

4 (3)(A) The heading for section 6708 is amend-
5 ed to read as follows:

6 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
7 **WITH RESPECT TO REPORTABLE TRANS-**
8 **ACTIONS.”.**

9 (B) The item relating to section 6708 in the
10 table of sections for part I of subchapter B of chap-
11 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to
reportable transactions.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to transactions with respect to
14 which material aid, assistance, or advice referred to in sec-
15 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of
16 1986 (as added by this section) is provided after the date
17 of the enactment of this Act.

18 **SEC. 805. MODIFICATIONS TO PENALTY FOR FAILURE TO**
19 **REGISTER TAX SHELTERS.**

20 (a) IN GENERAL.—Section 6707 (relating to failure
21 to furnish information regarding tax shelters) is amended
22 to read as follows:

1 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
2 **ING REPORTABLE TRANSACTIONS.**

3 “(a) IN GENERAL.—If a person who is required to
4 file a return under section 6111(a) with respect to any
5 reportable transaction—

6 “(1) fails to file such return on or before the
7 date prescribed therefor, or

8 “(2) files false or incomplete information with
9 the Secretary with respect to such transaction,
10 such person shall pay a penalty with respect to such return
11 in the amount determined under subsection (b).

12 “(b) AMOUNT OF PENALTY.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), the penalty imposed under subsection (a)
15 with respect to any failure shall be \$50,000.

16 “(2) LISTED TRANSACTIONS.—The penalty im-
17 posed under subsection (a) with respect to any listed
18 transaction shall be an amount equal to the greater
19 of—

20 “(A) \$200,000, or

21 “(B) 50 percent of the gross income de-
22 rived by such person with respect to aid, assist-
23 ance, or advice which is provided with respect
24 to the listed transaction before the date the re-
25 turn including the transaction is filed under
26 section 6111.

1 Subparagraph (B) shall be applied by substituting
 2 ‘75 percent’ for ‘50 percent’ in the case of an inten-
 3 tional failure or act described in subsection (a).

4 “(c) RESCISSION AUTHORITY.—The provisions of
 5 section 6707A(d) (relating to authority of Commissioner
 6 to rescind penalty) shall apply to any penalty imposed
 7 under this section.

8 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
 9 The terms ‘reportable transaction’ and ‘listed transaction’
 10 have the respective meanings given to such terms by sec-
 11 tion 6707A(c).”.

12 (b) CLERICAL AMENDMENT.—The item relating to
 13 section 6707 in the table of sections for part I of sub-
 14 chapter B of chapter 68 is amended by striking “tax shel-
 15 ters” and inserting “reportable transactions”.

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to returns the due date for which
 18 is after the date of the enactment of this Act.

19 **SEC. 806. MODIFICATION OF PENALTY FOR FAILURE TO**
 20 **MAINTAIN LISTS OF INVESTORS.**

21 (a) IN GENERAL.—Subsection (a) of section 6708 is
 22 amended to read as follows:

23 “(a) IMPOSITION OF PENALTY.—

24 “(1) IN GENERAL.—If any person who is re-
 25 quired to maintain a list under section 6112(a) fails

1 to make such list available upon written request to
2 the Secretary in accordance with section
3 6112(b)(1)(A) within 20 business days after the
4 date of the Secretary's request, such person shall
5 pay a penalty of \$10,000 for each day of such fail-
6 ure after such 20th day.

7 “(2) REASONABLE CAUSE EXCEPTION.—No
8 penalty shall be imposed by paragraph (1) with re-
9 spect to the failure on any day if such failure is due
10 to reasonable cause.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to requests made after the date
13 of the enactment of this Act.

14 **SEC. 807. PENALTY ON PROMOTERS OF TAX SHELTERS.**

15 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-
16 TERS.—Section 6700(a) is amended by adding at the end
17 the following new sentence: “Notwithstanding the first
18 sentence, if an activity with respect to which a penalty
19 imposed under this subsection involves a statement de-
20 scribed in paragraph (2)(A), the amount of the penalty
21 shall be equal to 50 percent of the gross income derived
22 (or to be derived) from such activity by the person on
23 which the penalty is imposed.”.

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

4 **Subtitle B—Provisions to**
 5 **Discourage Corporate Expatriation**

6 **SEC. 821. TAX TREATMENT OF INVERTED CORPORATE EN-**
 7 **TITIES.**

8 (a) IN GENERAL.—Subchapter C of chapter 80 (re-
 9 lating to provisions affecting more than one subtitle) is
 10 amended by adding at the end the following new section:

11 **“SEC. 7874. RULES RELATING TO INVERTED CORPORATE**
 12 **ENTITIES.**

13 “(a) INVERTED CORPORATIONS TREATED AS DOMES-
 14 TIC CORPORATIONS.—

15 “(1) IN GENERAL.—If a foreign incorporated
 16 entity is treated as an inverted domestic corporation,
 17 then, notwithstanding section 7701(a)(4), such enti-
 18 ty shall be treated for purposes of this title as a do-
 19 mestic corporation.

20 “(2) INVERTED DOMESTIC CORPORATION.—For
 21 purposes of this section, a foreign incorporated enti-
 22 ty shall be treated as an inverted domestic corpora-
 23 tion if, pursuant to a plan (or a series of related
 24 transactions)—

1 “(A) the entity completes after March 20,
2 2002, the direct or indirect acquisition of sub-
3 stantially all of the properties held directly or
4 indirectly by a domestic corporation or substan-
5 tially all of the properties constituting a trade
6 or business of a domestic partnership,

7 “(B) after the acquisition at least 80 per-
8 cent of the stock (by vote or value) of the entity
9 is held—

10 “(i) in the case of an acquisition with
11 respect to a domestic corporation, by
12 former shareholders of the domestic cor-
13 poration by reason of holding stock in the
14 domestic corporation, or

15 “(ii) in the case of an acquisition with
16 respect to a domestic partnership, by
17 former partners of the domestic partner-
18 ship by reason of holding a capital or prof-
19 its interest in the domestic partnership,
20 and

21 “(C) the expanded affiliated group which
22 after the acquisition includes the entity does
23 not have substantial business activities in the
24 foreign country in which or under the law of
25 which the entity is created or organized when

1 compared to the total business activities of such
2 expanded affiliated group.

