

108TH CONGRESS  
2D SESSION

# S. 2761

To amend the Internal Revenue Code of 1986 to provide tax relief for farmers, ranchers, and fishermen, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 22, 2004

Mr. GRASSLEY (for himself, Mr. BAUCUS, Mr. SMITH, Mr. CONRAD, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide tax relief for farmers, ranchers, and fishermen, 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 “Heartland Investment and Rural Employment (HIRE)  
6 Act”.

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

1 to, or repeal of, a section or other provision, the reference  
 2 shall be considered to be made to a section or other provi-  
 3 sion of the Internal Revenue Code of 1986.

4 (c) TABLE OF CONTENTS.—

Sec. 1. Short title; etc.

TITLE I—AGRICULTURAL TAX RELIEF

Subtitle A—Provisions Relating To Cooperatives

- Sec. 101. Modification to cooperative marketing rules to include value added processing involving animals.  
 Sec. 102. Extension of declaratory judgment procedures to farmers' cooperative organizations.  
 Sec. 103. Payment of dividends on stock of cooperatives without reducing patronage dividends.  
 Sec. 104. Apportionment of credits.  
 Sec. 105. Subchapter T Commission.

Subtitle B—General Provisions

- Sec. 111. Exclusion of rental income from self-employment tax.  
 Sec. 112. Exclusion of conservation reserve program payments from self-employment tax.  
 Sec. 113. Exemption of agricultural bonds from private activity bond volume limits.  
 Sec. 114. Modifications to section 512(b)(13).  
 Sec. 115. Coordinate farmers and fishermen income averaging and the alternative minimum tax.  
 Sec. 116. Special rules for livestock sold on account of weather-related conditions.  
 Sec. 117. Reduction of holding period to 12 months for purposes of determining whether horses are section 1231 assets.  
 Sec. 118. Charitable deduction for contributions of food inventories.  
 Sec. 119. Farm, Fishing, and Ranch Risk Management Accounts.

TITLE II—PROVISIONS RELATING TO SMALL BUSINESS

Subtitle A—Maximum Number of Shareholders of an S Corporation

- Sec. 201. Members of family treated as 1 shareholder.  
 Sec. 202. Increase in number of eligible shareholders to 100.  
 Sec. 203. Nonresident aliens allowed as beneficiaries of an electing small business trust.

Subtitle B—Termination of Election and Additions To Tax Due To Passive Investment Income

- Sec. 211. Modifications to passive income rules.

Subtitle C—Treatment of S Corporation Shareholders

- Sec. 221. Transfer of suspended losses incident to divorce.

- Sec. 222. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.
- Sec. 223. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.
- Sec. 224. Clarification of electing small business trust distribution rules.

#### Subtitle D—Provisions Relating To Banks

- Sec. 231. Sale of stock in IRA relating to S corporation election exempt from prohibited transaction rules.
- Sec. 232. Exclusion of investment securities income from passive income test for bank S corporations.
- Sec. 233. Treatment of qualifying director shares.

#### Subtitle E—Qualified Subchapter S Subsidiaries

- Sec. 241. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.
- Sec. 242. Information returns for qualified subchapter S subsidiaries.

#### Subtitle F—Additional Provisions

- Sec. 251. Elimination of all earnings and profits attributable to pre-1983 years.
- Sec. 252. Reduced recognition period for built-in gains.
- Sec. 253. Repeal of special occupational taxes on producers and marketers of alcoholic beverages.

### TITLE III—RURAL TAX RELIEF

- Sec. 301. Expansion of designated renewal community area based on 2000 census data.
- Sec. 302. Exemption of qualified 501(c)(3) bonds for nursing homes from Federal guarantee prohibitions.
- Sec. 303. Rural investment tax credit.
- Sec. 304. Qualified rural small business investment credit.
- Sec. 305. Modifications of treatment of qualified zone academy bonds.
- Sec. 306. Certain expenses of rural letter carriers.
- Sec. 307. New markets tax credit for Native American reservations.
- Sec. 308. Modifications of authority of Indian tribal governments to issue tax-exempt bonds.
- Sec. 309. Indian school construction.
- Sec. 310. Community homeownership credit.

1     **TITLE I—AGRICULTURAL TAX**  
 2                     **RELIEF**  
 3     **Subtitle A—Provisions Relating To**  
 4                     **Cooperatives**

5     **SEC. 101. MODIFICATION TO COOPERATIVE MARKETING**  
 6                     **RULES TO INCLUDE VALUE ADDED PROC-**  
 7                     **ESSING INVOLVING ANIMALS.**

8             (a) IN GENERAL.—Section 1388 (relating to defini-  
 9     tions and special rules) is amended by adding at the end  
 10    the following new subsection:

11            “(k) COOPERATIVE MARKETING INCLUDES VALUE-  
 12    ADDED PROCESSING INVOLVING ANIMALS.—For pur-  
 13    poses of section 521 and this subchapter, the term ‘mar-  
 14    keting the products of members or other producers’ in-  
 15    cludes feeding the products of members or other producers  
 16    to cattle, hogs, fish, chickens, or other animals and selling  
 17    the resulting animals or animal products.”.

18            (b) CONFORMING AMENDMENT.—Section 521(b) is  
 19    amended by adding at the end the following new para-  
 20    graph:

21            “(7) CROSS REFERENCE.—

**“For treatment of value-added processing involv-  
 ing animals, see section 1388(k).”.**

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



1 otherwise payable to patrons which are derived from busi-  
 2 ness done with or for patrons during the taxable year.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
 4 this section shall apply to distributions in taxable years  
 5 beginning after the date of the enactment of this Act.

6 **SEC. 104. APPORTIONMENT OF CREDITS.**

7 (a) IN GENERAL.—Section 1388 (relating to defini-  
 8 tions and special rules), as amended by this Act, is amend-  
 9 ed by adding at the end the following new subsection:

10 “(1) APPORTIONMENT OF CREDIT.—

11 “(1) IN GENERAL.—In the case of any organi-  
 12 zation to which part I of this subchapter applies,  
 13 any portion of any credit determined under any sec-  
 14 tion of this chapter for the taxable year may, at the  
 15 election of the organization, be apportioned among  
 16 patrons eligible to share in patronage dividends on  
 17 the basis of the quantity or value of business done  
 18 with or for such patrons for the taxable year. Such  
 19 an election shall be made on a timely filed return for  
 20 the taxable year and, once made, shall be irrevocable  
 21 for such taxable year.

22 “(2) TREATMENT OF ORGANIZATIONS AND PA-  
 23 TRONS.—

24 “(A) ORGANIZATIONS.—The amount of the  
 25 credit not apportioned to patrons pursuant to

1 paragraph (1) shall be included in the amount  
2 determined under the applicable section of this  
3 chapter for the taxable year of the organization.

4 “(B) PATRONS.—The amount of the credit  
5 apportioned to patrons pursuant to paragraph  
6 (1) shall be included in the amount determined  
7 under such applicable section for the first tax-  
8 able year of each patron ending on or after the  
9 last day of the payment period (as defined in  
10 section 1382(d)) for the taxable year of the or-  
11 ganization or, if earlier, for the taxable year of  
12 each patron ending on or after the date on  
13 which the patron receives notice from the coop-  
14 erative of the apportionment.

15 “(C) SPECIAL RULES FOR DECREASE IN  
16 CREDITS FOR TAXABLE YEAR.—If the amount  
17 of the credit of the organization determined  
18 under such applicable section for a taxable year  
19 is less than the amount of such credit shown on  
20 the return of the organization for such year, an  
21 amount equal to the excess of—

22 “(i) such reduction, over

23 “(ii) the amount not apportioned to  
24 such patrons under paragraph (1) for the  
25 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) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to taxable years beginning after  
9 the date of the enactment of this Act.

10 **SEC. 105. SUBCHAPTER T COMMISSION.**

11 (a) FINDINGS.—The Senate finds the following:

12 (1) The National Conference of Commissioners  
13 on Uniform State Laws adopted a resolution at its  
14 2002 Annual Meeting authorizing the formation of  
15 a Study Committee on a Business Cooperative Act.  
16 The text of the resolution charges the Study Com-  
17 mittee “to review State cooperative law, with an ini-  
18 tial charge to contact potentially interested groups  
19 . . . to evaluate the viability, need, and support for  
20 such a project.” The initial scope of the study is to  
21 be limited to farm and related cooperatives.

22 (2) Cooperatives and specifically cooperative  
23 taxation does not exist in a vacuum. As business  
24 corporations, cooperatives are subject to many of the  
25 tax rules applicable to other business forms. How-



1 ever, cooperatives have special features that justify  
2 unique approaches to certain aspects of taxation.

3 (3) The Committee on Finance of the Senate  
4 has specific interest in the future of cooperatives or-  
5 ganized under subchapter T of the Internal Revenue  
6 Code of 1986. Subchapter T is the basis for coopera-  
7 tive taxation and the taxation of patrons.

8 (4) Soon after the income tax was enacted, a  
9 statutory exemption was created for farmer coopera-  
10 tives that met certain operational tests. In 1951, the  
11 tax law was changed through a repeal of the farmer  
12 cooperative exemption and the addition of deductions  
13 for previously exempt farmer cooperatives for stock  
14 dividends and patronage-based distributions on non-  
15 patronage income. In 1962, the tax law was rewrit-  
16 ten to ensure that a single current tax was paid on  
17 cooperative margins, because the courts began allow-  
18 ing both cooperatives and patrons to exclude patron-  
19 age refunds from taxable income.

20 (5) It has been over 40 years since the coopera-  
21 tive tax laws were examined by Congress.

22 (b) ESTABLISHMENT OF COMMISSION.—

23 (1) IN GENERAL.—There is established the  
24 “Subchapter T Commission” (in this section re-  
25 ferred to as the “Commission”).

1 (2) MEMBERSHIP.—

2 (A) COMPOSITION.—The Commission shall  
3 be composed of 8 members of whom—

4 (i) 5 shall be appointed by the chair-  
5 man of the Committee on Finance of the  
6 Senate, and shall consist of the chairman  
7 of the Commission, 1 cooperative tax spe-  
8 cialist, 1 cooperative attorney, and 2 coop-  
9 erative chief executive officers;

10 (ii) 2 shall be appointed by the Sec-  
11 retary of Agriculture, and shall consist of  
12 1 cooperative bank chief executive officer  
13 and 1 farmer; and

14 (iii) 1 shall be appointed by the Sec-  
15 retary of the Treasury, and shall consist of  
16 a cooperative specialist from the Depart-  
17 ment of the Treasury.

18 (B) DATE.—The appointments of the  
19 members of the Commission shall be made not  
20 later than 30 days after the enactment of this  
21 Act.

22 (3) PERIOD OF APPOINTMENT; VACANCIES.—  
23 Members shall be appointed for the life of the Com-  
24 mission. Any vacancy in the Commission shall not

1 affect its powers, but shall be filled in the same  
2 manner as the original appointment.

3 (4) INITIAL MEETING.—Not later than 30 days  
4 after the date on which all members of the Commis-  
5 sion have been appointed, the Commission shall hold  
6 its first meeting.

7 (5) MEETINGS.—The Commission shall meet at  
8 the call of the Chairman.

9 (6) QUORUM.—A majority of the members of  
10 the Commission shall constitute a quorum, but a  
11 lesser number of members may hold hearings.

12 (c) DUTIES OF THE COMMISSION.—

13 (1) STUDY.—The Commission shall conduct a  
14 thorough study of subchapter T of chapter 1 of the  
15 Internal Revenue Code of 1986 and shall deter-  
16 mine—

17 (A) whether the subchapter should be mod-  
18 ernized;

19 (B) what are the barriers to raising equity  
20 within a cooperative;

21 (C) whether a new limited liability coopera-  
22 tive structure should be created for cooperatives  
23 that would benefit from being taxed, and for  
24 business purposes be treated under the more  
25 flexible rules of a limited liability company,

1 while at the same time benefiting from the own-  
2 ership structure of traditional cooperatives; and

3 (D) whether Federal securities law and  
4 other Federal law other than tax law are bar-  
5 riers to the ongoing development and growth of  
6 cooperatives.

7 (2) RECOMMENDATIONS.—The Commission  
8 shall develop recommendations based on the deter-  
9 minations made under paragraph (1).

10 (3) REPORT.—Not later than 1 year after the  
11 date of the enactment of this Act, the Commission  
12 shall submit a report to the President and Congress  
13 which shall contain a detailed statement of the find-  
14 ings and conclusions of the Commission, together  
15 with its recommendations for such legislation and  
16 administrative actions as it considers appropriate.

17 (d) POWERS OF THE COMMISSION.—

18 (1) HEARINGS.—The Commission may hold  
19 such hearings, sit and act at such times and places,  
20 take such testimony, and receive such evidence as  
21 the Commission considers advisable to carry out this  
22 Act.

23 (2) INFORMATION FROM FEDERAL AGENCIES.—  
24 The Commission may secure directly from any Fed-  
25 eral department or agency such information as the

1 Commission considers necessary to carry out this  
2 Act. Upon request of the Chairman of the Commis-  
3 sion, the head of such department or agency shall  
4 furnish such information to the Commission.

5 (3) POSTAL SERVICES.—The Commission may  
6 use the United States mails in the same manner and  
7 under the same conditions as other departments and  
8 agencies of the Federal Government.

9 (4) GIFTS.—The Commission may accept, use,  
10 and dispose of gifts or donations of services or prop-  
11 erty.

12 (e) COMMISSION PERSONNEL MATTERS.—

13 (1) COMPENSATION OF MEMBERS.—Each mem-  
14 ber of the Commission who is not an officer or em-  
15 ployee of the Federal Government shall be com-  
16 pensated at a rate equal to the daily equivalent of  
17 the annual rate of basic pay prescribed for level IV  
18 of the Executive Schedule under section 5315 of title  
19 5, United States Code, for each day (including travel  
20 time) during which such member is engaged in the  
21 performance of the duties of the Commission. All  
22 members of the Commission who are officers or em-  
23 ployees of the United States shall serve without com-  
24 pensation in addition to that received for their serv-  
25 ices as officers or employees of the United States.

1           (2) TRAVEL EXPENSES.—The members of the  
2 Commission shall be allowed travel expenses, includ-  
3 ing per diem in lieu of subsistence, at rates author-  
4 ized for employees of agencies under subchapter I of  
5 chapter 57 of title 5, United States Code, while  
6 away from their homes or regular places of business  
7 in the performance of services for the Commission.

8           (3) STAFF.—

9           (A) IN GENERAL.—The Chairman of the  
10 Commission may, without regard to the civil  
11 service laws and regulations, appoint and termi-  
12 nate such other additional personnel as may be  
13 necessary to enable the Commission to perform  
14 its duties.

15           (B) COMPENSATION.—The Chairman of  
16 the Commission may fix the compensation of  
17 the Commission personnel without regard to  
18 chapter 51 and subchapter III of chapter 53 of  
19 title 5, United States Code, relating to classi-  
20 fication of positions and General Schedule pay  
21 rates, except that the rate of pay for such per-  
22 sonnel may not exceed the rate payable for level  
23 V of the Executive Schedule under section 5316  
24 of such title.

1           (4) **DETAIL OF GOVERNMENT EMPLOYEES.**—  
 2     Any Federal Government employee may be detailed  
 3     to the Commission without reimbursement, and such  
 4     detail shall be without interruption or loss of civil  
 5     service status or privilege.

6           (5) **PROCUREMENT OF TEMPORARY AND INTER-**  
 7     **MITTENT SERVICES.**—The Chairman of the Commis-  
 8     sion may procure temporary and intermittent serv-  
 9     ices under section 3109(b) of title 5, United States  
 10    Code, at rates for individuals which do not exceed  
 11    the daily equivalent of the annual rate of basic pay  
 12    prescribed for level V of the Executive Schedule  
 13    under section 5316 of such title.

14          (f) **TERMINATION OF THE COMMISSION.**—The Com-  
 15    mission shall terminate 90 days after the date on which  
 16    the Commission submits its report under subsection (b).

17          (g) **AUTHORIZATION OF APPROPRIATIONS.**—There  
 18    are authorized to be appropriated such sums as are nec-  
 19    essary to the Commission to carry out this section.

## 20           **Subtitle B—General Provisions**

### 21   **SEC. 111. EXCLUSION OF RENTAL INCOME FROM SELF-EM-** 22                           **PLOYMENT TAX.**

23          (a) **INTERNAL REVENUE CODE.**—Section  
 24    1402(a)(1)(A) (relating to net earnings from self-employ-

1 ment) is amended by striking “an arrangement” and in-  
2 serting “a written lease agreement”.

3 (b) SOCIAL SECURITY ACT.—Section 211(a)(1)(A) of  
4 the Social Security Act is amended by striking “an ar-  
5 rangement” and inserting “a written lease agreement”.

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

9 **SEC. 112. EXCLUSION OF CONSERVATION RESERVE PRO-**  
10 **GRAM PAYMENTS FROM SELF-EMPLOYMENT**  
11 **TAX.**

12 (a) INTERNAL REVENUE CODE.—Section 1402(a)(1)  
13 (relating to net earnings from self-employment) is amend-  
14 ed by inserting “and including payments under section  
15 1233(2) of the Food Security Act of 1985 (16 U.S.C.  
16 3833(2))” after “crop shares”.

17 (b) SOCIAL SECURITY ACT.—Section 211(a)(1) of  
18 the Social Security Act is amended by inserting “and in-  
19 cluding payments under section 1233(2) of the Food Secu-  
20 rity Act of 1985 (16 U.S.C. 3833(2))” after “crop  
21 shares”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to payments made after the date  
24 of the enactment of this Act.



1 **SEC. 113. EXEMPTION OF AGRICULTURAL BONDS FROM**  
 2 **PRIVATE ACTIVITY BOND VOLUME LIMITS.**

3 (a) **IN GENERAL.**—Section 146(g) (relating to excep-  
 4 tion for certain bonds) is amended by striking “and” at  
 5 the end of paragraph (3), by striking the period at the  
 6 end of paragraph (4) and inserting “, and”, and by insert-  
 7 ing after paragraph (4) the following new paragraph:

8 “(5) any qualified small issue bond described in  
 9 section 144(a)(12)(B)(ii).”

10 (b) **EFFECTIVE DATE.**—The amendments made by  
 11 this section shall apply to bonds issued after the date of  
 12 the enactment of this Act.

13 **SEC. 114. MODIFICATIONS TO SECTION 512(b)(13).**

14 (a) **IN GENERAL.**—Paragraph (13) of section 512(b)  
 15 (relating to special rules for certain amounts received from  
 16 controlled entities) is amended by redesignating subpara-  
 17 graph (E) as subparagraph (F) and by inserting after sub-  
 18 paragraph (D) the following new subparagraph:

19 “(E) **PARAGRAPH TO APPLY ONLY TO EX-**  
 20 **CESS PAYMENTS.**—

21 “(i) **IN GENERAL.**—Subparagraph (A)  
 22 shall apply only to the portion of a speci-  
 23 fied payment received or accrued by the  
 24 controlling organization that exceeds the  
 25 amount which would have been paid or ac-

1           crued if such payment met the require-  
2           ments prescribed under section 482.

3           “(ii) ADDITION TO TAX FOR VALU-  
4           ATION MISSTATEMENTS.—The tax imposed  
5           by this chapter on the controlling organiza-  
6           tion shall be increased by an amount equal  
7           to 20 percent of the larger of—

8                   “(I) such excess determined with-  
9                   out regard to any amendment or sup-  
10                  plement to a return of tax, or

11                   “(II) such excess determined  
12                  with regard to all such amendments  
13                  and supplements.”.

14       (b) EFFECTIVE DATE.—

15           (1) IN GENERAL.—The amendment made by  
16           this section shall apply to payments received or ac-  
17           crued after December 31, 2000.

18           (2) PAYMENTS SUBJECT TO BINDING CONTRACT  
19           TRANSITION RULE.—If the amendments made by  
20           section 1041 of the Taxpayer Relief Act of 1997 did  
21           not apply to any amount received or accrued in the  
22           first 2 taxable years beginning on or after the date  
23           of the enactment of the Taxpayer Relief Act of 1997  
24           under any contract described in subsection (b)(2) of  
25           such section, such amendments also shall not apply

1 to amounts received or accrued under such contract  
2 before January 1, 2001.

3 **SEC. 115. COORDINATE FARMERS AND FISHERMEN INCOME**  
4 **AVERAGING AND THE ALTERNATIVE MIN-**  
5 **IMUM TAX.**

6 (a) IN GENERAL.—Section 55(c) (defining regular  
7 tax) is amended by redesignating paragraph (2) as para-  
8 graph (3) and by inserting after paragraph (1) the fol-  
9 lowing new paragraph:

10 “(2) COORDINATION WITH INCOME AVERAGING  
11 FOR FARMERS AND FISHERMEN.—Solely for pur-  
12 poses of this section, section 1301 (relating to aver-  
13 aging of farm and fishing income) shall not apply in  
14 computing the regular tax.”.

15 (b) ALLOWING INCOME AVERAGING FOR FISHER-  
16 MEN.—

17 (1) IN GENERAL.—Section 1301(a) is amended  
18 by striking “farming business” and inserting “farm-  
19 ing business or fishing business”.

20 (2) DEFINITION OF ELECTED FARM INCOME.—

21 (A) IN GENERAL.—Clause (i) of section  
22 1301(b)(1)(A) is amended by inserting “or fish-  
23 ing business” before the semicolon.

24 (B) CONFORMING AMENDMENT.—Subpara-  
25 graph (B) of section 1301(b)(1) is amended by



1           (3) by striking “WHERE THERE HAS BEEN  
2 ENVIRONMENTAL CONTAMINATION” in the heading  
3 and inserting “IN CERTAIN CASES”.

4           (b) EXTENSION OF REPLACEMENT PERIOD OF IN-  
5 VOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e)  
6 of section 1033 (relating to involuntary conversions) is  
7 amended—

8           (1) by striking “CONDITIONS.—For purposes”  
9 and inserting “CONDITIONS.—

10           “(1) IN GENERAL.—For purposes”, and

11           (2) by adding at the end the following new  
12 paragraph:

13           “(2) EXTENSION OF REPLACEMENT PERIOD.—

14           “(A) IN GENERAL.—In the case of  
15 drought, flood, or other weather-related condi-  
16 tions described in paragraph (1) which result in  
17 the area being designated as eligible for assist-  
18 ance by the Federal Government, subsection  
19 (a)(2)(B) shall be applied with respect to any  
20 converted property by substituting ‘4 years’ for  
21 ‘2 years’.

22           “(B) FURTHER EXTENSION BY SEC-  
23 RETARY.—The Secretary may extend on a re-  
24 gional basis the period for replacement under  
25 this section (after the application of subpara-

1 graph (A)) for such additional time as the Sec-  
2 retary determines appropriate if the weather-re-  
3 lated conditions which resulted in such applica-  
4 tion continue for more than 3 years.”.

