

Public Law 109–222
109th Congress

An Act

To provide for reconciliation pursuant to section 201(b) of the concurrent resolution
on the budget for fiscal year 2006.

May 17, 2006
[H.R. 4297]

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

SECTION 1. SHORT TITLE, ETC.

(a) **SHORT TITLE.**—This Act may be cited as the “Tax Increase
Prevention and Reconciliation Act of 2005”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly
provided, whenever in this Act an amendment or repeal is expressed
in terms of an amendment to, or repeal of, a section or other
provision, the reference shall be considered to be made to a section
or other provision of the Internal Revenue Code of 1986.

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

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Sec. 102. Capital gains and dividends rates.
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- Sec. 505. Treatment of distributions attributable to FIRPTA gains.
- Sec. 506. Prevention of avoidance of tax on investments of foreign persons in United States real property through wash sale transactions.
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TITLE I—EXTENSION AND MODIFICATION OF CERTAIN PROVISIONS

SEC. 101. INCREASED EXPENSING FOR SMALL BUSINESS.

26 USC 179. Subsections (b)(1), (b)(2), (b)(5), (c)(2), and (d)(1)(A)(ii) of section 179 (relating to election to expense certain depreciable business assets) are each amended by striking “2008” and inserting “2010”.

SEC. 102. CAPITAL GAINS AND DIVIDENDS RATES.

26 USC 1 note. Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking “December 31, 2008” and inserting “December 31, 2010”.

SEC. 103. CONTROLLED FOREIGN CORPORATIONS.

(a) SUBPART F EXCEPTION FOR ACTIVE FINANCING.—

(1) **EXEMPT INSURANCE INCOME.**—Paragraph (10) of section 953(e) (relating to application) is amended—

(A) by striking “January 1, 2007” and inserting “January 1, 2009”, and

(B) by striking “December 31, 2006” and inserting “December 31, 2008”.

(2) **EXCEPTION TO TREATMENT AS FOREIGN PERSONAL HOLDING COMPANY INCOME.**—Paragraph (9) of section 954(h) (relating to application) is amended by striking “January 1, 2007” and inserting “January 1, 2009”.

(b) LOOK-THROUGH TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER THE FOREIGN PERSONAL HOLDING COMPANY RULES.—

(1) **IN GENERAL.**—Subsection (c) of section 954 (relating to foreign personal holding company income) is amended by adding at the end the following new paragraph:

“(6) **LOOK-THRU RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS.**—

“(A) **IN GENERAL.**—For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is not subpart F income. For

purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph.

“(B) APPLICATION.—Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2009, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

26 USC 954 note.

TITLE II—OTHER PROVISIONS

SEC. 201. CLARIFICATION OF TAXATION OF CERTAIN SETTLEMENT FUNDS.

(a) IN GENERAL.—Subsection (g) of section 468B (relating to clarification of taxation of certain funds) is amended to read as follows:

26 USC 468B.

“(g) CLARIFICATION OF TAXATION OF CERTAIN FUNDS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. The Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

Regulations.

“(2) EXEMPTION FROM TAX FOR CERTAIN SETTLEMENT FUNDS.—An escrow account, settlement fund, or similar fund shall be treated as beneficially owned by the United States and shall be exempt from taxation under this subtitle if—

“(A) it is established pursuant to a consent decree entered by a judge of a United States District Court,

“(B) it is created for the receipt of settlement payments as directed by a government entity for the sole purpose of resolving or satisfying one or more claims asserting liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980,

“(C) the authority and control over the expenditure of funds therein (including the expenditure of contributions thereto and any net earnings thereon) is with such government entity, and

“(D) upon termination, any remaining funds will be disbursed to such government entity for use in accordance with applicable law.

For purposes of this paragraph, the term ‘government entity’ means the United States, any State or political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of any of the foregoing.

“(3) TERMINATION.—Paragraph (2) shall not apply to accounts and funds established after December 31, 2010.”.

26 USC 468B
note.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to accounts and funds established after the date of the enactment of this Act.

SEC. 202. MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.

26 USC 355.

Subsection (b) of section 355 (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

“(3) **SPECIAL RULE RELATING TO ACTIVE BUSINESS REQUIREMENT.**—

“(A) **IN GENERAL.**—In the case of any distribution made after the date of the enactment of this paragraph and on or before December 31, 2010, a corporation shall be treated as meeting the requirement of paragraph (2)(A) if and only if such corporation is engaged in the active conduct of a trade or business.

“(B) **AFFILIATED GROUP RULE.**—For purposes of subparagraph (A), all members of such corporation’s separate affiliated group shall be treated as one corporation. For purposes of the preceding sentence, a corporation’s separate affiliated group is the affiliated group which would be determined under section 1504(a) if such corporation were the common parent and section 1504(b) did not apply.

“(C) **TRANSITION RULE.**—Subparagraph (A) shall not apply to any distribution pursuant to a transaction which is—

“(i) made pursuant to an agreement which was binding on the date of the enactment of this paragraph and at all times thereafter,

“(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

“(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

The preceding sentence shall not apply if the distributing corporation elects not to have such sentence apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

“(D) **SPECIAL RULE FOR CERTAIN PRE-ENACTMENT DISTRIBUTIONS.**—For purposes of determining the continued qualification under paragraph (2)(A) of distributions made on or before the date of the enactment of this paragraph as a result of an acquisition, disposition, or other restructuring after such date and on or before December 31, 2010, such distribution shall be treated as made on the date of such acquisition, disposition, or restructuring for purposes of applying subparagraphs (A) through (C) of this paragraph.”.

SEC. 203. VETERANS’ MORTGAGE BONDS.

(a) **EXPANSION OF DEFINITION OF VETERANS ELIGIBLE FOR STATE HOME LOAN PROGRAMS FUNDED BY QUALIFIED VETERANS’ MORTGAGE BONDS.**—

(1) **IN GENERAL.**—Paragraph (4) of section 143(l) (defining qualified veteran) is amended to read as follows:

“(4) QUALIFIED VETERAN.—For purposes of this subsection, the term ‘qualified veteran’ means—

“(A) in the case of the States of Alaska, Oregon, and Wisconsin, any veteran—

“(i) who served on active duty, and

“(ii) who applied for the financing before the date 25 years after the last date on which such veteran left active service, and

“(B) in the case of any other State, any veteran—

“(i) who served on active duty at some time before January 1, 1977, and

“(ii) who applied for the financing before the later of—

“(I) the date 30 years after the last date on which such veteran left active service, or

“(II) January 31, 1985.”.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to bonds issued on or after the date of the enactment of this Act.