3 Except as provided in regulations, an acquisition of
4 properties of a domestic corporation shall not be
5 treated as described in subparagraph (A) if none of
6 the corporation's stock was readily tradeable on an
7 established securities market at any time during the
8 4-year period ending on the date of the acquisition.

9 “(b) PRESERVATION OF DOMESTIC TAX BASE IN
10 CERTAIN INVERSION TRANSACTIONS TO WHICH SUB-
11 SECTION (a) DOES NOT APPLY.—

12 “(1) IN GENERAL.—If a foreign incorporated
13 entity would be treated as an inverted domestic cor-
14 poration with respect to an acquired entity if
15 either—

16 “(A) subsection (a)(2)(A) were applied by
17 substituting ‘after December 31, 1996, and on
18 or before March 20, 2002’ for ‘after March 20,
19 2002’ and subsection (a)(2)(B) were applied by
20 substituting ‘more than 50 percent’ for ‘at least
21 80 percent’, or

22 “(B) subsection (a)(2)(B) were applied by
23 substituting ‘more than 50 percent’ for ‘at least
24 80 percent’,

1 then the rules of subsection (c) shall apply to any
2 inversion gain of the acquired entity during the ap-
3 plicable period and the rules of subsection (d) shall
4 apply to any related party transaction of the ac-
5 quired entity during the applicable period. This sub-
6 section shall not apply for any taxable year if sub-
7 section (a) applies to such foreign incorporated enti-
8 ty for such taxable year.

9 “(2) ACQUIRED ENTITY.—For purposes of this
10 section—

11 “(A) IN GENERAL.—The term ‘acquired
12 entity’ means the domestic corporation or part-
13 nership substantially all of the properties of
14 which are directly or indirectly acquired in an
15 acquisition described in subsection (a)(2)(A) to
16 which this subsection applies.

17 “(B) AGGREGATION RULES.—Any domes-
18 tic person bearing a relationship described in
19 section 267(b) or 707(b) to an acquired entity
20 shall be treated as an acquired entity with re-
21 spect to the acquisition described in subpara-
22 graph (A).

23 “(3) APPLICABLE PERIOD.—For purposes of
24 this section—

1 “(A) IN GENERAL.—The term ‘applicable
2 period’ means the period—

3 “(i) beginning on the first date prop-
4 erties are acquired as part of the acquisi-
5 tion described in subsection (a)(2)(A) to
6 which this subsection applies, and

7 “(ii) ending on the date which is 10
8 years after the last date properties are ac-
9 quired as part of such acquisition.

10 “(B) SPECIAL RULE FOR INVERSIONS OC-
11 CURRING BEFORE MARCH 21, 2002.—In the case
12 of any acquired entity to which paragraph
13 (1)(A) applies, the applicable period shall be the
14 10-year period beginning on January 1, 2003.

15 “(c) TAX ON INVERSION GAINS MAY NOT BE OFF-
16 SET.—If subsection (b) applies—

17 “(1) IN GENERAL.—The taxable income of an
18 acquired entity (or any expanded affiliated group
19 which includes such entity) for any taxable year
20 which includes any portion of the applicable period
21 shall in no event be less than the inversion gain of
22 the entity for the taxable year.

23 “(2) CREDITS NOT ALLOWED AGAINST TAX ON
24 INVERSION GAIN.—Credits shall be allowed against
25 the tax imposed by this chapter on an acquired enti-

1 ty for any taxable year described in paragraph (1)
2 only to the extent such tax exceeds the product of—

3 “(A) the amount of the inversion gain for
4 the taxable year, and

5 “(B) the highest rate of tax specified in
6 section 11(b)(1).

7 For purposes of determining the credit allowed by
8 section 901 inversion gain shall be treated as from
9 sources within the United States.

10 “(3) SPECIAL RULES FOR PARTNERSHIPS.—In
11 the case of an acquired entity which is a
12 partnership—

13 “(A) the limitations of this subsection shall
14 apply at the partner rather than the partner-
15 ship level,

16 “(B) the inversion gain of any partner for
17 any taxable year shall be equal to the sum of—

18 “(i) the partner’s distributive share of
19 inversion gain of the partnership for such
20 taxable year, plus

21 “(ii) income or gain required to be
22 recognized for the taxable year by the part-
23 ner under section 367(a), 741, or 1001, or
24 under any other provision of chapter 1, by
25 reason of the transfer during the applica-

1 ble period of any partnership interest of
2 the partner in such partnership to the for-
3 eign incorporated entity, and

4 “(C) the highest rate of tax specified in
5 the rate schedule applicable to the partner
6 under chapter 1 shall be substituted for the
7 rate of tax under paragraph (2)(B).

8 “(4) INVERSION GAIN.—For purposes of this
9 section, the term ‘inversion gain’ means any income
10 or gain required to be recognized under section 304,
11 311(b), 367, 1001, or 1248, or under any other pro-
12 vision of chapter 1, by reason of the transfer during
13 the applicable period of stock or other properties by
14 an acquired entity—

15 “(A) as part of the acquisition described in
16 subsection (a)(2)(A) to which subsection (b) ap-
17 plies, or

18 “(B) after such acquisition to a foreign re-
19 lated person.

20 The Secretary may provide that income or gain from
21 the sale of inventories or other transactions in the
22 ordinary course of a trade or business shall not be
23 treated as inversion gain under subparagraph (B) to
24 the extent the Secretary determines such treatment

1 would not be inconsistent with the purposes of this
2 section.

3 “(5) COORDINATION WITH SECTION 172 AND
4 MINIMUM TAX.—Rules similar to the rules of para-
5 graphs (3) and (4) of section 860E(a) shall apply
6 for purposes of this section.

7 “(6) STATUTE OF LIMITATIONS.—

8 “(A) IN GENERAL.—The statutory period
9 for the assessment of any deficiency attrib-
10 utable to the inversion gain of any taxpayer for
11 any pre-inversion year shall not expire before
12 the expiration of 3 years from the date the Sec-
13 retary is notified by the taxpayer (in such man-
14 ner as the Secretary may prescribe) of the ac-
15 quisition described in subsection (a)(2)(A) to
16 which such gain relates and such deficiency
17 may be assessed before the expiration of such
18 3-year period notwithstanding the provisions of
19 any other law or rule of law which would other-
20 wise prevent such assessment.