5 (c) INCOME INCLUSION RULES.—Section 451(e) (re-  
6 lating to special rule for proceeds from livestock sold on  
7 account of drought, flood, or other weather-related condi-  
8 tions) is amended by adding at the end the following new  
9 paragraph:

10 “(3) SPECIAL ELECTION RULES.—If section  
11 1033(e)(2) applies to a sale or exchange of livestock  
12 described in paragraph (1), the election under para-  
13 graph (1) shall be deemed valid if made during the  
14 replacement period described in such section.”.

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to taxable years beginning after  
17 December 31, 2001.

18 **SEC. 117. REDUCTION OF HOLDING PERIOD TO 12 MONTHS**  
19 **FOR PURPOSES OF DETERMINING WHETHER**  
20 **HORSES ARE SECTION 1231 ASSETS.**

21 (a) IN GENERAL.—Subparagraph (A) of section  
22 1231(b)(3) (relating to definition of property used in the  
23 trade or business) is amended by striking “and horses”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2003.

4 **SEC. 118. CHARITABLE DEDUCTION FOR CONTRIBUTIONS**  
5 **OF FOOD INVENTORIES.**

6 (a) IN GENERAL.—Subsection (e) of section 170 (re-  
7 lating to certain contributions of ordinary income and cap-  
8 ital gain property) is amended by adding at the end the  
9 following new paragraph:

10 “(7) APPLICATION OF PARAGRAPH (3) TO CER-  
11 TAIN CONTRIBUTIONS OF FOOD INVENTORY.—For  
12 purposes of this section—

13 “(A) EXTENSION TO INDIVIDUALS.—In the  
14 case of a charitable contribution of apparently  
15 wholesome food—

16 “(i) paragraph (3)(A) shall be applied  
17 without regard to whether the contribution  
18 is made by a C corporation, and

19 “(ii) in the case of a taxpayer other  
20 than a C corporation, the aggregate  
21 amount of such contributions from any  
22 trade or business (or interest therein) of  
23 the taxpayer for any taxable year which  
24 may be taken into account under this sec-  
25 tion shall not exceed 10 percent of the tax-

1 payer's net income from any such trade or  
2 business, computed without regard to this  
3 section, for such taxable year.

4 “(B) LIMITATION ON REDUCTION.—In the  
5 case of a charitable contribution of apparently  
6 wholesome food, notwithstanding paragraph  
7 (3)(B), the amount of the reduction determined  
8 under paragraph (1)(A) shall not exceed the  
9 amount by which the fair market value of such  
10 property exceeds twice the basis of such prop-  
11 erty.

12 “(C) DETERMINATION OF BASIS.—If a  
13 taxpayer—

14 “(i) does not account for inventories  
15 under section 471, and

16 “(ii) is not required to capitalize indi-  
17 rect costs under section 263A,

18 the taxpayer may elect, solely for purposes of  
19 paragraph (3)(B), to treat the basis of any ap-  
20 parently wholesome food as being equal to 25  
21 percent of the fair market value of such food.

22 “(D) DETERMINATION OF FAIR MARKET  
23 VALUE.—In the case of a charitable contribu-  
24 tion of apparently wholesome food which is a  
25 qualified contribution (within the meaning of



1 paragraph (3), as modified by subparagraph (A)  
2 of this paragraph) and which, solely by reason  
3 of internal standards of the taxpayer or lack of  
4 market, cannot or will not be sold, the fair mar-  
5 ket value of such contribution shall be deter-  
6 mined—

7 “(i) without regard to such internal  
8 standards or such lack of market and

9 “(ii) by taking into account the price  
10 at which the same or substantially the  
11 same food items (as to both type and qual-  
12 ity) are sold by the taxpayer at the time of  
13 the contribution (or, if not so sold at such  
14 time, in the recent past).

15 “(E) APPARENTLY WHOLESOME FOOD.—

16 For purposes of this paragraph, the term ‘ap-  
17 parently wholesome food’ has the meaning given  
18 such term by section 22(b)(2) of the Bill Emer-  
19 son Good Samaritan Food Donation Act (42  
20 U.S.C. 1791(b)(2)), as in effect on the date of  
21 the enactment of this paragraph.

22 “(F) APPORTIONMENT OF DEDUCTION.—

23 In the case of any organization to which part  
24 I of subchapter T applies, any portion of any  
25 deduction determined under this section with

1           respect to any charitable contribution of appar-  
2           ently wholesome food for the taxable year may,  
3           at the election of the organization, be appor-  
4           tioned among patrons eligible to share in pa-  
5           tronage dividends on the basis of the quantity  
6           or value of business done with or for such pa-  
7           trons for the taxable year. Such an election  
8           shall be made on a timely filed return for the  
9           taxable year and, once made, shall be irrev-  
10          ocable for such taxable year.”.

11          (b) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to contributions made after the  
13 date of the enactment of this Act.

14 **SEC. 119. FARM, FISHING, AND RANCH RISK MANAGEMENT**  
15 **ACCOUNTS.**

16          (a) IN GENERAL.—Subpart C of part II of sub-  
17 chapter E of chapter 1 (relating to taxable year for which  
18 deductions taken) is amended by inserting after section  
19 468B the following new section:

20 **“SEC. 468C. FARM, FISHING, AND RANCH RISK MANAGE-**  
21 **MENT ACCOUNTS.**

22          “(a) DEDUCTION ALLOWED.—In the case of an indi-  
23 vidual engaged in an eligible farming business or commer-  
24 cial fishing, there shall be allowed as a deduction for any  
25 taxable year the amount paid in cash by the taxpayer dur-

1 ing the taxable year to a Farm, Fishing, and Ranch Risk  
2 Management Account (hereinafter referred to as the  
3 ‘FFARRM Account’).

4 “(b) LIMITATION.—

5 “(1) CONTRIBUTIONS.—The amount which a  
6 taxpayer may pay into the FFARRM Account for  
7 any taxable year shall not exceed 20 percent of so  
8 much of the taxable income of the taxpayer (deter-  
9 mined without regard to this section) which is at-  
10 tributable (determined in the manner applicable  
11 under section 1301) to any eligible farming business  
12 or commercial fishing.

13 “(2) DISTRIBUTIONS.—Distributions from a  
14 FFARRM Account may not be used to purchase,  
15 lease, or finance any new fishing vessel, add capacity  
16 to any fishery, or otherwise contribute to the over-  
17 capitalization of any fishery. The Secretary of Com-  
18 merce shall implement regulations to enforce this  
19 paragraph.

20 “(c) ELIGIBLE BUSINESSES.—For purposes of this  
21 section—

22 “(1) ELIGIBLE FARMING BUSINESS.—The term  
23 ‘eligible farming business’ means any farming busi-  
24 ness (as defined in section 263A(e)(4)) which is not

1 a passive activity (within the meaning of section  
2 469(c)) of the taxpayer.

3 “(2) COMMERCIAL FISHING.—The term ‘com-  
4 mercial fishing’ has the meaning given such term by  
5 section (3) of the Magnuson-Stevens Fishery Con-  
6 servation and Management Act (16 U.S.C. 1802)  
7 but only if such fishing is not a passive activity  
8 (within the meaning of section 469(c)) of the tax-  
9 payer.

10 “(d) FFARRM ACCOUNT.—For purposes of this sec-  
11 tion—

12 “(1) IN GENERAL.—The term ‘FFARRM Ac-  
13 count’ means a trust created or organized in the  
14 United States for the exclusive benefit of the tax-  
15 payer, but only if the written governing instrument  
16 creating the trust meets the following requirements:

17 “(A) No contribution will be accepted for  
18 any taxable year in excess of the amount al-  
19 lowed as a deduction under subsection (a) for  
20 such year.

21 “(B) The trustee is a bank (as defined in  
22 section 408(n)) or another person who dem-  
23 onstrates to the satisfaction of the Secretary  
24 that the manner in which such person will ad-

1 minister the trust will be consistent with the re-  
2 quirements of this section.

3 “(C) The assets of the trust consist en-  
4 tirely of cash or of obligations which have ade-  
5 quate stated interest (as defined in section  
6 1274(c)(2)) and which pay such interest not  
7 less often than annually.

8 “(D) All income of the trust is distributed  
9 currently to the grantor.

10 “(E) The assets of the trust will not be  
11 commingled with other property except in a  
12 common trust fund or common investment  
13 fund.

14 “(2) ACCOUNT TAXED AS GRANTOR TRUST.—  
15 The grantor of a FFARRM Account shall be treated  
16 for purposes of this title as the owner of such Ac-  
17 count and shall be subject to tax thereon in accord-  
18 ance with subpart E of part I of subchapter J of  
19 this chapter (relating to grantors and others treated  
20 as substantial owners).

21 “(e) INCLUSION OF AMOUNTS DISTRIBUTED.—

22 “(1) IN GENERAL.—Except as provided in para-  
23 graph (2), there shall be includible in the gross in-  
24 come of the taxpayer for any taxable year—

1           “(A) any amount distributed from a  
2           FFARRM Account of the taxpayer during such  
3           taxable year, and

4           “(B) any deemed distribution under—

5                   “(i) subsection (f)(1) (relating to de-  
6                   posits not distributed within 5 years),

7                   “(ii) subsection (f)(2) (relating to ces-  
8                   sation in eligible farming business), and

9                   “(iii) subparagraph (B) or (C) of sub-  
10                   section (f)(3) (relating to prohibited trans-  
11                   actions and pledging account as security).

12           “(2) EXCEPTIONS.—Paragraph (1)(A) shall not  
13           apply to—

14                   “(A) any distribution to the extent attrib-  
15                   utable to income of the Account, and

16                   “(B) the distribution of any contribution  
17                   paid during a taxable year to a FFARRM Ac-  
18                   count to the extent that such contribution ex-  
19                   ceeds the limitation applicable under subsection  
20                   (b) if requirements similar to the requirements  
21                   of section 408(d)(4) are met.

22           For purposes of subparagraph (A), distributions  
23           shall be treated as first attributable to income and  
24           then to other amounts.

25           “(f) SPECIAL RULES.—

1           “(1) TAX ON DEPOSITS IN ACCOUNT WHICH  
2 ARE NOT DISTRIBUTED WITHIN 5 YEARS.—

3           “(A) IN GENERAL.—If, at the close of any  
4 taxable year, there is a nonqualified balance in  
5 any FFARRM Account—

6           “(i) there shall be deemed distributed  
7 from such Account during such taxable  
8 year an amount equal to such balance, and

9           “(ii) the taxpayer’s tax imposed by  
10 this chapter for such taxable year shall be  
11 increased by 10 percent of such deemed  
12 distribution.

13           The preceding sentence shall not apply if an  
14 amount equal to such nonqualified balance is  
15 distributed from such Account to the taxpayer  
16 before the due date (including extensions) for  
17 filing the return of tax imposed by this chapter  
18 for such year (or, if earlier, the date the tax-  
19 payer files such return for such year).

20           “(B) NONQUALIFIED BALANCE.—For pur-  
21 poses of subparagraph (A), the term ‘non-  
22 qualified balance’ means any balance in the Ac-  
23 count on the last day of the taxable year which  
24 is attributable to amounts deposited in such Ac-  
25 count before the 4th preceding taxable year.

1           “(C) ORDERING RULE.—For purposes of  
2           this paragraph, distributions from a FFARRM  
3           Account (other than distributions of current in-  
4           come) shall be treated as made from deposits in  
5           the order in which such deposits were made, be-  
6           ginning with the earliest deposits.

7           “(2) CESSATION IN ELIGIBLE BUSINESS.—At  
8           the close of the first disqualification period after a  
9           period for which the taxpayer was engaged in an eli-  
10          gible farming business or commercial fishing, there  
11          shall be deemed distributed from the FFARRM Ac-  
12          count of the taxpayer an amount equal to the bal-  
13          ance in such Account (if any) at the close of such  
14          disqualification period. For purposes of the pre-  
15          ceding sentence, the term ‘disqualification period’  
16          means any period of 2 consecutive taxable years for  
17          which the taxpayer is not engaged in an eligible  
18          farming business or commercial fishing.

19          “(3) CERTAIN RULES TO APPLY.—Rules similar  
20          to the following rules shall apply for purposes of this  
21          section:

22                  “(A) Section 220(f)(8) (relating to treat-  
23                  ment after death of account holder).



1           “(B) Section 408(e)(2) (relating to loss of  
2           exemption of account where individual engages  
3           in prohibited transaction).

4           “(C) Section 408(e)(4) (relating to effect  
5           of pledging account as security).

6           “(D) Section 408(g) (relating to commu-  
7           nity property laws).

8           “(E) Section 408(h) (relating to custodial  
9           accounts).

10          “(4) TIME WHEN PAYMENTS DEEMED MADE.—  
11          For purposes of this section, a taxpayer shall be  
12          deemed to have made a payment to a FFARRM Ac-  
13          count on the last day of a taxable year if such pay-  
14          ment is made on account of such taxable year and  
15          is made on or before the due date (without regard  
16          to extensions) for filing the return of tax for such  
17          taxable year.

18          “(5) INDIVIDUAL.—For purposes of this sec-  
19          tion, the term ‘individual’ shall not include an estate  
20          or trust.

21          “(6) DEDUCTION NOT ALLOWED FOR SELF-EM-  
22          PLOYMENT TAX.—The deduction allowable by reason  
23          of subsection (a) shall not be taken into account in  
24          determining an individual’s net earnings from self-

1 employment (within the meaning of section 1402(a))  
2 for purposes of chapter 2.

3 “(g) REPORTS.—The trustee of a FFARRM Account  
4 shall make such reports regarding such Account to the  
5 Secretary and to the person for whose benefit the Account  
6 is maintained with respect to contributions, distributions,  
7 and such other matters as the Secretary may require  
8 under regulations. The reports required by this subsection  
9 shall be filed at such time and in such manner and fur-  
10 nished to such persons at such time and in such manner  
11 as may be required by such regulations.”.

12 (b) TAX ON EXCESS CONTRIBUTIONS.—

13 (1) Subsection (a) of section 4973 (relating to  
14 tax on excess contributions to certain tax-favored ac-  
15 counts and annuities) is amended by striking “or”  
16 at the end of paragraph (4), by adding “or” at the  
17 end of paragraph (5), and by inserting after para-  
18 graph (5) the following new paragraph:

19 “(6) a FFARRM Account (within the meaning  
20 of section 468C(d)),”.

21 (2) Section 4973 is amended by adding at the  
22 end the following new subsection:

23 “(h) EXCESS CONTRIBUTIONS TO FFARRM AC-  
24 COUNTS.—For purposes of this section, in the case of a  
25 FFARRM Account (within the meaning of section

1 468C(d)), the term ‘excess contributions’ means the  
 2 amount by which the amount contributed for the taxable  
 3 year to the Account exceeds the amount which may be con-  
 4 tributed to the Account under section 468C(b) for such  
 5 taxable year. For purposes of this subsection, any con-  
 6 tribution which is distributed out of the FFARRM Ac-  
 7 count in a distribution to which section 468C(e)(2)(B) ap-  
 8 plies shall be treated as an amount not contributed.”.

9 (c) TAX ON PROHIBITED TRANSACTIONS.—

10 (1) Subsection (c) of section 4975 (relating to  
 11 tax on prohibited transactions) is amended by add-  
 12 ing at the end the following new paragraph:

13 “(7) SPECIAL RULE FOR FFARRM ACCOUNTS.—  
 14 A person for whose benefit a FFARRM Account  
 15 (within the meaning of section 468C(d)) is estab-  
 16 lished shall be exempt from the tax imposed by this  
 17 section with respect to any transaction concerning  
 18 such account (which would otherwise be taxable  
 19 under this section) if, with respect to such trans-  
 20 action, the account ceases to be a FFARRM Ac-  
 21 count by reason of the application of section  
 22 468C(f)(3)(A) to such account.”.

23 (2) Paragraph (1) of section 4975(e) is amend-  
 24 ed by redesignating subparagraphs (F) and (G) as  
 25 subparagraphs (G) and (H), respectively, and by in-

1       serting after subparagraph (E) the following new  
2       subparagraph:

3               “(F) a FFARRM Account described in  
4               section 468C(d),”.

5       (d) **FAILURE TO PROVIDE REPORTS ON FFARRM**  
6 **ACCOUNTS.**—Paragraph (2) of section 6693(a) (relating  
7 to failure to provide reports on certain tax-favored ac-  
8 counts or annuities) is amended by redesignating subpara-  
9 graphs (C) and (D) as subparagraphs (D) and (E), re-  
10 spectively, and by inserting after subparagraph (B) the  
11 following new subparagraph:

12               “(C) section 468C(g) (relating to  
13               FFARRM Accounts),”.

14       (e) **CLERICAL AMENDMENT.**—The table of sections  
15 for subpart C of part II of subchapter E of chapter 1 is  
16 amended by inserting after the item relating to section  
17 468B the following new item:

                  “Sec. 468C. Farm, Fishing, and Ranch Risk Management Ac-  
                  counts.”.

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

1                   **TITLE II—PROVISIONS**  
 2           **RELATING TO SMALL BUSINESS**  
 3           **Subtitle A—Maximum Number of**  
 4           **Shareholders of an S Corporation**

5   **SEC. 201. MEMBERS OF FAMILY TREATED AS 1 SHARE-**  
 6                   **HOLDER.**

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

10                   “(1) **MEMBERS OF FAMILY TREATED AS 1**  
 11           **SHAREHOLDER.**—

12                   “(A) **IN GENERAL.**—For purpose of sub-  
 13           section (b)(1)(A)—

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

17                   “(ii) in the case of a family with re-  
 18                   spect to which an election is in effect  
 19                   under subparagraph (D), all members of  
 20                   the family shall be treated as 1 share-  
 21                   holder.

22                   “(B) **MEMBERS OF THE FAMILY.**—For  
 23           purpose of subparagraph (A)(ii)—

24                   “(i) **IN GENERAL.**—The term ‘mem-  
 25                   bers of the family’ means the common an-

1           cestor, lineal descendants of the common  
2           ancestor, and the spouses (or former  
3           spouses) of such lineal descendants or com-  
4           mon ancestor.

5           “(ii) COMMON ANCESTOR.—For pur-  
6           poses of this paragraph, an individual shall  
7           not be considered a common ancestor if, as  
8           of the later of the effective date of this  
9           paragraph or the time the election under  
10          section 1362(a) is made, the individual is  
11          more than 3 generations removed from the  
12          youngest generation of shareholders who  
13          would (but for this clause) be members of  
14          the family. For purposes of the preceding  
15          sentence, a spouse (or former spouse) shall  
16          be treated as being of the same generation  
17          as the individual to which such spouse is  
18          (or was) married.

19          “(C) EFFECT OF ADOPTION, ETC.—In de-  
20          termining whether any relationship specified in  
21          subparagraph (B) exists, the rules of section  
22          152(b)(2) shall apply.

23          “(D) ELECTION.—An election under sub-  
24          paragraph (A)(ii)—

1                   “(i) may, except as otherwise provided  
2                   in regulations prescribed by the Secretary,  
3                   be made by any member of the family, and  
4                   “(ii) shall remain in effect until termi-  
5                   nated as provided in regulations prescribed  
6                   by the Secretary.”.

7           (b) RELIEF FROM INADVERTENT INVALID ELECTION  
8 OR TERMINATION.—Section 1362(f) (relating to inad-  
9 vertent invalid elections or terminations), as amended by  
10 section 229, is amended—

11           (1) by inserting “or section 1361(c)(1)(A)(ii)”  
12           after “section 1361(b)(3)(B)(ii),” in paragraph (1),  
13           and

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

16           (c) EFFECTIVE DATES.—

17           (1) SUBSECTION (a).—The amendment made  
18           by subsection (a) shall apply to taxable years begin-  
19           ning after December 31, 2004.

20           (2) SUBSECTION (b).—The amendments made  
21           by subsection (b) shall apply to elections and termi-  
22           nations made after December 31, 2004.

1 **SEC. 202. INCREASE IN NUMBER OF ELIGIBLE SHARE-**  
2 **HOLDERS TO 100.**

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

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

9 **SEC. 203. NONRESIDENT ALIENS ALLOWED AS BENE-**  
10 **FICIARIES OF AN ELECTING SMALL BUSINESS**  
11 **TRUST.**

12 (a) IN GENERAL.—Section 1361(e)(1)(A)(i)(I) is  
13 amended by inserting “(including a nonresident alien indi-  
14 vidual)” after “individual”.

15 (b) CONFORMING AMENDMENT.—Clause (v) of sec-  
16 tion 1361(e)(2)(B) is amended by adding at the end the  
17 following new sentence: “This clause shall not apply for  
18 purposes of subsection (b)(1)(C).”.

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

22 **Subtitle B—Termination of Elec-**  
23 **tion and Additions To Tax Due**  
24 **To Passive Investment Income**

25 **SEC. 211. MODIFICATIONS TO PASSIVE INCOME RULES.**

26 (a) INCREASED PERCENTAGE LIMIT.—



1           (1) IN GENERAL.—Subsection (a)(2) of section  
2   1375 (relating to tax imposed when passive invest-  
3   ment income of corporation having accumulated  
4   earnings and profits exceeds 25 percent of gross re-  
5   ceipts) is amended by striking “25 percent” and in-  
6   serting “60 percent”.

7           (2) CONFORMING AMENDMENTS.—

8           (A) Section 26(b)(2)(J) is amended by  
9   striking “25 percent” and inserting “60 per-  
10   cent”.

11          (B) Section 1362(d)(3)(A)(i)(II) is amend-  
12   ed by striking “25 percent” and inserting “60  
13   percent”.

14          (C) The heading for paragraph (3) of sec-  
15   tion 1362(d) is amended by striking “25 PER-  
16   CENT” and inserting “60 PERCENT”.

17          (D) Section 1375(b)(1)(A)(i) is amended  
18   by striking “25 percent” and inserting “60 per-  
19   cent”.

20          (E) The heading for section 1375 is  
21   amended by striking “**25 PERCENT**” and in-  
22   serting “**60 PERCENT**”.

23          (F) The table of sections for part III of  
24   subchapter S of chapter 1 is amended by strik-

1           ing “25 percent” in the item relating to section  
2           1375 and inserting “60 percent”.

3           (b) CAPITAL GAIN NOT TREATED AS PASSIVE IN-  
4 VESTMENT INCOME.—Section 1362(d)(3) is amended—

5           (1) by striking “annuities,” and all that follows  
6           in subparagraph (C)(i) and inserting “and annu-  
7           ities.”, and

8           (2) by striking subparagraphs (C)(iv) and (D)  
9           and by redesignating subparagraph (E) as subpara-  
10          graph (D).

11          (c) CONFORMING AMENDMENTS.—Section 1375(d) is  
12          amended by striking “subchapter C” both places it ap-  
13          pears and inserting “accumulated”.

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

17                   **Subtitle C—Treatment of S**  
18                   **Corporation Shareholders**

19   **SEC. 221. TRANSFER OF SUSPENDED LOSSES INCIDENT TO**  
20                   **DIVORCE.**

21          (a) IN GENERAL.—Section 1366(d) (relating to spe-  
22          cial rules for losses and deductions) is amended by adding  
23          at the end the following new paragraph:

24                   “(4) TRANSFER OF SUSPENDED LOSSES AND  
25                   DEDUCTIONS WHEN STOCK IS TRANSFERRED INCI-

1 DENT TO DIVORCE.—For purposes of paragraph (2),  
2 the transfer of any shareholder’s stock in an S cor-  
3 poration incident to a decree of divorce shall include  
4 any loss or deduction described in such paragraph  
5 attributable to such stock.”.