26 USC 143 note.

(b) REVISION OF STATE VETERANS LIMIT.—

(1) IN GENERAL.—Subparagraph (B) of section 143(l)(3) (relating to volume limitation) is amended—

26 USC 143.

(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and moving such clauses 2 ems to the right,

(B) by amending the matter preceding subclause (I), as designated by subparagraph (A), to read as follows:

“(B) STATE VETERANS LIMIT.—

“(i) IN GENERAL.—In the case of any State to which clause (ii) does not apply, the State veterans limit for any calendar year is the amount equal to—”, and

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

“(ii) ALASKA, OREGON, AND WISCONSIN.—In the case of the following States, the State veterans limit for any calendar year is the amount equal to—

“(I) \$25,000,000 for the State of Alaska,

“(II) \$25,000,000 for the State of Oregon, and

“(III) \$25,000,000 for the State of Wisconsin.

“(iii) PHASEIN.—In the case of calendar years beginning before 2010, clause (ii) shall be applied by substituting for each of the dollar amounts therein an amount equal to the applicable percentage of such dollar amount. For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

Applicability.

“For Calendar Year:	Applicable percentage is:
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent.

“(iv) TERMINATION.—The State veterans limit for the States specified in clause (ii) for any calendar year after 2010 is zero.”.

26 USC 143 note.

(2) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to allocations of State volume limit after April 5, 2006.

SEC. 204. CAPITAL GAINS TREATMENT FOR CERTAIN SELF-CREATED MUSICAL WORKS.

26 USC 1221.

(a) **IN GENERAL.**—Subsection (b) of section 1221 (relating to capital asset defined) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) **SALE OR EXCHANGE OF SELF-CREATED MUSICAL WORKS.**—At the election of the taxpayer, paragraphs (1) and (3) of subsection (a) shall not apply to musical compositions or copyrights in musical works sold or exchanged before January 1, 2011, by a taxpayer described in subsection (a)(3).”.

(b) **LIMITATION ON CHARITABLE CONTRIBUTIONS.**—Subparagraph (A) of section 170(e)(1) is amended by inserting “(determined without regard to section 1221(b)(3))” after “long-term capital gain”.

26 USC 170 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to sales and exchanges in taxable years beginning after the date of the enactment of this Act.

SEC. 205. VESSEL TONNAGE LIMIT.

26 USC 1355 note.

(a) **IN GENERAL.**—Paragraph (4) of section 1355(a) (relating to qualifying vessel) is amended by inserting “(6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011)” after “10,000”.

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

SEC. 206. MODIFICATION OF SPECIAL ARBITRAGE RULE FOR CERTAIN FUNDS.

In the case of bonds issued after the date of the enactment of this Act and before August 31, 2009—

(1) the requirement of paragraph (1) of section 648 of the Deficit Reduction Act of 1984 (98 Stat. 941) shall be treated as met with respect to the securities or obligations referred to in such section if such securities or obligations are held in a fund the annual distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue, and

Applicability.

(2) paragraph (3) of such section shall be applied by substituting “distributions from” for “the investment earnings of” both places it appears.

SEC. 207. AMORTIZATION OF EXPENSES INCURRED IN CREATING OR ACQUIRING MUSIC OR MUSIC COPYRIGHTS.

(a) **IN GENERAL.**—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:

“(8) **SPECIAL RULES FOR CERTAIN MUSICAL WORKS AND COPYRIGHTS.**—

“(A) **IN GENERAL.**—If an election is in effect under this paragraph for any taxable year, then, notwithstanding paragraph (1), any expense which—

“(i) is paid or incurred by the taxpayer in creating or acquiring any applicable musical property placed in service during the taxable year, and

“(ii) is otherwise properly chargeable to capital account,

shall be amortized ratably over the 5-year period beginning with the month in which the property was placed in service. The preceding sentence shall not apply to any expense which, without regard to this paragraph, would not be allowable as a deduction.

“(B) EXCLUSIVE METHOD.—Except as provided in this paragraph, no depreciation or amortization deduction shall be allowed with respect to any expense to which subparagraph (A) applies.

“(C) APPLICABLE MUSICAL PROPERTY.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘applicable musical property’ means any musical composition (including any accompanying words), or any copyright with respect to a musical composition, which is property to which this subsection applies without regard to this paragraph.

“(ii) EXCEPTIONS.—Such term shall not include any property—

“(I) with respect to which expenses are treated as qualified creative expenses to which section 263A(h) applies,

“(II) to which a simplified procedure established under section 263A(j)(2) applies, or

“(III) which is an amortizable section 197 intangible (as defined in section 197(c)).

“(D) ELECTION.—An election under this paragraph shall be made at such time and in such form as the Secretary may prescribe and shall apply to all applicable musical property placed in service during the taxable year for which the election applies.

Applicability.

“(E) TERMINATION.—An election may not be made under this paragraph for any taxable year beginning after December 31, 2010.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred with respect to property placed in service in taxable years beginning after December 31, 2005.

26 USC 167 note.

SEC. 208. MODIFICATION OF EFFECTIVE DATE OF DISREGARD OF CERTAIN CAPITAL EXPENDITURES FOR PURPOSES OF QUALIFIED SMALL ISSUE BONDS.

(a) IN GENERAL.—Section 144(a)(4)(G) is amended by striking “September 30, 2009” and inserting “December 31, 2006”.

(b) CONFORMING AMENDMENT.—Section 144(a)(4)(F) is amended by striking “September 30, 2009” and inserting “December 31, 2006”.

SEC. 209. MODIFICATION OF TREATMENT OF LOANS TO QUALIFIED CONTINUING CARE FACILITIES.

(a) IN GENERAL.—Section 7872 is amended by redesignating subsection (h) as subsection (i) and inserting after subsection (g) the following new subsection:

“(h) EXCEPTION FOR LOANS TO QUALIFIED CONTINUING CARE FACILITIES.—

“(1) IN GENERAL.—This section shall not apply for any calendar year to any below-market loan owed by a facility which on the last day of such year is a qualified continuing care facility, if such loan was made pursuant to a continuing care contract and if the lender (or the lender’s spouse) attains age 62 before the close of such year.