21 “(B) PRE-INVERSION YEAR.—For purposes
22 of subparagraph (A), the term ‘pre-inversion
23 year’ means any taxable year if—

24 “(i) any portion of the applicable pe-
25 riod is included in such taxable year, and

1 “(ii) such year ends before the taxable
2 year in which the acquisition described in
3 subsection (a)(2)(A) is completed.

4 “(d) SPECIAL RULES APPLICABLE TO RELATED
5 PARTY TRANSACTIONS.—

6 “(1) ANNUAL APPLICATION FOR AGREEMENTS
7 ON RETURN POSITIONS.—

8 “(A) IN GENERAL.—Each acquired entity
9 to which subsection (b) applies shall file with
10 the Secretary an application for an approval
11 agreement under subparagraph (D) for each
12 taxable year which includes a portion of the ap-
13 plicable period. Such application shall be filed
14 at such time and manner, and shall contain
15 such information, as the Secretary may pre-
16 scribe.

17 “(B) SECRETARIAL ACTION.—Within 90
18 days of receipt of an application under subpara-
19 graph (A) (or such longer period as the Sec-
20 retary and entity may agree upon), the Sec-
21 retary shall—

22 “(i) enter into an agreement described
23 in subparagraph (D) for the taxable year
24 covered by the application,

1 “(ii) notify the entity that the Sec-
2 retary has determined that the application
3 was filed in good faith and substantially
4 complies with the requirements for the ap-
5 plication under subparagraph (A), or

6 “(iii) notify the entity that the Sec-
7 retary has determined that the application
8 was not filed in good faith or does not sub-
9 stantially comply with such requirements.

10 If the Secretary fails to act within the time pre-
11 scribed under the preceding sentence, the entity
12 shall be treated for purposes of this paragraph
13 as having received notice under clause (ii).

14 “(C) FAILURES TO COMPLY.—If an ac-
15 quired entity fails to file an application under
16 subparagraph (A), or the acquired entity re-
17 ceives a notice under subparagraph (B)(iii), for
18 any taxable year, then for such taxable year—

19 “(i) there shall not be allowed any de-
20 duction, or addition to basis or cost of
21 goods sold, for amounts paid or incurred,
22 or losses incurred, by reason of a trans-
23 action between the acquired entity and a
24 foreign related person,

1 “(ii) any transfer or license of intan-
2 gible property (as defined in section
3 936(h)(3)(B)) between the acquired entity
4 and a foreign related person shall be dis-
5 regarded, and

6 “(iii) any cost-sharing arrangement
7 between the acquired entity and a foreign
8 related person shall be disregarded.

9 “(D) APPROVAL AGREEMENT.—For pur-
10 poses of subparagraph (A), the term ‘approval
11 agreement’ means a prefilling, advance pricing,
12 or other agreement specified by the Secretary
13 which contains such provisions as the Secretary
14 determines necessary to ensure that the require-
15 ments of sections 163(j), 267(a)(3), 482, and
16 845, and any other provision of this title appli-
17 cable to transactions between related persons
18 and specified by the Secretary, are met.

19 “(E) TAX COURT REVIEW.—

20 “(i) IN GENERAL.—The Tax Court
21 shall have jurisdiction over any action
22 brought by an acquired entity receiving a
23 notice under subparagraph (B)(iii) to de-
24 termine whether the issuance of the notice
25 was an abuse of discretion, but only if the

1 action is brought within 30 days after the
2 date of the mailing (determined under
3 rules similar to section 6213) of the notice.

4 “(ii) COURT ACTION.—The Tax Court
5 shall issue its decision within 30 days after
6 the filing of the action under clause (i) and
7 may order the Secretary to issue a notice
8 described in subparagraph (B)(ii).

9 “(iii) REVIEW.—An order of the Tax
10 Court under this subparagraph shall be re-
11 viewable in the same manner as any other
12 decision of the Tax Court.

13 “(2) MODIFICATIONS OF LIMITATION ON INTER-
14 EST DEDUCTION.—In the case of an acquired entity
15 to which subsection (b) applies, section 163(j) shall
16 be applied—

17 “(A) without regard to paragraph
18 (2)(A)(ii) thereof, and

19 “(B) by substituting ‘25 percent’ for ‘50
20 percent’ each place it appears in paragraph
21 (2)(B) thereof.

22 “(e) OTHER DEFINITIONS AND SPECIAL RULES.—
23 For purposes of this section—

24 “(1) RULES FOR APPLICATION OF SUBSECTION
25 (a)(2).—In applying subsection (a)(2) for purposes of

1 subsections (a) and (b), the following rules shall
2 apply:

3 “(A) CERTAIN STOCK DISREGARDED.—

4 There shall not be taken into account in deter-
5 mining ownership for purposes of subsection
6 (a)(2)(B)—

7 “(i) stock held by members of the ex-
8 panded affiliated group which includes the
9 foreign incorporated entity, or

10 “(ii) stock of such entity which is sold
11 in a public offering or private placement
12 related to the acquisition described in sub-
13 section (a)(2)(A).

14 “(B) PLAN DEEMED IN CERTAIN CASES.—

15 If a foreign incorporated entity acquires directly
16 or indirectly substantially all of the properties
17 of a domestic corporation or partnership during
18 the 4-year period beginning on the date which
19 is 2 years before the ownership requirements of
20 subsection (a)(2)(B) are met with respect to
21 such domestic corporation or partnership, such
22 actions shall be treated as pursuant to a plan.

23 “(C) CERTAIN TRANSFERS DIS-
24 REGARDED.—The transfer of properties or li-
25 abilities (including by contribution or distribu-

1 tion) shall be disregarded if such transfers are
2 part of a plan a principal purpose of which is
3 to avoid the purposes of this section.