6 (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply to transfers in taxable years begin-  
8 ning after December 31, 2003.

9 **SEC. 222. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK**  
10 **AMOUNTS BY QUALIFIED SUBCHAPTER S**  
11 **TRUST INCOME BENEFICIARIES.**

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

14 (1) by striking “and” at the end of subpara-  
15 graph (A),

16 (2) by striking the period at the end of sub-  
17 paragraph (B) and inserting “, and”, and

18 (3) by adding at the end the following new sub-  
19 paragraph:

20 “(C) for purposes of applying sections 465  
21 and 469(g) to the beneficiary of the trust, the  
22 disposition of the S corporation stock by the  
23 trust shall be treated as a disposition by such  
24 beneficiary.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to transfers in taxable years begin-  
3 ning after December 31, 2003.

4 **SEC. 223. DISREGARD OF UNEXERCISED POWERS OF AP-**  
5 **POINTMENT IN DETERMINING POTENTIAL**  
6 **CURRENT BENEFICIARIES OF ESBT.**

7 (a) IN GENERAL.—Section 1361(e)(2) (defining po-  
8 tential current beneficiary) is amended by inserting “(de-  
9 termined without regard to any unexercised (in whole or  
10 in part) power of appointment during such period)” after  
11 “of the trust” in the first sentence.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to taxable years beginning after  
14 December 31, 2003.

15 **SEC. 224. CLARIFICATION OF ELECTING SMALL BUSINESS**  
16 **TRUST DISTRIBUTION RULES.**

17 (a) IN GENERAL.—Section 641(c)(1) (relating to spe-  
18 cial rules for taxation of electing small business trusts)  
19 is amended—

20 (1) by striking “and” at the end of subpara-  
21 graph (A),

22 (2) by redesignating subparagraph (B) as sub-  
23 paragraph (C), and

24 (3) by inserting after subparagraph (A) the fol-  
25 lowing new subparagraph:



1 retirement accounts on the date of the enactment of this  
2 Act.

3 **SEC. 232. EXCLUSION OF INVESTMENT SECURITIES INCOME**  
4 **FROM PASSIVE INCOME TEST FOR BANK S**  
5 **CORPORATIONS.**

6 (a) IN GENERAL.—Section 1362(d)(3) (relating to  
7 where passive investment income exceeds certain percent-  
8 age of gross receipts for 3 consecutive taxable years and  
9 corporation has accumulated earnings and profits), as  
10 amended by this Act, is amended by adding at the end  
11 the following new subparagraph:

12 “(E) EXCEPTION FOR BANKS; ETC.—In  
13 the case of a bank (as defined in section 581),  
14 a bank holding company (as defined in section  
15 246A(c)(3)(B)(ii)), or a qualified subchapter S  
16 subsidiary which is a bank, the term ‘passive  
17 investment income’ shall not include—

18 “(i) interest income earned by such  
19 bank, bank holding company, or qualified  
20 subchapter S subsidiary, or

21 “(ii) dividends on assets required to  
22 be held by such bank, bank holding com-  
23 pany, or qualified subchapter S subsidiary  
24 to conduct a banking business, including  
25 stock in the Federal Reserve Bank, the

1 Federal Home Loan Bank, or the Federal  
2 Agricultural Mortgage Bank or participa-  
3 tion certificates issued by a Federal Inter-  
4 mediate Credit Bank.”.

5 (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to taxable years beginning after  
7 December 31, 2003.

8 **SEC. 233. TREATMENT OF QUALIFYING DIRECTOR SHARES.**

9 (a) IN GENERAL.—Section 1361 (defining S corpora-  
10 tion) is amended by adding at the end the following new  
11 subsection:

12 “(f) TREATMENT OF QUALIFYING DIRECTOR  
13 SHARES.—

14 “(1) IN GENERAL.—For purposes of this sub-  
15 chapter—

16 “(A) qualifying director shares shall not be  
17 treated as a second class of stock, and

18 “(B) no person shall be treated as a share-  
19 holder of the corporation by reason of holding  
20 qualifying director shares.

21 “(2) QUALIFYING DIRECTOR SHARES DE-  
22 FINED.—For purposes of this subsection, the term  
23 ‘qualifying director shares’ means any shares of  
24 stock in a bank (as defined in section 581) or in a

1 bank holding company registered as such with the  
2 Federal Reserve System—

3 “(i) which are held by an individual  
4 solely by reason of status as a director of  
5 such bank or company or its controlled  
6 subsidiary; and

7 “(ii) which are subject to an agree-  
8 ment pursuant to which the holder is re-  
9 quired to dispose of the shares of stock  
10 upon termination of the holder’s status as  
11 a director at the same price as the indi-  
12 vidual acquired such shares of stock.

13 “(3) DISTRIBUTIONS.—A distribution (not in  
14 part or full payment in exchange for stock) made by  
15 the corporation with respect to qualifying director  
16 shares shall be includible as ordinary income of the  
17 holder and deductible to the corporation as an ex-  
18 pense in computing taxable income under section  
19 1363(b) in the year such distribution is received.”.

20 (b) CONFORMING AMENDMENT.—Section 1366(a) is  
21 amended by adding at the end the following new para-  
22 graph:

23 “(3) ALLOCATION WITH RESPECT TO QUALI-  
24 FYING DIRECTOR SHARES.—The holders of quali-  
25 fying director shares (as defined in section 1361(f))



1 shall not, with respect to such shares of stock, be al-  
2 located any of the items described in paragraph  
3 (1).”.

4 (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2003.

## 7 **Subtitle E—Qualified Subchapter S** 8 **Subsidiaries**

### 9 **SEC. 241. RELIEF FROM INADVERTENTLY INVALID QUALI-** 10 **FIED SUBCHAPTER S SUBSIDIARY ELECTIONS** 11 **AND TERMINATIONS.**

12 (a) IN GENERAL.—Section 1362(f) (relating to inad-  
13 vertent invalid elections or terminations) is amended—

14 (1) by inserting “or under section  
15 1361(b)(3)(B)(ii)” after “subsection (a)” in para-  
16 graph (1),

17 (2) by inserting “or under section  
18 1361(b)(3)(C)” after “subsection (d)” in paragraph  
19 (1)(B),

20 (3) by inserting “or a qualified subchapter S  
21 subsidiary, as the case may be” after “small busi-  
22 ness corporation” in paragraph (3)(A),

23 (4) by inserting “or a qualified subchapter S  
24 subsidiary, as the case may be” after “S corpora-  
25 tion” in paragraph (4), and

1 (5) by inserting “or a qualified subchapter S  
2 subsidiary, as the case may be” after “S corpora-  
3 tion” in the matter following paragraph (4).

4 (b) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2003.

7 **SEC. 242. INFORMATION RETURNS FOR QUALIFIED SUB-**  
8 **CHAPTER S SUBSIDIARIES.**

9 (a) IN GENERAL.—Section 1361(b)(3)(A) (relating  
10 to treatment of certain wholly owned subsidiaries) is  
11 amended by inserting “and in the case of information re-  
12 turns required under part III of subchapter A of chapter  
13 61” after “Secretary”.

14 (b) EFFECTIVE DATE.—The amendment made by  
15 this section shall apply to taxable years beginning after  
16 December 31, 2003.

17 **Subtitle F—Additional Provisions**

18 **SEC. 251. ELIMINATION OF ALL EARNINGS AND PROFITS**  
19 **ATTRIBUTABLE TO PRE-1983 YEARS.**

20 (a) IN GENERAL.—Subsection (a) of section 1311 of  
21 the Small Business Job Protection Act of 1996 is amend-  
22 ed to read as follows:

23 “(a) IN GENERAL.—If a corporation was an electing  
24 small business corporation under subchapter S of chapter  
25 1 of the Internal Revenue Code of 1986 for any taxable

1 year beginning before January 1, 1983, the amount of  
2 such corporation's accumulated earnings and profits (as  
3 of the beginning of the first taxable year beginning after  
4 December 31, 2003) shall be reduced by an amount equal  
5 to the portion (if any) of such accumulated earnings and  
6 profits which were accumulated in any taxable year begin-  
7 ning before January 1, 1983, for which such corporation  
8 was an electing small business corporation under such  
9 subchapter S.".

10 (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to taxable years beginning after  
12 December 31, 2003.

13 **SEC. 252. REDUCED RECOGNITION PERIOD FOR BUILT-IN**  
14 **GAINS.**

15 (a) IN GENERAL.—Paragraph (7) of section 1374(d)  
16 (relating to definitions and special rules) is amended to  
17 read as follows:

18 “(7) RECOGNITION PERIOD.—The term ‘rec-  
19 ognition period’ means the 7-year period beginning  
20 with the 1st day of the 1st taxable year for which  
21 the corporation was an S corporation. For purposes  
22 of applying this section to any amount includible in  
23 income by reason of distributions to shareholders  
24 pursuant to section 593(e), the preceding sentence  
25 shall be applied without regard to the duration of

1 the recognition period in effect on the date of such  
 2 distribution.”.

3 (b) EFFECTIVE DATE.—

4 (1) GENERAL RULE.—The amendment made by  
 5 this section shall apply to any recognition period in  
 6 effect on or after the date of the enactment of this  
 7 Act.

8 (2) SPECIAL APPLICATION TO EXISTING PERI-  
 9 ODS EXCEEDING 7 YEARS.— Any recognition period  
 10 in effect on the date of the enactment of this Act,  
 11 the length of which is greater than 7 years, shall end  
 12 on such date.

13 **SEC. 253. REPEAL OF SPECIAL OCCUPATIONAL TAXES ON**  
 14 **PRODUCERS AND MARKETERS OF ALCO-**  
 15 **HOLIC BEVERAGES.**

16 (a) REPEAL OF OCCUPATIONAL TAXES.—

17 (1) IN GENERAL.—The following provisions of  
 18 part II of subchapter A of chapter 51 (relating to  
 19 occupational taxes) are hereby repealed:

20 (A) Subpart A (relating to proprietors of  
 21 distilled spirits plants, bonded wine cellars,  
 22 etc.).

23 (B) Subpart B (relating to brewer).

24 (C) Subpart D (relating to wholesale deal-  
 25 ers) (other than sections 5114 and 5116).

1 (D) Subpart E (relating to retail dealers)  
2 (other than section 5124).

3 (E) Subpart G (relating to general provi-  
4 sions) (other than sections 5142, 5143, 5145,  
5 and 5146).

6 (2) NONBEVERAGE DOMESTIC DRAWBACK.—  
7 Section 5131 is amended by striking “, on payment  
8 of a special tax per annum,”.

9 (3) INDUSTRIAL USE OF DISTILLED SPIRITS.—  
10 Section 5276 is hereby repealed.

11 (b) CONFORMING AMENDMENTS.—

12 (1)(A) The heading for part II of subchapter A  
13 of chapter 51 and the table of subparts for such  
14 part are amended to read as follows:

15 **“PART II—MISCELLANEOUS PROVISIONS**

“Subpart A. Manufacturers of stills.

“Subpart B. Nonbeverage domestic drawback claimants.

“Subpart C. Recordkeeping by dealers.

“Subpart D. Other provisions.”.

16 (B) The table of parts for such subchapter A  
17 is amended by striking the item relating to part II  
18 and inserting the following new item:

“Part II. Miscellaneous provisions.”.

19 (2) Subpart C of part II of such subchapter  
20 (relating to manufacturers of stills) is redesignated  
21 as subpart A.

1           (3)(A) Subpart F of such part II (relating to  
2 nonbeverage domestic drawback claimants) is reded-  
3 igned as subpart B and sections 5131 through  
4 5134 are redesignated as sections 5111 through  
5 5114, respectively.

6           (B) The table of sections for such subpart B,  
7 as so redesignated, is amended—

8                   (i) by redesignating the items relating to  
9 sections 5131 through 5134 as relating to sec-  
10 tions 5111 through 5114, respectively, and

11                   (ii) by striking “and rate of tax” in the  
12 item relating to section 5111, as so rededig-  
13 nated.

14           (C) Section 5111, as redesignated by subpara-  
15 graph (A), is amended—

16                   (i) by striking “**AND RATE OF TAX**” in  
17 the section heading,

18                   (ii) by striking the subsection heading for  
19 subsection (a), and

20                   (iii) by striking subsection (b).

21           (4) Part II of subchapter A of chapter 51 is  
22 amended by adding after subpart B, as redesignated  
23 by paragraph (3), the following new subpart:

24                   **“Subpart C—Recordkeeping by Dealers**

“Sec. 5121. Recordkeeping by wholesale dealers.

“Sec. 5122. Recordkeeping by retail dealers.

“Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.”.

1           (5)(A) Section 5114 (relating to records) is  
2           moved to subpart C of such part II and inserted  
3           after the table of sections for such subpart.

4           (B) Section 5114 is amended—

5                   (i) by striking the section heading and in-  
6                   serting the following new heading:

7           **“SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.”,**

8                   and

9                           (ii) by redesignating subsection (e) as sub-  
10                          section (d) and by inserting after subsection (b)  
11                          the following new subsection:

12           “(c) WHOLESALE DEALERS.—For purposes of this  
13           part—

14                   “(1) WHOLESALE DEALER IN LIQUORS.—The  
15                   term ‘wholesale dealer in liquors’ means any dealer  
16                   (other than a wholesale dealer in beer) who sells, or  
17                   offers for sale, distilled spirits, wines, or beer, to an-  
18                   other dealer.

19                   “(2) WHOLESALE DEALER IN BEER.—The term  
20                   ‘wholesale dealer in beer’ means any dealer who  
21                   sells, or offers for sale, beer, but not distilled spirits  
22                   or wines, to another dealer.

1           “(3) DEALER.—The term ‘dealer’ means any  
2 person who sells, or offers for sale, any distilled spir-  
3 its, wines, or beer.

4           “(4) PRESUMPTION IN CASE OF SALE OF 20  
5 WINE GALLONS OR MORE.—The sale, or offer for  
6 sale, of distilled spirits, wines, or beer, in quantities  
7 of 20 wine gallons or more to the same person at  
8 the same time, shall be presumptive evidence that  
9 the person making such sale, or offer for sale, is en-  
10 gaged in or carrying on the business of a wholesale  
11 dealer in liquors or a wholesale dealer in beer, as the  
12 case may be. Such presumption may be overcome by  
13 evidence satisfactorily showing that such sale, or  
14 offer for sale, was made to a person other than a  
15 dealer.”.

16           (C) Paragraph (3) of section 5121(d), as so re-  
17 designated, is amended by striking “section 5146”  
18 and inserting “section 5123”.

19           (6)(A) Section 5124 (relating to records) is  
20 moved to subpart C of part II of subchapter A of  
21 chapter 51 and inserted after section 5121.

22           (B) Section 5124 is amended—

23                 (i) by striking the section heading and in-  
24 serting the following new heading:



1 **“SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.”,**

2 (ii) by striking “section 5146” in sub-  
3 section (c) and inserting “section 5123”, and

4 (iii) by redesignating subsection (c) as sub-  
5 section (d) and inserting after subsection (b)  
6 the following new subsection:

7 “(c) RETAIL DEALERS.—For purposes of this sec-  
8 tion—

9 “(1) RETAIL DEALER IN LIQUORS.—The term  
10 ‘retail dealer in liquors’ means any dealer (other  
11 than a retail dealer in beer or a limited retail dealer)  
12 who sells, or offers for sale, distilled spirits, wines,  
13 or beer, to any person other than a dealer.

14 “(2) RETAIL DEALER IN BEER.—The term ‘re-  
15 tail dealer in beer’ means any dealer (other than a  
16 limited retail dealer) who sells, or offers for sale,  
17 beer, but not distilled spirits or wines, to any person  
18 other than a dealer.

19 “(3) LIMITED RETAIL DEALER.—The term ‘lim-  
20 ited retail dealer’ means any fraternal, civic, church,  
21 labor, charitable, benevolent, or ex-servicemen’s or-  
22 ganization making sales of distilled spirits, wine or  
23 beer on the occasion of any kind of entertainment,  
24 dance, picnic, bazaar, or festival held by it, or any  
25 person making sales of distilled spirits, wine or beer  
26 to the members, guests, or patrons of bona fide

1 fairs, reunions, picnics, carnivals, or other similar  
 2 outings, if such organization or person is not other-  
 3 wise engaged in business as a dealer.

4 “(4) DEALER.—The term ‘dealer’ has the  
 5 meaning given such term by section 5121(c)(3).”.

6 (7) Section 5146 is moved to subpart C of part  
 7 II of subchapter A of chapter 51, inserted after sec-  
 8 tion 5122, and redesignated as section 5123.

9 (8) Part II of subchapter A of chapter 51 is  
 10 amended by inserting after subpart C the following  
 11 new subpart:

12 **“Subpart D—Other Provisions**

“Sec. 5131. Packaging distilled spirits for industrial uses.

“Sec. 5132. Prohibited purchases by dealers.”.

13 (9) Section 5116 is moved to subpart D of part  
 14 II of subchapter A of chapter 51, inserted after the  
 15 table of sections, redesignated as section 5131, and  
 16 amended by inserting “(as defined in section  
 17 5121(c))” after “dealer” in subsection (a).

18 (10) Subpart D of part II of subchapter A of  
 19 chapter 51 is amended by adding at the end thereof  
 20 the following new section:

21 **“SEC. 5132. PROHIBITED PURCHASES BY DEALERS.**

22 “(a) IN GENERAL.—Except as provided in regula-  
 23 tions prescribed by the Secretary, it shall be unlawful for  
 24 a dealer to purchase distilled spirits for resale from any

1 person other than a wholesale dealer in liquors who is re-  
 2 quired to keep the records prescribed by section 5121.

3 “(b) LIMITED RETAIL DEALERS.—A limited retail  
 4 dealer may lawfully purchase distilled spirits for resale  
 5 from a retail dealer in liquors.

6 “(c) PENALTY AND FORFEITURE.—

**“For penalty and forfeiture provisions applicable  
 to violations of subsection (a), see sections 5687 and  
 7302.”.**

7 (11) Subsection (b) of section 5002 is amend-  
 8 ed—

9 (A) by striking “section 5112(a)” and in-  
 10 serting “section 5121(c)(3)”,

11 (B) by striking “section 5112” and insert-  
 12 ing “section 5121(c)”,

13 (C) by striking “section 5122” and insert-  
 14 ing “section 5122(c)”.

15 (12) Subparagraph (A) of section 5010(c)(2) is  
 16 amended by striking “section 5134” and inserting  
 17 “section 5114”.

18 (13) Subsection (d) of section 5052 is amended  
 19 to read as follows:

20 “(d) BREWER.—For purposes of this chapter, the  
 21 term ‘brewer’ means any person who brews beer or pro-  
 22 duces beer for sale. Such term shall not include any person  
 23 who produces only beer exempt from tax under section  
 24 5053(e).”.

1           (14) The text of section 5182 is amended to  
2 read as follows:

3           “For provisions requiring recordkeeping by  
4 wholesale liquor dealers, see section 5121, and by re-  
5 tail liquor dealers, see section 5122.”.

6           (15) Subsection (b) of section 5402 is amended  
7 by striking “section 5092” and inserting “section  
8 5052(d)”.

9           (16) Section 5671 is amended by striking “or  
10 5091”.

11           (17)(A) Part V of subchapter J of chapter 51  
12 is hereby repealed.

13           (B) The table of parts for such subchapter J is  
14 amended by striking the item relating to part V.

15           (18)(A) Sections 5142, 5143, and 5145 are  
16 moved to subchapter D of chapter 52, inserted after  
17 section 5731, redesignated as sections 5732, 5733,  
18 and 5734, respectively, and amended by striking  
19 “this part” each place it appears and inserting “this  
20 subchapter”.

21           (B) Section 5732, as redesignated by subpara-  
22 graph (A), is amended by striking “(except the tax  
23 imposed by section 5131)” each place it appears.

24           (C) Paragraph (2) of section 5733(c), as redesi-  
25 gnated by subparagraph (A), is amended by striking

1 “liquors” both places it appears and inserting “to-  
2 bacco products and cigarette papers and tubes”.

3 (D) The table of sections for subchapter D of  
4 chapter 52 is amended by adding at the end thereof  
5 the following:

“Sec. 5732. Payment of tax.

“Sec. 5733. Provisions relating to liability for occupational taxes.

“Sec. 5734. Application of State laws.”.

6 (E) Section 5731 is amended by striking sub-  
7 section (c) and by redesignating subsection (d) as  
8 subsection (c).

9 (19) Subsection (c) of section 6071 is amended  
10 by striking “section 5142” and inserting “section  
11 5732”.

12 (20) Paragraph (1) of section 7652(g) is  
13 amended—

14 (A) by striking “subpart F” and inserting  
15 “subpart B”, and

16 (B) by striking “section 5131(a)” and in-  
17 serting “section 5111”.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall take effect on July 1, 2004, but shall  
20 not apply to taxes imposed for periods before such date.

1     **TITLE III—RURAL TAX RELIEF**

2     **SEC. 301. EXPANSION OF DESIGNATED RENEWAL COMMU-**  
3             **NITY AREA BASED ON 2000 CENSUS DATA.**

4             (a) RENEWAL COMMUNITIES.—Section 1400E (relat-  
5     ing to designation of renewal communities) is amended by  
6     adding at the end the following new subsection:

7             “(g) EXPANSION OF DESIGNATED AREAS.—

8                     “(1) EXPANSION BASED ON 2000 CENSUS.—At  
9             the request of the nominating entity with respect to  
10            a renewal community, the Secretary of Housing and  
11            Urban Development may expand the area of a re-  
12            newal community to include any census tract—

13                             “(A) which, at the time such community  
14                             was nominated, met the requirements of this  
15                             section for inclusion in such community but for  
16                             the failure of such tract to meet 1 or more of  
17                             the population and poverty rate requirements of  
18                             this section using 1990 census data, and

19                             “(B) which meets all failed population and  
20                             poverty rate requirements of this section using  
21                             2000 census data.

22             “(2) EXPANSION TO CERTAIN AREAS WHICH DO  
23            NOT MEET POPULATION REQUIREMENTS.—

24                             “(A) IN GENERAL.—At the request of 1 or  
25                             more local governments and the State or States

1 in which an area described in subparagraph (B)  
2 is located, the Secretary of Housing and Urban  
3 Development may expand a designated area to  
4 include such area.

5 “(B) AREA.—An area is described in this  
6 subparagraph if—

7 “(i) the area is adjacent to at least 1  
8 other area designated as a renewal commu-  
9 nity,

10 “(ii) the area has a population less  
11 than the population required under sub-  
12 section (c)(2)(C), and

13 “(iii)(I) the area meets the require-  
14 ments of subparagraphs (A) and (B) of  
15 subsection (c)(2) and subparagraph (A) of  
16 subsection (c)(3), or

17 “(II) the area contains a population  
18 of less than 100 people.

