108TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
108–67

ENERGY TAX POLICY ACT OF 2003

APRIL 9, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1531]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1531) to amend the Internal Revenue Code of 1986 to enhance energy conservation and to provide for reliability and diversity in the energy supply for the American people, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Energy Tax Policy Act of 2003".

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

(c) TABLE OF CONTENTS.—

Sec. 1. Short title.

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Sec. 101. Credit for residential solar energy property.
Sec. 102. Extension and expansion of credit for electricity produced from renewable resources.
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Sec. 104. Credit for energy efficiency improvements to existing homes.
Sec. 105. Business credit for construction of new energy efficient home.
Sec. 106. Energy credit for combined heat and power system property.
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Sec. 206. Determination of small refiner exception to oil depletion deduction.
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Sec. 208. Modifications to special rules for nuclear decommissioning costs.
Sec. 209. Treatment of certain income of cooperatives.
Sec. 210. Arbitrage rules not to apply to prepayments for natural gas.
Sec. 211. Prepayment of premium liability for coal industry health benefits.

TITLE III—PRODUCTION

Sec. 301. Oil and gas from marginal wells.
Sec. 302. Temporary suspension of limitation based on 65 percent of taxable income and extension of suspension of taxable income limit with respect to marginal production.
Sec. 303. Amortization of delay rental payments.
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TITLE IV—CORPORATE EXPATRIATION

Sec. 401. Tax treatment of corporate expatriation.
Sec. 402. Expressing the sense of the Congress that tax reform is needed to address the issue of corporate expatriation.

TITLE I—CONSERVATION

SEC. 101. CREDIT FOR RESIDENTIAL SOLAR ENERGY PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

"SEC. 25C. RESIDENTIAL SOLAR ENERGY PROPERTY.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year, and

"(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during the taxable year.

"(b) LIMITATIONS.—

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

"(A) $2,000 for each system of property described in subsection (c)(1), and

"(B) $2,000 for each system of property described in subsection (c)(2).

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

"(A) in the case of solar water heating equipment, such equipment is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed, and

"(B) in the case of a photovoltaic system, such system meets appropriate fire and electric code requirements.

"(c) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term 'qualified solar water heating property expenditure' means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun.

"(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term 'qualified photovoltaic property expenditure' means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit.

"(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

"(4) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1) or (2) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

"(5) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

"(d) SPECIAL RULES.—

"(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following shall apply:

"(A) The amount of the credit allowable under subsection (a) by reason of expenditures made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

"(B) There shall be allowable with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

"(C) Subparagraphs (A) and (B) shall be applied separately with respect to qualified solar water heating property expenditures and qualified photovoltaic property expenditures.

"(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

"(3) CONDOMINIUMS.—

"(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

"(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

"(4) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

"(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

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

"(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

"(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

"(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(A)).

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(f) TERMINATION.—The credit allowed under this section shall not apply to taxable years beginning after December 31, 2006 (December 31, 2008, with respect to qualified photovoltaic property expenditures).".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting ", and", and by adding at the end the following new paragraph:

"(29) to the extent provided in section 25C(e), in the case of amounts with respect to which a credit has been allowed under section 25C.".

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25B the following new item:

"Sec. 25C. Residential solar energy property.".

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

SEC. 102. EXTENSION AND EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM RENEWABLE RESOURCES.

(a) EXTENSION OF CREDIT FOR WIND AND CLOSED-LOOP BIOMASS FACILITIES.—Subparagraphs (A) and (B) of section 45(c)(3) are each amended by striking "2004" and inserting "2007".

(b) EXPANSION OF CREDIT FOR OPEN-LOOP BIOMASS, LANDFILL GAS FACILITIES, AND TRASH COMBUSTION FACILITIES.—Paragraph (3) of section 45(c) is amended by adding at the end the following new subparagraphs:

"(D) OPEN-LOOP BIOMASS FACILITIES.—In the case of a facility using open-loop biomass to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

"(E) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

"(F) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this subparagraph and before January 1, 2007.".

(c) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 45 is amended by adding at the end the following new paragraphs:

"(5) OPEN-LOOP BIOMASS.—The term 'open-loop biomass' means any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

"(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush,

"(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled, or

"(C) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass.

"(6) REDUCED CREDIT FOR CERTAIN PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (D) or (E) of paragraph (3) which is placed in service before the date of the enactment of this paragraph—

"(A) subsection (a)(1) shall be applied by substituting '1.0 cents' for '1.5 cents', and

"(B) the 5-year period beginning on the date of the enactment of this paragraph shall be substituted in lieu of the 10-year period in subsection (a)(2)(A)(ii).

"(7) CREDIT ELIGIBILITY FOR OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in paragraph (3)(D) which is placed in service before the date of enactment of this paragraph, if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) is the lessee or the operator of such facility.

"(8) LIMIT ON REDUCTIONS FOR GRANTS, ETC., FOR OPEN-LOOP BIOMASS FACILITIES.—If the amount of the credit determined under subsection (a) with respect to any open-loop biomass facility is required to be reduced under paragraph (3) of subsection (b), the fraction under such paragraph shall in no event be greater than ½.

"(9) COORDINATION WITH SECTION 29.—The term 'qualified facility' shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.".

(d) QUALIFIED ENERGY RESOURCES.—Paragraph (1) of section 45(c) (relating to qualified energy resources) is amended to read as follows:

"(1) QUALIFIED ENERGY RESOURCES.—The term 'qualified energy resources' means any resource described in paragraph (3) which is used to generate electricity at a qualified facility.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 103. CREDIT FOR QUALIFIED FUEL CELL POWER PLANTS.

(a) BUSINESS PROPERTY.—

(1) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking "or" at the end of clause (i), by adding "or" at the end of clause (ii), and by inserting after clause (ii) the following new clause:

"(iii) equipment which is part of a qualified fuel cell power plant,".

(2) QUALIFIED FUEL CELL POWER PLANT.—Subsection (a) of section 48 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) QUALIFIED FUEL CELL POWER PLANT.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified fuel cell power plant' means a fuel cell power plant that has an electricity-only generation efficiency greater than 30 percent.

"(B) LIMITATION.—The energy credit with respect to any qualified fuel cell power plant for any taxable year shall not exceed—

"(i) $500 for each ½ kilowatt of capacity of the power plant, reduced by

"(ii) the aggregate energy credits allowed with respect to such power plant for all prior taxable years.

"(C) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

"(D) TERMINATION.—Such term shall not include any property placed in service after December 31, 2006.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(b) NONBUSINESS PROPERTY.—

(1) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25C the following new section:

"SEC. 25D. NONBUSINESS QUALIFIED FUEL CELL POWER PLANT.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the qualified fuel cell power plant expenditures which are paid or incurred during such year.

"(b) LIMITATIONS.—The credit allowed under subsection (a) with respect to any qualified fuel cell power plant for any taxable year shall not exceed—

"(1) $500 for each ½ kilowatt of capacity of the power plant, reduced by

"(2) the aggregate energy credits allowed with respect to such power plant for all prior taxable years.

"(c) QUALIFIED FUEL CELL POWER PLANT EXPENDITURES.—For purposes of this section, the term 'qualified fuel cell power plant expenditures' means expenditures by the taxpayer for any qualified fuel cell power plant (as defined in section 48(a)(4))—

"(1) which meets the requirements of subparagraphs (B) and (D) of section 48(a)(3), and

"(2) which is installed on or in connection with a dwelling unit—

"(A) which is located in the United States, and

"(B) which is used by the taxpayer as a residence.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

"(d) SPECIAL RULES.—For purposes of this section, rules similar to the rules of section 25C(d) shall apply.

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(f) TERMINATION.—This section shall not apply to any expenditure made after December 31, 2006.".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting ", and", and by adding at the end the following new paragraph:

"(30) to the extent provided in section 25D(e), in the case of amounts with respect to which a credit has been allowed under section 25D.".

(B) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25C the following new item:

"Sec. 25D. Nonbusiness qualified fuel cell power plant.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures paid or incurred after December 31, 2003, in taxable years ending after such date.

SEC. 104. CREDIT FOR ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

"SEC. 25E. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 20 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—The credit allowed by this section with respect to a dwelling shall not exceed $2,000.

"(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed to the taxpayer under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of $2,000 reduced by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all prior taxable years.

"(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

"(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term 'qualified energy efficiency improvements' means any energy efficient building envelope component which meets the prescriptive criteria for such component established by the 2000 International Energy Conservation Code (or, in the case of metal roofs with appropriate pigmented coatings, meets the Energy Star program requirements), if—

"(1) such component is installed in or on a dwelling—

"(A) located in the United States, and

"(B) owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

"(2) the original use of such component commences with the taxpayer, and

"(3) such component reasonably can be expected to remain in use for at least 5 years.

If the aggregate cost of such components with respect to any dwelling exceeds $1,000, such components shall be treated as qualified energy efficiency improvements only if such components are also certified in accordance with subsection (e) as meeting such criteria.

"(e) CERTIFICATION.—The certification described in subsection (d) shall be—

"(1) determined on the basis of the technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency, based upon energy use or building envelope component performance, for the energy efficient building envelope component,

"(2) provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider who is accredited by or otherwise authorized to use approved energy performance measurement methods by the Residential Energy Services Network (RESNET), and

"(3) made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components installed and their respective energy efficiency levels.

"(f) DEFINITIONS AND SPECIAL RULES.—

"(1) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

"(2) CONDOMINIUMS.—

"(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having paid his proportionate share of the cost of qualified energy efficiency improvements made by such association.

"(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

"(3) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.

"(4) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term 'dwelling' includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003).

"(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(h) APPLICATION OF SECTION.—This section shall apply to qualified energy efficiency improvements installed after December 31, 2003, and before January 1, 2007.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 23 is amended by striking "section 1400C" and inserting "sections 25E and 1400C".

(2) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting ", and", and by adding at the end the following new paragraph:

"(31) to the extent provided in section 25E(g), in the case of amounts with respect to which a credit has been allowed under section 25E.".

(3) Subsection (d) of section 1400C is amended by inserting "and section 25E" after "this section".

(4) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25D the following new item:

"Sec. 25E. Energy efficiency improvements to existing homes.".

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

SEC. 105. BUSINESS CREDIT FOR CONSTRUCTION OF NEW ENERGY EFFICIENT HOME.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 45F the following new section:

"SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.

"(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualified new energy efficient home during construction of such home.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—

"(A) IN GENERAL.—The credit allowed by this section with respect to a dwelling shall not exceed $2,000.