4 “(D) SPECIAL RULE FOR RELATED PART-
5 NERSHIPS.—For purposes of applying sub-
6 section (a)(2) to the acquisition of a domestic
7 partnership, except as provided in regulations,
8 all partnerships which are under common con-
9 trol (within the meaning of section 482) shall
10 be treated as 1 partnership.

11 “(E) TREATMENT OF CERTAIN RIGHTS.—
12 The Secretary shall prescribe such regulations
13 as may be necessary—

14 “(i) to treat warrants, options, con-
15 tracts to acquire stock, convertible debt in-
16 struments, and other similar interests as
17 stock, and

18 “(ii) to treat stock as not stock.

19 “(2) EXPANDED AFFILIATED GROUP.—The
20 term ‘expanded affiliated group’ means an affiliated
21 group as defined in section 1504(a) but without re-
22 gard to section 1504(b)(3), except that section
23 1504(a) shall be applied by substituting ‘more than
24 50 percent’ for ‘at least 80 percent’ each place it ap-
25 pears.

1 “(3) FOREIGN INCORPORATED ENTITY.—The
2 term ‘foreign incorporated entity’ means any entity
3 which is, or but for subsection (a)(1) would be,
4 treated as a foreign corporation for purposes of this
5 title.

6 “(4) FOREIGN RELATED PERSON.—The term
7 ‘foreign related person’ means, with respect to any
8 acquired entity, a foreign person which—

9 “(A) bears a relationship to such entity de-
10 scribed in section 267(b) or 707(b), or

11 “(B) is under the same common control
12 (within the meaning of section 482) as such en-
13 tity.

14 “(5) SUBSEQUENT ACQUISITIONS BY UNRE-
15 LATED DOMESTIC CORPORATIONS.—

16 “(A) IN GENERAL.—Subject to such condi-
17 tions, limitations, and exceptions as the Sec-
18 retary may prescribe, if, after an acquisition de-
19 scribed in subsection (a)(2)(A) to which sub-
20 section (b) applies, a domestic corporation stock
21 of which is traded on an established securities
22 market acquires directly or indirectly any prop-
23 erties of one or more acquired entities in a
24 transaction with respect to which the require-
25 ments of subparagraph (B) are met, this sec-

1 tion shall cease to apply to any such acquired
2 entity with respect to which such requirements
3 are met.

4 “(B) REQUIREMENTS.—The requirements
5 of the subparagraph are met with respect to a
6 transaction involving any acquisition described
7 in subparagraph (A) if—

8 “(i) before such transaction the do-
9 mestic corporation did not have a relation-
10 ship described in section 267(b) or 707(b),
11 and was not under common control (within
12 the meaning of section 482), with the ac-
13 quired entity, or any member of an ex-
14 panded affiliated group including such en-
15 tity, and

16 “(ii) after such transaction, such ac-
17 quired entity—

18 “(I) is a member of the same ex-
19 panded affiliated group which includes
20 the domestic corporation or has such
21 a relationship or is under such com-
22 mon control with any member of such
23 group, and

24 “(II) is not a member of, and
25 does not have such a relationship and

1 is not under such common control
2 with any member of, the expanded af-
3 filiated group which before such ac-
4 quisition included such entity.

5 “(f) REGULATIONS.—The Secretary shall provide
6 such regulations as are necessary to carry out this section,
7 including regulations providing for such adjustments to
8 the application of this section as are necessary to prevent
9 the avoidance of the purposes of this section, including the
10 avoidance of such purposes through—

11 “(1) the use of related persons, pass-through or
12 other noncorporate entities, or other intermediaries,
13 or

14 “(2) transactions designed to have persons
15 cease to be (or not become) members of expanded
16 affiliated groups or related persons.”.

17 (b) TREATMENT OF AGREEMENTS.—

18 (1) CONFIDENTIALITY.—

19 (A) TREATMENT AS RETURN INFORMA-
20 TION.—Section 6103(b)(2) (relating to return
21 information) is amended by striking “and” at
22 the end of subparagraph (C), by inserting
23 “and” at the end of subparagraph (D), and by
24 inserting after subparagraph (D) the following
25 new subparagraph:

1 “(E) any approval agreement under section
2 7874(d)(1) to which any preceding subpara-
3 graph does not apply and any background in-
4 formation related to the agreement or any ap-
5 plication for the agreement,”.

6 (B) EXCEPTION FROM PUBLIC INSPECTION
7 AS WRITTEN DETERMINATION.—Section
8 6110(b)(1)(B) is amended by striking “or (D)”
9 and inserting “, (D), or (E)”.

10 (2) REPORTING.—The Secretary of the Treas-
11 ury shall include with any report on advance pricing
12 agreements required to be submitted after the date
13 of the enactment of this Act under section 521(b) of
14 the Ticket to Work and Work Incentives Improve-
15 ment Act of 1999 (Public Law 106–170) a report
16 regarding approval agreements under section
17 7874(d)(1) of the Internal Revenue Code of 1986.
18 Such report shall include information similar to the
19 information required with respect to advance pricing
20 agreements and shall be treated for confidentiality
21 purposes in the same manner as the reports on ad-
22 vance pricing agreements are treated under section
23 521(b)(3) of such Act.

24 (c) INFORMATION REPORTING.—The Secretary of the
25 Treasury shall exercise the Secretary’s authority under the

1 Internal Revenue Code of 1986 to require entities involved
2 in transactions to which section 7874 of such Code (as
3 added by subsection (a)) applies to report to the Secretary,
4 shareholders, partners, and such other persons as the Sec-
5 retary may prescribe such information as is necessary to
6 ensure the proper tax treatment of such transactions.

7 (d) CONFORMING AMENDMENT.—The table of sec-
8 tions for subchapter C of chapter 80 is amended by adding
9 at the end the following new item:

“Sec. 7874. Rules relating to inverted corporate entities.”.

10 (e) TRANSITION RULE FOR CERTAIN REGULATED
11 INVESTMENT COMPANIES AND UNIT INVESTMENT
12 TRUSTS.—Notwithstanding section 7874 of the Internal
13 Revenue Code of 1986 (as added by subsection (a)), a reg-
14 ulated investment company, or other pooled fund or trust
15 specified by the Secretary of the Treasury, may elect to
16 recognize gain by reason of section 367(a) of such Code
17 with respect to a transaction under which a foreign incor-
18 porated entity is treated as an inverted domestic corpora-
19 tion under section 7874(a) of such Code by reason of an
20 acquisition completed after March 20, 2002, and before
21 January 1, 2004.