“(2) CONTINUING CARE CONTRACT.—For purposes of this section, the term ‘continuing care contract’ means a written contract between an individual and a qualified continuing care facility under which—

“(A) the individual or individual’s spouse may use a qualified continuing care facility for their life or lives,

“(B) the individual or individual’s spouse will be provided with housing, as appropriate for the health of such individual or individual’s spouse—

“(i) in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care), and

“(ii) in an assisted living facility or a nursing facility, as is available in the continuing care facility, and

“(C) the individual or individual’s spouse will be provided assisted living or nursing care as the health of such individual or individual’s spouse requires, and as is available in the continuing care facility.

Guidelines.

The Secretary shall issue guidance which limits such term to contracts which provide only facilities, care, and services described in this paragraph.

“(3) QUALIFIED CONTINUING CARE FACILITY.—

“(A) IN GENERAL.—For purposes of this section, the term ‘qualified continuing care facility’ means 1 or more facilities—

“(i) which are designed to provide services under continuing care contracts,

“(ii) which include an independent living unit, plus an assisted living or nursing facility, or both, and

“(iii) substantially all of the independent living unit residents of which are covered by continuing care contracts.

“(B) NURSING HOMES EXCLUDED.—The term ‘qualified continuing care facility’ shall not include any facility which is of a type which is traditionally considered a nursing home.

“(4) TERMINATION.—This subsection shall not apply to any calendar year after 2010.”.

(b) CONFORMING AMENDMENTS.—

26 USC 7872.

(1) Section 7872(g) is amended by adding at the end the following new paragraph:

“(6) SUSPENSION OF APPLICATION.—Paragraph (1) shall not apply for any calendar year to which subsection (h) applies.”.

(2) Section 142(d)(2)(B) is amended by striking “Section 7872(g)” and inserting “Subsections (g) and (h) of section 7872”.

26 USC 142 note.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date.

TITLE III—ALTERNATIVE MINIMUM TAX RELIEF

SEC. 301. INCREASE IN ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT FOR 2006.

(a) **IN GENERAL.**—Section 55(d)(1) (relating to exemption amount for taxpayers other than corporations) is amended—

(1) by striking “\$58,000” and all that follows through “2005” in subparagraph (A) and inserting “\$62,550 in the case of taxable years beginning in 2006”, and

(2) by striking “\$40,250” and all that follows through “2005” in subparagraph (B) and inserting “\$42,500 in the case of taxable years beginning in 2006”.

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

SEC. 302. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX LIABILITY.

(a) **IN GENERAL.**—Paragraph (2) of section 26(a) is amended—

(1) by striking “2005” in the heading thereof and inserting “2006”, and

(2) by striking “or 2005” and inserting “2005, or 2006”.

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

TITLE IV—CORPORATE ESTIMATED TAX PROVISIONS

SEC. 401. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

Notwithstanding section 6655 of the Internal Revenue Code of 1986—

(1) in the case of a corporation with assets of not less than \$1,000,000,000 (determined as of the end of the preceding taxable year)—

(A) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2006 shall be 105 percent of such amount,

(B) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2012 shall be 106.25 percent of such amount,

(C) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2013 shall be 100.75 percent of such amount, and

(D) the amount of the next required installment after an installment referred to in subparagraph (A), (B), or (C) shall be appropriately reduced to reflect the amount of the increase by reason of such subparagraph,

(2) 20.5 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2010 shall not be due until October 1, 2010, and

26 USC 55.

26 USC 55 note.

26 USC 26 note.

26 USC 6655
note.

(3) 27.5 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2011 shall not be due until October 1, 2011.

TITLE V—REVENUE OFFSET PROVISIONS

SEC. 501. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

26 USC 163.

(a) **IN GENERAL.**—Section 163(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) **TREATMENT OF CORPORATE PARTNERS.**—Except to the extent provided by regulations, in applying this subsection to a corporation which owns (directly or indirectly) an interest in a partnership—

“(A) such corporation’s distributive share of interest income paid or accrued to such partnership shall be treated as interest income paid or accrued to such corporation,

“(B) such corporation’s distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

“(C) such corporation’s share of the liabilities of such partnership shall be treated as liabilities of such corporation.”.

(b) **ADDITIONAL REGULATORY AUTHORITY.**—Section 163(j)(9) (relating to regulations), as redesignated by subsection (a), is amended by striking “and” at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting “, and”, and by adding at the end the following new subparagraph:

“(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership’s interest income or interest expense.”.

26 USC 163 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

SEC. 502. REPORTING OF INTEREST ON TAX-EXEMPT BONDS.

(a) **IN GENERAL.**—Section 6049(b)(2) (relating to exceptions) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(b) **CONFORMING AMENDMENT.**—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking “subparagraph (C)” and inserting “subparagraph (B)”.

26 USC 6049
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to interest paid after December 31, 2005.

SEC. 503. 5-YEAR AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR CERTAIN MAJOR INTEGRATED OIL COMPANIES.

(a) **IN GENERAL.**—Section 167(h) (relating to amortization of geological and geophysical expenditures) is amended by adding at the end the following new paragraph:

“(5) SPECIAL RULE FOR MAJOR INTEGRATED OIL COMPANIES.—

“(A) IN GENERAL.—In the case of a major integrated oil company, paragraphs (1) and (4) shall be applied by substituting ‘5-year’ for ‘24 month’.” Applicability.

“(B) MAJOR INTEGRATED OIL COMPANY.—For purposes of this paragraph, the term ‘major integrated oil company’ means, with respect to any taxable year, a producer of crude oil—

“(i) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year,

“(ii) which had gross receipts in excess of \$1,000,000,000 for its last taxable year ending during calendar year 2005, and

“(iii) to which subsection (c) of section 613A does not apply by reason of paragraph (4) of section 613A(d), determined—

“(I) by substituting ‘15 percent’ for ‘5 percent’ each place it occurs in paragraph (3) of section 613A(d), and

“(II) without regard to whether subsection (c) of section 613A does not apply by reason of paragraph (2) of section 613A(d).