19 “(3) APPLICABILITY.—Any expansion of a re-  
20 newal community under this section shall take effect  
21 as provided in subsection (b).”.

22 (b) EFFECTIVE DATE.—The amendment made by  
23 this subsection shall take effect as if included in the  
24 amendments made by section 101 of the Community Re-  
25 newal Tax Relief Act of 2000.

1 **SEC. 302. EXEMPTION OF QUALIFIED 501(c)(3) BONDS FOR**  
2 **NURSING HOMES FROM FEDERAL GUAR-**  
3 **ANTEE PROHIBITIONS.**

4 (a) IN GENERAL.—Section 149(b)(3) (relating to ex-  
5 ceptions) is amended by adding at the end the following  
6 new subparagraph:

7 “(E) EXCEPTION FOR QUALIFIED 501(c)(3)  
8 BONDS FOR NURSING HOMES.—

9 “(i) IN GENERAL.—Paragraph (1)  
10 shall not apply to any qualified 501(c)(3)  
11 bond issued before the date which is 1 year  
12 after the date of the enactment of this sub-  
13 paragraph for the benefit of an organiza-  
14 tion described in section 501(c)(3), if such  
15 bond is part of an issue the proceeds of  
16 which are used to finance 1 or more of the  
17 following facilities primarily for the benefit  
18 of the elderly:

19 “(I) Licensed nursing home facil-  
20 ity.

21 “(II) Licensed or certified as-  
22 sisted living facility.

23 “(III) Licensed personal care fa-  
24 cility.

25 “(IV) Continuing care retirement  
26 community.



1           “(ii) LIMITATION.—With respect to  
2           any calendar year, clause (i) shall not  
3           apply to any bond described in such clause  
4           if the aggregate authorized face amount of  
5           the issue of which such bond is a part  
6           when increased by the outstanding amount  
7           of such bonds issued by the issuer for such  
8           calendar year exceeds \$15,000,000.

9           “(iii) CONTINUING CARE RETIREMENT  
10          COMMUNITY.—For purposes of this sub-  
11          paragraph, the term ‘continuing care re-  
12          tirement community’ means a community  
13          which provides, on the same campus, a  
14          continuum of residential living options and  
15          support services to persons at least 60  
16          years of age under a written agreement.  
17          For purposes of the preceding sentence,  
18          the residential living options shall include  
19          independent living units, nursing home  
20          beds, and either assisted living units or  
21          personal care beds.”.

22          (b) EFFECTIVE DATE.—The amendment made by  
23          this section shall apply to bonds issued after the date of  
24          the enactment of this Act.

1 **SEC. 303. RURAL INVESTMENT TAX CREDIT.**

2 (a) IN GENERAL.—Subpart D of part IV of sub-  
3 chapter A of chapter 1 (relating to business related cred-  
4 its) is amended by adding at the end the following:

5 **“SEC. 42A. RURAL INVESTMENT CREDIT.**

6 “(a) IN GENERAL.—For purposes of section 38, the  
7 amount of the rural investment credit determined under  
8 this section for any taxable year in the credit period shall  
9 be an amount equal to the applicable percentage of the  
10 eligible basis of each qualified rural investment building.

11 “(b) APPLICABLE PERCENTAGE: 70 PERCENT  
12 PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PER-  
13 CENT PRESENT VALUE CREDIT FOR EXISTING BUILD-  
14 INGS.—For purposes of this section—

15 “(1) IN GENERAL.—The term ‘applicable per-  
16 centage’ means the appropriate percentage pre-  
17 scribed by the Secretary for the earlier of—

18 “(A) the first month of the credit period  
19 with respect to a rural investment building, or

20 “(B) at the election of the taxpayer, the  
21 month in which the taxpayer and the rural in-  
22 vestment credit agency enter into an agreement  
23 with respect to such building (which is binding  
24 on such agency, the taxpayer, and all successors  
25 in interest) as to the rural investment credit  
26 dollar amount to be allocated to such building.

1 A month may be elected under subparagraph (B)  
2 only if the election is made not later than the 5th  
3 day after the close of such month. Such an election,  
4 once made, shall be irrevocable.

5 “(2) METHOD OF PRESCRIBING PERCENT-  
6 AGES.—The percentages prescribed by the Secretary  
7 for any month shall be percentages which will yield  
8 over a 10-year period amounts of credit under sub-  
9 section (a) which have a present value equal to—

10 “(A) 70 percent of the eligible basis of a  
11 new building, and

12 “(B) 30 percent of the eligible basis of an  
13 existing building.

14 “(3) METHOD OF DISCOUNTING.—The present  
15 value under paragraph (2) shall be determined—

16 “(A) as of the last day of the 1st year of  
17 the 10-year period referred to in paragraph (2),

18 “(B) by using a discount rate equal to 72  
19 percent of the average of the annual Federal  
20 mid-term rate and the annual Federal long-  
21 term rate applicable under section 1274(d)(1)  
22 to the month applicable under subparagraph  
23 (A) or (B) of paragraph (1) and compounded  
24 annually, and

1           “(C) by assuming that the credit allowable  
2           under this section for any year is received on  
3           the last day of such year.

4           “(c) ELIGIBLE BASIS; QUALIFIED RURAL INVEST-  
5           MENT BUILDING.—For purposes of this section—

6           “(1) ELIGIBLE BASIS.—

7           “(A) IN GENERAL.—The eligible basis of  
8           any qualified rural investment building for any  
9           taxable year shall be determined under rules  
10          similar to the rules under section 42(d), except  
11          that—

12                   “(i) the determination of the adjusted  
13                   basis of any building shall be made as of  
14                   the beginning of the credit period, and

15                   “(ii) such basis shall include develop-  
16                   ment costs properly attributable to such  
17                   building.

18           “(B) DEVELOPMENT COSTS.—For pur-  
19           poses of subparagraph (A)(ii), the term ‘devel-  
20           opment costs’ includes—

21                   “(i) site preparation costs,

22                   “(ii) State and local impact fees,

23                   “(iii) reasonable development costs,

24                   “(iv) professional fees related to basis  
25           items,

1                   “(v) construction financing costs re-  
2                   lated to basis items other than land, and

3                   “(vi) on-site and adjacent improve-  
4                   ments required by State and local govern-  
5                   ments.

6                   “(2) QUALIFIED RURAL INVESTMENT BUILD-  
7                   ING.—The term ‘qualified rural investment building’  
8                   means any building which is part of a qualified rural  
9                   investment project at all times during the period—

10                   “(A) beginning on the 1st day in the com-  
11                   pliance period on which such building is part of  
12                   such an investment project, and

13                   “(B) ending on the last day of the compli-  
14                   ance period with respect to such building.

15                   “(d) REHABILITATION EXPENDITURES TREATED AS  
16 SEPARATE NEW BUILDING.—Rehabilitation expenditures  
17 paid or incurred by the taxpayer with respect to any build-  
18 ing shall be treated for purposes of this section as a sepa-  
19 rate new building under the rules of section 42(e).

20                   “(e) DEFINITION AND SPECIAL RULES RELATING TO  
21 CREDIT PERIOD.—

22                   “(1) CREDIT PERIOD DEFINED.—For purposes  
23 of this section, the term ‘credit period’ means, with  
24 respect to any building, the period of 10 taxable

1 years beginning with the taxable year in which the  
2 building is first placed in service.

3 “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT  
4 PERIOD.—

5 “(A) IN GENERAL.—The credit allowable  
6 under subsection (a) with respect to any build-  
7 ing for the 1st taxable year of the credit period  
8 shall be determined by multiplying such credit  
9 by the fraction—

10 “(i) the numerator of which is the  
11 number of full months of such year during  
12 which such building was in service, and

13 “(ii) the denominator of which is 12.

14 “(B) DISALLOWED 1ST YEAR CREDIT AL-  
15 LOWED IN 11TH YEAR.—Any reduction by rea-  
16 son of subparagraph (A) in the credit allowable  
17 (without regard to subparagraph (A)) for the  
18 1st taxable year of the credit period shall be al-  
19 lowable under subsection (a) for the 1st taxable  
20 year following the credit period.

21 “(3) CREDIT PERIOD FOR EXISTING BUILDINGS  
22 NOT TO BEGIN BEFORE REHABILITATION CREDIT  
23 ALLOWED.—The credit period for an existing build-  
24 ing shall not begin before the 1st taxable year of the

1 credit period for rehabilitation expenditures with re-  
 2 spect to the building.

3 “(f) QUALIFIED RURAL INVESTMENT PROJECT;  
 4 QUALIFYING COUNTY.—For purposes of this section—

5 “(1) QUALIFIED RURAL INVESTMENT  
 6 PROJECT.—The term ‘qualified rural investment  
 7 project’ means any investment project of 1 or more  
 8 qualified rural investment buildings located in a  
 9 qualifying county (and, if necessary to the project,  
 10 any contiguous county) and selected by the State ac-  
 11 cording to its qualified rural investment plan.

12 “(2) QUALIFYING COUNTY.—The term ‘quali-  
 13 fying county’ means any county which—

14 “(A) is outside a metropolitan statistical  
 15 area (defined as such by the Office of Manage-  
 16 ment and Budget), and

17 “(B) during the 20-year period ending  
 18 with the year in which the most recent census  
 19 was conducted, has a net out-migration of in-  
 20 habitants from the county of at least 10 percent  
 21 of the population of the county at the beginning  
 22 of such period.

23 “(g) LIMITATION ON AGGREGATE CREDIT ALLOW-  
 24 ABLE WITH RESPECT TO INVESTMENT PROJECTS LO-  
 25 CATED IN A STATE.—

1           “(1) CREDIT MAY NOT EXCEED CREDIT  
2 AMOUNT ALLOCATED TO BUILDING.—The amount of  
3 the credit determined under this section for any tax-  
4 able year with respect to any building shall not ex-  
5 ceed the rural investment credit dollar amount allo-  
6 cated to such building under rules similar to the  
7 rules of section 42(h)(1).

8           “(2) ALLOCATED CREDIT AMOUNT TO APPLY  
9 TO ALL TAXABLE YEARS ENDING DURING OR AFTER  
10 CREDIT ALLOCATION YEAR.—Any rural investment  
11 credit dollar amount allocated to any building for  
12 any calendar year—

13           “(A) shall apply to such building for all  
14 taxable years in the credit period ending during  
15 or after such calendar year, and

16           “(B) shall reduce the aggregate rural in-  
17 vestment credit dollar amount of the allocating  
18 agency only for such calendar year.

19           “(3) RURAL INVESTMENT CREDIT DOLLAR  
20 AMOUNT FOR AGENCIES.—

21           “(A) IN GENERAL.—The aggregate rural  
22 investment credit dollar amount which a rural  
23 investment credit agency may allocate for any  
24 calendar year is the portion of the State rural  
25 investment credit ceiling allocated under this



1 paragraph for such calendar year to such agen-  
2 cy.

3 “(B) STATE CEILING INITIALLY ALLO-  
4 CATED TO STATE RURAL INVESTMENT CREDIT  
5 AGENCIES.—Except as provided in subpara-  
6 graphs (D) and (E), the State rural investment  
7 credit ceiling for each calendar year shall be al-  
8 located to the rural investment credit agency of  
9 such State. If there is more than 1 rural invest-  
10 ment credit agency of a State, all such agencies  
11 shall be treated as a single agency.

12 “(C) STATE RURAL INVESTMENT CREDIT  
13 CEILING.—The State rural investment credit  
14 ceiling applicable to any State and any calendar  
15 year shall be an amount equal to the sum of—

16 “(i) the unused State rural investment  
17 credit ceiling (if any) of such State for the  
18 preceding calendar year,

19 “(ii) \$185,000 for each qualifying  
20 county in the State,

21 “(iii) the amount of State rural in-  
22 vestment credit ceiling returned in the cal-  
23 endar year, plus

1                   “(iv) the amount (if any) allocated  
2                   under subparagraph (D) to such State by  
3                   the Secretary.

4                   For purposes of clause (i), the unused State  
5                   rural investment credit ceiling for any calendar  
6                   year is the excess (if any) of the sum of the  
7                   amounts described in clauses (ii) through (iv)  
8                   over the aggregate rural investment credit dol-  
9                   lar amount allocated for such year. For pur-  
10                  poses of clause (iii), the amount of State rural  
11                  investment credit ceiling returned in the cal-  
12                  endar year equals the rural investment credit  
13                  dollar amount previously allocated within the  
14                  State to any investment project which fails to  
15                  meet the 10 percent test under section  
16                  42(h)(1)(E)(ii) on a date after the close of the  
17                  calendar year in which the allocation was made  
18                  or which does not become a qualified rural in-  
19                  vestment project within the period required by  
20                  this section or the terms of the allocation or to  
21                  any investment project with respect to which an  
22                  allocation is canceled by mutual consent of the  
23                  rural investment credit agency and the alloca-  
24                  tion recipient.

1                   “(D) UNUSED RURAL INVESTMENT CREDIT  
2 CARRYOVERS ALLOCATED AMONG CERTAIN  
3 STATES.—

4                   “(i) IN GENERAL.—The unused rural  
5 investment credit carryover of a State for  
6 any calendar year shall be assigned to the  
7 Secretary for allocation among qualified  
8 States for the succeeding calendar year.

9                   “(ii) UNUSED RURAL INVESTMENT  
10 CREDIT CARRYOVER.—For purposes of this  
11 subparagraph, the unused rural investment  
12 credit carryover of a State for any calendar  
13 year is the excess (if any) of the unused  
14 State rural investment credit ceiling for  
15 such year (as defined in subparagraph  
16 (C)(i)) over the excess (if any) of—

17                   “(I) the unused State rural in-  
18 vestment credit ceiling for the year  
19 preceding such year, over

20                   “(II) the aggregate rural invest-  
21 ment credit dollar amount allocated  
22 for such year.

23                   “(iii) FORMULA FOR ALLOCATION OF  
24 UNUSED RURAL INVESTMENT CREDIT  
25 CARRYOVERS AMONG QUALIFIED

1 STATES.—The amount allocated under this  
2 subparagraph to a qualified State for any  
3 calendar year shall be the amount deter-  
4 mined by the Secretary to bear the same  
5 ratio to the aggregate unused rural invest-  
6 ment credit carryovers of all States for the  
7 preceding calendar year as such State’s  
8 population for the calendar year bears to  
9 the population of all qualified States for  
10 the calendar year. For purposes of the pre-  
11 ceding sentence, population shall be deter-  
12 mined in accordance with section 146(j).

13 “(iv) QUALIFIED STATE.—For pur-  
14 poses of this subparagraph, the term  
15 ‘qualified State’ means, with respect to a  
16 calendar year, any State—

17 “(I) which allocated its entire  
18 State rural investment credit ceiling  
19 for the preceding calendar year, and

20 “(II) for which a request is made  
21 (not later than May 1 of the calendar  
22 year) to receive an allocation under  
23 clause (iii).

24 “(E) STATE MAY PROVIDE FOR DIF-  
25 FERENT ALLOCATION.—Rules similar to the

1 rules of section 146(e) (other than paragraph  
2 (2)(B) thereof) shall apply for purposes of this  
3 paragraph.

4 “(F) POPULATION.—For purposes of this  
5 paragraph, population shall be determined in  
6 accordance with section 146(j).

7 “(G) COST-OF-LIVING ADJUSTMENT.—

8 “(i) IN GENERAL.—In the case of a  
9 calendar year after 2005, the \$185,000  
10 amount in subparagraph (C) shall be in-  
11 creased by an amount equal to—

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

14 “(II) the cost-of-living adjust-  
15 ment determined under section  
16 1(f)(3) for such calendar year by sub-  
17 stituting ‘calendar year 2004’ for ‘cal-  
18 endar year 1992’ in subparagraph (B)  
19 thereof.

20 “(ii) ROUNDING.—Any increase under  
21 clause (i) which is not a multiple of \$5,000  
22 shall be rounded to the next lowest mul-  
23 tiple of \$5,000.

1           “(4) PORTION OF STATE CEILING SET-ASIDE  
2           FOR CERTAIN INVESTMENT PROJECTS INVOLVING  
3           QUALIFIED NONPROFIT ORGANIZATIONS.—

4                   “(A) IN GENERAL.—At least 10 percent of  
5           the State rural investment credit ceiling for any  
6           State for any calendar year shall be allocated to  
7           qualified rural investment projects described in  
8           subparagraph (B).

9                   “(B) INVESTMENT PROJECTS INVOLVING  
10           QUALIFIED NONPROFIT ORGANIZATIONS.—For  
11           purposes of subparagraph (A), a qualified rural  
12           investment project is described in this subpara-  
13           graph if a qualified nonprofit organization is to  
14           materially participate (within the meaning of  
15           section 469(h)) in the development and oper-  
16           ation of the investment project throughout the  
17           compliance period.

18                   “(C) QUALIFIED NONPROFIT ORGANIZA-  
19           TION.—For purposes of this paragraph, the  
20           term ‘qualified nonprofit organization’ means  
21           any organization if—

22                           “(i) such organization is described in  
23                           any paragraph of section 501(c) and is ex-  
24                           empt from tax under section 501(a),

1           “(ii) such organization is determined  
2           by the State rural investment credit agency  
3           not to be affiliated with or controlled by a  
4           for-profit organization; and

5           “(iii) 1 of the exempt purposes of  
6           such organization includes the fostering of  
7           rural investment.

8           “(D) TREATMENT OF CERTAIN SUBSIDI-  
9           ARIES.—

10           “(i) IN GENERAL.—For purposes of  
11           this paragraph, a qualified nonprofit orga-  
12           nization shall be treated as satisfying the  
13           ownership and material participation test  
14           of subparagraph (B) if any qualified cor-  
15           poration in which such organization holds  
16           stock satisfies such test.

17           “(ii) QUALIFIED CORPORATION.—For  
18           purposes of clause (i), the term ‘qualified  
19           corporation’ means any corporation if 100  
20           percent of the stock of such corporation is  
21           held by 1 or more qualified nonprofit orga-  
22           nizations at all times during the period  
23           such corporation is in existence.

24           “(E) STATE MAY NOT OVERRIDE SET-  
25           ASIDE.—Nothing in subparagraph (F) of para-

1 graph (3) shall be construed to permit a State  
2 not to comply with subparagraph (A) of this  
3 paragraph.

4 “(F) CREDITS FOR QUALIFIED NONPROFIT  
5 ORGANIZATIONS.—

6 “(i) ALLOWANCE OF CREDIT.—Any  
7 credit which would be allowable under sub-  
8 section (a) with respect to a qualified rural  
9 investment building of a qualified nonprofit  
10 organization if such organization were not  
11 exempt from tax under this chapter shall  
12 be treated as a credit allowable under sub-  
13 part C to such organization.

14 “(ii) USE OF CREDIT.—A qualified  
15 nonprofit organization may assign, trade,  
16 sell, or otherwise transfer any credit allow-  
17 able to such organization under subpara-  
18 graph (A) to any taxpayer.

19 “(iii) CREDIT NOT INCOME.—A trans-  
20 fer under subparagraph (B) of any credit  
21 allowable under subparagraph (A) shall not  
22 result in income for purposes of section  
23 511.

24 “(5) SPECIAL RULES.—



1           “(A) BUILDING MUST BE LOCATED WITH-  
2           IN JURISDICTION OF CREDIT AGENCY.—A rural  
3           investment credit agency may allocate its aggre-  
4           gate rural investment credit dollar amount only  
5           to buildings located in the jurisdiction of the  
6           governmental unit of which such agency is a  
7           part.

8           “(B) AGENCY ALLOCATIONS IN EXCESS OF  
9           LIMIT.—If the aggregate rural investment cred-  
10          it dollar amounts allocated by a rural invest-  
11          ment credit agency for any calendar year exceed  
12          the portion of the State rural investment credit  
13          ceiling allocated to such agency for such cal-  
14          endar year, the rural investment credit dollar  
15          amounts so allocated shall be reduced (to the  
16          extent of such excess) for buildings in the re-  
17          verse of the order in which the allocations of  
18          such amounts were made.

19          “(C) CREDIT REDUCED IF ALLOCATED  
20          CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT  
21          WHICH WOULD BE ALLOWABLE WITHOUT RE-  
22          GARD TO SALES CONVENTION, ETC.—

23                 “(i) IN GENERAL.—The amount of  
24                 the credit determined under this section  
25                 with respect to any building shall not ex-

1           ceed the clause (ii) percentage of the  
2           amount of the credit which would (but for  
3           this subparagraph) be determined under  
4           this section with respect to such building.

5           “(ii) DETERMINATION OF PERCENT-  
6           AGE.—For purposes of clause (i), the  
7           clause (ii) percentage with respect to any  
8           building is the percentage which—

9                   “(I) the rural investment credit  
10                   dollar amount allocated to such build-  
11                   ing bears to

12                   “(II) the credit amount deter-  
13                   mined in accordance with clause (iii).

14           “(iii) DETERMINATION OF CREDIT  
15           AMOUNT.—The credit amount determined  
16           in accordance with this clause is the  
17           amount of the credit which would (but for  
18           this subparagraph) be determined under  
19           this section with respect to the building if  
20           this section were applied without regard to  
21           paragraph (2)(A) of subsection (e).

22           “(D) RURAL INVESTMENT CREDIT AGENCY  
23           TO SPECIFY APPLICABLE PERCENTAGE AND  
24           MAXIMUM ELIGIBLE BASIS.—In allocating a  
25           rural investment credit dollar amount to any

1 building, the rural investment credit agency  
2 shall specify the applicable percentage and the  
3 maximum eligible basis which may be taken  
4 into account under this section with respect to  
5 such building. The applicable percentage and  
6 maximum eligible basis so specified shall not ex-  
7 ceed the applicable percentage and eligible basis  
8 determined under this section without regard to  
9 this subsection.

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

12 “(A) RURAL INVESTMENT CREDIT AGEN-  
13 CY.—The term ‘rural investment credit agency’  
14 means any agency authorized to carry out this  
15 subsection.

16 “(B) POSSESSIONS TREATED AS  
17 STATES.—The term ‘State’ includes a posses-  
18 sion of the United States.

19 “(7) PORTION OF STATE CEILING SET-ASIDE  
20 FOR QUALIFIED RURAL SMALL BUSINESS INVEST-  
21 MENT CREDITS.—Not more than 20 percent of the  
22 State rural investment credit ceiling for any State  
23 for any calendar year may be allocated to qualified  
24 rural small business investment credits under section  
25 42B.

1       “(h) DEFINITIONS AND SPECIAL RULES.—For pur-  
2 poses of this section—

3           “(1) COMPLIANCE PERIOD.—The term ‘compli-  
4 ance period’ means, with respect to any building, the  
5 period of 10 taxable years beginning with the 1st  
6 taxable year of the credit period with respect there-  
7 to.

8           “(2) NEW BUILDING.—The term ‘new building’  
9 means a building the original use of which begins  
10 with the taxpayer.

11          “(3) EXISTING BUILDING.—The term ‘existing  
12 building’ means any building which is not a new  
13 building.

14          “(4) APPLICATION TO ESTATES AND TRUSTS.—  
15 In the case of an estate or trust, the amount of the  
16 credit determined under subsection (a) and any in-  
17 crease in tax under subsection (i) shall be appor-  
18 tioned between the estate or trust and the bene-  
19 ficiaries on the basis of the income of the estate or  
20 trust allocable to each.