"(B) PRIOR CREDIT AMOUNTS ON SAME DWELLING TAKEN INTO ACCOUNT.— If a credit was allowed under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of $2,000 reduced by the sum of the credits allowed under subsection (a) with respect to the dwelling for all prior taxable years.

"(2) COORDINATION WITH REHABILITATION AND ENERGY CREDITS.—For purposes of this section—

"(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)) or to the energy percentage of energy property (as determined under section 48(a)), and

"(B) expenditures taken into account under either section 47 or 48(a) shall not be taken into account under this section.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE CONTRACTOR.—The term 'eligible contractor' means the person who constructed the new energy efficient home, or in the case of a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003), the manufactured home producer of such home.

"(2) ENERGY EFFICIENT PROPERTY.—The term 'energy efficient property' means any energy efficient building envelope component, and any energy efficient heating or cooling appliance.

"(3) QUALIFIED NEW ENERGY EFFICIENT HOME.—The term 'qualified new energy efficient home' means a dwelling—

"(A) located in the United States,

"(B) the construction of which is substantially completed after December 31, 2003, "(C) the original use of which is as a principal residence (within the meaning of section 121) which commences with the person who acquires such dwelling from the eligible contractor, and

"(D) which is certified to have a level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 2000 International Energy Conservation Code and to have building envelope component improvements account for ⅓ of such 30 percent.

"(4) CONSTRUCTION.—The term 'construction' includes reconstruction and rehabilitation.

"(5) ACQUIRE.—The term 'acquire' includes purchase and, in the case of reconstruction and rehabilitation, such term includes a binding written contract for such reconstruction or rehabilitation.

"(6) BUILDING ENVELOPE COMPONENT.—The term 'building envelope component' means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.

"(7) MANUFACTURED HOME INCLUDED.—The term 'dwelling' includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003).

"(d) CERTIFICATION.—

"(1) METHOD.—A certification described in subsection (c)(3)(D) shall be determined on the basis of one of the following methods:

"(A) The technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency for the energy efficient building envelope component or energy efficient heating or cooling appliance, based upon energy use or building envelope component performance.

"(B) An energy performance measurement method that utilizes computer software approved by organizations designated by the Secretary.

"(2) PROVIDER.—Such certification shall be provided by—

"(A) in the case of a method described in paragraph (1)(A), a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating systems provider who is accredited by, or otherwise authorized to use, approved energy performance measurement methods by the Home Energy Ratings Systems Council or the National Association of State Energy Officials, or

"(B) in the case of a method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

"(3) FORM.—Such certification shall be made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling appliances installed and their respective energy efficiency levels, and in the case of a method described in subparagraph (B) of paragraph (1), accompanied by written analysis documenting the proper application of a permissible energy performance measurement method to the specific circumstances of such dwelling.

"(4) REGULATIONS.—

"(A) IN GENERAL.—In prescribing regulations under this subsection for energy performance measurement methods, the Secretary shall prescribe procedures for calculating annual energy costs for heating and cooling and cost savings and for the reporting of the results. Such regulations shall—

"(i) be based on the National Home Energy Rating Technical Guidelines of the National Association of State Energy Officials, the Home Energy Rating Guidelines of the Home Energy Rating Systems Council, or the modified 2001 California Residential ACM manual,

"(ii) provide that any calculation procedures be developed such that the same energy efficiency measures allow a home to qualify for the credit under this section regardless of whether the house uses a gas or oil furnace or boiler or an electric heat pump, and

"(iii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and explanations for the homebuyer of the energy efficient features that were used to comply with the requirements of this section.

"(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the National Association of State Energy Officials.

"(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

"(f) APPLICATION OF SECTION.—Subsection (a) shall apply to dwellings purchased during the period beginning on January 1, 2004, and ending on December 31, 2006.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to current year business credit) is amended by striking "plus" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ", plus", and by adding at the end thereof the following new paragraph:

"(16) the new energy efficient home credit determined under section 45G.".

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end thereof the following new subsection:

"(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a new energy efficient home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45G.".

(d) LIMITATION ON CARRYBACK.—Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

"(11) NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45G may be carried back to any taxable year ending before January 1, 2004.".

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Subsection (c) of section 196 is amended by striking "and" at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting ", and", and by adding after paragraph (10) the following new paragraph:

"(11) the new energy efficient home credit determined under section 45G.".

(f) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45F the following new item:

"Sec. 45G. New energy efficient home credit.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 2003.

SEC. 106. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking "or" at the end of clause (ii), by adding "or" at the end of clause (iii), and by inserting after clause (iii) the following new clause:

"(iv) combined heat and power system property,".

(b) COMBINED HEAT AND POWER SYSTEM PROPERTY.—Subsection (a) of section 48 is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

"(5) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of this subsection—

"(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term 'combined heat and power system property' means property comprising a system—

"(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

"(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

"(iii) which produces—

"(I) at least 20 percent of its total useful energy in the form of thermal energy, and

"(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

"(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of

50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

"(v) which is placed in service after December 31, 2003, and before January 1, 2007.

"(B) SPECIAL RULES.—

"(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

"(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and

"(II) the denominator of which is the lower heating value of the primary fuel source for the system.

"(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(iii) shall be determined on a Btu basis.

"(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term 'combined heat and power system property' does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

"(iv) PUBLIC UTILITY PROPERTY.—

"(I) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(1)), the taxpayer may only claim the credit under the subsection if, with respect to such property, the taxpayer uses a normalization method of accounting.

"(II) CERTAIN EXCEPTION NOT TO APPLY.—The matter in paragraph (3) which follows subparagraph (D) shall not apply to combined heat and power system property.

"(C) EXTENSION OF DEPRECIATION RECOVERY PERIOD.—If a taxpayer is allowed credit under this section for combined heat and power system property and such property would (but for this subparagraph) have a class life of 15 years or less under section 168, such property shall be treated as having a 22-year class life for purposes of section 168.".

(c) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—Subsection (d) of section 39 is amended by adding at the end the following new paragraph:

"(12) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(5) may be carried back to a taxable year ending before January 1, 2004.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

SEC. 107. NEW NONREFUNDABLE PERSONAL CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAXES.

(a) IN GENERAL.—

(1) SECTION 25C.—Section 25C(b), as added by section 101, is amended by adding at the end the following new paragraph:

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

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section and section 25D and 25E) and section 27 for the taxable year.".

(2) SECTION 25D.—Section 25D(b), as added by section 103, is amended to read as follows:

"(b) LIMITATIONS.—

"(1) IN GENERAL.—The credit allowed under subsection (a) with respect to any qualified fuel cell power plant for any taxable year shall not exceed—

"(A) $500 for each ½ kilowatt of capacity of the power plant, reduced by

"(B) the aggregate energy credits allowed with respect to such power plant for all prior taxable years.

"(2) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section and section 25E) and section 27 for the taxable year.".

(3) SECTION 25E.—Section 25E(b), as added by section 104, is amended by adding at the end the following new paragraph:

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

"(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 23(b)(4)(B) is amended by inserting "and sections 25C, 25D, and 25E" after "this section".

(2) Section 24(b)(3)(B) is amended by striking "and 25B" and inserting ", 25B, 25C, 25D, and 25E".

(3) Section 25(e)(1)(C) is amended by inserting "25C, 25D, and 25E" after "25B,".

(4) Section 25B(g)(2) is amended by striking "section 23" and inserting "sections 23, 25C, 25D, and 25E".

(5) Section 25E(c), as added by section 104, is amended by striking "section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)" and inserting "subsection (b)(3)".

(6) Section 26(a)(1) is amended by striking "and 25B" and inserting "25B, 25C, 25D, and 25E".

(7) Section 904(h) is amended by striking "and 25B" and inserting "25B, 25C, 25D, and 25E".

(8) Section 1400C(d) is amended by striking "and 25B" and inserting "25B, 25C, 25D, and 25E".

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

SEC. 108. REPEAL OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Subparagraph (A) of section 4041(a)(1) is amended by striking "or a diesel-powered train" each place it appears and by striking "or train".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 4041(a)(1) is amended by striking clause (ii) and by redesignating clause (iii) as clause (ii).

(B) Subparagraph (C) of section 4041(b)(1) is amended by striking all that follows "section 6421(e)(2)" and inserting a period.

(C) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081."

(D) Subsection (f) of section 4082 is amended by striking "section 4041(a)(1)" and inserting "subsections (d)(3) and (a)(1) of section 4041, respectively".

(E) Paragraph (3) of section 4083(a) is amended by striking "or a diesel-powered train".

(F) Paragraph (3) of section 6421(f) is amended to read as follows:

"(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081."

(G) Paragraph (3) of section 6427(l) is amended to read as follows:

"(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof."

(b) FUEL USED ON INLAND WATERWAYS.—

(1) IN GENERAL.—Paragraph (1) of section 4042(b) is amended by adding "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 4042(b) is amended by striking subparagraph (C).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2004.

SEC. 109. REDUCED MOTOR FUEL EXCISE TAX ON CERTAIN MIXTURES OF DIESEL FUEL.

(a) IN GENERAL.—Paragraph (2) of section 4081(a) is amended by adding at the end the following:

"(C) DIESEL-WATER FUEL EMULSION.—In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting '19.7 cents' for '24.3 cents'.".

(b) SPECIAL RULES FOR DIESEL-WATER FUEL EMULSIONS.—

(1) REFUNDS FOR TAX-PAID PURCHASES.—Section 6427 is amended by redesignating subsections (m) through (p) as subsections (n) through (q), respectively, and by inserting after subsection (l) the following new subsection:

"(m) DIESEL FUEL USED TO PRODUCE EMULSION.—

"(1) IN GENERAL.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(C) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means the aggregate rate of tax imposed by section 4081 determined without regard to section 4081(a)(2)(C).

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means the aggregate rate of tax imposed by section 4081 determined with regard to section 4081(a)(2)(C).".

(2) LATER SEPARATION OF FUEL.—

(A) IN GENERAL.—Section 4081 (relating to imposition of tax) is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

"(d) LATER SEPARATION OF FUEL FROM DIESEL-WATER FUEL EMULSION.—If any person separates the taxable fuel from a diesel-water fuel emulsion on which tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(C) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.".

(B) CONFORMING AMENDMENT.—Subsection (d) of section 6416 is amended by striking "section 4081(e)" and inserting "section 4081(f)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2003.

SEC. 110. REPEAL OF PHASEOUTS FOR QUALIFIED ELECTRIC VEHICLE CREDIT AND DEDUCTION FOR CLEAN FUEL-VEHICLES.