For purposes of clauses (i) and (ii), all persons treated as a single employer under subsections (a) and (b) of section 52 shall be treated as 1 person and, in case of a short taxable year, the rule under section 448(c)(3)(B) shall apply.” Applicability.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act. 26 USC 167 note.

SEC. 504. APPLICATION OF FIRPTA TO REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Subclause (II) of section 897(h)(4)(A)(i) (defining qualified investment entity) is amended by inserting “which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company” after “regulated investment company”. 26 USC 897.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the provisions of section 411 of the American Jobs Creation Act of 2004 to which it relates. 26 USC 897 note.

SEC. 505. TREATMENT OF DISTRIBUTIONS ATTRIBUTABLE TO FIRPTA GAINS.

(a) QUALIFIED INVESTMENT ENTITY.—

(1) IN GENERAL.—Section 897(h)(1) is amended—

(A) by striking “a nonresident alien individual or a foreign corporation” in the first sentence and inserting “a nonresident alien individual, a foreign corporation, or other qualified investment entity”,

(B) by striking “such nonresident alien individual or foreign corporation” in the first sentence and inserting “such nonresident alien individual, foreign corporation, or other qualified investment entity”, and

(C) by striking the second sentence and inserting the following new sentence: “Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien individual or a foreign corporation with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if such individual or corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of such distribution.”.

26 USC 897.

(2) EXCEPTION TO TERMINATION OF APPLICATION OF SECTION 897 RULES TO REGULATED INVESTMENT COMPANIES.—Clause (ii) of section 897(h)(4)(A) is amended by adding at the end the following new sentence: “Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.”.

(b) WITHHOLDING ON DISTRIBUTIONS TREATED AS GAIN FROM UNITED STATES REAL PROPERTY INTERESTS.—Section 1445(e) (relating to special rules for distributions, etc. by corporations, partnerships, trusts, or estates) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

“(6) DISTRIBUTIONS BY REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If any portion of a distribution from a qualified investment entity (as defined in section 897(h)(4)) to a nonresident alien individual or a foreign corporation is treated under section 897(h)(1) as gain realized by such individual or corporation from the sale or exchange of a United States real property interest, the qualified investment entity shall deduct and withhold under subsection (a) a tax equal to 35 percent (or, to the extent provided in regulations, 15 percent (20 percent in the case of taxable years beginning after December 31, 2010)) of the amount so treated.”.

(c) TREATMENT OF CERTAIN DISTRIBUTIONS AS DIVIDENDS.—

(1) IN GENERAL.—Section 852(b)(3) (relating to capital gains) is amended by adding at the end the following new subparagraph:

“(E) CERTAIN DISTRIBUTIONS.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount of such distribution which would be included in computing long-term capital gains for the shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

“(i) shall not be included in computing such shareholder’s long-term capital gains, and

“(ii) shall be included in such shareholder’s gross income as a dividend from the regulated investment company.”.

(2) CONFORMING AMENDMENT.—Section 871(k)(2) (relating to short-term capital gain dividends) is amended by adding at the end the following new subparagraph:

“(E) CERTAIN DISTRIBUTIONS.—In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

“(i) shall not be treated as a short-term capital gain dividend, and

“(ii) shall be included in such shareholder’s gross income as a dividend from the regulated investment company.”.

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before the date of the enactment of this Act if such amount was not otherwise required to be withheld under any such section as in effect before such amendments. 26 USC 852 note.

SEC. 506. PREVENTION OF AVOIDANCE OF TAX ON INVESTMENTS OF FOREIGN PERSONS IN UNITED STATES REAL PROPERTY THROUGH WASH SALE TRANSACTIONS.

(a) IN GENERAL.—Section 897(h) (relating to special rules for certain investment entities) is amended by adding at the end the following new paragraph: 26 USC 897.

“(5) TREATMENT OF CERTAIN WASH SALE TRANSACTIONS.—

“(A) IN GENERAL.—If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

“(B) APPLICABLE WASH SALES TRANSACTION.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘applicable wash sales transaction’ means any transaction (or series of transactions) under which a nonresident alien individual, foreign corporation, or qualified investment entity—

“(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding the ex-dividend date of a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

“(II) acquires, or enters into a contract or option to acquire, a substantially identical interest in such entity during the 61-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual, foreign corporation, or qualified investment entity shall be treated as having acquired any interest acquired by a person related (within the meaning of section 267(b) or 707(b)(1)) to the individual, corporation, or entity, and any interest which such person has entered into any contract or option to acquire.

“(ii) APPLICATION TO SUBSTITUTE DIVIDEND AND SIMILAR PAYMENTS.—Subparagraph (A) shall apply to—

“(I) any substitute dividend payment (within the meaning of section 861), or

“(II) any other similar payment specified in regulations which the Secretary determines necessary to prevent avoidance of the purposes of this paragraph.

The portion of any such payment treated by the taxpayer as gain from the sale or exchange of a United States real property interest under subparagraph (A) by reason of this clause shall be equal to the portion of the distribution such payment is in lieu of which would have been so treated but for the transaction giving rise to such payment.

“(iii) EXCEPTION WHERE DISTRIBUTION ACTUALLY RECEIVED.—A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual, foreign corporation, or qualified investment entity receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

“(iv) EXCEPTION FOR CERTAIN PUBLICLY TRADED STOCK.—A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual, foreign corporation, or qualified investment entity did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).”.

26 USC 1445.

(b) NO WITHHOLDING REQUIRED.—Section 1445(b) (relating to exemptions) is amended by adding at the end the following new paragraph:

“(8) APPLICABLE WASH SALES TRANSACTIONS.—No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(5).”.

26 USC 897 note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after the date of the enactment of this Act.

SEC. 507. SECTION 355 NOT TO APPLY TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT COMPANIES.

(a) IN GENERAL.—

Section 355 (relating to distributions of stock and securities of a controlled corporation) is amended by adding at the end the following new subsection:

“(g) SECTION NOT TO APPLY TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT CORPORATIONS.—

“(1) IN GENERAL.—This section (and so much of section 356 as relates to this section) shall not apply to any distribution which is part of a transaction if—

“(A) either the distributing corporation or controlled corporation is, immediately after the transaction, a disqualified investment corporation, and

“(B) any person holds, immediately after the transaction, a 50-percent or greater interest in any disqualified investment corporation, but only if such person did not hold such an interest in such corporation immediately before the transaction.