21          “(i) RECAPTURE OF CREDIT.—If—

22           “(1) as of the close of any taxable year in the  
23 compliance period, the amount of the eligible basis  
24 of any building with respect to the taxpayer is less  
25 than

1           “(2) the amount of such basis as of the close  
2 of the preceding taxable year,  
3 then the taxpayer’s tax under this chapter for the  
4 taxable year shall be increased by the credit recap-  
5 ture amount determined under rules similar to the  
6 rules of section 42(j).

7           “(j) CERTIFICATIONS AND OTHER REPORTS TO SEC-  
8 RETARY.—

9           “(1) CERTIFICATION WITH RESPECT TO 1ST  
10 YEAR OF CREDIT PERIOD.—Following the close of  
11 the 1st taxable year in the credit period with respect  
12 to any qualified rural investment building, the tax-  
13 payer shall certify to the Secretary (at such time  
14 and in such form and in such manner as the Sec-  
15 retary prescribes)—

16           “(A) the taxable year, and calendar year,  
17 in which such building was first placed in serv-  
18 ice,

19           “(B) the eligible basis of such building as  
20 of the beginning of the credit period,

21           “(C) the maximum applicable percentage  
22 and eligible basis permitted to be taken into ac-  
23 count by the appropriate rural investment cred-  
24 it agency under subsection (g),

1           “(D) the election made under subsection  
2           (f) with respect to the qualified rural invest-  
3           ment project of which such building is a part,  
4           and

5           “(E) such other information as the Sec-  
6           retary may require.

7           In the case of a failure to make the certification re-  
8           quired by the preceding sentence on the date pre-  
9           scribed therefor, unless it is shown that such failure  
10          is due to reasonable cause and not to willful neglect,  
11          no credit shall be allowable by reason of subsection  
12          (a) with respect to such building for any taxable  
13          year ending before such certification is made.

14          “(2) ANNUAL REPORTS TO THE SECRETARY.—  
15          The Secretary may require taxpayers to submit an  
16          information return (at such time and in such form  
17          and manner as the Secretary prescribes) for each  
18          taxable year setting forth—

19                 “(A) the eligible basis for the taxable year  
20                 of each qualified rural investment building of  
21                 the taxpayer,

22                 “(B) the information described in para-  
23                 graph (1)(C) for the taxable year, and

24                 “(C) such other information as the Sec-  
25                 retary may require.

1 The penalty under section 6652(j) shall apply to any  
2 failure to submit the return required by the Sec-  
3 retary under the preceding sentence on the date pre-  
4 scribed therefor.

5 “(3) ANNUAL REPORTS FROM RURAL INVEST-  
6 MENT CREDIT AGENCIES.—Each agency which allo-  
7 cates any rural investment credit amount to any  
8 building for any calendar year shall submit to the  
9 Secretary (at such time and in such manner as the  
10 Secretary shall prescribe) an annual report speci-  
11 fying—

12 “(A) the amount of rural investment credit  
13 amount allocated to each building for such year,

14 “(B) sufficient information to identify each  
15 such building and the taxpayer with respect  
16 thereto, and

17 “(C) such other information as the Sec-  
18 retary may require.

19 The penalty under section 6652(j) shall apply to any  
20 failure to submit the report required by the pre-  
21 ceding sentence on the date prescribed therefor.

22 “(k) RESPONSIBILITIES OF RURAL INVESTMENT  
23 CREDIT AGENCIES.—

24 “(1) PLANS FOR ALLOCATION OF CREDIT  
25 AMONG INVESTMENT PROJECTS.—

1           “(A) IN GENERAL.—Notwithstanding any  
2 other provision of this section, the rural invest-  
3 ment credit dollar amount with respect to any  
4 building shall be zero unless—

5           “(i) such amount was allocated pursu-  
6 ant to a qualified rural investment plan of  
7 the agency which is approved by the gov-  
8 ernmental unit (in accordance with rules  
9 similar to the rules of section 147(f)(2)  
10 (other than subparagraph (B)(ii) thereof))  
11 of which such agency is a part,

12           “(ii) such agency notifies the chief ex-  
13 ecutive officer (or the equivalent) of the  
14 local jurisdiction within which the building  
15 is located of such investment project and  
16 provides such individual a reasonable op-  
17 portunity to comment on the investment  
18 project,

19           “(iii) a comprehensive market study  
20 of the development needs of individuals in  
21 the qualifying county to be served by the  
22 investment project is conducted before the  
23 credit allocation is made and at the devel-  
24 oper’s expense by a disinterested party who  
25 is approved by such agency, and



1           “(iv) a written explanation is available  
2           to the general public for any allocation of  
3           a rural investment credit dollar amount  
4           which is not made in accordance with es-  
5           tablished priorities and selection criteria of  
6           the rural investment credit agency.

7           “(B) QUALIFIED RURAL INVESTMENT  
8           PLAN.—For purposes of this section, the term  
9           ‘qualified rural investment plan’ means any  
10          plan—

11           “(i) which sets forth selection criteria  
12           to be used to determine priorities of the  
13           rural investment credit agency which are  
14           appropriate to qualifying counties,

15           “(ii) which also gives preference in al-  
16           locating rural investment credit dollar  
17           amounts among selected investment  
18           projects to—

19           “(I) investment projects that tar-  
20           get those small rural counties with  
21           consistently high rates of net out-mi-  
22           gration,

23           “(II) investment projects that  
24           link the economic development and job  
25           creation efforts of 2 or more small

1 rural counties with high rates of net  
2 out-migration, and

3 “(III) investment projects that  
4 link the economic development and job  
5 creation efforts of 1 or more small  
6 rural counties in the State with high  
7 rates of net out-migration to related  
8 efforts in regions of such State experi-  
9 encing economic growth, and

10 “(iii) which provides a procedure that  
11 the agency (or an agent or other private  
12 contractor of such agency) will follow in  
13 monitoring for noncompliance with the  
14 provisions of this section and in notifying  
15 the Internal Revenue Service of such non-  
16 compliance which such agency becomes  
17 aware of and in monitoring for noncompli-  
18 ance through regular site visits.

19 “(C) CERTAIN SELECTION CRITERIA MUST  
20 BE USED.—The selection criteria set forth in a  
21 qualified rural investment plan must include—

22 “(i) investment project location,

23 “(ii) technology and transportation in-  
24 frastructure needs, and

25 “(iii) private development trends.

1           “(2) CREDIT ALLOCATED TO BUILDING NOT TO  
2 EXCEED AMOUNT NECESSARY TO ASSURE INVEST-  
3 MENT PROJECT FEASIBILITY.—

4           “(A) IN GENERAL.—The rural investment  
5 credit dollar amount allocated to an investment  
6 project shall not exceed the amount the rural  
7 investment credit agency determines is nec-  
8 essary for the financial feasibility of the invest-  
9 ment project and its viability as a qualified  
10 rural investment project throughout the compli-  
11 ance period.

12           “(B) AGENCY EVALUATION.—In making  
13 the determination under subparagraph (A), the  
14 rural investment credit agency shall consider—

15           “(i) the sources and uses of funds and  
16 the total financing planned for the invest-  
17 ment project,

18           “(ii) any proceeds or receipts expected  
19 to be generated by reason of tax benefits,

20           “(iii) the percentage of the rural in-  
21 vestment credit dollar amount used for in-  
22 vestment project costs other than the cost  
23 of intermediaries, and

1           “(iv) the reasonableness of the devel-  
2           opmental and operational costs of the in-  
3           vestment project.

4           Clause (iii) shall not be applied so as to impede  
5           the development of investment projects in hard-  
6           to-develop areas.

7           “(C) DETERMINATION MADE WHEN CRED-  
8           IT AMOUNT APPLIED FOR AND WHEN BUILDING  
9           PLACED IN SERVICE.—

10           “(i) IN GENERAL.—A determination  
11           under subparagraph (A) shall be made as  
12           of each of the following times:

13                   “(I) The application for the rural  
14                   investment credit dollar amount.

15                   “(II) The allocation of the rural  
16                   investment credit dollar amount.

17                   “(III) The date the building is  
18                   first placed in service.

19           “(ii) CERTIFICATION AS TO AMOUNT  
20           OF OTHER SUBSIDIES.—Prior to each de-  
21           termination under clause (i), the taxpayer  
22           shall certify to the rural investment credit  
23           agency the full extent of all Federal, State,  
24           and local subsidies which apply (or which

1                   the taxpayer expects to apply) with respect  
2                   to the building.

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

7                   “(1) dealing with—

8                           “(A) investment projects which include  
9                           more than 1 building or only a portion of a  
10                           building, and

11                           “(B) buildings which are sold in portions,

12                   “(2) providing for the application of this section  
13 to short taxable years,

14                   “(3) preventing the avoidance of the rules of  
15 this section, and

16                   “(4) providing the opportunity for rural invest-  
17 ment credit agencies to correct administrative errors  
18 and omissions with respect to allocations and record  
19 keeping within a reasonable period after their dis-  
20 covery, taking into account the availability of regula-  
21 tions and other administrative guidance from the  
22 Secretary.”.

23           (b) CURRENT YEAR BUSINESS CREDIT CALCULA-  
24 TION.—Section 38(b) (relating to current year business  
25 credit), as amended by this Act, is amended by striking

1 “plus” at the end of paragraph (15), by striking the period  
2 at the end of paragraph (16) and inserting “, plus”, and  
3 by adding at the end the following:

4 “(17) the rural investment credit determined  
5 under section 42A(a).”.

6 (c) LIMITATION ON CARRYBACK.—Subsection (d) of  
7 section 39 (relating to carryback and carryforward of un-  
8 used credits), as amended by this Act, is amended by add-  
9 ing at the end the following:

10 “(12) NO CARRYBACK OF RURAL INVESTMENT  
11 CREDIT BEFORE EFFECTIVE DATE.—No portion of  
12 the unused business credit for any taxable year  
13 which is attributable to the rural investment credit  
14 determined under section 42A may be carried back  
15 to a taxable year beginning before the date of the  
16 enactment of this paragraph.”.

17 (d) CONFORMING AMENDMENTS.—

18 (1) Section 55(c)(1) is amended by inserting  
19 “or subsection (i) or (j) of section 42A” after “sec-  
20 tion 42”.

21 (2) Subsections (i)(c)(3), (i)(c)(6)(B)(i), and  
22 (k)(1) of section 469 are each amended by inserting  
23 “or 42A” after “section 42”.

24 (3) Section 772(a) is amended by striking  
25 “and” at the end of paragraph (10), by redesignig-

1 nating paragraph (11) as paragraph (12), and by in-  
 2 serting after paragraph (10) the following:

3 “(11) the rural investment credit determined  
 4 under section 42A, and”.

5 (4) Section 774(b)(4) is amended by inserting  
 6 “, 42A(i),” after “section 42(j)”.

7 (e) CLERICAL AMENDMENT.—The table of sections  
 8 for subpart D of part IV of subchapter A of chapter 1  
 9 is amended by inserting after the item relating to section  
 10 42 the following:

“Sec. 42A. Rural investment credit.”.

11 (f) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to expenditures made in taxable  
 13 years beginning after the date of the enactment of this  
 14 Act.

15 **SEC. 304. QUALIFIED RURAL SMALL BUSINESS INVEST-**  
 16 **MENT CREDIT.**

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

21 **“SEC. 42B. QUALIFIED RURAL SMALL BUSINESS INVEST-**  
 22 **MENT CREDIT.**

23 “(a) IN GENERAL.—For purposes of section 38, in  
 24 the case of a qualified rural small business, the amount  
 25 of the qualified rural small business investment credit de-

1 terminated under this section for any taxable year is equal  
2 to 30 percent of the qualified expenditures for the taxable  
3 year of such business.

4 “(b) DOLLAR LIMITATION.—

5 “(1) IN GENERAL.—The credit allowable under  
6 subsection (a) for any taxable year shall not exceed  
7 the lesser of—

8 “(A) \$5,000, or

9 “(B) the amount when added to the aggregate  
10 credits allowable to the taxpayer under  
11 subsection (a) for all preceding taxable years  
12 does not exceed \$25,000.

13 “(2) NO DOUBLE CREDIT ALLOWED.—In the  
14 case of any qualified rural small business which  
15 places in service a qualified rural investment build-  
16 ing with respect to which a rural investment credit  
17 is allowed under section 42A for any taxable year,  
18 paragraph (1)(A) shall be applied with respect to  
19 such taxable year by substituting ‘zero’ for ‘\$5,000’.

20 “(c) QUALIFIED RURAL SMALL BUSINESS.—For  
21 purposes of this section, the term ‘qualified rural small  
22 business’ means any person if such person—

23 “(1) employed not more than 5 full-time em-  
24 ployees during the taxable year,



1           “(2) materially and substantially participates in  
2 management,

3           “(3) is located in a qualifying county, and

4           “(4) submitted a qualified business plan with  
5 respect to which the rural investment credit agency  
6 with jurisdiction over such qualifying county has al-  
7 located a portion of the State rural investment ceil-  
8 ing for such taxable year under section 42A(g)(7).  
9 For purposes of paragraph (1), an employee shall be con-  
10 sidered full-time if such employee is employed at least 30  
11 hours per week for 20 or more calendar weeks in the tax-  
12 able year.

13           “(d) QUALIFIED EXPENDITURES.—For purposes of  
14 this section—

15           “(1) IN GENERAL.—The term ‘qualified expend-  
16 itures’ means expenditures normally associated with  
17 starting or expanding a business and included in a  
18 qualified business plan, including costs for capital,  
19 plant and equipment, inventory expenses, and wages,  
20 but not including interest costs.

21           “(2) ONLY CERTAIN EXPENDITURES INCLUDED  
22 FOR EXISTING BUSINESSES.—In the case of a quali-  
23 fied rural small business with respect to which a  
24 credit under subsection (a) was allowed for a pre-  
25 ceding taxable year, such term shall include only so

1 much of the expenditures described in paragraph (1)  
2 for the taxable year as exceed the aggregate of such  
3 expenditures for the preceding taxable year.

4 “(e) QUALIFIED BUSINESS PLAN.—For purposes of  
5 this section, the term ‘qualified business plan’ means a  
6 business plan which—

7 “(1) has been approved by the rural investment  
8 credit agency with jurisdiction over the qualifying  
9 county in which the qualified rural small business is  
10 located pursuant to such agency’s rural investment  
11 plan, and

12 “(2) meets such requirements as the agency  
13 may specify.

14 “(f) DENIAL OF DOUBLE BENEFIT.—In the case of  
15 the amount of the credit determined under this section—

16 “(1) no deduction or credit shall be allowed for  
17 such amount under any other provision of this chap-  
18 ter, and

19 “(2) no increase in the adjusted basis of any  
20 property shall result from such amount.

21 “(g) DEFINITIONS AND SPECIAL RULES.—For pur-  
22 poses of this section—

23 “(1) any term which is used in this section  
24 which is used in section 42A shall have the meaning  
25 given such term by section 42A, and

1           “(2) rules similar to the rules under subsections  
2           (j)(2), (j)(3), and (k) of section 42A shall apply.”.

3           (b) CURRENT YEAR BUSINESS CREDIT CALCULA-  
4 TION.—Section 38(b) (relating to current year business  
5 credit), as amended by this Act, is amended by striking  
6 “plus” at the end of paragraph (16), by striking the period  
7 at the end of paragraph (17) and inserting “, plus”, and  
8 by adding at the end the following:

9           “(18) the qualified rural small business invest-  
10           ment credit determined under section 42B(a).”.

11           (c) LIMITATION ON CARRYBACK.—Subsection (d) of  
12 section 39 (relating to carryback and carryforward of un-  
13 used credits), as amended by this Act, is amended by add-  
14 ing at the end the following:

15           “(13) NO CARRYBACK OF QUALIFIED RURAL  
16           SMALL BUSINESS INVESTMENT CREDIT BEFORE EF-  
17           FECTIVE DATE.—No portion of the unused business  
18           credit for any taxable year which is attributable to  
19           the qualified rural small business investment credit  
20           determined under section 42B may be carried back  
21           to a taxable year beginning before the date of the  
22           enactment of this paragraph.”.

23           (d) CLERICAL AMENDMENT.—The table of sections  
24 for subpart D of part IV of subchapter A of chapter 1,

1 as amended by this Act, is amended by inserting after the  
2 item relating to section 42A the following:

“Sec. 42B. Qualified rural small business investment credit.”.

3 (e) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to expenditures made in taxable  
5 years beginning after the date of the enactment of this  
6 Act.

7 **SEC. 305. MODIFICATIONS OF TREATMENT OF QUALIFIED**  
8 **ZONE ACADEMY BONDS.**

9 (a) **PROCEEDS OF BONDS MAY BE USED FOR CON-**  
10 **STRUCTION AND LAND ACQUISITION.**—Paragraph (5) of  
11 section 1397E(d) (defining qualified purpose) is amend-  
12 ed—

13 (1) by striking “rehabilitating or repairing” in  
14 subparagraph (A) and inserting “constructing, reha-  
15 bilitating, or repairing”, and

16 (2) by redesignating subparagraphs (B), (C),  
17 and (D) as subparagraphs (C), (D), and (E), respec-  
18 tively, and by inserting after subparagraph (A) the  
19 following:

20 “(B) acquiring the land on which the facil-  
21 ity is to be constructed.”.

22 (b) **EFFECTIVE DATE.**—The amendments made by  
23 this section shall apply to obligations issued after Decem-  
24 ber 31, 2003.

1 **SEC. 306. CERTAIN EXPENSES OF RURAL LETTER CAR-**  
2 **RIERS.**

3 (a) IN GENERAL.—Section 162(o) (relating to treat-  
4 ment of certain reimbursed expenses of rural mail car-  
5 riers) is amended by redesignating paragraph (2) as para-  
6 graph (3) and by inserting after paragraph (1) the fol-  
7 lowing:

8 “(2) SPECIAL RULE WHERE EXPENSES EXCEED  
9 REIMBURSEMENTS.—Notwithstanding paragraph  
10 (1)(A), if the expenses incurred by an employee for  
11 the use of a vehicle in performing services described  
12 in paragraph (1) exceed the qualified reimburse-  
13 ments for such expenses, such excess shall be taken  
14 into account in computing the miscellaneous  
15 itemized deductions of the employee under section  
16 67.”.

17 (b) CONFORMING AMENDMENT.—The heading for  
18 section 162(o) is amended by striking “REIMBURSED”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years beginning after  
21 December 31, 2003.

22 **SEC. 307. NEW MARKETS TAX CREDIT FOR NATIVE AMER-**  
23 **ICAN RESERVATIONS.**

24 (a) IN GENERAL.—Subpart D of part IV of sub-  
25 chapter A of chapter 1 (relating to business related cred-  
26 its) is amended by redesignating sections 45E and 45F

1 as sections 45F and 45G, respectively, and by inserting  
2 after section 45D the following new section:

3 **“SEC. 45E. NEW MARKETS TAX CREDIT FOR NATIVE AMER-**  
4 **ICAN RESERVATIONS.**

5 “(a) ALLOWANCE OF CREDIT.—

6 “(1) IN GENERAL.—For purposes of section 38,  
7 in the case of a taxpayer who holds a qualified eq-  
8 uity investment on a credit allowance date of such  
9 investment which occurs during the taxable year, the  
10 Native American new markets tax credit determined  
11 under this section for such taxable year is an  
12 amount equal to the applicable percentage of the  
13 amount paid to the reservation development entity  
14 for such investment at its original issue.

15 “(2) APPLICABLE PERCENTAGE.—For purposes  
16 of paragraph (1), the applicable percentage is—

17 “(A) 5 percent with respect to the first 3  
18 credit allowance dates, and

19 “(B) 6 percent with respect to the remain-  
20 der of the credit allowance dates.

21 “(3) CREDIT ALLOWANCE DATE.—For purposes  
22 of paragraph (1), the term ‘credit allowance date’  
23 means, with respect to any qualified equity invest-  
24 ment—

1           “(A) the date on which such investment is  
2 initially made, and

3           “(B) each of the 6 anniversary dates of  
4 such date thereafter.

5       “(b) QUALIFIED EQUITY INVESTMENT.—For pur-  
6 poses of this section—

7           “(1) IN GENERAL.—The term ‘qualified equity  
8 investment’ means any equity investment in a res-  
9 ervation development entity if—

10           “(A) such investment is acquired by the  
11 taxpayer at its original issue (directly or  
12 through an underwriter) solely in exchange for  
13 cash,

14           “(B) substantially all of such cash is used  
15 by the reservation development entity to make  
16 qualified low-income reservation investments,  
17 and

18           “(C) such investment is designated for  
19 purposes of this section by the reservation de-  
20 velopment entity.

21       Such term shall not include any equity investment  
22 issued by a reservation development entity more  
23 than 5 years after the date that such entity receives  
24 an allocation under subsection (f). Any allocation

1 not used within such 5-year period may be reallo-  
2 cated by the Secretary under subsection (f).

3 “(2) LIMITATION.—The maximum amount of  
4 equity investments issued by a reservation develop-  
5 ment entity which may be designated under para-  
6 graph (1)(C) by such entity shall not exceed the por-  
7 tion of the limitation amount allocated under sub-  
8 section (f) to such entity.

9 “(3) SAFE HARBOR FOR DETERMINING USE OF  
10 CASH.—The requirement of paragraph (1)(B) shall  
11 be treated as met if at least 85 percent of the aggre-  
12 gate gross assets of the reservation development en-  
13 tity are invested in qualified low-income reservation  
14 investments.

15 “(4) TREATMENT OF SUBSEQUENT PUR-  
16 CHASERS.—The term ‘qualified equity investment’  
17 includes any equity investment which would (but for  
18 paragraph (1)(A)) be a qualified equity investment  
19 in the hands of the taxpayer if such investment was  
20 a qualified equity investment in the hands of a prior  
21 holder.

22 “(5) REDEMPTIONS.—A rule similar to the rule  
23 of section 1202(e)(3) shall apply for purposes of this  
24 subsection.



1           “(6) EQUITY INVESTMENT.—The term ‘equity  
2 investment’ means—

3           “(A) any stock (other than nonqualified  
4 preferred stock as defined in section 351(g)(2))  
5 in an entity which is a corporation, and

6           “(B) any capital interest in an entity  
7 which is a partnership.

8           “(c) RESERVATION DEVELOPMENT ENTITY.—For  
9 purposes of this section—

10           “(1) IN GENERAL.—The term ‘reservation de-  
11 velopment entity’ means any domestic corporation or  
12 partnership if—

13           “(A) the primary mission of the entity is  
14 serving, or providing investment capital for,  
15 low-income reservations,

16           “(B) the entity maintains accountability to  
17 residents of low-income reservations through  
18 their representation on any governing board of  
19 the entity or on any advisory board to the enti-  
20 ty, and

21           “(C) the entity is certified by the Secretary  
22 for purposes of this section as being a reserva-  
23 tion development entity.