22 **SEC. 822. EXCISE TAX ON STOCK COMPENSATION OF INSID-**
23 **ERS IN INVERTED CORPORATIONS.**

24 (a) IN GENERAL.—Subtitle D is amended by adding
25 at the end the following new chapter:

1 **“CHAPTER 48—STOCK COMPENSATION OF**
2 **INSIDERS IN INVERTED CORPORATIONS**

“Sec. 5000A. Stock compensation of insiders in inverted corporations entities.

3 **“SEC. 5000A. STOCK COMPENSATION OF INSIDERS IN IN-**
4 **VERTED CORPORATIONS.**

5 “(a) IMPOSITION OF TAX.—In the case of an indi-
6 vidual who is a disqualified individual with respect to any
7 inverted corporation, there is hereby imposed on such per-
8 son a tax equal to 20 percent of the value (determined
9 under subsection (b)) of the specified stock compensation
10 held (directly or indirectly) by or for the benefit of such
11 individual or a member of such individual’s family (as de-
12 fined in section 267) at any time during the 12-month
13 period beginning on the date which is 6 months before
14 the inversion date.

15 “(b) VALUE.—For purposes of subsection (a)—

16 “(1) IN GENERAL.—The value of specified stock
17 compensation shall be—

18 “(A) in the case of a stock option (or other
19 similar right) or any stock appreciation right,
20 the fair value of such option or right, and

21 “(B) in any other case, the fair market
22 value of such compensation.

23 “(2) DATE FOR DETERMINING VALUE.—The
24 determination of value shall be made—

1 “(A) in the case of specified stock com-
2 pensation held on the inversion date, on such
3 date,

4 “(B) in the case of such compensation
5 which is canceled during the 6 months before
6 the inversion date, on the day before such can-
7 cellation, and

8 “(C) in the case of such compensation
9 which is granted after the inversion date, on the
10 date such compensation is granted.

11 “(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN
12 RECOGNIZED.—Subsection (a) shall apply to any disquali-
13 fied individual with respect to an inverted corporation only
14 if gain (if any) on any stock in such corporation is recog-
15 nized in whole or part by any shareholder by reason of
16 the acquisition referred to in section 7874(a)(2)(A) (deter-
17 mined by substituting ‘July 10, 2002’ for ‘March 20,
18 2002’) with respect to such corporation.

19 “(d) EXCEPTION WHERE GAIN RECOGNIZED ON
20 COMPENSATION.—Subsection (a) shall not apply to—

21 “(1) any stock option which is exercised on the
22 inversion date or during the 6-month period before
23 such date and to the stock acquired in such exercise,
24 and

1 “(2) any specified stock compensation which is
2 sold, exchanged, or distributed during such period in
3 a transaction in which gain or loss is recognized in
4 full.

5 “(e) DEFINITIONS.—For purposes of this section—

6 “(1) DISQUALIFIED INDIVIDUAL.—The term
7 ‘disqualified individual’ means, with respect to a cor-
8 poration, any individual who, at any time during the
9 12-month period beginning on the date which is 6
10 months before the inversion date—

11 “(A) is subject to the requirements of sec-
12 tion 16(a) of the Securities Exchange Act of
13 1934 with respect to such corporation or any
14 member of the expanded affiliated group which
15 includes such corporation, or

16 “(B) would be subject to such require-
17 ments if such corporation or member were an
18 issuer of equity securities referred to in such
19 section.

20 “(2) INVERTED CORPORATION; INVERSION
21 DATE.—

22 “(A) INVERTED CORPORATION.—The term
23 ‘inverted corporation’ means any corporation to
24 which subsection (a) or (b) of section 7874 ap-
25 plies determined—

1 “(i) by substituting ‘July 10, 2002’
2 for ‘March 20, 2002’ in section
3 7874(a)(2)(A), and

4 “(ii) without regard to subsection
5 (b)(1)(A).

6 Such term includes any predecessor or suc-
7 cessor of such a corporation.

8 “(B) INVERSION DATE.—The term ‘inver-
9 sion date’ means, with respect to a corporation,
10 the date on which the corporation first becomes
11 an inverted corporation.

12 “(3) SPECIFIED STOCK COMPENSATION.—

13 “(A) IN GENERAL.—The term ‘specified
14 stock compensation’ means payment (or right
15 to payment) granted by the inverted corpora-
16 tion (or by any member of the expanded affili-
17 ated group which includes such corporation) to
18 any person in connection with the performance
19 of services by a disqualified individual for such
20 corporation or member if the value of such pay-
21 ment or right is based on (or determined by ref-
22 erence to) the value (or change in value) of
23 stock in such corporation (or any such mem-
24 ber).

1 “(B) EXCEPTIONS.—Such term shall not
2 include—

3 “(i) any option to which part II of
4 subchapter D of chapter 1 applies, or

5 “(ii) any payment or right to payment
6 from a plan referred to in section
7 280G(b)(6).

8 “(4) EXPANDED AFFILIATED GROUP.—The
9 term ‘expanded affiliated group’ means an affiliated
10 group (as defined in section 1504(a) without regard
11 to section 1504(b)(3)); except that section 1504(a)
12 shall be applied by substituting ‘more than 50 per-
13 cent’ for ‘at least 80 percent’ each place it appears.

14 “(f) SPECIAL RULES.—For purposes of this
15 section—

16 “(1) CANCELLATION OF RESTRICTION.—The
17 cancellation of a restriction which by its terms will
18 never lapse shall be treated as a grant.

19 “(2) PAYMENT OR REIMBURSEMENT OF TAX BY
20 CORPORATION TREATED AS SPECIFIED STOCK COM-
21 PENSATION.—Any payment of the tax imposed by
22 this section directly or indirectly by the inverted cor-
23 poration or by any member of the expanded affili-
24 ated group which includes such corporation—

1 “(A) shall be treated as specified stock
2 compensation, and

3 “(B) shall not be allowed as a deduction
4 under any provision of chapter 1.