“(2) DISQUALIFIED INVESTMENT CORPORATION.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘disqualified investment corporation’ means any distributing or controlled corporation if the fair market value of the investment assets of the corporation is—

“(i) in the case of distributions after the end of the 1-year period beginning on the date of the enactment of this subsection, $\frac{2}{3}$ or more of the fair market value of all assets of the corporation, and

“(ii) in the case of distributions during such 1-year period, $\frac{3}{4}$ or more of the fair market value of all assets of the corporation.

“(B) INVESTMENT ASSETS.—

“(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term ‘investment assets’ means—

“(I) cash,

“(II) any stock or securities in a corporation,

“(III) any interest in a partnership,

“(IV) any debt instrument or other evidence of indebtedness,

“(V) any option, forward or futures contract, notional principal contract, or derivative,

“(VI) foreign currency, or

“(VII) any similar asset.

“(ii) EXCEPTION FOR ASSETS USED IN ACTIVE CONDUCT OF CERTAIN FINANCIAL TRADES OR BUSINESSES.—Such term shall not include any asset which is held for use in the active and regular conduct of—

“(I) a lending or finance business (within the meaning of section 954(h)(4)),

“(II) a banking business through a bank (as defined in section 581), a domestic building and loan association (within the meaning of section 7701(a)(19)), or any similar institution specified by the Secretary, or

“(III) an insurance business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

Applicability.

This clause shall only apply with respect to any business if substantially all of the income of the business is derived from persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the person conducting the business.

“(iii) EXCEPTION FOR SECURITIES MARKED TO MARKET.—Such term shall not include any security (as defined in section 475(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

“(iv) STOCK OR SECURITIES IN A 20-PERCENT CONTROLLED ENTITY.—

“(I) IN GENERAL.—Such term shall not include any stock and securities in, or any asset described in subclause (IV) or (V) of clause (i) issued by, a corporation which is a 20-percent controlled entity with respect to the distributing or controlled corporation.

“(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 20-percent controlled entity.

Applicability.

“(III) 20-PERCENT CONTROLLED ENTITY.—For purposes of this clause, the term ‘20-percent controlled entity’ means, with respect to any distributing or controlled corporation, any corporation with respect to which the distributing or controlled corporation owns directly or indirectly stock meeting the requirements of section 1504(a)(2), except that such section shall be applied by substituting ‘20 percent’ for ‘80 percent’ and without regard to stock described in section 1504(a)(4).

“(v) INTERESTS IN CERTAIN PARTNERSHIPS.—

“(I) IN GENERAL.—Such term shall not include any interest in a partnership, or any debt instrument or other evidence of indebtedness, issued by the partnership, if 1 or more of the trades or businesses of the partnership are (or, without regard to the 5-year requirement under subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation, as the case may be, in determining whether the requirements of subsection (b) are met with respect to the distribution.

“(II) LOOK-THRU RULE.—The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any partnership described in subclause (I).

“(3) 50-PERCENT OR GREATER INTEREST.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘50-percent or greater interest’ has the meaning given such term by subsection (d)(4).

Applicability.

“(B) CONTRIBUTION RULES.—The rules of section 318 shall apply for purposes of determining ownership of stock for purposes of this paragraph.

“(4) TRANSACTION.—For purposes of this subsection, the term ‘transaction’ includes a series of transactions.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out, or prevent the avoidance of, the purposes of this subsection, including regulations—

“(A) to carry out, or prevent the avoidance of, the purposes of this subsection in cases involving—

“(i) the use of related persons, intermediaries, pass-thru entities, options, or other arrangements, and

“(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets,

“(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

“(C) which modify the application of the attribution rules applied for purposes of this subsection.”.

(b) EFFECTIVE DATES.—

26 USC 355 note.

(1) IN GENERAL.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

SEC. 508. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.

(a) STRENGTHENED REASONABLE EXPECTATION REQUIREMENT.—Subparagraph (A) of section 149(f)(2) (relating to reasonable expectation requirement) is amended to read as follows:

26 USC 149.

“(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that—

“(i) as of the close of the 1-year period beginning on the date of issuance of the issue, at least 30 percent of the net proceeds of the issue (as of the close of such period) will have been used directly or indirectly to make or finance loans to ultimate borrowers, and

“(ii) as of the close of the 3-year period beginning on such date of issuance, at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.”.

(b) WRITTEN LOAN COMMITMENT AND REDEMPTION REQUIREMENTS.—Section 149(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively, and by inserting after paragraph (3) the following new paragraphs:

“(4) WRITTEN LOAN COMMITMENT REQUIREMENT.—

“(A) IN GENERAL.—The requirement of this paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 30 percent of the net proceeds of such issue.

“(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any issuer which—

“(i) is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State, or

“(ii) is a State-created entity providing financing for water-infrastructure projects through the federally-sponsored State revolving fund program.

“(5) REDEMPTION REQUIREMENT.—The requirement of this paragraph is met if to the extent that less than the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

“(A) the amount required to be used under such clause, over

“(B) the amount actually used by the close of such period,

to redeem outstanding bonds within 90 days after the end of such period.”

26 USC 148.

(c) ELIMINATION OF DISREGARD OF POOLED BONDS IN DETERMINING ELIGIBILITY FOR SMALL ISSUER EXCEPTION TO ARBITRAGE REBATE.—Section 148(f)(4)(D)(ii) (relating to aggregation of issuers) is amended by striking subclause (II) and by redesignating subclauses (III) and (IV) as subclauses (II) and (III), respectively.

(d) CONFORMING AMENDMENTS.—

(1) Section 149(f)(1) is amended by striking “paragraphs (2) and (3)” and inserting “paragraphs (2), (3), (4), and (5)”.

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking “paragraph (4)(A)” and inserting “paragraph (6)(A)”.

(3) Section 54(l)(2) is amended by striking “section 149(f)(4)(A)” and inserting “section 149(f)(6)(A)”.

26 USC 54 note.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

SEC. 509. PARTIAL PAYMENTS REQUIRED WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) IN GENERAL.—Section 7122 (relating to compromises) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

“(c) RULES FOR SUBMISSION OF OFFERS-IN-COMPROMISE.—

“(1) PARTIAL PAYMENT REQUIRED WITH SUBMISSION.—

“(A) LUMP-SUM OFFERS.—

“(i) IN GENERAL.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of the amount of such offer.