(a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Subsection (b) of section 30 (relating to limitations) is amended by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(b) DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.—Paragraph (1) of section 179A(b) (relating to qualified clean-fuel vehicle property) is amended to read as follows:

"(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

"(A) in the case of a motor vehicle not described in subparagraph (B) or (C), $2,000,

"(B) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

"(C) $50,000 in the case of—

"(i) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

"(ii) any bus which has a seating capacity of at least 20 adults (not including the driver).".

SEC. 111. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following:

"SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the new qualified fuel cell motor vehicle credit determined under subsection (b), and

"(2) the advanced lean burn technology motor vehicle credit determined under subsection (c).

"(b) NEW QUALIFIED FUEL CELL MOTOR VEHICLE CREDIT.—

"(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

"(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

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

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

"(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

"(2) INCREASE FOR FUEL EFFICIENCY.—

"(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

"(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

"(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

"(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

"(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy,

"(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2000 model year city fuel economy,

"(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2000 model year city fuel economy, and

"(vii) $4,000, if such vehicle achieves at least 300 percent of the 2000 model year city fuel economy.

"(B) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2000 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

"(i) In the case of a passenger automobile:

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 or 8,500 lbs	11.1 mpg.

"(ii) In the case of a light truck:

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg

“If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
6,500 lbs	12.8 mpg
7,000 or 8,500 lbs	12.0 mpg.

“(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term ‘vehicle inertia weight class’ has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

“(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term ‘new qualified fuel cell motor vehicle’ means a motor vehicle—

“(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

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

“(i) for 2004 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

“(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

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

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

“(E) which is made by a manufacturer.

“(c) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

“(1) IN GENERAL.—For purposes of subsection (a), the advanced lean burn technology motor vehicle credit determined under this subsection with respect to a new qualified advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

“(2) CREDIT AMOUNT.—

“(A) INCREASE FOR FUEL EFFICIENCY.—The credit amount determined under this paragraph shall be—

“(i) $500, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

“(ii) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

“(iii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

“(iv) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

“(v) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

“(vi) $3,000, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

For purposes of clause (i), the 2000 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

“(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to an advanced lean burn technology motor vehicle shall be increased by—

“(i) $250, if such vehicle achieves a lifetime fuel savings of at least 1,500 gallons of gasoline, and

“(ii) $500, if such vehicle achieves a lifetime fuel savings of at least 2,500 gallons of gasoline.

“(C) OPTION TO USE LIKE VEHICLE.—At the option of the vehicle manufacturer, the increase for fuel efficiency and conservation credit may be calculated by comparing the new advanced lean-burn technology motor vehicle to a like vehicle.

“(3) DEFINITIONS.—For purposes of this subsection—

“(A) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.—The term ‘advanced lean burn technology motor vehicle’ means a motor vehicle with an internal combustion engine that—

“(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel, "(ii) incorporates direct injection,

"(iii) achieves at least 125 percent of the 2000 model year city fuel economy, and

"(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 8 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle.

"(B) LIKE VEHICLE.—The term 'like vehicle' for an advanced lean burn technology motor vehicle derived from a conventional production vehicle produced in the same model year means a model that is equivalent in the following areas:

"(i) Body style (2-door or 4-door).

"(ii) Transmission (automatic or manual).

"(iii) Acceleration performance (± 0.05 seconds).

"(iv) Drivetrain (2-wheel drive or 4-wheel drive).

"(v) Certification by the Administrator of the Environmental Protection Agency.

"(C) LIFETIME FUEL SAVINGS.—The term 'lifetime fuel savings' shall be calculated by dividing 120,000 by the difference between the 2000 model year city fuel economy for the vehicle inertia weight class and the city fuel economy for the new qualified hybrid motor vehicle.

"(d) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under subpart A and sections 27, 29, and 30A for the taxable year.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CONSUMABLE FUEL.—The term 'consumable fuel' means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

"(2) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

"(3) 2000 MODEL YEAR CITY FUEL ECONOMY.—The 2000 model year city fuel economy with respect to any vehicle shall be measured under rules similar to the rules under section 4064(c).

"(4) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

"(5) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(6) NO DOUBLE BENEFIT.—The amount of any deduction or credit allowable under this chapter (other than the credit allowable under this section), with respect to a vehicle described under subsection (b), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

"(7) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any sale or lease document the specific amount of any credit otherwise allowable to the entity under this section.

"(8) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

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

"(10) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

"(11) CARRYFORWARD ALLOWED.—

"(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year (referred to as the 'unused credit year' in this paragraph), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

"(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under subparagraph (A).

"(12) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

"(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

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

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

"(2) DETERMINATION OF MOTOR VEHICLE ELIGIBILITY.—The Secretary, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

"(g) TERMINATION.—This section shall not apply to any property placed in service after—

"(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2012, and

"(2) in the case of any other property, December 31, 2006.".

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking "and" at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting ", and", and by adding at the end the following:

"(32) to the extent provided in section 30B(e)(5).".

(2) Section 6501(m) is amended by inserting "30B(e)(10)," after "30(d)(4),".

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

"Sec. 30B. Alternative motor vehicle credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

TITLE II—RELIABILITY

SEC. 201. NATURAL GAS GATHERING LINES TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by striking "and" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) any natural gas gathering line, and".

(b) NATURAL GAS GATHERING LINE.—Subsection (i) of section 168 is amended by adding after paragraph (15) the following new paragraph:

"(16) NATURAL GAS GATHERING LINE.—The term 'natural gas gathering line' means—

"(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, or

"(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

"(i) a gas processing plant,

"(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

"(iii) an interconnection with an intrastate transmission pipeline, or

"(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.".

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (C)(i) the following:

"(C)(ii) .... 10".

(d) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: ", or in section 168(e)(3)(C)(ii)".

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

SEC. 202. NATURAL GAS DISTRIBUTION LINES TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and by inserting ", and", and by adding at the end the following new clause:

"(iv) any natural gas distribution line.".

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iii) the following:

"(E)(iv) .... 20".

(c) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: ", or in section 168(e)(3)(E)(iv)".

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

SEC. 203. ELECTRIC TRANSMISSION PROPERTY TREATED AS 15-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and by inserting ", and", and by adding at the end the following new clause:

"(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale.".

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by inserting after the item relating to subparagraph (E)(iv) the following:

"(E)(v) .... 20".

(c) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1) is amended by inserting before the period the following: ", or in section 168(e)(3)(E)(v)".

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

SEC. 204. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

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

"SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

"(a) TREATMENT AS EXPENSES.—A small business refiner (as defined in section 45H(c)(1)) may elect to treat 75 percent of qualified capital costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year as expenses which are not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which paid or incurred.

"(b) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on March 31, 2003, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

"(c) BASIS REDUCTION.—

"(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

"(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.".

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1) is amended by striking "or" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting "; or", and by adding at the end the following new subparagraph:

"(I) expenditures for which a deduction is allowed under section 179B.".

(2) Section 312(k)(3)(B) is amended—

(A) by striking "section 179 or 179A" each place it appears and inserting "section 179, 179A, or 179B", and

(B) in the heading, by striking "179 OR 179A" and inserting "179, 179A, OR 179B".

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

"(33) to the extent provided in section 179B(c)."

(4) Paragraphs (2)(C) and (3)(C) of section 1245(a) are each amended by inserting "179B," after "179A,".

(5) The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 179A the following new item:

"Sec. 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after March 31, 2003, in taxable years ending after such date.

SEC. 205. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following new section:

"SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

"(a) IN GENERAL.—For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

"(b) MAXIMUM CREDIT.—

"(1) IN GENERAL.—The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

"(A) 25 percent of the qualified capital costs incurred by the small business refiner with respect to such facility, reduced by

"(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

"(2) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on March 31, 2003, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

"(c) DEFINITIONS.—For purposes of this section—

"(1) SMALL BUSINESS REFINER.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil with respect to which not more than 1,500 persons are engaged in the refinery operations of the business on any day during such taxable year and whose average daily domestic refinery run for the 1-year period ending on March 31, 2003, did not exceed 205,000 barrels.

"(2) QUALIFIED CAPITAL COSTS.—The term 'qualified capital costs' means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

"(3) APPLICABLE EPA REGULATIONS.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

"(4) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any facility, the period beginning on April 1, 2003, and ending with the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility.

"(5) LOW SULFUR DIESEL FUEL.—The term 'low sulfur diesel fuel' means diesel fuel with a sulfur content of 15 parts per million or less.

"(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

"(e) CERTIFICATION.—

"(1) REQUIRED.—Not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is allowed with respect to a facility, the small business refiner must obtain certification from the Secretary, in consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

"(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

"(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application.

"(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

"(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends, and

"(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(f) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 taxpayer.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit) is amended by striking "plus" at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting ", plus", and by adding at the end the following new paragraph:

"(17) in the case of a small business refiner, the low sulfur diesel fuel production credit determined under section 45H(a).".

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding after subsection (d) the following new subsection:

"(e) LOW SULFUR DIESEL FUEL PRODUCTION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45H(a).".

(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to adjustments to basis) is amended by striking "and" at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting ", and", and by adding at the end the following new paragraph:

"(34) in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d).".

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45H. Credit for production of low sulfur diesel fuel.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after March 31, 2003, in taxable years ending after such date.

SEC. 206. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION.

(a) IN GENERAL.—Paragraph (4) of section 613A(d) (relating to certain refiners excluded) is amended to read as follows:

"(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and the related person for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.".

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

SEC. 207. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

"(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

"(1) IN GENERAL.—In the case of any qualifying electric transmission transaction to which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

"(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

"(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

"(ii) any portion of such cost previously taken into account under this subsection, and

"(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

"(2) QUALIFIED GAIN.—For purposes of this subsection, the term 'qualified gain' means, with respect to any qualifying electric transmission transaction in any taxable year—

"(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

"(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

"(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2007, of—

"(A) property used in the trade or business of providing electric transmission services, or

"(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

"(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

"(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

"(B) a person—

"(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

"(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2), or

"(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

"(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or "(ii) a political subdivision or affiliate thereof whose transmission facilities are under the operational control of a person described in clause (i).

"(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'exempt utility property' means property used in the trade or business of—

"(i) generating, transmitting, distributing, or selling electricity, or

"(ii) producing, transmitting, distributing, or selling natural gas.