5 “(3) CERTAIN RESTRICTIONS IGNORED.—
6 Whether there is specified stock compensation, and
7 the value thereof, shall be determined without regard
8 to any restriction other than a restriction which by
9 its terms will never lapse.

10 “(4) PROPERTY TRANSFERS.—Any transfer of
11 property shall be treated as a payment and any right
12 to a transfer of property shall be treated as a right
13 to a payment.

14 “(5) OTHER ADMINISTRATIVE PROVISIONS.—
15 For purposes of subtitle F, any tax imposed by this
16 section shall be treated as a tax imposed by subtitle
17 A.

18 “(g) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section.”.

21 (b) DENIAL OF DEDUCTION.—

22 (1) IN GENERAL.—Paragraph (6) of section
23 275(a) is amended by inserting “48,” after “46,”.

24 (2) \$1,000,000 LIMIT ON DEDUCTIBLE COM-
25 PENSATION REDUCED BY PAYMENT OF EXCISE TAX

1 ON SPECIFIED STOCK COMPENSATION.—Paragraph
2 (4) of section 162(m) is amended by adding at the
3 end the following new subparagraph:

4 “(G) COORDINATION WITH EXCISE TAX ON
5 SPECIFIED STOCK COMPENSATION.—The dollar
6 limitation contained in paragraph (1) with re-
7 spect to any covered employee shall be reduced
8 (but not below zero) by the amount of any pay-
9 ment (with respect to such employee) of the tax
10 imposed by section 5000A directly or indirectly
11 by the inverted corporation (as defined in such
12 section) or by any member of the expanded af-
13 filiated group (as defined in such section) which
14 includes such corporation.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) The last sentence of section 3121(v)(2)(A)
17 is amended by inserting before the period “or to any
18 specified stock compensation (as defined in section
19 5000A) on which tax is imposed by section 5000A”.

20 (2) The table of chapters for subtitle D is
21 amended by adding at the end the following new
22 item:

“Chapter 48. Stock compensation of insiders in inverted corpora-
tions.”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on July 11, 2002; except that

1 periods before such date shall not be taken into account
2 in applying the periods in subsections (a) and (e)(1) of
3 section 5000A of the Internal Revenue Code of 1986, as
4 added by this section.

5 **SEC. 823. REINSURANCE OF UNITED STATES RISKS IN FOR-**
6 **EIGN JURISDICTIONS.**

7 (a) **IN GENERAL.**—Section 845(a) (relating to alloca-
8 tion in case of reinsurance agreement involving tax avoid-
9 ance or evasion) is amended by striking “source and char-
10 acter” and inserting “amount, source, or character”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 this section shall apply to any risk reinsured after April
13 11, 2002.

14 **Subtitle C—Other Revenue**
15 **Provisions**

16 **SEC. 831. EXTENSION OF INTERNAL REVENUE SERVICE**
17 **USER FEES.**

18 (a) **IN GENERAL.**—Chapter 77 (relating to miscella-
19 neous provisions) is amended by adding at the end the
20 following new section:

21 **“SEC. 7528. INTERNAL REVENUE SERVICE USER FEES.**

22 **“(a) GENERAL RULE.**—The Secretary shall establish
23 a program requiring the payment of user fees for—

1 “(1) requests to the Internal Revenue Service
2 for ruling letters, opinion letters, and determination
3 letters, and

4 “(2) other similar requests.

5 “(b) PROGRAM CRITERIA.—

6 “(1) IN GENERAL.—The fees charged under the
7 program required by subsection (a)—

8 “(A) shall vary according to categories (or
9 subcategories) established by the Secretary,

10 “(B) shall be determined after taking into
11 account the average time for (and difficulty of)
12 complying with requests in each category (and
13 subcategory), and

14 “(C) shall be payable in advance.

15 “(2) EXEMPTIONS, ETC.—

16 “(A) IN GENERAL.—The Secretary shall
17 provide for such exemptions (and reduced fees)
18 under such program as the Secretary deter-
19 mines to be appropriate.

20 “(B) EXEMPTION FOR CERTAIN REQUESTS
21 REGARDING PENSION PLANS.—The Secretary
22 shall not require payment of user fees under
23 such program for requests for determination
24 letters with respect to the qualified status of a
25 pension benefit plan maintained solely by 1 or

1 more eligible employers or any trust which is
 2 part of the plan. The preceding sentence shall
 3 not apply to any request—

4 “(i) made after the later of—

5 “(I) the fifth plan year the pen-
 6 sion benefit plan is in existence, or

7 “(II) the end of any remedial
 8 amendment period with respect to the
 9 plan beginning within the first 5 plan
 10 years, or

11 “(ii) made by the sponsor of any pro-
 12 totype or similar plan which the sponsor
 13 intends to market to participating employ-
 14 ers.

15 “(C) DEFINITIONS AND SPECIAL RULES.—

16 For purposes of subparagraph (B)—

17 “(i) PENSION BENEFIT PLAN.—The
 18 term ‘pension benefit plan’ means a pen-
 19 sion, profit-sharing, stock bonus, annuity,
 20 or employee stock ownership plan.

21 “(ii) ELIGIBLE EMPLOYER.—The
 22 term ‘eligible employer’ means an eligible
 23 employer (as defined in section
 24 408(p)(2)(C)(i)(I)) which has at least 1
 25 employee who is not a highly compensated

1 employee (as defined in section 414(q))
 2 and is participating in the plan. The deter-
 3 mination of whether an employer is an eli-
 4 gible employer under subparagraph (B)
 5 shall be made as of the date of the request
 6 described in such subparagraph.

7 “(iii) DETERMINATION OF AVERAGE
 8 FEES CHARGED.—For purposes of any de-
 9 termination of average fees charged, any
 10 request to which subparagraph (B) applies
 11 shall not be taken into account.

12 “(3) AVERAGE FEE REQUIREMENT.—The aver-
 13 age fee charged under the program required by sub-
 14 section (a) shall not be less than the amount deter-
 15 mined under the following table:

“Category	Average fee
Employee plan ruling and opinion	\$250
Exempt organization ruling	\$350
Employee plan determination	\$300
Exempt organization determination	\$275
Chief counsel ruling	\$200.