“(ii) LUMP-SUM OFFER-IN-COMPROMISE.—For purposes of this section, the term ‘lump-sum offer-in-compromise’ means any offer of payments made in 5 or fewer installments.

“(B) PERIODIC PAYMENT OFFERS.—

“(i) IN GENERAL.—The submission of any periodic payment offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment.

“(ii) FAILURE TO MAKE INSTALLMENT DURING PENDENCY OF OFFER.—Any failure to make an installment (other than the first installment) due under such offer-in-compromise during the period such offer is being evaluated by the Secretary may be treated by the Secretary as a withdrawal of such offer-in-compromise.

“(2) RULES OF APPLICATION.—

“(A) USE OF PAYMENT.—The application of any payment made under this subsection to the assessed tax or other amounts imposed under this title with respect to such tax may be specified by the taxpayer.

“(B) APPLICATION OF USER FEE.—In the case of any assessed tax or other amounts imposed under this title with respect to such tax which is the subject of an offer-in-compromise to which this subsection applies, such tax or other amounts shall be reduced by any user fee imposed under this title with respect to such offer-in-compromise.

“(C) WAIVER AUTHORITY.—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3).”

(b) ADDITIONAL RULES RELATING TO TREATMENT OF OFFERS.—

(1) UNPROCESSABLE OFFER IF PAYMENT REQUIREMENTS ARE NOT MET.—Paragraph (3) of section 7122(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking “; and” at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting “, and”, and by adding at the end the following new subparagraph:

“(C) any offer-in-compromise which does not meet the requirements of subparagraph (A)(i) or (B)(i), as the case may be, of subsection (c)(1) may be returned to the taxpayer as unprocessable.”

(2) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Section 7122, as amended by subsection (a), is amended by adding at the end the following new subsection:

“(f) DEEMED ACCEPTANCE OF OFFER NOT REJECTED WITHIN CERTAIN PERIOD.—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer. For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in dispute in any judicial proceeding shall not be taken into account in determining the expiration of the 24-month period.”

(c) CONFORMING AMENDMENT.—Section 6159(f) is amended by striking “section 7122(d)” and inserting “section 7122(e)”.

26 USC 6159
note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

SEC. 510. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT'S INCOME.

26 USC 1.

(a) **IN GENERAL.**—Section 1(g)(2)(A) (relating to child to whom subsection applies) is amended by striking “age 14” and inserting “age 18”.

(b) **TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.**—Section 1(g)(4) (relating to net unearned income) is amended by adding at the end the following new subparagraph:

“(C) **TREATMENT OF DISTRIBUTIONS FROM QUALIFIED DISABILITY TRUSTS.**—For purposes of this subsection, in the case of any child who is a beneficiary of a qualified disability trust (as defined in section 642(b)(2)(C)(ii)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.”.

(c) **CONFORMING AMENDMENT.**—Section 1(g)(2) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, and”, and by inserting after subparagraph (B) the following new subparagraph:

“(C) such child does not file a joint return for the taxable year.”.

26 USC 1 note.

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

SEC. 511. IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.

(a) **IN GENERAL.**—Section 3402 is amended by adding at the end the following new subsection:

“(t) **EXTENSION OF WITHHOLDING TO CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.**—

“(1) **GENERAL RULE.**—The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making any payment to any person providing any property or services (including any payment made in connection with a government voucher or certificate program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment.

“(2) **PROPERTY AND SERVICES SUBJECT TO WITHHOLDING.**—Paragraph (1) shall not apply to any payment—

“(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or chapter 3,

“(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section,

“(C) of interest,

“(D) for real property,

“(E) to any governmental entity subject to the requirements of paragraph (1), any tax-exempt entity, or any foreign government,

“(F) made pursuant to a classified or confidential contract described in section 6050M(e)(3),

“(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than \$100,000,000 of such payments annually,

“(H) which is in connection with a public assistance or public welfare program for which eligibility is determined by a needs or income test, and

“(I) to any government employee not otherwise excludable with respect to their services as an employee.

“(3) COORDINATION WITH OTHER SECTIONS.—For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, payments to any person for property or services which are subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2010. 26 USC 3402 note.

SEC. 512. CONVERSIONS TO ROTH IRAS.

(a) REPEAL OF INCOME LIMITATIONS.—

(1) IN GENERAL.—Paragraph (3) of section 408A(c) (relating to limits based on modified adjusted gross income) is amended by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively. 26 USC 408A.

(2) CONFORMING AMENDMENT.—Clause (i) of section 408A(c)(3)(B) (as redesignated by paragraph (1)) is amended by striking “except that—” and all that follows and inserting “except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and”.

(b) ROLLOVERS TO A ROTH IRA FROM AN IRA OTHER THAN A ROTH IRA.—

(1) IN GENERAL.—Clause (iii) of section 408A(d)(3)(A) (relating to rollovers from an IRA other than a Roth IRA) is amended to read as follows:

“(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.”.

(2) CONFORMING AMENDMENTS.—

(A) Clause (i) of section 408A(d)(3)(E) is amended to read as follows:

“(i) ACCELERATION OF INCLUSION.—

“(I) IN GENERAL.—The amount otherwise required to be included in gross income for any taxable year beginning in 2010 or the first taxable year in the 2-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

“(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included

in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 2-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.”.

26 USC 408A.

(B) The heading for section 408A(d)(3)(E) is amended by striking “4-YEAR” and inserting “2-YEAR”.

26 USC 408A note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 513. REPEAL OF FSC/ETI BINDING CONTRACT RELIEF.

26 USC 56 note.

(a) FSC PROVISIONS.—Paragraph (1) of section 5(c) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 is amended by striking “which occurs—” and all that follows and inserting “which occurs before January 1, 2002.”.

26 USC 114 note.

(b) ETI PROVISIONS.—Section 101 of the American Jobs Creation Act of 2004 is amended by striking subsection (f).

26 USC 56 note.

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

SEC. 514. ONLY WAGES ATTRIBUTABLE TO DOMESTIC PRODUCTION TAKEN INTO ACCOUNT IN DETERMINING DEDUCTION FOR DOMESTIC PRODUCTION.