"(B) NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.—Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

"(6) SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

"(7) TIME FOR ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

"(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

"(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

"(8) PURCHASE.—For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

"(9) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 208. MODIFICATIONS TO SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) REPEAL OF LIMITATION ON DEPOSITS INTO FUND BASED ON COST OF SERVICE; CONTRIBUTIONS AFTER FUNDING PERIOD.—Subsection (b) of section 468A is amended to read as follows:

"(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

"(1) IN GENERAL.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.

"(2) CONTRIBUTIONS AFTER FUNDING PERIOD.—Notwithstanding any other provision of this section, a taxpayer may pay into the Fund in any taxable year after the last taxable year to which the ruling amount applies. Payments may not be made under the preceding sentence to the extent such payments would cause the assets of the Fund to exceed the nuclear decommissioning costs allocable to the taxpayer's current or former interest in the nuclear power plant to which the Fund relates. The limitation under the preceding sentence shall be determined by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended.".

(b) CLARIFICATION OF TREATMENT OF FUND TRANSFERS.—Subsection (e) of section 468A is amended by adding at the end the following new paragraph:

"(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

"(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

"(B) no amount shall be treated as distributed from such Fund, or be includible in gross income, by reason of such transfer.".

(c) TREATMENT OF CERTAIN DECOMMISSIONING COSTS.—

(1) IN GENERAL.—Section 468A is amended by redesignating subsections (f) and (g) as subsections (g) and (h), respectively, and by inserting after subsection (e) the following new subsection:

"(f) TRANSFERS INTO QUALIFIED FUNDS.—

"(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund up to an amount equal to the excess of the total nuclear decommissioning costs with respect to such nuclear power plant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

"(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

"(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

"(C) TRANSFERS OF QUALIFIED FUNDS.—If—

"(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

"(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferor for the taxable year which includes such date.

"(D) SPECIAL RULES.—

"(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

"(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall be the adjusted basis of such property.

"(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

"(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.".

(2) NEW RULING AMOUNT TO TAKE INTO ACCOUNT TOTAL COSTS.—Subparagraph (A) of section 468A(d)(2) is amended to read as follows:

"(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and".

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

SEC. 209. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking "or" at the end of clause (i), by striking clause (ii), and by adding at the end the following new clauses:

"(ii) from any provision or sale of transmission service or ancillary services if such services are provided on a nondiscriminatory open access basis under an independent transmission provider agreement approved by FERC (other than income received or accrued directly or indirectly from a member),

"(iii) from any nuclear decommissioning transaction, or

"(iv) from any asset exchange or conversion transaction.".

(2) DEFINITIONS AND SPECIAL RULES.—Paragraph (12) of section 501(c) is amended by adding at the end the following new subparagraphs:

"(E) For purposes of subparagraph (C)(ii), the term 'FERC' means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

"(F) For purposes of subparagraph (C)(iii), the term 'nuclear decommissioning transaction' means—

"(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

"(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

"(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

"(G) For purposes of subparagraph (C)(iv), the term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

"(i) generating, transmitting, distributing, or selling electric energy, or

"(ii) producing, transmitting, distributing, or selling natural gas.".

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS, ETC.—Paragraph (12) of section 501(c), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

"(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

"(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

"(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

"(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

"(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

"(II) the megawatt hours of electric energy sold during the base year to such members.

"(v) For purposes of clause (iv)(II), the term 'base year' means—

"(I) the calendar year preceding the start-up year, or

"(II) at the election of the electric company, the second or third calendar years preceding the start-up year.

"(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

"(vii) For purposes of this subparagraph, the start-up year is the calendar year which includes the date of the enactment of this subparagraph or, if later, at the election of the mutual or cooperative electric company—

"(I) the first year that such electric company offers nondiscriminatory open access, or

"(II) the first year in which at least 10 percent of such electric company's sales are not to members of such electric company.

"(viii) A company shall not fail to be treated as a mutual or cooperative company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

"(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.".

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end the following new paragraph:

"(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.".

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

"(c) CROSS REFERENCE.—

"For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).".

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

SEC. 210. ARBITRAGE RULES NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.

(a) IN GENERAL.—Subsection (b) of section 148 (relating to higher yielding investments) is amended by adding at the end the following new paragraph:

"(4) SAFE HARBOR FOR PREPAID NATURAL GAS.—

"(A) IN GENERAL.—The term 'investment-type property' does not include a prepayment under a qualified natural gas supply contract.

"(B) QUALIFIED NATURAL GAS SUPPLY CONTRACT.—For purposes of this paragraph, the term 'qualified natural gas supply contract' means any contract to acquire natural gas for resale by a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of—

"(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and

"(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

"(C) NATURAL GAS USED TO GENERATE ELECTRICITY.—Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

"(i) only if the electricity is generated by a utility owned by a governmental unit, and

"(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

"(D) ADJUSTMENTS FOR CHANGES IN CUSTOMER BASE.—

"(i) NEW BUSINESS CUSTOMERS.—If—

"(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for a business use at a property within the service area of such utility, and

"(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

"(ii) LOST CUSTOMERS.—The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

"(E) RULING REQUESTS.—The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

"(F) ADJUSTMENT FOR NATURAL GAS OTHERWISE ON HAND.—

"(i) IN GENERAL.—The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

"(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

"(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

"(ii) APPLICABLE SHARE.—For purposes of the clause (i), the term 'applicable share' means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

"(G) INTENTIONAL ACTS.—Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

"(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

"(ii) the amount of natural gas used to transport such natural gas to the utility.

"(H) TESTING PERIOD.—For purposes of this paragraph, the term 'testing period' means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

"(I) SERVICE AREA.—For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

"(i) any area throughout which such utility provided at all times during the testing period—

"(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

"(II) in the case of an electric utility, electricity distribution services,

"(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

"(iii) any area recognized as the service area of such utility under State or Federal law.".

(b) PRIVATE LOAN FINANCING TEST NOT TO APPLY TO PREPAYMENTS FOR NATURAL GAS.—Paragraph (2) of section 141(c) (providing exceptions to the private loan financing test) is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or", and by adding at the end the following new subparagraph:

"(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).".

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

SEC. 211. PREPAYMENT OF PREMIUM LIABILITY FOR COAL INDUSTRY HEALTH BENEFITS.

(a) IN GENERAL.—Section 9704 (relating to liability of assigned operators) is amended by adding at the end the following new subsection:

"(j) PREPAYMENT OF PREMIUM LIABILITY.—

"(1) IN GENERAL.—If—

"(A) any assigned operator who is a member of a controlled group of corporations (within the meaning of section 52(a)) makes a payment meeting the requirements of paragraph (2) to the Combined Fund, and

"(B) the common parent of such group—

"(i) is jointly and severally liable for any premium which would (but for this subsection) be required to be paid by such operator, and

"(ii) provides security which meets the requirements of paragraph (3),

then no person (other than such common parent) shall be liable for any premium for which such operator would otherwise be liable.

"(2) REQUIREMENTS.—A payment meets the requirements of this paragraph if—

"(A) the amount of the payment is not less than the present value of the total premium liability of the assigned operator for its assignees under this chapter with respect to the Combined Fund (as determined by the operator's enrolled actuary, as defined in section 7701(a)(35)), using actuarial methods and assumptions each of which is reasonable and which are reasonable in the aggregate, as determined by such enrolled actuary,

"(B) a signed actuarial report is filed with the Secretary of Labor by such enrolled actuary containing—

"(i) the date of the actuarial valuation applicable to the report, and

"(ii) a statement by the enrolled actuary signing the report that to the best of the actuary's knowledge the report is complete and accurate and that in the actuary's opinion the actuarial assumptions used are in the aggregate reasonably related to the experience of the operator and to reasonable expectations, "(C) a description of the security described in paragraph (3) is filed with the Secretary of Labor by the common parent, and

"(D) 30 calendar days have elapsed after the report required by subparagraph (B), and the description required by subparagraph (C), are filed with the Secretary of Labor, and the Secretary of Labor has not notified the assigned operator in writing that the requirements of this paragraph have not been satisfied.

"(3) SECURITY.—Security meets the requirements of this paragraph if—

"(A) the security (in the form of a bond, letter of credit, or cash escrow) is provided to the trustees of the 1992 UMWA Benefit Plan, solely for the purpose of paying premiums for beneficiaries described in section 9712(b)(2)(B), equal in amount to one year's liability of the assigned operator under section 9711, determined by using the average cost of such operator's liability during its prior 3 calendar years; and

"(B) the security will remain in place for 5 years.

"(4) USE OF PREPAYMENT.—Any payment to which this subsection applies (and earnings thereon) shall be used exclusively to pay premiums which would (but for this subsection) be required to be paid by the assigned operator making such payment."

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

TITLE III—PRODUCTION

SEC. 301. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits) is amended by adding at the end the following:

"SEC. 45I. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

"(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

"(1) the credit amount, and

"(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

"(b) CREDIT AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The credit amount is—

"(A) $3 per barrel of qualified crude oil production, and

"(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

"(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

"(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

"(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

"(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2003, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting '2002' for '1990').

"(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

"(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

"(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

"(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

"(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or natural gas which is produced from a qualified marginal well.

"(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

"(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated or qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

"(B) PROPORTIONATE REDUCTIONS.—

"(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

"(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

"(3) DEFINITIONS.—

"(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

"(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

"(ii) which, during the taxable year—

"(I) has average daily production of not more than 25 barrel equivalents, and

"(II) produces water at a rate not less than 95 percent of total well effluent.

"(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

"(C) BARREL EQUIVALENT.—The term 'barrel equivalent' means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

"(d) OTHER RULES.—

"(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

"(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

"(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.".

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) is amended by striking "plus" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ", plus", and by adding at the end the following:

"(18) the marginal oil and gas well production credit determined under section 45I(a).".

(c) CARRYBACK.—Subsection (a) of section 39 (relating to carryback and carryforward of unused credits generally) is amended by adding at the end the following:

"(3) 10-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—In the case of the marginal oil and gas well production credit—

"(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

"(B) paragraph (1) shall be applied by substituting '10 taxable years' for '1 taxable years' in subparagraph (A) thereof, and

"(C) paragraph (2) shall be applied—

"(i) by substituting '31 taxable years' for '21 taxable years' in subparagraph (A) thereof, and

"(ii) by substituting '30 taxable years' for '20 taxable years' in subparagraph (A) thereof.".

(d) COORDINATION WITH SECTION 29.—Section 29(a) is amended by striking "There" and inserting "At the election of the taxpayer, there".

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following:

"Sec. 45I. Credit for producing oil and gas from marginal wells.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2003.