16 “(c) TERMINATION.—No fee shall be imposed under
 17 this section with respect to requests made after September
 18 30, 2013.”.

19 (b) CONFORMING AMENDMENTS.—

1 (1) The table of sections for chapter 77 is
2 amended by adding at the end the following new
3 item:

 “Sec. 7528. Internal Revenue Service user fees.”.

4 (2) Section 10511 of the Revenue Act of 1987
5 is repealed.

6 (3) Section 620 of the Economic Growth and
7 Tax Relief Reconciliation Act of 2001 is repealed.

8 (c) LIMITATIONS.—Notwithstanding any other provi-
9 sion of law, any fees collected pursuant to section 7528
10 of the Internal Revenue Code of 1986, as added by sub-
11 section (a), shall not be expended by the Internal Revenue
12 Service unless provided by an appropriations Act.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to requests made after the date
15 of the enactment of this Act.

16 **SEC. 832. ADDITION OF VACCINES AGAINST HEPATITIS A**
17 **TO LIST OF TAXABLE VACCINES.**

18 (a) IN GENERAL.—Section 4132(a)(1) (defining tax-
19 able vaccine) is amended by redesignating subparagraphs
20 (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and
21 (M), respectively, and by inserting after subparagraph (H)
22 the following new subparagraph:

23 “(I) Any vaccine against hepatitis A.”.

1 (b) CONFORMING AMENDMENT.—Section
2 9510(c)(1)(A) is amended by striking “October 18, 2000”
3 and inserting “April 2, 2003”.

4 (c) EFFECTIVE DATE.—

5 (1) SALES, ETC.—The amendments made by
6 this section shall apply to sales and uses on or after
7 the first day of the first month which begins more
8 than 4 weeks after the date of the enactment of this
9 Act.

10 (2) DELIVERIES.—For purposes of paragraph
11 (1) and section 4131 of the Internal Revenue Code
12 of 1986, in the case of sales on or before the effec-
13 tive date described in such paragraph for which de-
14 livery is made after such date, the delivery date shall
15 be considered the sale date.

16 **SEC. 843. INDIVIDUAL EXPATRIATION TO AVOID TAX.**

17 (a) EXPATRIATION TO AVOID TAX.—

18 (1) IN GENERAL.—Subsection (a) of section
19 877 (relating to treatment of expatriates) is amend-
20 ed to read as follows:

21 “(a) TREATMENT OF EXPATRIATES.—

22 “(1) IN GENERAL.—Every nonresident alien in-
23 dividual to whom this section applies and who, with-
24 in the 10-year period immediately preceding the
25 close of the taxable year, lost United States citizen-

1 ship shall be taxable for such taxable year in the
2 manner provided in subsection (b) if the tax imposed
3 pursuant to such subsection (after any reduction in
4 such tax under the last sentence of such subsection)
5 exceeds the tax which, without regard to this section,
6 is imposed pursuant to section 871.

7 “(2) INDIVIDUALS SUBJECT TO THIS SEC-
8 TION.—This section shall apply to any individual
9 if—

10 “(A) the average annual net income tax
11 (as defined in section 38(c)(1)) of such indi-
12 vidual for the period of 5 taxable years ending
13 before the date of the loss of United States citi-
14 zenship is greater than \$122,000,

15 “(B) the net worth of the individual as of
16 such date is \$2,000,000 or more, or

17 “(C) such individual fails to certify under
18 penalty of perjury that he has met the require-
19 ments of this title for the 5 preceding taxable
20 years or fails to submit such evidence of such
21 compliance as the Secretary may require.

22 In the case of the loss of United States citizenship
23 in any calendar year after 2003, such \$122,000
24 amount shall be increased by an amount equal to
25 such dollar amount multiplied by the cost-of-living

1 adjustment determined under section 1(f)(3) for
2 such calendar year by substituting ‘2002’ for ‘1992’
3 in subparagraph (B) thereof. Any increase under the
4 preceding sentence shall be rounded to the nearest
5 multiple of \$1,000.”.

6 (2) REVISION OF EXCEPTIONS FROM ALTER-
7 NATIVE TAX.—Subsection (c) of section 877 (relat-
8 ing to tax avoidance not presumed in certain cases)
9 is amended to read as follows:

10 “(c) EXCEPTIONS.—

11 “(1) IN GENERAL.—Subparagraphs (A) and
12 (B) of subsection (a)(2) shall not apply to an indi-
13 vidual described in paragraph (2) or (3).

14 “(2) DUAL CITIZENS.—

15 “(A) IN GENERAL.—An individual is de-
16 scribed in this paragraph if—

17 “(i) the individual became at birth a
18 citizen of the United States and a citizen
19 of another country and continues to be a
20 citizen of such other country, and

21 “(ii) the individual has had no sub-
22 stantial contacts with the United States.

23 “(B) SUBSTANTIAL CONTACTS.—An indi-
24 vidual shall be treated as having no substantial

1 contacts with the United States only if the
2 individual—

3 “(i) was never a resident of the
4 United States (as defined in section
5 7701(b)),

6 “(ii) has never held a United States
7 passport, and

8 “(iii) was not present in the United
9 States for more than 30 days during any
10 calendar year which is 1 of the 10 calendar
11 years preceding the individual’s loss of
12 United States citizenship.

13 “(3) CERTAIN MINORS.—An individual is de-
14 scribed in this paragraph if—

15 “(A) the individual became at birth a cit-
16 izen of the United States,

17 “(B) neither parent of such individual was
18 a citizen of the United States at the time of
19 such birth,

20 “(C) the individual’s loss of United States
21 citizenship occurs before such individual attains
22 age 18½, and

23 “(D) the individual was not present in the
24 United States for more than 30 days during
25 any calendar year which is 1 of the 10 calendar

1 years preceding the individual’s loss of United
2 States citizenship.”.