(a) IN GENERAL.—Paragraph (2) of section 199(b) (relating to W-2 wages) is amended to read as follows:

“(2) W-2 WAGES.—For purposes of this section—

“(A) IN GENERAL.—The term ‘W-2 wages’ means, with respect to any person for any taxable year of such person, the sum of the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

“(B) LIMITATION TO WAGES ATTRIBUTABLE TO DOMESTIC PRODUCTION.—Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1).

“(C) RETURN REQUIREMENT.—Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.”.

(b) SIMPLIFICATION OF RULES FOR DETERMINING W-2 WAGES OF PARTNERS AND S CORPORATION SHAREHOLDERS.—

(1) IN GENERAL.—Clause (iii) of section 199(d)(1)(A) is amended to read as follows:

“(iii) each partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person’s allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary).”.

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 199(a) is amended by striking “and subsection (d)(1)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 199 note.

SEC. 515. MODIFICATION OF EXCLUSION FOR CITIZENS LIVING ABROAD.

(a) **INFLATION ADJUSTMENT OF FOREIGN EARNED INCOME LIMITATION.**—Clause (ii) of section 911(b)(2)(D) (relating to inflation adjustment) is amended— 26 USC 911.

- (1) by striking “2007” and inserting “2005”, and
- (2) by striking “2006” in subclause (II) and inserting “2004”.

(b) **MODIFICATION OF HOUSING COST AMOUNT.**—

(1) **MODIFICATION OF HOUSING COST FLOOR.**—Clause (i) of section 911(c)(1)(B) is amended to read as follows:

“(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by”.

(2) **MAXIMUM AMOUNT OF EXCLUSION.**—

(A) **IN GENERAL.**—Subparagraph (A) of section 911(c)(1) is amended by inserting “to the extent such expenses do not exceed the amount determined under paragraph (2)” after “the taxable year”.

(B) **LIMITATION.**—Subsection (c) of section 911 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

“(2) **LIMITATION.**—

“(A) **IN GENERAL.**—The amount determined under this paragraph is an amount equal to the product of—

“(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

“(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

“(B) **REGULATIONS.**—The Secretary may issue regulations or other guidance providing for the adjustment of the percentage under subparagraph (A)(i) on the basis of geographic differences in housing costs relative to housing costs in the United States.”.

(C) **CONFORMING AMENDMENTS.**—

(i) Section 911(d)(4) is amended by striking “and (c)(1)(B)(ii)” and inserting “, (c)(1)(B)(ii), and (c)(2)(A)(ii)”.

(ii) Section 911(d)(7) is amended by striking “subsection (c)(3)” and inserting “subsection (c)(4)”.

(c) **RATES OF TAX APPLICABLE TO NONEXCLUDED INCOME.**—Section 911 (relating to exclusion of certain income of citizens and residents of the United States living abroad) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **DETERMINATION OF TAX LIABILITY ON NONEXCLUDED AMOUNTS.**—For purposes of this chapter, if any amount is excluded

from the gross income of a taxpayer under subsection (a) for any taxable year, then, notwithstanding section 1 or 55—

“(1) the tax imposed by section 1 on the taxpayer for such taxable year shall be equal to the excess (if any) of—

“(A) the tax which would be imposed by section 1 for the taxable year if the taxpayer’s taxable income were increased by the amount excluded under subsection (a) for the taxable year, over

“(B) the tax which would be imposed by section 1 for the taxable year if the taxpayer’s taxable income were equal to the amount excluded under subsection (a) for the taxable year, and

“(2) the tentative minimum tax under section 55 for such taxable year shall be equal to the excess (if any) of—

“(A) the amount which would be such tentative minimum tax for the taxable year if the taxpayer’s taxable excess were increased by the amount excluded under subsection (a) for the taxable year, over

“(B) the amount which would be such tentative minimum tax for the taxable year if the taxpayer’s taxable excess were equal to the amount excluded under subsection (a) for the taxable year.

For purposes of this subsection, the amount excluded under subsection (a) shall be reduced by the aggregate amount of any deductions or exclusions disallowed under subsection (d)(6) with respect to such excluded amount.”

26 USC 911 note.

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

SEC. 516. TAX INVOLVEMENT OF ACCOMMODATION PARTIES IN TAX SHELTER TRANSACTIONS.

(a) IMPOSITION OF EXCISE TAX.—

(1) IN GENERAL.—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by adding at the end the following new subchapter:

“Subchapter F—Tax Shelter Transactions

“Sec. 4965. Excise tax on certain tax-exempt entities entering into prohibited tax shelter transactions.

“SEC. 4965. EXCISE TAX ON CERTAIN TAX-EXEMPT ENTITIES ENTERING INTO PROHIBITED TAX SHELTER TRANSACTIONS.

“(a) BEING A PARTY TO AND APPROVAL OF PROHIBITED TRANSACTIONS.—

“(1) TAX-EXEMPT ENTITY.—

“(A) IN GENERAL.—If a transaction is a prohibited tax shelter transaction at the time any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) becomes a party to the transaction, such entity shall pay a tax for the taxable year in which the entity becomes such a party and any subsequent taxable year in the amount determined under subsection (b)(1).

“(B) POST-TRANSACTION DETERMINATION.—If any tax-exempt entity described in paragraph (1), (2), or (3) of subsection (c) is a party to a subsequently listed transaction at any time during a taxable year, such entity shall pay

a tax for such taxable year in the amount determined under subsection (b)(1).

“(2) ENTITY MANAGER.—If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

“(b) AMOUNT OF TAX.—

“(1) ENTITY.—In the case of a tax-exempt entity—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of the tax imposed under subsection (a)(1) with respect to any transaction for a taxable year shall be an amount equal to the product of the highest rate of tax under section 11, and the greater of—

“(i) the entity’s net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to such transaction) for such taxable year which—

“(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), is attributable to such transaction, or

“(II) in the case of a subsequently listed transaction, is attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or

“(ii) 75 percent of the proceeds received by the entity for the taxable year which—

“(I) in the case of a prohibited tax shelter transaction (other than a subsequently listed transaction), are attributable to such transaction, or

“(II) in the case of a subsequently listed transaction, are attributable to such transaction and which are properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

“(B) INCREASE IN TAX FOR CERTAIN KNOWING TRANSACTIONS.—In the case of a tax-exempt entity which knew, or had reason to know, a transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—

“(i) 100 percent of the entity’s net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

“(ii) 75 percent of the proceeds received by the entity for the taxable year which are attributable to the prohibited tax shelter transaction.