SEC. 302. TEMPORARY SUSPENSION OF LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME AND EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.

(a) LIMITATION BASED ON 65 PERCENT OF TAXABLE INCOME.—Subsection (d) of section 613A (relating to limitation on percentage depletion in case of oil and gas wells) is amended by adding at the end the following new paragraph:

"(6) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT.—Paragraph (1) shall not apply to taxable years beginning after December 31, 2003, and before January 1, 2007, including with respect to amounts carried under the second sentence of paragraph (1) to such taxable years.".

(b) EXTENSION OF SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.—Subparagraph (H) of section 613A(c)(6) (relating to temporary suspension of taxable income limit with respect to marginal production) is amended by striking "2004" and inserting "2007".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2003.

SEC. 303. AMORTIZATION OF DELAY RENTAL PAYMENTS.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

"(1) IN GENERAL.—Any delay rental payment paid or incurred in connection with the development of oil or gas wells within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such payment was paid or incurred.

"(2) HALF-YEAR CONVENTION.—For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

"(3) EXCLUSIVE METHOD.—Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

"(4) TREATMENT UPON ABANDONMENT.—If any property to which a delay rental payment relates is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

"(5) DELAY RENTAL PAYMENTS.—For purposes of this subsection, the term 'delay rental payment' means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2003.

SEC. 304. AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.

(a) IN GENERAL.—Section 167 (relating to depreciation) is amended by redesignating subsection (i) as subsection (j) and by inserting after subsection (h) the following new subsection:

"(i) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

"(1) IN GENERAL.—Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

"(2) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of paragraphs (2), (3), and (4) of subsection (h) shall apply.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2003.

SEC. 305. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) IN GENERAL.—Section 29 is amended by adding at the end the following new subsection:

"(h) EXTENSION FOR OTHER FACILITIES.—

"(1) EXTENSION FOR OIL AND CERTAIN GAS.—In the case of a well for producing qualified fuels described in subparagraph (A) or (B)(i) of subsection (c)(1)—

"(A) APPLICATION OF CREDIT FOR NEW WELLS.—Notwithstanding subsection (f), this section shall apply with respect to such fuels—

"(i) which are produced from a well drilled after the date of the enactment of this subsection and before January 1, 2007, and

"(ii) which are sold not later than the close of the 4-year period beginning on the date that such well is drilled, or, if earlier, January 1, 2010.

"(B) EXTENSION OF CREDIT FOR OLD WELLS.—Subsection (f)(2) shall be applied by substituting '2007' for '2003' with respect to wells described in subsection (f)(1)(A) with respect to such fuels.

"(2) EXTENSION FOR FACILITIES PRODUCING QUALIFIED FUEL FROM LANDFILL GAS.—

"(A) IN GENERAL.—In the case of a facility for producing qualified fuel from landfill gas which was placed in service after June 30, 1998, and before January 1, 2007, this section shall apply to fuel produced at such facility during the 5-year period beginning on the later of—

"(i) the date such facility was placed in service, or

"(ii) the date of the enactment of this subsection.

"(B) REDUCTION OF CREDIT FOR CERTAIN LANDFILL FACILITIES.—In the case of a facility to which paragraph (1) applies and which is located at a landfill which is required pursuant to section 60.751(b)(2) or section 60.33c of title 40, Code of Federal Regulations (as in effect on April 3, 2003) to install and operate a collection and control system which captures gas generated within the landfill, subsection (a)(1) shall be applied to gas so captured by substituting '$2' for '$3' for the taxable year during which such system is required to be installed and operated.

"(3) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

"(A) DAILY LIMIT.—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service shall not be taken into account in determining such average.

"(B) EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT.—In the case of fuels sold during 2003, the dollar amount applicable under subsection (a)(1) shall be $3 (without regard to subsection (b)(2)). In the case of fuels sold after 2003, subparagraph (B) of subsection (d)(2) shall be applied by substituting '2003' for '1979'.".

(b) TREATMENT AS BUSINESS CREDIT.—

(1) CREDIT MOVED TO SUBPART RELATING TO BUSINESS RELATED CREDITS.—The Internal Revenue Code of 1986 is amended by redesignating section 29 as section 45J and by moving section 45J (as so redesignated) from subpart B of part IV of subchapter A of chapter 1 to the end of subpart D of part IV of subchapter A of chapter 1.

(2) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) is amended by striking "plus" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ", plus", and by adding at the end the following:

"(19) the nonconventional source production credit determined under section 45J(a).".

(3) CONFORMING AMENDMENTS.—

(A) Section 30(b)(2)(A), as redesignated by section 110(a), is amended by striking "sections 27 and 29" and inserting "section 27".

(B) Section 30B(d), as added by section 111, is amended by striking ", 29,".

(C) Section 39(d) is amended by adding at the end the following new paragraph:

"(13) NO CARRYBACK FOR NONCONVENTIONAL SOURCE PRODUCTION CREDIT.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45J may be carried back to a taxable year ending before April 1, 2003.".

(D) Sections 43(b)(2), 45I(b)(2)(C) (as added by section 301), and 613A(c)(6)(C) are each amended by striking "section 29(d)(2)(C)" and inserting "section 45J(d)(2)(C)".

(E) Paragraph (9) of section 45(c), as added by section 102(c), is amended by striking "section 29" and inserting "section 45J" and by striking "SECTION 29" in the heading of such paragraph and inserting "SECTION 45J".

(F) Section 45I(d)(3), as added by section 301, is amended by striking "section 29" each place it appears and inserting "section 45J".

(G) Section 45J(a), as amended by section 301(d) and redesignated by paragraph (1), is amended by striking "At the election of the taxpayer, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year" and inserting "For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is".

(H) Section 45J(b), as so redesignated, is amended by striking paragraph (6).

(I) Section 53(d)(1)(B)(iii) is amended by striking "under section 29" and all that follows through "or not allowed".

(J) Section 55(c)(2) is amended by striking "29(b)(6),".

(K) Subsection (a) of section 772 is amended by inserting "and" at the end of paragraph (9), by striking paragraph (10), and by redesignating paragraph (11) as paragraph (10).

(L) Paragraph (5) of section 772(d) is amended by striking "the foreign tax credit, and the credit allowable under section 29" and inserting "and the foreign tax credit".

(M) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 29.

(N) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45I the following new item:

"Sec. 45J. Credit for producing fuel from a nonconventional source.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to fuel sold after March 31, 2003, in taxable years ending after such date.

(2) TREATMENT AS BUSINESS CREDIT.—The amendments made by subsection (b) shall apply to taxable years ending after March 31, 2003.

SEC. 306. BUSINESS RELATED ENERGY CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULES FOR SPECIFIED ENERGY CREDITS.—

"(A) IN GENERAL.—In the case of specified energy credits—

"(i) this section and section 39 shall be applied separately with respect to such credits, and

"(ii) in applying paragraph (1) to such credits—

"(I) the tentative minimum tax shall be treated as being zero, and

"(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified energy credits).

"(B) SPECIFIED ENERGY CREDITS.—For purposes of this subsection, the term 'specified energy credits' means the credits determined under sections 45G, 45H, and 45I.

"(C) SPECIAL RULE FOR QUALIFIED WIND FACILITIES.—For purposes of this subsection, the term 'specified energy credits' shall include the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

"(i) at a facility using wind to produce electricity which is originally placed in service after the date of the enactment of this paragraph, and

"(ii) during the 4-year period beginning on the date that such facility was originally placed in service.".

(b) CONFORMING AMENDMENTS.—Paragraphs (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each amended by inserting "or the specified energy credits" after "employee credit".

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

SEC. 307. TEMPORARY REPEAL OF ALTERNATIVE MINIMUM TAX PREFERENCE FOR INTANGIBLE DRILLING COSTS.

(a) IN GENERAL.—Clause (ii) of section 57(a)(2)(E) is amended by adding at the end the following new sentence: "The preceding sentence shall not apply to taxable years beginning after December 31, 2003, and before January 1, 2006.".

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

SEC. 308. ALLOWANCE OF ENHANCED RECOVERY CREDIT AGAINST THE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Subparagraph (B) of section 38(c)(4), as amended by section 306, is amended by adding at the end the following new sentence: “For taxable years beginning after December 31, 2003, and before January 1, 2006, such term includes the credit determined under section 43.”.

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

TITLE IV—CORPORATE EXPATRIATION

SEC. 401. TAX TREATMENT OF CORPORATE EXPATRIATION.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

“SEC. 7874. TAX TREATMENT OF CORPORATE EXPATRIATION.

“(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

“(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

“(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

“(A) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

“(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

“(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

“(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

“(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

“(3) TERMINATION.—This subsection shall not apply to any acquisition completed after December 31, 2004.

“(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) FOREIGN INCORPORATED ENTITY.—The term ‘foreign incorporated entity’ means any entity which is, or but for subsection (a) would be, treated as a foreign corporation for purposes of this title.

“(2) EXPANDED AFFILIATED GROUP.—The term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a) but without regard to paragraphs (2), (3), and (4) of section 1504(b), except that section 1504(a) shall be applied by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears.

“(3) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership under subsection (a)(3)(B)—

“(A) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

“(B) stock of such foreign incorporated entity which is sold in a public offering related to the acquisition described in subsection (a)(3)(A).

“(4) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(3)(B) are met, such actions shall be treated as pursuant to a plan.

“(5) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

“(6) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(3)(B) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is an inverted domestic corporation, including regulations—

"(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

"(B) to treat stock as not stock.

"(c) SPECIAL RULE FOR TREATIES.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

"(d) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

"(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

"(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.".

(b) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

"Sec. 7874. Tax treatment of corporate expatriation."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 4, 2003.

SEC. 402. EXPRESSING THE SENSE OF THE CONGRESS THAT TAX REFORM IS NEEDED TO ADDRESS THE ISSUE OF CORPORATE EXPATRIATION.

(a) FINDINGS.—The Congress finds that—

(1) the tax laws of the United States are overly complex;

(2) the tax laws of the United States are among the most burdensome and uncompetitive in the world;

(3) the tax laws of the United States make it difficult for domestically-owned United States companies to compete abroad and in the United States;

(4) a domestically-owned corporation is disadvantaged compared to a United States subsidiary of a foreign-owned corporation; and

(5) international competitiveness is forcing many United States corporations to make a choice they do not want to make–go out of business, sell the business to a foreign competitor, or become a subsidiary of a foreign corporation (i.e., engage in an inversion transaction).