24           “(2) EXCEPTION.—For purposes of subpara-  
25 graph (C) of paragraph (1), the Secretary shall not

1 certify an entity as a reservation development entity  
 2 if such entity is also certified as a qualified commu-  
 3 nity development entity under section 45D(e).

4 “(d) QUALIFIED LOW-INCOME RESERVATION IN-  
 5 VESTMENTS.—For purposes of this section—

6 “(1) IN GENERAL.—The term ‘qualified low-in-  
 7 come reservation investment’ means—

8 “(A) any capital or equity investment in,  
 9 or loan to, any qualified active low-income res-  
 10 ervation business,

11 “(B) the purchase from another reserva-  
 12 tion development entity of any loan made by  
 13 such entity which is a qualified low-income res-  
 14 ervation investment,

15 “(C) financial counseling and other serv-  
 16 ices specified in regulations prescribed by the  
 17 Secretary to businesses located in, and resi-  
 18 dents of, low-income reservations, and

19 “(D) any equity investment in, or loan to,  
 20 any reservation development entity.

21 “(2) QUALIFIED ACTIVE LOW-INCOME RES-  
 22 ERVATION BUSINESS.—

23 “(A) IN GENERAL.—For purposes of para-  
 24 graph (1), the term ‘qualified active low-income  
 25 reservation business’ means, with respect to any

1 taxable year, any corporation (including a non-  
2 profit corporation) or partnership if for such  
3 year—

4 “(i) at least 50 percent of the total  
5 gross income of such entity is derived from  
6 the active conduct of a qualified business  
7 within any low-income reservation,

8 “(ii) a substantial portion of the use  
9 of the tangible property of such entity  
10 (whether owned or leased) is within any  
11 low-income reservation,

12 “(iii) a substantial portion of the serv-  
13 ices performed for such entity by its em-  
14 ployees are performed in any low-income  
15 reservation,

16 “(iv) less than 5 percent of the aver-  
17 age of the aggregate unadjusted bases of  
18 the property of such entity is attributable  
19 to collectibles (as defined in section  
20 408(m)(2)) other than collectibles that are  
21 held primarily for sale to customers in the  
22 ordinary course of such business, and

23 “(v) less than 5 percent of the aver-  
24 age of the aggregate unadjusted bases of  
25 the property of such entity is attributable

1 to nonqualified financial property (as de-  
2 fined in section 1397C(e)).

3 “(B) PROPRIETORSHIP.—Such term shall  
4 include any business carried on by an individual  
5 as a proprietor if such business would meet the  
6 requirements of subparagraph (A) were it incor-  
7 porated.

8 “(C) PORTIONS OF BUSINESS MAY BE  
9 QUALIFIED ACTIVE LOW-INCOME RESERVATION  
10 BUSINESS.—The term ‘qualified active low-in-  
11 come reservation business’ includes any trades  
12 or businesses which would qualify as a qualified  
13 active low-income reservation business if such  
14 trades or businesses were separately incor-  
15 porated.

16 “(3) QUALIFIED BUSINESS.—For purposes of  
17 this subsection, the term ‘qualified business’ has the  
18 meaning given to such term by section 45D(d)(3).

19 “(e) LOW-INCOME RESERVATION.—For purposes of  
20 this section, the term ‘low-income reservation’ means any  
21 Indian reservation (as defined in section 168(j)(6)) which  
22 has a poverty rate of at least 40 percent.

23 “(f) NATIONAL LIMITATION ON AMOUNT OF INVEST-  
24 MENTS DESIGNATED.—

1           “(1) IN GENERAL.—There is a Native American  
2 new markets tax credit limitation of \$50,000,000 for  
3 each of calendar years 2004 through 2007.

4           “(2) ALLOCATION OF LIMITATION.—The limita-  
5 tion under paragraph (1) shall be allocated by the  
6 Secretary among reservation development entities se-  
7 lected by the Secretary. In making allocations under  
8 the preceding sentence, the Secretary shall give pri-  
9 ority to any entity—

10           “(A) with a record of having successfully  
11 provided capital or technical assistance to dis-  
12 advantaged businesses or communities, or

13           “(B) which intends to satisfy the require-  
14 ment under subsection (b)(1)(B) by making  
15 qualified low-income reservation investments in  
16 1 or more businesses in which persons unre-  
17 lated to such entity (within the meaning of sec-  
18 tion 267(b) or 707(b)(1)) hold the majority eq-  
19 uity interest.

20           “(3) CARRYOVER OF UNUSED LIMITATION.—If  
21 the Native American new markets tax credit limita-  
22 tion for any calendar year exceeds the aggregate  
23 amount allocated under paragraph (2) for such year,  
24 such limitation for the succeeding calendar year  
25 shall be increased by the amount of such excess. No

1 amount may be carried under the preceding sentence  
2 to any calendar year after 2014.

3 “(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

4 “(1) IN GENERAL.—If, at any time during the  
5 7-year period beginning on the date of the original  
6 issue of a qualified equity investment in a reserva-  
7 tion development entity, there is a recapture event  
8 with respect to such investment, then the tax im-  
9 posed by this chapter for the taxable year in which  
10 such event occurs shall be increased by the credit re-  
11 capture amount.

12 “(2) CREDIT RECAPTURE AMOUNT.—For pur-  
13 poses of paragraph (1), the credit recapture amount  
14 is an amount equal to the sum of—

15 “(A) the aggregate decrease in the credits  
16 allowed to the taxpayer under section 38 for all  
17 prior taxable years which would have resulted if  
18 no credit had been determined under this sec-  
19 tion with respect to such investment, plus

20 “(B) interest at the underpayment rate es-  
21 tablished under section 6621 on the amount de-  
22 termined under subparagraph (A) for each  
23 prior taxable year for the period beginning on  
24 the due date for filing the return for the prior  
25 taxable year involved.

1 No deduction shall be allowed under this chapter for  
2 interest described in subparagraph (B).

3 “(3) RECAPTURE EVENT.—For purposes of  
4 paragraph (1), there is a recapture event with re-  
5 spect to an equity investment in a reservation devel-  
6 opment entity if—

7 “(A) such entity ceases to be a reservation  
8 development entity,

9 “(B) the proceeds of the investment cease  
10 to be used as required in subsection (b)(1)(B),  
11 or

12 “(C) such investment is redeemed by such  
13 entity.

14 “(4) SPECIAL RULES.—

15 “(A) TAX BENEFIT RULE.—The tax for  
16 the taxable year shall be increased under para-  
17 graph (1) only with respect to credits allowed  
18 by reason of this section which were used to re-  
19 duce tax liability. In the case of credits not so  
20 used to reduce tax liability, the carryforwards  
21 and carrybacks under section 39 shall be appro-  
22 priately adjusted.

23 “(B) NO CREDITS AGAINST TAX.—Any in-  
24 crease in tax under this subsection shall not be  
25 treated as a tax imposed by this chapter for

1           purposes of determining the amount of any cred-  
2           it under this chapter or for purposes of section  
3           55.

4           “(h) BASIS REDUCTION.—The basis of any qualified  
5 equity investment shall be reduced by the amount of any  
6 credit determined under this section with respect to such  
7 investment. This subsection shall not apply for purposes  
8 of sections 1202, 1400B, and 1400F.

9           “(i) REGULATIONS.—The Secretary shall prescribe  
10 such regulations as may be appropriate to carry out this  
11 section, including regulations—

12           “(1) which limit the credit for investments  
13 which are directly or indirectly subsidized by other  
14 Federal tax benefits (including the credit under sec-  
15 tion 42 and the exclusion from gross income under  
16 section 103),

17           “(2) which prevent the abuse of the purposes of  
18 this section,

19           “(3) which provide rules for determining wheth-  
20 er the requirement of subsection (b)(1)(B) is treated  
21 as met,

22           “(4) which impose appropriate reporting re-  
23 quirements, and

24           “(5) which apply the provisions of this section  
25 to newly formed entities.”.



1 (b) CREDIT MADE PART OF GENERAL BUSINESS  
2 CREDIT.—

3 (1) IN GENERAL.—Subsection (b) of section 38  
4 is amended by redesignating paragraphs (14) and  
5 (15) as paragraphs (15) and (16), respectively, and  
6 by inserting after paragraph (13) the following new  
7 paragraph:

8 “(14) the Native American new markets tax  
9 credit determined under section 45E(a),”.

10 (2) LIMITATION ON CARRYBACK.—Subsection  
11 (d) of section 39 is amended by redesignating para-  
12 graph (10) as paragraph (11) and by inserting after  
13 paragraph (9) the following new paragraph:

14 “(10) NO CARRYBACK OF NATIVE AMERICAN  
15 NEW MARKETS TAX CREDIT BEFORE JANUARY 1,  
16 2004.—No portion of the unused business credit for  
17 any taxable year which is attributable to the credit  
18 under section 45E may be carried back to a taxable  
19 year ending before January 1, 2004.”.

20 (c) DEDUCTION FOR UNUSED CREDIT.—Subsection  
21 (c) of section 196 is amended by redesignating paragraph  
22 (10) as paragraph (11), by striking “and” at the end of  
23 paragraph (9), and by inserting after paragraph (9) the  
24 following new paragraph:

1           “(10) the Native American new markets tax  
2 credit determined under section 45E(a), and”.

3 (d) CONFORMING AMENDMENTS.—

4           (1) Section 38(b)(15), as redesignated by sub-  
5 section (b)(1), is amended—

6               (A) by striking “45E(c)” and inserting  
7 “45F(c)”, and

8               (B) by striking “45E(a)” and inserting  
9 “45F(a)”.

10          (2) Section 38(b)(16), as redesignated by sub-  
11 section (b)(1), is amended by striking “45F(a)” and  
12 inserting “45G(a)”.

13          (3) Section 39(d)(11), as redesignated by sub-  
14 section (b)(2), is amended by striking “section 45E”  
15 and inserting “section 45F”.

16          (4) Section 196(c)(11), as redesignated by sub-  
17 section (c), is amended by striking “45E(a)” and in-  
18 serting “45F(a)”.

19          (5) Section 1016(a)(28) is amended—

20               (A) by striking “under section 45F” and  
21 inserting “under section 45G”, and

22               (B) by striking “section 45F(f)(1)” and in-  
23 serting “section 45G(f)(1)”.

24          (e) CLERICAL AMENDMENT.—The table of sections  
25 for subpart D of part IV of subchapter A of chapter 1

1 is amended by striking the items relating to sections 45E  
2 and 45F and inserting the following:

“Sec. 45E. New markets tax credit for Native American reser-  
vations.

“Sec. 45F. Small employer pension plan startup costs.

“Sec. 45G. Employer-provided child care credit.”.

3 (e) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to investments made after Decem-  
5 ber 31, 2003.

6 (f) GUIDANCE ON ALLOCATION OF NATIONAL LIM-  
7 TATION.—Not later than 120 days after the date of the  
8 enactment of this Act, the Secretary of the Treasury or  
9 the Secretary’s delegate shall issue guidance which speci-  
10 fies—

11 (1) how entities shall apply for an allocation  
12 under section 45E(f)(2) of the Internal Revenue  
13 Code of 1986, as added by this section;

14 (2) the competitive procedure through which  
15 such allocations are made; and

16 (3) the actions that such Secretary or delegate  
17 shall take to ensure that such allocations are prop-  
18 erly made to appropriate entities.

19 (g) AUDIT AND REPORT.—Not later than January 31  
20 of 2007 and 2010, the Comptroller General of the United  
21 States shall, pursuant to an audit of the Native American  
22 new markets tax credit program established under section  
23 45E of the Internal Revenue Code of 1986 (as added by

1 subsection (a)), report to Congress on such program, in-  
2 cluding all reservation development entities that receive an  
3 allocation under the Native American new markets credit  
4 under such section.

5 (h) GRANTS IN COORDINATION WITH CREDIT.—

6 (1) IN GENERAL.—The Secretary of the Treas-  
7 ury is authorized to award a grant of not more than  
8 \$1,000,000 to the First Nations Oweesta Corpora-  
9 tion.

10 (2) USE OF FUNDS.—The grant awarded under  
11 paragraph (1) may be used—

12 (A) to enhance the capacity of people living  
13 on low-income reservations (within the meaning  
14 of section 45E(e) of the Internal Revenue Code  
15 of 1986, as added by this section) to access,  
16 apply, control, create, leverage, utilize, and re-  
17 tain the financial benefits to such low-income  
18 reservations which are attributable to qualified  
19 low-income reservation investments (within the  
20 meaning of section 45E(d) of such Code), and

21 (B) to provide access to appropriate finan-  
22 cial capital for the development of such low-in-  
23 come reservations.

24 (3) AUTHORIZATION OF APPROPRIATIONS.—

25 There are authorized to be appropriated \$1,000,000

1 for fiscal years 2005 through 2015 to carry out the  
2 provisions of this subsection.

3 **SEC. 308. MODIFICATIONS OF AUTHORITY OF INDIAN TRIB-**  
4 **AL GOVERNMENTS TO ISSUE TAX-EXEMPT**  
5 **BONDS.**

6 (a) IN GENERAL.—Paragraph (1) of section 7871(c)  
7 (relating to Indian tribal governments treated as States  
8 for certain purposes) is amended to read as follows:

9 “(1) IN GENERAL.—Subsection (a) of section  
10 103 shall apply to any obligation issued by an In-  
11 dian tribal government (or subdivision thereof) only  
12 if—

13 “(A) such obligation—

14 “(i) is part of an issue 95 percent or  
15 more of the net proceeds of which are to  
16 be used to finance any facility located on  
17 an Indian reservation, and

18 “(ii) is issued before January 1, 2006,

19 or

20 “(B) such obligation is part of an issue  
21 substantially all of the proceeds of which are to  
22 be used in the exercise of any essential govern-  
23 mental function.”.

1 (b) SPECIAL RULES AND DEFINITIONS.—Subsection  
2 (c) of section 7871 is amended by inserting at the end  
3 the following new paragraph:

4 “(4) SPECIAL RULES AND DEFINITIONS.—

5 “(A) EXCLUSION OF GAMING.—An obliga-  
6 tion described in subparagraph (A) or (B) of  
7 paragraph (1) may not be used to finance any  
8 portion of a building in which class II or III  
9 gaming (as defined in section 4 of the Indian  
10 Gaming Regulatory Act (25 U.S.C. 2702)) is  
11 conducted or housed.

12 “(B) INDIAN RESERVATION.—For pur-  
13 poses of paragraph (1), the term ‘Indian res-  
14 ervation’ means—

15 “(i) a reservation, as defined in sec-  
16 tion 4(10) of the Indian Child Welfare Act  
17 of 1978 (25 U.S.C. 1903(10)), and

18 “(ii) lands held under the provisions  
19 of the Alaska Native Claims Settlement  
20 Act (43 U.S.C. 1601 et seq.) by a Native  
21 corporation as defined in section 3(m) of  
22 such Act (43 U.S.C. 1602(m)).”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to obligations issued after the date  
25 of the enactment of this Act.

1 **SEC. 309. INDIAN SCHOOL CONSTRUCTION.**

2 (a) DEFINITIONS.—In this section:

3 (1) BUREAU.—The term “Bureau” means the  
4 Bureau of Indian Affairs of the Department.

5 (2) DEPARTMENT.—The term “Department”  
6 means the Department of the Interior.

7 (3) ESCROW ACCOUNT.—The term “escrow ac-  
8 count” means the tribal school modernization escrow  
9 account established under subsection (b)(6)(B)(i).

10 (4) INDIAN.—The term “Indian” means any in-  
11 dividual who is a member of an Indian tribe.

12 (5) INDIAN TRIBE.—

13 (A) IN GENERAL.—The term “Indian  
14 tribe” has the meaning given the term “Indian  
15 tribal government” by section 7701(a)(40) of  
16 the Internal Revenue Code of 1986 (including  
17 the application of section 7871(d) of that  
18 Code).

19 (B) INCLUSION.—The term “Indian tribe”  
20 includes a consortium of Indian tribes approved  
21 by the Secretary.

22 (6) SECRETARY.—The term “Secretary” means  
23 the Secretary of the Interior.

24 (7) TRIBAL SCHOOL.—The term “tribal school”  
25 means an elementary school, secondary school, or  
26 dormitory that—

1 (A) is operated by a tribal organization or  
2 the Bureau for the education of Indian chil-  
3 dren; and

4 (B) under a contract, a grant, or an agree-  
5 ment, or for a Bureau-operated school, receives  
6 financial assistance to pay the costs of oper-  
7 ation from funds made available under—

8 (i) section 102, 103(a), or 208 of the  
9 Indian Self-Determination and Education  
10 Assistance Act (25 U.S.C. 450f, 450h(a),  
11 458d); or

12 (ii) the Tribally Controlled Schools  
13 Act of 1988 (25 U.S.C. 2501 et seq.).

14 (b) ISSUANCE OF BONDS.—

15 (1) IN GENERAL.—The Secretary shall establish  
16 a pilot program under which eligible Indian tribes  
17 may issue qualified tribal school modernization  
18 bonds to provide funding for the construction, reha-  
19 bilitation, or repair of tribal schools (including the  
20 advance planning and design of tribal schools).

21 (2) ELIGIBILITY.—

22 (A) IN GENERAL.—To be eligible to issue  
23 any qualified tribal school modernization bond  
24 under the program under paragraph (1), an In-  
25 dian tribe shall—



1 (i) prepare and submit to the Sec-  
2 retary a plan of construction that meets  
3 the requirements of subparagraph (B);

4 (ii) provide for quarterly and final in-  
5 spection of the project by the Bureau; and

6 (iii) pledge that the facilities financed  
7 by the bond will be used primarily for ele-  
8 mentary and secondary educational pur-  
9 poses for not less than the period during  
10 which the bond remains outstanding.

11 (B) PLAN OF CONSTRUCTION.—A plan of  
12 construction referred to in subparagraph (A)(i)  
13 meets the requirements of this subparagraph if  
14 the plan—

15 (i) contains a description of the con-  
16 struction to be carried out with funding  
17 provided under a qualified tribal school  
18 modernization bond;

19 (ii) demonstrates that a comprehen-  
20 sive survey has been completed to deter-  
21 mine the construction needs of the tribal  
22 school involved;

23 (iii) contains assurances that funding  
24 under the bond will be used only for the  
25 activities described in the plan;

1 (iv) contains a response to the evalua-  
2 tion criteria contained in Instructions and  
3 Application for Replacement School Con-  
4 struction, Revision 6, dated February 6,  
5 1999; and

6 (v) contains any other reasonable and  
7 related information determined to be ap-  
8 propriate by the Secretary.

9 (C) PRIORITY.—In determining whether an  
10 Indian tribe is eligible to participate in the pro-  
11 gram under this subsection, the Secretary shall  
12 give priority to an Indian tribe that, as dem-  
13 onstrated by the relevant plans of construction,  
14 will fund projects—

15 (i) described in the Education Facili-  
16 ties Replacement Construction Priorities  
17 List, as of fiscal year 2000, of the Bureau  
18 (65 Fed. Reg. 4623);

19 (ii) described in any subsequent prior-  
20 ities list published in the Federal Register;  
21 or

22 (iii) that meet the criteria for ranking  
23 schools as described in Instructions and  
24 Application for Replacement School Con-

1 construction, Revision 6, dated February 6,  
2 1999.

3 (D) ADVANCE PLANNING AND DESIGN  
4 FUNDING.—

5 (i) IN GENERAL.—An Indian tribe  
6 may propose in the plan of construction of  
7 the Indian tribe to receive advance plan-  
8 ning and design funding from the escrow  
9 account.

10 (ii) CONDITIONS ON ALLOCATION OF  
11 FUNDS.—As a condition to the allocation  
12 to an Indian tribe of advance planning and  
13 design funds from the escrow account  
14 under clause (i), the Indian tribe shall  
15 agree—

16 (I) to issue qualified tribal school  
17 modernization bonds after the date of  
18 receipt of the funds; and

19 (II) as a condition of each bond  
20 issuance, that the Indian tribe will de-  
21 posit into the escrow account, or a  
22 fund managed by the trustee as de-  
23 scribed in paragraph (4)(C), an  
24 amount equal to the amount of funds  
25 received from the escrow account.

1           (3) PERMISSIBLE ACTIVITIES.—In addition to  
2           the use of funds permitted under paragraph (1), an  
3           Indian tribe may use amounts received through the  
4           issuance of a qualified tribal school modernization  
5           bond—

6                   (A) to enter into and make payments  
7                   under contracts with licensed and bonded archi-  
8                   tects, engineers, and construction firms—

9                           (i) to determine the needs of the tribal  
10                           school; and

11                           (ii) for the design and engineering of  
12                           the tribal school;

13                   (B) to enter into and make payments  
14                   under contracts with financial advisers, under-  
15                   writers, attorneys, trustees, and other profes-  
16                   sionals who would be able to provide assistance  
17                   to the Indian tribe in issuing bonds; and

18                   (C) to carry out other activities determined  
19                   to be appropriate by the Secretary.

20           (4) BOND TRUSTEE.—

21                   (A) IN GENERAL.—Notwithstanding any  
22                   other provision of law, any qualified tribal  
23                   school modernization bond issued by an Indian  
24                   tribe under this subsection shall be subject to a

1 trust agreement between the Indian tribe and a  
2 trustee.

3 (B) TRUSTEE.—Any bank or trust com-  
4 pany that meets requirements established by  
5 the Secretary may be designated as a trustee  
6 under subparagraph (A).

7 (C) CONTENT OF TRUST AGREEMENT.—A  
8 trust agreement entered into by an Indian tribe  
9 under this paragraph shall specify that the  
10 trustee, with respect to any bond issued under  
11 this subsection, shall—

12 (i) act as a repository for the proceeds  
13 of the bond;

14 (ii) make payments to bondholders;

15 (iii) receive, as a condition to the  
16 issuance of the bond, a transfer of funds  
17 from the escrow account, or from other  
18 funds furnished by or on behalf of the In-  
19 dian tribe, in an amount that (including  
20 interest earnings from the investment of  
21 the funds in obligations of, or fully guaran-  
22 teed by, the United States, or from other  
23 investments authorized by paragraph (10))  
24 will produce funds sufficient to timely pay  
25 in full the entire principal amount of the

1 bond on the stated maturity date of the  
2 bond;

3 (iv) invest the funds transferred under  
4 clause (iii) in an investment described in  
5 that clause; and

6 (v)(I) hold and invest the funds trans-  
7 ferred under clause (iii) in a segregated  
8 fund or account under the agreement; and

9 (II) use the fund or account solely for  
10 payment of the costs of items described in  
11 paragraph (3).

12 (D) REQUIREMENTS FOR MAKING DIRECT  
13 PAYMENTS.—

14 (i) PAYMENTS.—

15 (I) IN GENERAL.—Notwith-  
16 standing any other provision of law,  
17 the trustee shall make any payment  
18 referred to in subparagraph (C)(v) in  
19 accordance with such requirements as  
20 the Indian tribe shall prescribe in the  
21 trust agreement entered into under  
22 subparagraph (C).

23 (II) INSPECTION.—Before mak-  
24 ing a payment for a project to a con-  
25 tractor under subparagraph (C)(v), to

1 ensure completion of the project, the  
 2 trustee shall require an inspection of  
 3 the project by—

4 (aa) a local financial institu-  
 5 tion; or

6 (bb) an independent inspect-  
 7 ing architect or engineer.