3 (3) CONFORMING AMENDMENT.—Section
4 2107(a) is amended to read as follows:

5 “(a) TREATMENT OF EXPATRIATES.—A tax com-
6 puted in accordance with the table contained in section
7 2001 is hereby imposed on the transfer of the taxable es-
8 tate, determined as provided in section 2106, of every de-
9 cedent nonresident not a citizen of the United States if
10 the date of death occurs during a taxable year with respect
11 to which the decedent is subject to tax under section
12 877(b).”.

13 (b) SPECIAL RULES FOR DETERMINING WHEN AN
14 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
15 OR LONG-TERM RESIDENT.—Section 7701 (relating to
16 definitions) is amended by redesignating subsection (n) as
17 subsection (o) and by inserting after subsection (m) the
18 following new subsection:

19 “(n) SPECIAL RULES FOR DETERMINING WHEN AN
20 INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN
21 OR LONG-TERM RESIDENT.—An individual who would not
22 (but for this subsection) be treated as a citizen or resident
23 of the United States shall continue to be treated as a cit-
24 izen or resident of the United States until such
25 individual—

1 “(1) gives notice of an expatriating act or ter-
2 mination of residency (with the requisite intent to
3 relinquish citizenship or terminate residency) to the
4 Secretary of State or the Secretary of Homeland Se-
5 curity, and

6 “(2) provides a statement in accordance with
7 section 6039G.”.

8 (c) PHYSICAL PRESENCE IN THE UNITED STATES
9 FOR MORE THAN 30 DAYS.—Section 877 (relating to ex-
10 patriation to avoid tax) is amended by adding at the end
11 the following new subsection:

12 “(g) PHYSICAL PRESENCE.—This section shall not
13 apply to any individual for any taxable year during the
14 10-year period referred to in subsection (a) in which such
15 individual is present (within the meaning of section
16 7701(b)(7) without regard to subparagraphs (B), (C), and
17 (D) thereof) in the United States for more than 30 days
18 in the calendar year ending in such taxable year, and such
19 individual shall be treated for purposes of this title as a
20 citizen or resident of the United States for such taxable
21 year.”.

22 (d) TRANSFERS SUBJECT TO GIFT TAX.—Subsection
23 (a) of section 2501 (relating to taxable transfers) is
24 amended by adding at the end the following:

25 “(6) TRANSFERS OF CERTAIN STOCK.—

1 “(A) IN GENERAL.—Paragraph (3) shall
2 not apply to the transfer of stock described in
3 subparagraph (B) by any individual to whom
4 section 877(b) applies, and section 2511(a)
5 shall be applied without regard to whether such
6 stock is property which is situated within the
7 United States.

8 “(B) VALUATION.—For purposes of sub-
9 paragraph (A), the value of stock shall be deter-
10 mined as provided in section 2103, except
11 that—

12 “(i) if the donor owned (within the
13 meaning of section 958(a)) at the time of
14 such transfer 10 percent or more of the
15 total combined voting power of all classes
16 of stock entitled to vote of a foreign cor-
17 poration, and

18 “(ii) if such donor owned (within the
19 meaning of section 958(a)), or is consid-
20 ered to have owned (by applying the own-
21 ership rules of section 958(b)), at the time
22 of such transfer, more than 50 percent
23 of—

1 “(I) the total combined voting
2 power of all classes of stock entitled
3 to vote of such corporation, or

4 “(II) the total value of the stock
5 of such corporation,

6 then the portion of the fair market value of the
7 stock of such foreign corporation transferred by
8 such donor which is included for purposes of
9 subparagraph (A) shall be the amount which
10 bears the same ratio to such value as the fair
11 market value of any assets owned by such for-
12 eign corporation and situated in the United
13 States at the time of such transfer bears to the
14 total fair market value of all assets owned by
15 such foreign corporation at such time. For pur-
16 poses of the preceding sentence, a donor shall
17 be treated as owning stock of a foreign corpora-
18 tion at the time of such transfer if, at such
19 time, by trust or otherwise, within the meaning
20 of sections 2035 to 2038, inclusive, he owned
21 such stock.”.

22 (e) ENHANCED INFORMATION REPORTING FROM IN-
23 DIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

24 (1) IN GENERAL.—Subsection (a) of section
25 6039G is amended to read as follows:

1 “(a) IN GENERAL.—Notwithstanding any other pro-
2 vision of law, any individual to whom section 877(b) ap-
3 plies for any taxable year shall provide a statement for
4 such taxable year which includes the information described
5 in subsection (b).”.

6 (2) INFORMATION TO BE PROVIDED.—Sub-
7 section (b) of section 6039G is amended to read as
8 follows:

9 “(b) INFORMATION TO BE PROVIDED.—Information
10 required under subsection (a) shall include—

11 “(1) the taxpayer’s TIN,

12 “(2) the mailing address of such individual’s
13 principal foreign residence,

14 “(3) the foreign country, in which such indi-
15 vidual is residing,

16 “(4) the foreign country of which such indi-
17 vidual is a citizen,

18 “(5) information detailing the income, assets,
19 and liabilities of such individual,

20 “(6) the number of days that the individual was
21 present in the United States during the taxable year,
22 and

23 “(7) such other information as the Secretary
24 may prescribe.”.

1 (3) INCREASE IN PENALTY.—Subsection (d) of
2 section 6039G is amended to read as follows:

3 “(d) PENALTY.—If—

4 “(1) an individual is required to file a state-
5 ment under subsection (a) for any taxable year, and

6 “(2) fails to file such a statement with the Sec-
7 retary on or before the date such statement is re-
8 quired to be filed or fails to include all the informa-
9 tion required to be shown on the statement or in-
10 cludes incorrect information,

11 such individual shall pay a penalty of \$5,000 unless it is
12 shown that such failure is due to reasonable cause and
13 not to willful neglect.”.

14 (4) CONFORMING AMENDMENT.—Section
15 6039G is amended by striking subsections (c), (f),
16 and (g) and by redesignating subsections (d) and (e)
17 as subsection (c) and (d), respectively.

18 (f) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to individuals who expatriate after
20 February 27, 2003.

Calendar No. 113

108TH CONGRESS
1ST SESSION

S. 1149

[Report No. 108-54]

A BILL

To amend the Internal Revenue Code of 1986 to provide energy tax incentives, and for other purposes.

MAY 23, 2003

Read twice and placed on the calendar