(b) SENSE OF CONGRESS.—It is the sense of Congress that passage of legislation to fix the underlying problems with our tax laws is essential and should occur as soon as possible, so United States corporations will not face the current pressures to engage in inversion transactions.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill, H.R. 1531, as amended (the "Energy Tax Policy Act of 2003"), provides incentives for taxpayers to conserve energy, to enhance the reliability of domestic energy supplies, and to increase domestic supplies of energy.

The bill provides net tax reductions of over $14.472 billion over fiscal years 2003–2008.

B. BACKGROUND AND NEED FOR LEGISLATION

The provisions approved by the Committee provide incentives for taxpayers to conserve energy, to convert to cleaner forms of energy, to enhance the reliability of domestic energy supplies, and to increase domestic supplies of energy. The estimated revenue effects of the provisions comply with the most recent Congressional Budget Office revisions of budget surplus projections.

C. Legislative History

COMMITTEE ACTION

The Subcommittee on Oversight held hearings on March 5, 2001 on the impact of Federal tax laws on the cost and supply of energy. The Subcommittee on Select Revenue Measures held hearings on May 3, June 12, and June 13, 2001 on the effect of Federal tax laws on the production, supply, and conservation of energy. On July 24, 2001, the Committee on Ways and Means reported a bill, H.R. 2511, to the House of Representatives. H.R. 2511 included incentives for taxpayer's to conserve energy, to convert to cleaner forms of energy, to enhance the reliability of domestic energy supplies, and to increase domestic supplies of energy. The House passed the bill, as part of H.R. 4, 240–189 on August 2, 2001. The Senate amended and passed H.R. 4 on April 25, 2002. A conference was convened, but not completed before the adjournment of the 107th Congress.

The Committee on Ways and Means marked up the provisions of the bill on April 3, 2003, and reported the provisions, as amended, on April 3, 2003, by a roll call vote, with a quorum present.

II. EXPLANATION OF THE BILL

TITLE I—CONSERVATION

A. Tax Credit for Residential Solar Energy

(Sec. 101 of the bill and new sec. 25C of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law personal tax credit for residential solar energy property.

REASONS FOR CHANGE

The Committee recognizes that residential energy use represents a large share of national energy consumption, and accordingly believes that measures to encourage alternative energy sources for residential use have the potential to substantially reduce national reliance on traditional energy sources. The Committee believes that a tax credit for investments in solar energy sources will help to achieve that goal. Furthermore, the Committee believes that the on-site generation of electricity and hot water will reduce reliance on the United States' electricity grid and on natural gas pipelines.

EXPLANATION OF PROVISION

The provision provides a personal tax credit for the purchase of qualified photovoltaic property and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 15 percent of qualified investment up to a maximum credit of $2,000 for solar water heating property and $2,000 for rooftop photovoltaic property. This credit is nonrefundable, and the depreciable basis of the property is reduced by the amount of the credit.

Qualifying solar water heating property is property that heats water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun. Qualified photovoltaic property is property that uses solar energy to generate electricity for use in a dwelling unit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures.

Certain equipment safety requirements need to be met to qualify for the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations.

EFFECTIVE DATE

The credit applies to purchases in taxable years ending after December 31, 2003 and before January 1, 2007 (January 1, 2009 in the case of qualified photovoltaic property).

B. EXTENSION AND MODIFICATION OF THE SECTION 45 ELECTRICITY PRODUCTION CREDIT

(Sec. 102 of the bill and sec. 45 of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste facilities (sec. 45). The amount of the credit is 1.5 cents per kilowatt hour (indexed for inflation) of electricity produced. The amount of the credit was 1.8 cents per kilowatt hour for 2002. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit applies to electricity produced by a wind energy facility placed in service after December 31, 1993, and before January 1, 2004, to electricity produced by a closed-loop biomass facility placed in service after December 31, 1992, and before January 1, 2004, and to a poultry waste facility placed in service after December 31, 1999, and before January 1, 2004. The credit is allowable for production during the 10-year period after a facility is originally placed in service. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee/operator of a facility owned by a governmental unit.

Closed-loop biomass is plant matter, where the plants are grown for the sole purpose of being used to generate electricity. It does not include waste materials (including, but not limited to, scrap wood, manure, and municipal or agricultural waste). The credit also is not available to taxpayers who use standing timber to produce electricity. Poultry waste means poultry manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

The credit for electricity produced from wind, closed-loop biomass, or poultry waste is a component of the general business credit (sec. 38(b)(8)). The credit, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000, or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39). To coordinate the carryback with the period of application for this credit, the credit for electricity produced from closed-loop biomass facilities may not be carried back to a tax year ending before 1993 and the credit for electricity produced from wind energy may not be carried back to a tax year ending before 1994 (sec. 39).

REASONS FOR CHANGE

The Committee recognizes that the section 45 production credit has fostered additional electricity generation capacity in the form of non-polluting wind power. The Committee believes it is important to continue this tax credit by extending the placed in service date for such facilities to bring more wind energy to the United States's electric grid.

Based on the success of the section 45 credit in the development of wind power as an alternative source of electricity generation, the Committee further believes the country will benefit from the expansion of the production credit to certain other "environmentally friendly" sources of electricity generation. While open-loop biomass, landfill gas, and trash combustion facilities are not pollution free, they do address environmental concerns related to waste disposal and, in the case of landfill gas, mitigate the release of methane gas into the atmosphere. In addition, these potential power sources further diversify the nation's energy supply.

Lastly, the Committee believes that certain pre-existing facilities should qualify for the section 45 production credit, albeit at a reduced rate. These facilities previously received explicit subsidies, or implicit subsidies provided through rate regulation. In a deregulated electricity market, these facilities, and the environmental benefits they yield, may be uneconomic without additional economic incentive. The Committee believes the benefits provided by such existing facilities warrant their inclusion in the section 45 production credit.

EXPLANATION OF PROVISION

The provision extends the placed in service date for wind facilities and closed-loop biomass facilities to facilities placed in service after December 31, 1993 (December 31, 1992 in the case of closed-loop biomass facilities) and before January 1, 2007.

The proposal also defines three new qualifying facilities: open-loop biomass facilities, landfill gas facilities, and trash combustion facilities. Open-loop biomass is defined as any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from any of forest-related resources, solid wood waste materials, or agricultural sources. Eligible forest-related resources are defined as mill as residues, precommercial thinnings, slash, and brush. Solid wood waste materials include waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings. Agricultural sources include orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues. However, qualifying open-loop biomass does not include municipal solid waste (garbage) or paper that is commonly recycled. Landfill gas is defined as methane gas derived from the biodegradation of municipal solid waste. Trash combustion facilities are facilities that burn municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. Qualifying open-loop biomass facilities and qualifying landfill gas facilities include facilities used to produce electricity placed in service before January 1, 2007. Qualifying trash combustion facilities include facilities placed in service after the date of enactment and before January 1, 2007.

In the case of qualifying open-loop biomass facilities and qualifying landfill gas facilities placed in service on or before the date of enactment, the taxpayer may claim the section 45 production credit for only five years, commencing on the date of enactment. In the case of qualifying open-loop biomass facilities and qualifying landfill gas facilities placed in service on or before the date of enactment, the taxpayer may claim two-thirds of the otherwise allowable credit for electricity produced at the facility. In the case of qualifying open-loop biomass facilities originally placed in service on or before the date of enactment, a lessee or operator may claim the credit in lieu of the owner of the qualifying facility.

In the case of wind facilities placed in service after the date of enactment, the taxpayer may claim credit for electricity production against both the taxpayer's regular tax and the taxpayer's alternative minimum tax, if any, for electricity produced during the first four years of production measured from the date on which the facility is placed in service.

In the case of qualifying open-loop biomass facilities, the reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits cannot exceed 50 percent.

No facility that previously claimed or currently claims credit under section 29 of the Code is a qualifying facility for purposes of section 45.

EFFECTIVE DATE

The provision is effective for electricity sold from qualifying facilities after the date of enactment.

C. Tax Incentives for Fuel Cells

(Sec. 103 of the bill and sec. 48 and new sec. 25D of the Code)

PRESENT LAW

A nonrefundable, 10–percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for fuel cell power plant property.

REASONS FOR CHANGE

The Committee believes that investments in qualified fuel cell power plants represent a promising means to produce electricity through non-polluting means and from nonconventional energy sources. Furthermore, the on-site generation of electricity provided by fuel cell power plants will reduce reliance on the United States' electricity grid. The Committee believes that providing a tax credit for investment in qualified fuel cell power plants will encourage investments in such systems.

EXPLANATION OF PROVISION

The provision provides a 10 percent credit for the purchase of qualified fuel cell power plants for businesses and individuals. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent. The credit may not exceed $500 for each 0.5 kilowatt of capacity. For individuals, the qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence. The credit is nonrefundable. The taxpayer's basis in the property is reduced by the amount of the credit claimed.

EFFECTIVE DATE

The credit for businesses applies to property placed in service after December 31, 2003 and before January 1, 2007, under rules similar to rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990). The credit for individuals applies to expenditures made after December 31, 2003 and before January 1, 2007.

D. Credit for Energy Efficiency Improvements to Existing Homes

(Sec. 104 of the bill and new sec. 25E of the Code)

PRESENT LAW

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for energy efficiency improvements to existing homes.

REASONS FOR CHANGE

The Committee recognizes that residential energy use for heating and cooling represents a large share of national energy consumption, and accordingly believes that measures to reduce heating and cooling energy requirements have the potential to substantially reduce national energy consumption. The Committee further recognizes that many existing homes are inadequately insulated. Accordingly, the Committee believes that a tax credit for certain energy-efficiency improvements related to a home's envelope (exterior windows (including skylights) and doors, insulation, and certain roofing systems) will encourage homeowners to improve the insulation of their homes, which in turn will reduce national energy consumption.

EXPLANATION OF PROVISION

The provision provides a 20-percent nonrefundable credit for the purchase of qualified energy efficiency improvements. The maximum credit for a taxpayer with respect to the same dwelling for all taxable years is $2,000. A qualified energy efficiency improvement is any energy efficiency building envelope component that is certified (in the case of expenditures that exceed $1,000) to meet or exceed the prescriptive criteria for such a component established by the 2000 International Energy Conservation Code (or, in the case of metal roofs with appropriate pigmented coatings, meets the Energy Star program requirements), and (1) that is installed in or on a dwelling located in the United States; (2) owned and used by the taxpayer as the taxpayer's principal residence; (3) the original use of which commences with the taxpayer; and (4) such component reasonably can be expected to remain in use for at least five years.