8 (ii) CONTRACTS.—Each contract re-  
 9 ferred to in paragraph (3) shall specify, or  
 10 be renegotiated to specify, that payments  
 11 under the contract shall be made in ac-  
 12 cordance with this paragraph.

13 (5) PAYMENTS OF PRINCIPAL AND INTEREST.—

14 (A) PRINCIPAL.—

15 (i) IN GENERAL.—No principal pay-  
 16 ment on any qualified tribal school mod-  
 17 ernization bond shall be required under  
 18 this subsection until the final, stated date  
 19 on which the bond reaches maturity.

20 (ii) MATURITY; OUTSTANDING PRIN-  
 21 CIPAL.—With respect to a qualified tribal  
 22 school modernization bond issued under  
 23 this subsection—

1 (I) the bond shall reach maturity  
2 not later than 15 years after the date  
3 of issuance of the bond; and

4 (II) on the date on which the  
5 bond reaches maturity, the entire out-  
6 standing principal under the bond  
7 shall become due and payable.

8 (B) INTEREST.—There shall be awarded a  
9 tax credit under section 1400M of the Internal  
10 Revenue Code of 1986 in lieu of interest on a  
11 qualified tribal school modernization bond  
12 issued under this subsection.

13 (6) BOND GUARANTEES.—

14 (A) IN GENERAL.—Payment of the prin-  
15 cipal portion of a qualified tribal school mod-  
16 ernization bond issued under this subsection  
17 shall be guaranteed solely by amounts deposited  
18 with each respective bond trustee as described  
19 in paragraph (4)(C)(iii).

20 (B) ESTABLISHMENT OF ACCOUNT.—

21 (i) IN GENERAL.—Notwithstanding  
22 any other provision of law, the Secretary  
23 may—

24 (I) establish a tribal school mod-  
25 ernization escrow account; and



1 (II) beginning in fiscal year  
2 2005, from amounts made available  
3 for school replacement under the con-  
4 struction account of the Bureau, de-  
5 posit not more than \$30,000,000 for  
6 each fiscal year into the escrow ac-  
7 count.

8 (ii) TRANSFERS OF EXCESS PRO-  
9 CEEDS.—Excess proceeds held under any  
10 trust agreement that are not needed for  
11 any of the purposes described in clauses  
12 (iii) and (v) of paragraph (4)(C) shall be  
13 transferred, from time to time, by the  
14 trustee for deposit into the escrow account.

15 (iii) PAYMENTS.—The Secretary shall  
16 use any amounts deposited in the escrow  
17 account under clauses (i) and (ii)—

18 (I) to make payments to trustees  
19 appointed and acting in accordance  
20 with paragraph (4); or

21 (II) to make payments described  
22 in paragraph (2)(D).

23 (7) LIMITATIONS.—

24 (A) OBLIGATION TO REPAY.—

1 (i) IN GENERAL.—Notwithstanding  
2 any other provision of law, the principal  
3 amount on any qualified tribal school mod-  
4 ernization bond issued under this sub-  
5 section shall be repaid only to the extent of  
6 any escrowed funds provided under para-  
7 graph (4)(C)(iii).

8 (ii) NO GUARANTEE.—No qualified  
9 tribal school modernization bond issued by  
10 an Indian tribe under this subsection shall  
11 be an obligation of, and no payment of the  
12 principal of such a bond shall be guaran-  
13 teed by—

14 (I) the United States;

15 (II) the Indian tribe; or

16 (III) the tribal school for which  
17 the bond was issued.

18 (B) LAND AND FACILITIES.—No land or  
19 facility purchased or improved with amounts  
20 derived from a qualified tribal school mod-  
21 ernization bond issued under this subsection  
22 shall be mortgaged or used as collateral for the  
23 bond.

24 (8) SALE OF BONDS.—A qualified tribal school  
25 modernization bond may be sold at a purchase price

1 equal to, in excess of, or at a discount from, the par  
2 amount of the bond.

3 (9) TREATMENT OF TRUST AGREEMENT EARN-  
4 INGS.—No amount earned through the investment of  
5 funds under the control of a trustee under any trust  
6 agreement described in paragraph (4) shall be sub-  
7 ject to Federal income taxation.

8 (10) INVESTMENT OF SINKING FUNDS.—A  
9 sinking fund established for the purpose of the pay-  
10 ment of principal on a qualified tribal school mod-  
11 ernization bond issued under this subsection shall be  
12 invested in—

13 (A) obligations issued by or guaranteed by  
14 the United States; or

15 (B) such other assets as the Secretary of  
16 the Treasury may by regulation allow.

17 (c) EXPANSION OF INCENTIVES FOR TRIBAL  
18 SCHOOLS.—Chapter 1 is amended by adding at the end  
19 the following new subchapter:

20 **“Subchapter Z—Tribal School Modernization**  
21 **Provisions**

“Sec. 1400M. Credit to holders of qualified tribal school modernization bonds.

1 **“SEC. 1400M. CREDIT TO HOLDERS OF QUALIFIED TRIBAL**  
2 **SCHOOL MODERNIZATION BONDS.**

3 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-  
4 payer who holds a qualified tribal school modernization  
5 bond on a credit allowance date of such bond which occurs  
6 during the taxable year, there shall be allowed as a credit  
7 against the tax imposed by this chapter for such taxable  
8 year an amount equal to the sum of the credits determined  
9 under subsection (b) with respect to credit allowance dates  
10 during such year on which the taxpayer holds such bond.

11 “(b) AMOUNT OF CREDIT.—

12 “(1) IN GENERAL.—The amount of the credit  
13 determined under this subsection with respect to any  
14 credit allowance date for a qualified tribal school  
15 modernization bond is 25 percent of the annual  
16 credit determined with respect to such bond.

17 “(2) ANNUAL CREDIT.—The annual credit de-  
18 termined with respect to any qualified tribal school  
19 modernization bond is the product of—

20 “(A) the applicable credit rate, multiplied  
21 by

22 “(B) the outstanding face amount of the  
23 bond.

24 “(3) APPLICABLE CREDIT RATE.—For purposes  
25 of paragraph (1), the applicable credit rate with re-  
26 spect to an issue is the rate equal to an average

1 market yield (as of the date of sale of the issue) on  
2 outstanding long-term corporate obligations (as de-  
3 termined by the Secretary).

4 “(4) SPECIAL RULE FOR ISSUANCE AND RE-  
5 DEMPTION.—In the case of a bond which is issued  
6 during the 3-month period ending on a credit allow-  
7 ance date, the amount of the credit determined  
8 under this subsection with respect to such credit al-  
9 lowance date shall be a ratable portion of the credit  
10 otherwise determined based on the portion of the 3-  
11 month period during which the bond is outstanding.  
12 A similar rule shall apply when the bond is re-  
13 deemed.

14 “(c) LIMITATION BASED ON AMOUNT OF TAX.—

15 “(1) IN GENERAL.—The credit allowed under  
16 subsection (a) for any taxable year shall not exceed  
17 the excess of—

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

21 “(B) the sum of the credits allowable  
22 under part IV of subchapter A (other than sub-  
23 part C thereof, relating to refundable credits).

24 “(2) CARRYOVER OF UNUSED CREDIT.—If the  
25 credit allowable under subsection (a) exceeds the

1 limitation imposed by paragraph (1) for such taxable  
2 year, such excess shall be carried to the succeeding  
3 taxable year and added to the credit allowable under  
4 subsection (a) for such taxable year.

5 “(d) QUALIFIED TRIBAL SCHOOL MODERNIZATION  
6 BOND; OTHER DEFINITIONS.—For purposes of this sec-  
7 tion—

8 “(1) QUALIFIED TRIBAL SCHOOL MODERNIZA-  
9 TION BOND.—

10 “(A) IN GENERAL.—The term ‘qualified  
11 tribal school modernization bond’ means, sub-  
12 ject to subparagraph (B), any bond issued as  
13 part of an issue under section 309(b) of the  
14 Heartland Investment and Rural Employment  
15 (HIRE) Act, as in effect on the date of the en-  
16 actment of this section, if—

17 “(i) 95 percent or more of the pro-  
18 ceeds of such issue are to be used for the  
19 construction, rehabilitation, or repair of a  
20 school facility funded by the Bureau of In-  
21 dian Affairs of the Department of the Inte-  
22 rior or for the acquisition of land on which  
23 such a facility is to be constructed with  
24 part of the proceeds of such issue,

1           “(ii) the bond is issued by an Indian  
2           tribe,

3           “(iii) the issuer designates such bond  
4           for purposes of this section, and

5           “(iv) the term of each bond which is  
6           part of such issue does not exceed 15  
7           years.

8           “(B) NATIONAL LIMITATION ON AMOUNT  
9           OF BONDS DESIGNATED.—

10           “(i) NATIONAL LIMITATION.—There is  
11           a national qualified tribal school mod-  
12           ernization bond limitation for each cal-  
13           endar year. Such limitation is—

14                   “(I) \$200,000,000 for 2005,

15                   “(II) \$200,000,000 for 2006,

16                   and

17                   “(III) zero after 2006.

18           “(ii) ALLOCATION OF LIMITATION.—  
19           The national qualified tribal school mod-  
20           ernization bond limitation shall be allo-  
21           cated to Indian tribes by the Secretary of  
22           the Interior subject to the provisions of  
23           section 309 of the Heartland Investment  
24           and Rural Employment (HIRE) Act, as in

1 effect on the date of the enactment of this  
2 section.

3 “(iii) DESIGNATION SUBJECT TO LIMITATION AMOUNT.—The maximum aggregate face amount of bonds issued during  
4 any calendar year which may be designated  
5 under subsection (d)(1) with respect to any  
6 Indian tribe shall not exceed the limitation  
7 amount allocated to such government  
8 under clause (ii) for such calendar year.

9 “(iv) CARRYOVER OF UNUSED LIMITATION.—If for any calendar year—

10 “(I) the limitation amount under  
11 this subparagraph, exceeds

12 “(II) the amount of qualified  
13 tribal school modernization bonds  
14 issued during such year,

15 the limitation amount under this subparagraph for the following calendar year shall  
16 be increased by the amount of such excess.

17 The preceding sentence shall not apply if  
18 such following calendar year is after 2012.

19 “(2) CREDIT ALLOWANCE DATE.—The term  
20 ‘credit allowance date’ means—

21 “(A) March 15,



1 “(B) June 15,

2 “(C) September 15, and

3 “(D) December 15.

4 Such term includes the last day on which the bond  
5 is outstanding.

6 “(3) BOND.—The term ‘bond’ includes any ob-  
7 ligation.

8 “(4) TRIBE.—The term ‘tribe’ has the meaning  
9 given the term ‘Indian tribal government’ by section  
10 7701(a)(40), including the application of section  
11 7871(d). Such term includes any consortium of  
12 tribes approved by the Secretary of the Interior.

13 “(e) CREDIT INCLUDED IN GROSS INCOME.—Gross  
14 income includes the amount of the credit allowed to the  
15 taxpayer under this section (determined without regard to  
16 subsection (c)) and the amount so included shall be treat-  
17 ed as interest income.

18 “(f) BONDS HELD BY REGULATED INVESTMENT  
19 COMPANIES.—If any qualified tribal school modernization  
20 bond is held by a regulated investment company, the credit  
21 determined under subsection (a) shall be allowed to share-  
22 holders of such company under procedures prescribed by  
23 the Secretary.

24 “(g) TREATMENT FOR ESTIMATED TAX PUR-  
25 POSES.—Solely for purposes of sections 6654 and 6655,

1 the credit allowed by this section to a taxpayer by reason  
2 of holding a qualified tribal school modernization bonds  
3 on a credit allowance date shall be treated as if it were  
4 a payment of estimated tax made by the taxpayer on such  
5 date.

6 “(h) CREDIT TREATED AS ALLOWED UNDER PART  
7 IV OF SUBCHAPTER A.—For purposes of subtitle F, the  
8 credit allowed by this section shall be treated as a credit  
9 allowable under part IV of subchapter A of this chapter.

10 “(i) REPORTING.—Issuers of qualified tribal school  
11 modernization bonds shall submit reports similar to the  
12 reports required under section 149(e).”.

13 (d) CONFORMING AMENDMENT.—The table of sub-  
14 chapters for chapter 1 is amended by adding at the end  
15 the following new item:

“SUBCHAPTER Z. Tribal school modernization provisions.”.

16 (e) ADDITIONAL PROVISIONS.—

17 (1) SOVEREIGN IMMUNITY.—This section and  
18 the amendments made by this section shall not be  
19 construed to impact, limit, or affect the sovereign  
20 immunity of the Federal Government or any State  
21 or tribal government.

22 (2) APPLICATION.—This section and the  
23 amendments made by this section shall take effect  
24 on the date of the enactment of this Act with respect

1 to bonds issued after December 31, 2004, regardless  
2 of the status of regulations promulgated thereunder.

3 **SEC. 310. COMMUNITY HOMEOWNERSHIP CREDIT.**

4 (a) IN GENERAL.—Subpart D of part IV of sub-  
5 chapter A of chapter 1, as amended by this Act, is amend-  
6 ed by inserting after section 42B the following new sec-  
7 tion:

8 **“SEC. 42C. COMMUNITY HOMEOWNERSHIP CREDIT.**

9 “(a) ALLOWANCE OF CREDIT.—For purposes of sec-  
10 tion 38, the amount of the homeownership credit deter-  
11 mined under this section for any taxable year in the credit  
12 period shall be an amount equal to the applicable percent-  
13 age of the eligible basis of each qualified residence.

14 “(b) APPLICABLE PERCENTAGE.—For purposes of  
15 this section—

16 “(1) IN GENERAL.—The term ‘applicable per-  
17 centage’ means the appropriate percentage pre-  
18 scribed by the Secretary for the month in which the  
19 taxpayer and the homeownership credit agency enter  
20 into an agreement with respect to such residence  
21 (which is binding on such agency, the taxpayer, and  
22 all successors in interest) as to the homeownership  
23 credit dollar amount to be allocated to such resi-  
24 dence.

1           “(2) METHOD OF PRESCRIBING PERCENT-  
2           AGE.—The percentage prescribed by the Secretary  
3           for any month shall be the percentage which will  
4           yield over a 5-year period amounts of credit under  
5           subsection (a) which have a present value equal to  
6           50 percent of the eligible basis of a qualified resi-  
7           dence.

8           “(3) METHOD OF DISCOUNTING.—The present  
9           value under paragraph (2) shall be determined—

10                   “(A) as of the last day of the 1st year of  
11                   the 5-year period referred to in paragraph (2),

12                   “(B) by using a discount rate equal to 72  
13                   percent of the annual Federal mid-term rate  
14                   applicable under section 1274(d)(1) to the  
15                   month applicable under paragraph (1) and com-  
16                   pounded annually, and

17                   “(C) by assuming that the credit allowable  
18                   under this section for any year is received on  
19                   the last day of such year.

20           “(c) QUALIFIED RESIDENCE.—For purposes of this  
21           section—

22                   “(1) IN GENERAL.—The term ‘qualified resi-  
23                   dence’ means any residence—

24                   “(A) which is located—

1           “(i) in a census tract which has a me-  
2           dian gross income which does not exceed  
3           80 percent of the greater of national or  
4           state-wide median gross income,

5           “(ii) in a rural area (as defined under  
6           section 520 of the Housing Act of 1949),

7           “(iii) on a reservation for a federally  
8           recognized Indian tribe, or

9           “(iv) in an area of chronic economic  
10          distress, and

11          “(B) which is purchased by a qualified  
12          buyer.

13          For purposes of subparagraph (A)(iv), an area is an  
14          area of chronic economic distress if it is approved  
15          for designation as such under section 143(j)(3); ex-  
16          cept that such designation shall not require the ap-  
17          proval of the Secretary, shall be deemed to be ap-  
18          proved by the Secretary of Housing and Urban De-  
19          velopment if not approved or disapproved by the  
20          Secretary of Housing and Urban Development with-  
21          in 90 days after submission for approval for pur-  
22          poses of section 143(j)(3)(A)(ii), and shall cease to  
23          apply after the end of the 5th calendar year after  
24          the calendar year in which the designation is made.

25          “(2) RESIDENCE.—

1           “(A) IN GENERAL.—For purposes of para-  
2 graph (1), the term ‘residence’ means—

3                   “(i) a single-family home containing 1  
4 to 4 housing units,

5                   “(ii) a condominium unit, or

6                   “(iii) stock in a cooperative housing  
7 corporation (as defined in section 216(b)).

8           “(B) FACTORY-BUILT HOMES IN-  
9 CLUDED.—For purposes of clause (i), (ii), or  
10 (iii) of subparagraph (A), such term shall in-  
11 clude any factory-built home.

12           “(3) TIMING OF DETERMINATION.—For pur-  
13 poses of paragraph (1), the determination of wheth-  
14 er a residence is a qualified residence shall be made  
15 at the time a binding commitment for an allocation  
16 of credit is awarded by the homeownership credit  
17 agency; except that the determination of whether a  
18 purchaser is a qualified buyer shall be made at the  
19 time the residence is sold.

20           “(4) MEDIAN GROSS INCOME.—For purposes of  
21 this section, median gross income shall be deter-  
22 mined consistent with section 143(f)(2).

23           “(d) ELIGIBLE BASIS.—For purposes of this sec-  
24 tion—

25                   “(1) NEW QUALIFIED RESIDENCES.—

1           “(A) IN GENERAL.—The eligible basis of a  
2 new qualified residence is—

3           “(i) in the case of a qualified resi-  
4 dence which is sold in a transaction which  
5 meets the requirements of subparagraph  
6 (B), its adjusted basis (excluding land) im-  
7 mediately before such sale, and

8           “(ii) zero in any other case.

9           “(B) REQUIREMENTS.—A sale of a quali-  
10 fied residence meets the requirements of this  
11 subparagraph if—

12           “(i) the buyer acquires the qualified  
13 residence by purchase (as defined in sec-  
14 tion 179(d)(2)),

15           “(ii) the buyer of the qualified resi-  
16 dence is not a related person with respect  
17 to the seller, and

18           “(iii) in the case of a seller who mate-  
19 rially participates in the development of  
20 the residence, the buyer’s debt financing is  
21 originated by a third party who is not a re-  
22 lated person with respect to the seller.

23           “(2) EXISTING QUALIFIED RESIDENCES.—

24           “(A) IN GENERAL.—The eligible basis of  
25 an existing qualified residence is—

1           “(i) in the case of a qualified resi-  
2           dence which is sold in a transaction which  
3           meets the requirements of subparagraph  
4           (B), its adjusted basis (excluding land) im-  
5           mediately before such sale, and

6           “(ii) zero in any other case.

7           “(B) REQUIREMENTS.—A sale of a quali-  
8           fied residence meets the requirements of this  
9           subparagraph if—

10           “(i) the buyer acquires the qualified  
11           residence by purchase (as defined in sec-  
12           tion 179(d)(2)),

13           “(ii) the qualified residence has un-  
14           dergone substantial rehabilitation in con-  
15           nection with the sale described in clause  
16           (i),

17           “(iii) the buyer of the qualified resi-  
18           dence is not a related person with respect  
19           to the seller, and

20           “(iv) in the case of a seller who mate-  
21           rially participates in the development of  
22           the residence, the buyer’s debt financing is  
23           originated by a third party who is not a re-  
24           lated person with respect to the seller.



1           “(C) SUBSTANTIAL REHABILITATION.—  
2           For purposes of subparagraph (B), substantial  
3           rehabilitation means rehabilitation expenditures  
4           paid or incurred with respect to a qualified resi-  
5           dence that are at least \$25,000.

6           “(D) LIMITATION OF ACQUISITION  
7           BASIS.—The eligible basis of an existing quali-  
8           fied residence may not exceed 150 percent of  
9           the qualified rehabilitation expenditures.

10          “(3) EFFECT OF SUBSEQUENT SALE, ETC.—A  
11          subsequent sale, assignment, rental, or refinancing  
12          of the qualified residence by the buyer or the subse-  
13          quent sale, assignment, or pooling of the buyer’s fi-  
14          nancing by the originator shall not be considered in  
15          determining whether or not the prior sales trans-  
16          action satisfied the requirements of subparagraph  
17          (B) of paragraph (1) or (2).

18          “(4) SPECIAL RULES RELATING TO DETER-  
19          MINATION OF ADJUSTED BASIS.—For purposes of  
20          this subsection—

21                 “(A) IN GENERAL.—Except as provided in  
22                 subparagraph (B), the adjusted basis of any  
23                 qualified residence—

24                         “(i) shall not include so much of the  
25                         basis of such qualified residence as is de-

1           terminated by reference to the basis of other  
2           property held at any time by the person  
3           acquiring the residence, and

4           “(ii) shall be determined without re-  
5           gard to the adjusted basis of any property  
6           which is not part of such qualified resi-  
7           dence.

8           “(B) BASIS OF PROPERTY IN COMMON  
9           AREAS, ETC., INCLUDED.—The adjusted basis  
10          of any qualified residence shall be determined  
11          by taking into account (on a pro rata basis) the  
12          adjusted basis of property (other than land)  
13          used in common areas or provided as com-  
14          parable amenities to all residences within a  
15          project.

16          “(5) SPECIAL RULES FOR DETERMINING ELIGI-  
17          BLE BASIS.—

18          “(A) RELATED PERSON, ETC.—For pur-  
19          poses of this section, a person (in this clause re-  
20          ferred to as the ‘related person’) is related to  
21          any person if the related person bears a rela-  
22          tionship to such person specified in section  
23          267(b) or 707(b)(1), or the related person and  
24          such person are engaged in trades or businesses  
25          under common control (within the meaning of

1 subsections (a) and (b) of section 52). For pur-  
2 poses of the preceding sentence, in applying  
3 section 267(b) or 707(b)(1), ‘10 percent’ shall  
4 be substituted for ‘50 percent’.

5 “(B) NONRESIDENTIAL SPACE EX-  
6 CLUDED.—No portion of the eligible basis of a  
7 qualified residence shall include costs attrib-  
8 utable to nonresidential space.

9 “(C) LIMITATION.—The eligible basis of  
10 any residence may not exceed the mortgage  
11 limit for Federal Housing Administration in-  
12 sured mortgages for single family homes in the  
13 area in which such residence is located.

14 “(e) DEFINITION AND SPECIAL RULES RELATING TO  
15 CREDIT PERIOD.—

16 “(1) CREDIT PERIOD DEFINED.—For purposes  
17 of this section, the term ‘credit period’ means, with  
18 respect to any qualified residence, the period of 5  
19 taxable years beginning with the taxable year in  
20 which the sale of the qualified residence occurs satis-  
21 fying the requirements of subsection (d)(1)(B) or  
22 (d)(2)(B).

23 “(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT  
24 PERIOD.—

1           “(A) IN GENERAL.—The credit allowable  
2           under subsection (a) with respect to any quali-  
3           fied residence for the 1st taxable year of the  
4           credit period shall be determined by multiplying  
5           the eligible basis under subsection (d) by the  
6           fraction—

7                   “(i) the numerator of which is the  
8                   sum of the number of remaining whole  
9                   months in such 1st taxable year after the  
10                  sale of the qualified residence, and

11                  “(ii) the denominator of which is 12.