This subparagraph shall not apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of the enactment of this section.

“(2) ENTITY MANAGER.—In the case of each entity manager, the amount of the tax imposed under subsection (a)(2) shall be \$20,000 for each approval (or other act causing participation) described in subsection (a)(2).

“(c) TAX-EXEMPT ENTITY.—For purposes of this section, the term ‘tax-exempt entity’ means an entity which is—

“(1) described in section 501(c) or 501(d),

“(2) described in section 170(c) (other than the United States),

“(3) an Indian tribal government (within the meaning of section 7701(a)(40)),

“(4) described in paragraph (1), (2), or (3) of section 4979(e),

“(5) a program described in section 529,

“(6) an eligible deferred compensation plan described in section 457(b) which is maintained by an employer described in section 4457(e)(1)(A), or

“(7) an arrangement described in section 4973(a).

“(d) ENTITY MANAGER.—For purposes of this section, the term ‘entity manager’ means—

“(1) in the case of an entity described in paragraph (1), (2), or (3) of subsection (c)—

“(A) the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and

“(B) with respect to any act, the person having authority or responsibility with respect to such act, and

“(2) in the case of an entity described in paragraph (4), (5), (6), or (7) of subsection (c), the person who approves or otherwise causes the entity to be a party to the prohibited tax shelter transaction.

“(e) PROHIBITED TAX SHELTER TRANSACTION; SUBSEQUENTLY LISTED TRANSACTION.—For purposes of this section—

“(1) PROHIBITED TAX SHELTER TRANSACTION.—

“(A) IN GENERAL.—The term ‘prohibited tax shelter transaction’ means—

“(i) any listed transaction, and

“(ii) any prohibited reportable transaction.

“(B) LISTED TRANSACTION.—The term ‘listed transaction’ has the meaning given such term by section 6707A(c)(2).

“(C) PROHIBITED REPORTABLE TRANSACTION.—The term ‘prohibited reportable transaction’ means any confidential transaction or any transaction with contractual protection (as defined under regulations prescribed by the Secretary) which is a reportable transaction (as defined in section 6707A(c)(1)).

“(2) SUBSEQUENTLY LISTED TRANSACTION.—The term ‘subsequently listed transaction’ means any transaction to which a tax-exempt entity is a party and which is determined by the Secretary to be a listed transaction at any time after

the entity has become a party to the transaction. Such term shall not include a transaction which is a prohibited reportable transaction at the time the entity became a party to the transaction.

“(f) REGULATORY AUTHORITY.—The Secretary is authorized to promulgate regulations which provide guidance regarding the determination of the allocation of net income or proceeds of a tax-exempt entity attributable to a transaction to various periods, including before and after the listing of the transaction or the date which is 90 days after the date of the enactment of this section.

“(g) COORDINATION WITH OTHER TAXES AND PENALTIES.—The tax imposed by this section is in addition to any other tax, addition to tax, or penalty imposed under this title.”

(2) CONFORMING AMENDMENT.—The table of subchapters for chapter 42 is amended by adding at the end the following new item:

“SUBCHAPTER F. TAX SHELTER TRANSACTIONS.”

(b) DISCLOSURE REQUIREMENTS.—

(1) DISCLOSURE BY ENTITY TO THE INTERNAL REVENUE SERVICE.—

(A) IN GENERAL.—Section 6033(a) (relating to organizations required to file) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

26 USC 6033.

“(2) BEING A PARTY TO CERTAIN REPORTABLE TRANSACTIONS.—Every tax-exempt entity described in section 4965(c) shall file (in such form and manner and at such time as determined by the Secretary) a disclosure of—

“(A) such entity’s being a party to any prohibited tax shelter transaction (as defined in section 4965(e)), and

“(B) the identity of any other party to such transaction which is known by such tax-exempt entity.”

(B) CONFORMING AMENDMENT.—Section 6033(a)(1) is amended by striking “paragraph (2)” and inserting “paragraph (3)”.

(2) DISCLOSURE BY OTHER TAXPAYERS TO THE TAX-EXEMPT ENTITY.—Section 6011 (relating to general requirement of return, statement, or list) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) DISCLOSURE OF REPORTABLE TRANSACTION TO TAX-EXEMPT ENTITY.—Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(c)) which is a party to such transaction that such transaction is such a prohibited tax shelter transaction.”

(c) PENALTY FOR NONDISCLOSURE.—

(1) IN GENERAL.—Section 6652(c) (relating to returns by exempt organizations and by certain trusts) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

“(3) DISCLOSURE UNDER SECTION 6033(a)(2).—

“(A) PENALTY ON ENTITIES.—In the case of a failure to file a disclosure required under section 6033(a)(2), there shall be paid by the tax-exempt entity (the entity manager

in the case of a tax-exempt entity described in paragraph (4), (5), (6), or (7) of section 4965(c) \$100 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 disclosure shall not exceed \$50,000.

“(B) WRITTEN DEMAND.—

“(i) IN GENERAL.—The Secretary may make a written demand on any entity or manager subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the disclosure shall be filed for purposes of this subparagraph.

“(ii) FAILURE TO COMPLY WITH DEMAND.—If any entity or manager fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by such entity or manager failing to so comply \$100 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all entities and managers for failures with respect to any 1 disclosure shall not exceed \$10,000.

“(C) DEFINITIONS.—Any term used in this section which is also used in section 4965 shall have the meaning given such term under section 4965.”.

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 6652(c) is amended by striking “6033” each place it appears in the text and heading thereof and inserting “6033(a)(1)”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act, with respect to transactions before, on, or after such date, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.

26 USC 6652.

26 USC 4965
note.

(2) DISCLOSURE.—The amendments made by subsections (b) and (c) shall apply to disclosures the due date for which are after the date of the enactment of this Act.

Approved May 17, 2006.

LEGISLATIVE HISTORY—H.R. 4297 (S. 2020):

HOUSE REPORTS: Nos. 109–304 (Comm. on Ways and Means) and 109–455 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 151 (2005): Dec. 8, considered and passed House.

Vol. 152 (2006): Feb. 1, 2, considered and passed Senate, amended.

May 10, House agreed to conference report.

May 11, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 42 (2006):

May 17, Presidential remarks.