Building envelope components are: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling; (2) exterior windows (including skylights) and doors; and (3) metal roofs with appropriate pigmented coating which are specifically and primarily designed to reduce the heat loss or gain for a dwelling.

The taxpayer's basis in the property is reduced by the amount of the credit. Special rules apply in the case of condominiums and tenant-stockholders in cooperative housing corporations.

EFFECTIVE DATE

The credit is effective for qualified energy efficiency improvements installed after December 31, 2003 and before January 1, 2007.

E. BUSINESS CREDIT FOR CONSTRUCTION OF NEW ENERGY-EFFICIENT HOMES

(Sec. 105 of the bill and new sec. 45G of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the construction of new energy-efficient homes.

REASONS FOR CHANGE

The Committee recognizes that residential energy use for heating and cooling represents a large share of national energy consumption, and accordingly believes that measures to reduce heating and cooling energy requirements have the potential to substantially reduce national energy consumption. The Committee further recognizes that the most cost-effective time to properly insulate a home is when it is under construction. Accordingly, the Committee believes that a tax credit for the use of energy-efficiency components in a home's envelope (exterior windows (including skylights) and doors, insulation, and certain roofing systems) or heating and cooling appliances will encourage contractors to produce highly energy-efficient homes, which in turn will reduce national energy consumption.

EXPLANATION OF PROVISION

The provision provides a credit to an eligible contractor (up to $2,000 per dwelling) of an amount equal to the aggregate adjusted bases of all energy-efficient property installed in a qualified new energy-efficient home during construction.

The eligible contractor is the person who constructs the home, or in the case of a manufactured home, the producer of such home. Energy efficiency property is any energy-efficient building envelope component (insulation materials, exterior windows and doors, metal roofs with appropriate pigmented coatings) and any energy-efficient heating or cooling appliance.

To qualify as an energy-efficient new home, the home must be: (1) a dwelling located in the United States; (2) the principal residence of the person who acquires the dwelling from the eligible contractor; (3) certified to have a level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 2000 International Energy Conservation Code; and (4) with respect to the building envelope alone, certified to have a level of annual heating and cooling energy consumption that is 10 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 2000 International Energy Conservation Code.

EFFECTIVE DATE

The credit applies to homes whose construction is substantially completed after December 31, 2003 and which are purchased during the period beginning on January 1, 2003 and ending on December 31, 2006.

F. ENERGY CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY

(Sec. 106 of the bill and sec. 48 of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for combined heat and power ("CHP") property.

REASONS FOR CHANGE

The Committee believes that investments in combined heat and power systems represent a promising means to achieve greater national energy efficiency by encouraging the dual use of the energy from the burning of fossil fuels. Furthermore, the on-site generation of electricity provided by CHP systems will reduce reliance on the United States' electricity grid. The Committee believes that providing a tax credit for investment in combined heat and power property will encourage investments in such systems.

EXPLANATION OF PROVISION

The provision provides a 10-percent credit for the purchase of combined heat and power property.

CHP property is property: (1) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) which produces at least 20 percent of its total useful energy in the form of thermal energy and at least 20 percent in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical capacities.)

CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

If a taxpayer is allowed a credit for CHP property, and the property would ordinarily have a depreciation class life of 15 years or less, the depreciation period for the property is treated as having a 22-year class life. The present-law carry back rules of the general business credit generally apply except that no credits attributable to combined heat and power property may be carried back before the effective date of this provision.

EFFECTIVE DATE

The credit applies to property placed in service after December 31, 2003 and before January 1, 2007.

G. ALLOW NONBUSINESS ENERGY CREDITS AGAINST THE ALTERNATIVE MINIMUM TAX

(Sec. 107 of the bill and new secs. 25C, 25D, and 25E of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax on individuals in an amount equal to the excess of the tentative minimum tax over the regular tax liability. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount.

Generally, for taxable years beginning after December 31, 2003, nonrefundable personal credits may not exceed the excess of the regular tax liability over the tentative minimum tax.

REASONS FOR CHANGE

The Committee believes that the incentive effects of the nonbusiness energy credits should be available to all individual taxpayers, regardless of their alternative minimum tax status. Accordingly, the bill provides that the nonbusiness energy credits can be utilized by offsetting both the regular tax and the alternative minimum tax.

EXPLANATION OF PROVISION

The provision allows the personal energy credits added by the bill to offset both the regular tax and the alternative minimum tax. These credits include the credit for residential solar energy property (sec. 25C), the credit for qualified stationary fuel cell powerplant expenditures (sec. 25D), and the credit for energy efficiency improvements to existing homes (sec. 25E).

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2003.

H. REPEAL CERTAIN EXCISE TAXES ON RAIL DIESEL FUEL AND INLAND WATERWAY BARGE FUELS

(Sec. 108 of the bill and secs. 4041 and 4042 of the Code)

PRESENT LAW

Under present law, diesel fuel used in trains is subject to a 4.4-cents-per-gallon excise tax. Revenues from 4.3 cents per gallon of this excise tax are retained in the General Fund of the Treasury. The remaining 0.1-cent per gallon is deposited in the Leaking Underground Storage Tank ("LUST") Trust Fund.[1]

Similarly, fuel used in barges operating on the designated inland waterways system is subject to a 4.3-cents-per-gallon General Fund excise tax. This tax is in addition to the 20.1-cents-per-gallon tax rate that is imposed on fuels used in these barges to fund the Inland Waterways Trust Fund and the Leaking Underground Storage Tank Trust Fund.

In both cases, the 4.3-cents-per-gallon excise tax rates are permanent. The LUST Trust Fund tax is scheduled to expire after March 31, 2005.

REASONS FOR CHANGE

The Committee notes that in 1993, the Congress enacted the present-law 4.3-cents-per-gallon excise tax on motor fuels as a deficit reduction measure, with the receipts payable to the General Fund. Since that time, the Congress has diverted the 4.3-cents-per-gallon excise tax for most uses to specified trust funds that provide benefits for those motor fuel users who ultimately bear the burden of these taxes. As a result, the Committee finds that generally only rail and barge operators remain as motor fuel users subject to the 4.3-cents-per-gallon excise tax who receive no benefits from a dedicated trust fund as a result of their tax burden. The Committee observes that rail and barge operators compete with other transportation service providers who benefit from expenditures paid from dedicated trust funds. The Committee concludes that it is inequitable and distortive of transportation decisions to continue to impose the 4.3-cents-per-gallon excise tax on diesel fuel used in trains and barges.

EXPLANATION OF PROVISION

The 4.3-cents-per-gallon General Fund excise tax rate on diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system is repealed. The 0.1 cent per gallon for the Leaking Underground Storage Tank ("LUST") Trust Fund is unchanged by the provision.

EFFECTIVE DATE

The proposal is effective on January 1, 2004.

I. BTU-BASED RATE FOR DIESEL/WATER EMULSION FUEL

(Sec. 109 of the bill and secs. 4081 and 6427 of the Code)

PRESENT LAW

A 24.3-cents-per-gallon excise tax is imposed on diesel fuel to finance the Highway Trust Fund. Gasoline and most special motor fuels are subject to tax at 18.3 cents per gallon for the Trust Fund. The statutory rate for certain special motor fuels is determined on an energy equivalent basis, as follows:

[1] The 0.1-cent per gallon for the LUST Trust Fund applies so long as there is a tax imposed on rail diesel and the LUST Trust Fund tax is in effect (secs. 4041(d)(1) and (3), and 4081(d)(3)).

Liquefied petroleum gas (propane)	13.6 cents per gallon.
Liquefied natural gas	11.9 cents per gallon.
Methanol derived from petroleum or natural gas	9.15 cents per gallon.
Compressed natural gas	48.54 cents per MCF.

No special tax rate is provided for diesel fuel blended in a water emulsion fuel.

REASONS FOR CHANGE

The Highway Trust Fund taxes are structured to reflect use of the highway system. Because diesel/water emulsion fuels have fewer Btu's, larger quantities must be purchased to travel the same number of miles as regular diesel fuel. A Btu-based tax rate better correlates highway use and tax paid. The Committee further understands that the diesel fuel/water emulsion fuel may reduce air pollutants relative to regular diesel fuel and believes that the Btu-based rate, by removing a tax disadvantage to use of the fuel, will be beneficial to the environment.

EXPLANATION OF PROVISION

A special tax rate of 19.7 cents per gallon is provided for diesel fuel blended with water into a diesel-water fuel emulsion to reflect the reduced Btu content per gallon resulting from the water. Emulsion fuels eligible for the special rate consists of not more than 86 percent diesel (and other minor chemical additives to enhance combustion) and at least 14 percent water. Anyone who separates the diesel fuel from the diesel-water fuel emulsion on which a reduced rate of tax was imposed is treated as a refiner of the fuel and is liable for the difference between the amount of tax on the latest removal of the separated fuel and the amount of tax that was imposed upon the pre-mixture removal.

EFFECTIVE DATE

The provision applies to fuels removed after September 30, 2003.

J. MODIFICATIONS AND EXTENSIONS OF PROVISIONS RELATING TO ELECTRIC VEHICLES, CLEAN-FUEL VEHICLES, AND CLEAN-FUEL VEHICLE REFUELING PROPERTY

(Secs. 110 and 111 of the bill and secs. 179A and 30 of the Code and new sec. 30B of the Code)

PRESENT LAW

Electric vehicles

A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000 (sec. 30). A qualified electric vehicle is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current, the original use of which commences with the taxpayer, and that is acquired for the use by the taxpayer and not for resale. The full amount of the credit is available for purchases prior to 2002. The credit phases down in the years 2004 through 2006, and is unavailable for purchases after December 31, 2006.

Clean-fuel vehicles

Certain costs of qualified clean-fuel vehicle may be expensed and deducted when such property is placed in service (sec. 179A). Qualified clean-fuel vehicle property includes motor vehicles that use certain clean-burning fuels (natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, any other alcohol or ether).[2] The maximum amount of the deduction is $50,000 for a truck or van with a gross vehicle weight over 26,000 pounds or a bus with seating capacities of at least 20 adults; $5,000 in the case of a truck or van with a gross vehicle weight between 10,000 and 26,000 pounds; and $2,000 in the case of any other motor vehicle. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction. The deduction phases down in the years 2004 through 2006, and is unavailable for purchases after December 31, 2006.