12           “(B) DISALLOWED 1ST YEAR CREDIT AL-  
13           LOWED IN 6TH YEAR.—Any reduction by reason  
14           of subparagraph (A) in the credit allowable  
15           (without regard to subparagraph (A)) for the  
16           1st taxable year of the credit period shall be al-  
17           lowable under subsection (a) for the 1st taxable  
18           year following the credit period.

19           “(f) LIMITATION ON AGGREGATE CREDIT ALLOW-  
20           ABLE WITH RESPECT TO QUALIFIED RESIDENCES LO-  
21           CATED IN A STATE.—

22                   “(1) CREDIT MAY NOT EXCEED CREDIT DOLLAR  
23           AMOUNT ALLOCATED TO QUALIFIED RESIDENCE.—

24                   “(A) IN GENERAL.—The amount of the  
25           credit determined under this section for any

1 taxable year with respect to any qualified resi-  
2 dence shall not exceed the homeownership cred-  
3 it dollar amount allocated to such qualified resi-  
4 dence under this subsection.

5 “(B) TIME FOR MAKING ALLOCATION.—

6 “(i) An allocation shall be taken into  
7 account under subparagraph (A) only if it  
8 is made not later than the close of the cal-  
9 endar year in which the qualified residence  
10 is sold.

11 “(ii) A homeownership credit agency  
12 may allocate available homeownership cred-  
13 it dollar amounts to a qualified residence  
14 prior to the year of sale of such qualified  
15 residence if—

16 “(I) the taxpayer owns fee title  
17 or a leasehold interest of not less than  
18 50 years in the site of the qualified  
19 residence as of the later of the date  
20 which is 6 months after the date that  
21 the allocation was made or the close  
22 of the calendar year in which the allo-  
23 cation is made, and

24 “(II) such qualified residence is  
25 completed not later than the close of

1                   the second calendar year following the  
2                   calendar year in which the allocation  
3                   was made.

4                   “(C) VESTED RIGHT TO CREDIT DOLLAR  
5                   AMOUNT.—Once a homeownership credit alloca-  
6                   tion is received by a taxpayer, the right to such  
7                   credit is vested in such taxpayer and is not sub-  
8                   ject to recapture, except as provided in para-  
9                   graph (5)(B).

10                  “(2) HOMEOWNERSHIP CREDIT DOLLAR  
11                  AMOUNT FOR AGENCIES.—

12                   “(A) IN GENERAL.—The aggregate home-  
13                   ownership credit dollar amount which a home-  
14                   ownership credit agency may allocate for any  
15                   calendar year is the portion of the State home-  
16                   ownership credit ceiling allocated under this  
17                   paragraph for such calendar year to such agen-  
18                   cy.

19                   “(B) STATE CEILING INITIALLY ALLO-  
20                   CATED TO STATE HOMEOWNERSHIP CREDIT  
21                   AGENCIES.—Except as provided in subpara-  
22                   graphs (D) and (E), the State homeownership  
23                   credit ceiling for each calendar year shall be al-  
24                   located to the homeownership credit agency of  
25                   such State. If there is more than 1 homeowner-

1 ship credit agency of a State, all such agencies  
2 shall be treated as a single agency.

3 “(C) STATE HOMEOWNERSHIP CREDIT  
4 CEILING.—The State homeownership credit ceil-  
5 ing applicable to any State for any calendar  
6 year shall be an amount equal to the sum of—

7 “(i) the unused State homeownership  
8 credit ceiling (if any) of such State for the  
9 preceding calendar year,

10 “(ii) the greater of—

11 “(I) \$.50 multiplied by the State  
12 population, or

13 “(II) \$2,000,000,

14 “(iii) the amount of State homeown-  
15 ership credit ceiling returned in the calendar  
16 year, plus

17 “(iv) the amount (if any) allocated  
18 under subparagraph (D) to such State by  
19 the Secretary.

20 For purposes of clause (i), the unused State  
21 homeownership credit ceiling for any calendar  
22 year is the excess (if any) of the sum of the  
23 amounts described in clauses (ii) through (iv)  
24 over the aggregate homeownership credit dollar  
25 amount allocated for such year. For purposes of

1 clause (iii), the amount of State homeownership  
2 credit ceiling returned in the calendar year  
3 equals the homeownership credit dollar amount  
4 previously allocated within the State to any  
5 qualified residence with respect to which an al-  
6 location is canceled by mutual consent of the  
7 homeownership credit agency and the allocation  
8 recipient.

9 “(D) UNUSED HOMEOWNERSHIP CREDIT  
10 CARRYOVERS ALLOCATED AMONG CERTAIN  
11 STATES.—

12 “(i) IN GENERAL.—The unused home-  
13 ownership credit carryover of a State for  
14 any calendar year shall be assigned to the  
15 Secretary for allocation among qualified  
16 States for the succeeding calendar year.

17 “(ii) UNUSED HOMEOWNERSHIP  
18 CREDIT CARRYOVER.—For purposes of this  
19 subparagraph, the unused homeownership  
20 credit carryover of a State for any calendar  
21 year is the excess (if any) of—

22 “(I) the unused State home-  
23 ownership credit ceiling for the year  
24 preceding such year, over



1                   “(II) the aggregate homeowner-  
2                   ship credit dollar amount allocated for  
3                   such year.

4                   “(iii) FORMULA FOR ALLOCATION OF  
5                   UNUSED       HOMEOWNERSHIP       CREDIT  
6                   CARRYOVERS        AMONG        QUALIFIED  
7                   STATES.—The amount allocated under this  
8                   subparagraph to a qualified State for any  
9                   calendar year shall be the amount deter-  
10                  mined by the Secretary to bear the same  
11                  ratio to the aggregate unused homeowner-  
12                  ship credit carryovers of all States for the  
13                  preceding calendar year as such State’s  
14                  population for the calendar year bears to  
15                  the population of all qualified States for  
16                  the calendar year.

17                  “(iv) QUALIFIED STATE.—For pur-  
18                  poses of this subparagraph, the term  
19                  ‘qualified State’ means, with respect to a  
20                  calendar year, any State—

21                       “(I) which allocated its entire  
22                       State homeownership credit ceiling for  
23                       the preceding calendar year, and

24                       “(II) for which a request is made  
25                       (not later than May 1 of the calendar

1                   year) to receive an allocation under  
2                   clause (iii).

3                   “(E) STATE MAY PROVIDE FOR DIF-  
4                   FERENT ALLOCATION.—Rules similar to the  
5                   rules of section 146(e) (other than paragraph  
6                   (2)(B) thereof) shall apply for purposes of this  
7                   paragraph.

8                   “(F) POPULATION.—For purposes of this  
9                   paragraph, population shall be determined in  
10                  accordance with section 146(j).

11                  “(3) PORTION OF STATE CEILING SET-ASIDE  
12                  FOR CERTAIN PROJECTS INVOLVING QUALIFIED  
13                  NONPROFIT ORGANIZATIONS.—

14                  “(A) IN GENERAL.—Not more than 92.5  
15                  percent of the State homeownership credit ceil-  
16                  ing for any State for any calendar year shall be  
17                  allocated to projects other than qualified non-  
18                  profit housing projects described in subpara-  
19                  graph (B).

20                  “(B) PROJECTS INVOLVING QUALIFIED  
21                  NONPROFIT ORGANIZATIONS.—For purposes of  
22                  subparagraph (A), a qualified nonprofit housing  
23                  project is described in this subparagraph if a  
24                  qualified nonprofit organization is to own an in-  
25                  terest in the project (directly or through a part-

1           nership) and materially participate (within the  
2           meaning of section 469(h)) in the development  
3           and operation of the project throughout the  
4           credit period.

5           “(C) QUALIFIED NONPROFIT ORGANIZA-  
6           TION.—For purposes of this paragraph, the  
7           term ‘qualified nonprofit organization’ means  
8           any organization if—

9                   “(i) such organization is described in  
10                   paragraph (3) or (4) of section 501(c) and  
11                   is exempt from tax under section 501(a),

12                   “(ii) such organization is determined  
13                   by the State homeownership credit agency  
14                   not to be affiliated with or controlled by a  
15                   for-profit organization, and

16                   “(iii) 1 of the exempt purposes of  
17                   such organization includes the fostering of  
18                   low-income housing.

19           “(D) TREATMENT OF CERTAIN SUBSIDI-  
20           ARIES.—

21                   “(i) IN GENERAL.—For purposes of  
22                   this paragraph, a qualified nonprofit orga-  
23                   nization shall be treated as satisfying the  
24                   ownership and material participation test  
25                   of subparagraph (B) if any qualified cor-

1           poration in which such organization holds  
2           stock satisfies such test.

3           “(ii) QUALIFIED CORPORATION.—For  
4           purposes of clause (i), the term ‘qualified  
5           corporation’ means any corporation if 100  
6           percent of the stock of such corporation is  
7           held by 1 or more qualified nonprofit orga-  
8           nizations at all times during the period  
9           such corporation is in existence.

10          “(E) STATE MAY NOT OVERRIDE SET-  
11          ASIDE.—Nothing in subparagraph (E) of para-  
12          graph (2) shall be construed to permit a State  
13          not to comply with subparagraph (A) of this  
14          paragraph.

15          “(4) LIMITATION ON ALLOCATIONS TO AREAS  
16          OF CHRONIC ECONOMIC DISTRESS.—No more than  
17          50 percent of a homeownership credit agency’s por-  
18          tion of the State homeownership credit ceiling for a  
19          calendar year may be allocated to residences located  
20          in areas that—

21                 “(A) are designated as areas of chronic  
22                 economic distress in accordance with paragraph  
23                 (1) of subsection (c), and

24                 “(B) do not meet the requirements of  
25                 clause (i), (ii), or (iii) of subsection (c)(1)(A).

1           “(5) SPECIAL RULES.—

2                   “(A) RESIDENCE MUST BE LOCATED  
3           WITHIN JURISDICTION OF CREDIT AGENCY.—A  
4           homeownership credit agency may allocate its  
5           aggregate homeownership credit dollar amount  
6           only to qualified residences located in the juris-  
7           diction of the governmental unit of which such  
8           agency is a part.

9                   “(B) AGENCY ALLOCATIONS IN EXCESS OF  
10           LIMIT.—If the aggregate homeownership credit  
11           dollar amounts allocated by a homeownership  
12           credit agency for any calendar year exceed the  
13           portion of the State homeownership credit ceil-  
14           ing allocated to such agency for such calendar  
15           year, the homeownership credit dollar amounts  
16           so allocated shall be reduced (to the extent of  
17           such excess) for residences in the reverse of the  
18           order in which the allocations of such amounts  
19           were made.

20           “(g) DEFINITIONS AND SPECIAL RULES.—For pur-  
21           poses of this section—

22                   “(1) COMPLETED.—The term ‘completed’  
23           means the point in time where a qualified residence  
24           is first placed in a condition or state of readiness  
25           and availability for occupancy.

1           “(2) PROJECT.—The term ‘project’ means 1 or  
2 more residences together with functionally related  
3 and subordinate facilities developed and made avail-  
4 able to inhabitants of such residences, including rec-  
5 reational facilities and parking areas. To constitute  
6 a project, each residence must—

7           “(A) be developed by the same taxpayer  
8 pursuant to common planning and feasibility  
9 studies,

10           “(B) be financed through a common plan  
11 of construction financing, and

12           “(C) have common ownership prior to sale.

13 For purposes of this paragraph, it is not necessary  
14 that all residences within a project be contiguous or  
15 that all residences consist only of either new resi-  
16 dences or existing residences and it is not necessary  
17 that each residence within a project be a qualified  
18 residence.

19           “(3) QUALIFIED BUYER.—

20           “(A) IN GENERAL.—The term ‘qualified  
21 buyer’ means a buyer if at the time of the ac-  
22 quisition of the qualified residence, the buyer—

23           “(i) is 1 or more individuals whose in-  
24 come does not exceed 80 percent of the

1 area median gross income (70 percent for  
2 families of less than 3 members), and

3 “(ii) intends to occupy the residence  
4 as the buyer’s principal residence (within  
5 the meaning of section 121).

6 “(B) SPECIAL RULES IN QUALIFIED CEN-  
7 SUS TRACTS.—With respect to residences lo-  
8 cated in qualified census tracts (as defined in  
9 section 42), subparagraph (A) shall be applied  
10 by substituting ‘100 percent’ for ‘80 percent’  
11 and ‘90 percent’ for ‘70 percent’.

12 “(C) DETERMINATION OF INCOME.—For  
13 purposes of this paragraph, a buyer’s income  
14 shall be determined in accordance with section  
15 143(f)(4), except that subparagraph (B) of  
16 such section shall be applied substituting ‘the  
17 national median gross income’ for ‘the state-  
18 wide median gross income for the State in  
19 which such residence is located’.

20 “(4) NEW QUALIFIED RESIDENCE.—The term  
21 ‘new qualified residence’ means a qualified residence  
22 the original ownership of which begins with the tax-  
23 payer.

1           “(5) EXISTING QUALIFIED RESIDENCE.—The  
2 term ‘existing qualified residence’ means any quali-  
3 fied residence which is not a new qualified residence.

4           “(6) HOMEOWNERSHIP CREDIT AGENCY.—The  
5 term ‘homeownership credit agency’ means any  
6 agency authorized to carry out this section.

7           “(7) POSSESSIONS TREATED AS STATES.—The  
8 term ‘State’ includes the District of Columbia and a  
9 possession of the United States.

10           “(8) APPLICATION TO ESTATES AND TRUSTS.—  
11 In the case of an estate or trust, the amount of the  
12 credit determined under subsection (a) shall be ap-  
13 portioned between the estate or trust and the bene-  
14 ficiaries on the basis of the income of the estate or  
15 trust allocable to each.

16           “(h) REDUCTION IN TAX BENEFITS.—

17           “(1) RECAPTURE OF CREDIT.—If within the 5-  
18 year period beginning on the date of the original  
19 purchase of a qualified residence, the residence is  
20 sold, the qualified buyer—

21                   “(A) shall deduct and withhold an amount  
22 equal to the recapture amount from the amount  
23 realized on such sale, and

24                   “(B) shall transfer such amount to the  
25 homeownership credit agency which allocated



1           the homeownership credit dollar amount to such  
2           residence.

3           “(2) RECAPTURE AMOUNT.—For purposes of  
4           paragraph (1), the recapture amount is the amount  
5           equal to—

6                   “(A) 100 percent of the gain from the sale  
7                   referred to in paragraph (1) in the 1st or 2nd  
8                   year,

9                   “(B) 80 percent of the gain from such sale  
10                  in the 3rd year,

11                  “(C) 70 percent of the gain from such sale  
12                  in the 4th year, or

13                  “(D) 60 percent of the gain from such sale  
14                  in the 5th year.

15           “(3) DENIAL OF DEDUCTIONS IF CONVERTED  
16           TO RENTAL HOUSING.—If a qualified residence is  
17           converted to rental housing within the 5-year period  
18           beginning on the date of the original purchase of a  
19           qualified residence, no deduction for amortization or  
20           depreciation under this chapter shall be permitted  
21           with respect to such residence during such period.

22           “(i) APPLICATION OF AT-RISK RULES.—For pur-  
23           poses of this section, rules of section 465 shall not apply  
24           in determining the eligible basis of any qualified residence.

25           “(j) REPORTS TO THE SECRETARY.—

1           “(1) FROM THE TAXPAYER.—The Secretary  
2           may require taxpayers to submit an information re-  
3           turn (at such time and in such form and manner as  
4           the Secretary prescribes) for each taxable year set-  
5           ting forth—

6                   “(A) the eligible basis for the taxable year  
7                   of each qualified residence with respect to which  
8                   the taxpayer is claiming a credit under this sec-  
9                   tion,

10                   “(B) the amount of all homeownership  
11                   credit allocations received by the taxpayer from  
12                   any and all State homeownership credit agen-  
13                   cies, and

14                   “(C) such other information as the Sec-  
15                   retary may require.

16           The penalty under section 6652(j) shall apply to any  
17           failure to submit the return required by the Sec-  
18           retary under the preceding sentence on the date pre-  
19           scribed therefor.

20           “(2) FROM HOMEOWNERSHIP CREDIT AGEN-  
21           CIES.—Each agency which allocates any homeown-  
22           ership credit dollar amount to any residence for any  
23           calendar year shall submit to the Secretary (at such  
24           time and in such form and manner as the Secretary  
25           shall prescribe) an annual report specifying—

1           “(A) the amount of the homeownership  
2 credit dollar amount allocated to each residence  
3 for such year,

4           “(B) sufficient information to identify each  
5 such residence and the taxpayer initially enti-  
6 tled to claim the credit under this section with  
7 respect thereto, and

8           “(C) such other information as the Sec-  
9 retary may require.

10       “(k) RESPONSIBILITIES OF HOMEOWNERSHIP CRED-  
11 IT AGENCIES.—

12           “(1) PLANS FOR ALLOCATION OF CREDIT  
13 AMONG RESIDENCES.—

14           “(A) IN GENERAL.—Notwithstanding any  
15 other provision of this section, the homeown-  
16 ership credit dollar amount with respect to any  
17 qualified residence shall be zero unless such  
18 amount was allocated pursuant to a qualified  
19 allocation plan of the homeownership credit  
20 agency which is approved by the governmental  
21 unit (in accordance with rules similar to the  
22 rules of section 147(f)(2) (other than subpara-  
23 graph (B)(ii) thereof)) of which such agency is  
24 a part.

1           “(B) QUALIFIED ALLOCATION PLAN.—For  
 2 purposes of this paragraph, the term ‘qualified  
 3 allocation plan’ means any plan which sets forth  
 4 selection criteria to be used to determine the  
 5 homeownership development priorities of the  
 6 homeownership credit agency which are appro-  
 7 priate to local conditions.

8           “(C) CERTAIN HOMEOWNERSHIP DEVEL-  
 9 OPMENT CRITERIA MUST BE USED.—The devel-  
 10 opment criteria set forth in a qualified alloca-  
 11 tion plan must include—

12                   “(i) contribution of the development  
 13 to community stability and revitalization,

14                   “(ii) community and local government  
 15 support for the development,

16                   “(iii) need for homeownership develop-  
 17 ment within the area,

18                   “(iv) sponsor capability, and

19                   “(v) long-term sustainability of the  
 20 project as owner-occupied residences.

21           “(2) CREDIT ALLOCATED TO RESIDENCE NOT  
 22 TO EXCEED AMOUNT NECESSARY TO ASSURE FEASI-  
 23 BILITY.—

24           “(A) IN GENERAL.—The homeownership  
 25 credit dollar amount allocated to a residence

1 shall not exceed the amount the homeownership  
2 credit agency determines is necessary for the  
3 feasibility of the residence.

4 “(B) AGENCY EVALUATION.—In making  
5 the determination under subparagraph (A), the  
6 homeownership credit agency shall consider—

7 “(i) the sources and uses of funds and  
8 the total financing planned for the resi-  
9 dence,

10 “(ii) any proceeds or receipts expected  
11 to be generated by reason of tax benefits,

12 “(iii) the anticipated appraised value  
13 of the residence,

14 “(iv) the reasonableness of the devel-  
15 opmental costs of the residence,

16 “(v) the affordability to a reasonable  
17 range of prospective qualified buyers, and

18 “(vi) whether the residence addresses  
19 the need for affordable homes for families  
20 with children.

21 “(C) DETERMINATION MADE WHEN CRED-  
22 IT DOLLAR AMOUNT APPLIED FOR.—A deter-  
23 mination under subparagraph (A) shall be made  
24 as of each of the following times:

1                   “(i) The application for the home-  
2                   ownership credit dollar amount.

3                   “(ii) The allocation of the homeowner-  
4                   ship credit dollar amount.

5                   “(3) LIEN FOR RECAPTURE AMOUNT.—A home-  
6                   ownership credit dollar amount may be allocated by  
7                   a homeownership credit agency to a residence only  
8                   if such agency has a lien on such residence for the  
9                   payment of any amount potentially required to be  
10                  paid under subsection (h) to such agency.

11                  “(1) REGULATIONS.—The Secretary shall prescribe  
12                  such regulations as may be necessary or appropriate to  
13                  carry out the purposes of this section, including regula-  
14                  tions—

15                   “(1) dealing with—

16                   “(A) projects which include more than 1  
17                   residence or only a portion of a residence, and

18                   “(B) buildings which are completed in por-  
19                   tions,

20                   “(2) providing for the application of this section  
21                   to short taxable years,

22                   “(3) preventing the avoidance of the rules of  
23                   this section, and

24                   “(4) providing the opportunity for homeowner-  
25                   ship credit agencies to correct administrative errors

1 and omissions with respect to allocations and record  
2 keeping within a reasonable period after their dis-  
3 covery, taking into account the availability of regula-  
4 tions and other administrative guidance from the  
5 Secretary.”.

6 (b) CURRENT YEAR BUSINESS CREDIT CALCULA-  
7 TION.—Section 38(b) (relating to current year business  
8 credit), as amended by this Act, is amended by striking  
9 “plus” at the end of paragraph (17), by striking the period  
10 at the end of paragraph (18) and inserting “, plus”, and  
11 by adding at the end the following:

12 “(19) the homeownership credit determined  
13 under section 42C(a),”.

14 (c) LIMITATION ON CARRYBACK.—Subsection (d) of  
15 section 39 (relating to carryback and carryforward of un-  
16 used credits), as amended by this Act, is amended by add-  
17 ing at the end the following:

18 “(14) NO CARRYBACK OF HOMEOWNERSHIP  
19 CREDIT BEFORE EFFECTIVE DATE.—No amount of  
20 unused business credit available under section 42C  
21 may be carried back to a taxable year beginning on  
22 or before the effective date of such section.”.

23 (d) CONFORMING AMENDMENTS.—

1           (1) Section 55(c)(1) is amended by inserting  
2           “or subsection (h) or (i) of section 42C” after “sec-  
3           tion 42A”.

4           (2) Subsections (i)(3)(D), (i)(6)(B)(i), and  
5           (k)(1) of section 469 are each amended by inserting  
6           “or 42C” after “section 42A”.

7           (3) Section 772(a) is amended by striking  
8           “and” at the end of paragraph (11), by redesignig-  
9           nating paragraph (12) as paragraph (13), and by in-  
10          serting after paragraph (11) the following:

11           “(12) the homeownership credit determined  
12          under section 42C, and”.

13          (4) Section 774(b)(4) is amended by inserting  
14          “, 42C(h),” after “section 42A(i)”.

15          (e) CLERICAL AMENDMENT.—The table of sections  
16          for subpart D of part IV of subchapter A of chapter 1,  
17          as amended by this section, is amended by inserting after  
18          the item relating to section 42B the following:

                  “Sec. 42C. Community homeownership credit.”.

19          (f) EFFECTIVE DATE.—The amendments made by  
20          this section shall apply to qualified residences sold in tax-  
21          able years beginning after December 31, 2004, and before  
22          January 1, 2006.

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