REASONS FOR CHANGE

The Committee believes that automobile transportation in the United States in the 21st century can, and should, be less polluting of the air and more fuel efficient. The Committee recognizes that various different technological solutions may lead to this result. The Committee observes that consumer demand is increasing for those hybrid motor vehicles already available in the marketplace and that substantial new economic incentives to purchase these vehicles are not warranted. However, the Committee believes that tax benefits to lower the cost of certain other new technology automotive alternatives can help lower consumer resistance to these technologies and speed the nation's advancement down the highway to cleaner, more efficient, automobiles. The Committee believes no one technology has established that it alone provides the solution. Therefore, the Committee concludes it is appropriate to provide tax benefits tailored to each specific technology.

EXPLANATION OF PROVISION

Electric vehicles

The provision repeals the phased down reduction in the credit for years 2004, 2005, and 2006. Thus, the provision provides that a taxpayer could claim the full 10-percent credit (up to a $4,000) maximum for the purchase of qualified electric vehicles before January 1, 2007.

Clean-fuel vehicles

The provision repeals the phased down reduction in the allowable deduction for years 2004, 2005, and 2006. Thus, the provision provides that a taxpayer could claim a full deduction for allowable costs of clean-fuel vehicles purchased before January 1, 2007.

Fuel cell vehicles

The provision provides a credit for the purchase of a new qualified fuel cell motor vehicle. A qualifying fuel cell vehicle is a motor vehicle that is propelled by power derived from one or more cells

[2] A hybrid-electric vehicle may qualify as a clean-fuel vehicle under present law.

which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle and may or may not require reformation prior to use. In general the provision provides that the buyer claims the credit, unless the buyer is a tax-exempt entity in which case the seller or lessor of the vehicle may claim the credit. The provision permits unused credits to be carried forward for up to 20 years. Qualified fuel cell motor vehicles are vehicles placed in service before 2013.

The amount of credit for the purchase of a fuel cell vehicle is determined by a base credit amount that depends upon the weight class of the vehicle and, in the case of automobiles or light trucks, an additional credit amount that depends upon the rated fuel economy of the vehicle compared to a base fuel economy. For these purposes the base fuel economy is the 2000 model year city fuel economy rating for vehicles of various weight classes (see below). Table 1, below, shows the base credit amounts.

TABLE 1.—BASE CREDIT AMOUNT FOR FUEL CELL VEHICLES

Vehicle gross weight rating in pounds	Credit amount
vehicle ≤8,500	$4,000
8,500 < vehicle ≤14,000	10,000
14,000 < vehicle ≤26,000	20,000
26,000 < vehicle	40,000

Table 2, below, shows the additional credits for automobiles or light trucks.

TABLE 2.—CREDIT FOR QUALIFYING FUEL CELL VEHICLES

[Percent of base fuel economy]

Credit	If fuel economy of the fuel cell vehicle is:	
	At least	But less than
$1,000	150	175
$1,500	175	200
$2,000	200	225
$2,500	225	250
$3,000	250	275
$3,500	275	300
$4,000	300	

Advanced lean burn technology motor vehicle

The provision provides a credit for the purchase of a new advanced lean burn technology motor vehicle. A qualifying advanced lean burn technology motor vehicle must meet the Environmental Protection Agency's Tier II bin 8 emissions standards. In general the provision provides that the buyer claims the credit, unless the buyer is a tax-exempt entity in which case the seller or lessor of the vehicle may claim the credit. The provision permits unused credits to be carried forward for up to 20 years. Qualified advanced lean burn technology motor vehicles are vehicles placed in service before 2007. Table 3, below, shows the credits for the purchase of an advanced lean burn technology motor vehicle.

TABLE 3.—CREDIT FOR QUALIFYING ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLES

[Percent of base fuel economy]

Credit	If fuel economy of the vehicle is: At least	But less than
$500	125	150
$1,000	150	175
$1,500	175	200
$2,000	200	225
$2,500	225	250
$3,000	250	

In addition to the credit amount shown in Table 3, an advanced lean burn technology automobile or light truck may be eligible for an additional credit of $250 if the vehicle achieves an estimated lifetime fuel savings of at least 1,500 gallons of fuel and a further additional credit of $500 if the vehicle achieves an estimated lifetime fuel savings of at least 2,500 gallons compared to a like conventional vehicle (using the 2000 model year city fuel economy rating for the like vehicle and assuming 120,000 miles driven).

Base fuel economy

The base fuel economy is the 2000 model year city fuel economy for vehicles by inertia weight class by vehicle type. The "vehicle inertia weight class" is that defined in regulations prescribed by the Environmental Protection Agency for purposes of Title II of the Clean Air Act. Table 4, below, shows the 2000 model year city fuel economy for vehicles by type and by inertia weight class.

TABLE 4.—2000 MODEL YEAR CITY FUEL ECONOMY

Vehicle inertia weight class (pounds)	Passenger automobile (miles per gallon)	Light truck (miles per gallon)
1,500	43.7	37.6
1,750	43.7	37.6
2,000	38.3	33.7
2,250	34.1	30.6
2,500	30.7	28.0
2,750	27.9	25.9
3,000	25.6	24.1
3,500	22.0	21.3
4,000	19.3	19.0
4,500	17.2	17.3
5,000	15.5	15.8
5,500	14.1	14.6
6,000	12.9	13.6
6,500	11.9	12.8
7,000	11.1	12.0
8,500	11.1	12.0

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE II—RELIABILITY

A. NATURAL GAS GATHERING LINES TREATED AS SEVEN-YEAR PROPERTY

(Sec. 201 of the bill and secs. 168 and 56 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.[3] Revenue Procedure 87–56 includes two asset classes that could describe natural gas gathering lines owned by nonproducers of natural gas. Asset class 46.0, describing pipeline transportation, provides a class life of 22 years and a recovery period of 15 years. Asset class 13.2, describing assets used in the exploration for and production of petroleum and natural gas deposits, provides a class life of 14 years and a depreciation recovery period of seven years. The uncertainty regarding the appropriate recovery period of natural gas gathering lines has resulted in litigation between taxpayers and the IRS. The 10th Circuit Court of Appeals held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 13.2 (i.e., seven-year recovery period).[4] More recently, the Tax Court and the U.S. District Court for the Eastern District of Michigan, Southern Division, held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 46.0 (i.e., 15-year recovery period).[5]

REASONS FOR CHANGE

The Committee believes the appropriate recovery period for natural gas gathering lines is seven years. The Committee also believes a seven-year recovery period, and the certainty provided compared to present law, will foster investment in natural gas fields that will enhance the domestic supply of natural gas.

EXPLANATION OF PROVISION

The provision establishes a statutory seven-year recovery period and a class life of 10 years for natural gas gathering lines. In addition, the provision provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property. A natural gas gathering line is defined to include any pipe, equipment, and appurtenance that is (1) determined to be a gathering line by the Federal Energy Regulatory Commission, or (2) used to deliver natural gas from the wellhead or a common point to the point at which such gas first reaches (a) a gas processing plant, (b) an interconnection with an interstate transmission line, (c) an interconnection with an intrastate transmission line, or

[3] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

[4] *Duke Energy* v. *Commissioner,* 172 F.3d 1255 (10th Cir. 1999), rev'g 109 T.C. 416 (1997). See also *True* v. *United States,* 97–2 U.S. Tax Cas. (CCH) par. 50,946 (D. Wyo. 1997).

[5] *Clajon Gas Co., L.P.* v. *Commissioner,* 119 T.C. 197 (2002) and *Saginaw Bay Pipeline Co.* v. *United States,* 124 F. Supp. 2d 465 (E.D. Mich. 2001).

(d) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment. No inference is intended as to the proper treatment of natural gas gathering lines placed in service before the date of enactment.

B. NATURAL GAS DISTRIBUTION LINES TREATED AS FIFTEEN-YEAR PROPERTY

(Sec. 202 of the bill and secs. 168 and 56 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87–56.[6] Natural gas distribution pipelines are assigned a 20-year recovery period and a class life of 35 years.

REASONS FOR CHANGE

The Committee recognizes the importance of modernizing our aging energy infrastructure to meet the demands of the twenty-first century, and the Committee also recognizes that both short-term and long-term solutions are required to meet this challenge. The Committee understands that investment in our energy infrastructure has not kept pace with the nation's needs. In light of this, the Committee believes it is appropriate to reduce the recovery period for investment in certain energy infrastructure property to encourage investment in such property.

EXPLANATION OF PROVISION

The provision establishes a statutory 15-year recovery period and a class life of 20 years for natural gas distribution lines. In addition, the provision provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment. a067hr.027

C. TRANSMISSION PROPERTY TREATED AS FIFTEEN-YEAR PROPERTY

(Sec. 203 of the bill and secs. 168 and 56 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in serv-

[6] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

ice after 1986 are generally set forth in Revenue Procedure 87–56.[7] Assets used in the transmission and distribution of electricity for sale and related land improvements are assigned a 20-year recovery period and a class life of 30 years.

REASONS FOR CHANGE

The Committee recognizes the importance of modernizing our aging energy infrastructure to meet the demands of the twenty-first century, and the Committee also recognizes that both short-term and long-term solutions are required to meet this challenge. The Committee understands that investment in our energy infrastructure has not kept pace with the nation's needs. In light of this, the Committee believes it is appropriate to reduce the recovery period for investment in certain energy infrastructure property to encourage investment in such property.

EXPLANATION OF PROVISION

The provision establishes a statutory 15-year recovery period and a class life of 20 years for certain assets used in the transmission of electricity for sale and related land improvements. For purposes of the provision, section 1245 property used in the transmission of electricity for sale at 69 kilovolts and above will qualify for the new recovery period. In addition, the provision provides that there would be no adjustment to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to such property.

EFFECTIVE DATE

The provision is effective for property placed in service after the date of enactment.

D. Expensing of Capital Costs Incurred and Credit for Production in Complying With Environmental Protection Agency Sulfur Regulations

(Secs. 204 and 205 of the bill and new secs. 179B and 45H of the Code)

PRESENT LAW

Taxpayers generally may recover the costs of investments in refinery property through annual depreciation deductions. Present law does not provide a credit for the production of low-sulfur diesel fuel.

REASONS FOR CHANGE

The Committee believes it is important for all refiners to meet applicable pollution control standards. However, the Committee is concerned that the cost of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency may force some small refiners out of business. To maintain this refining capacity and to foster compliance with pollution control standards, the Committee believes it is appropriate to modify cost recovery provisions for small refiners to reduce their capital costs

[7] 1987–2 C.B. 674 (as clarified and modified by Rev. Proc. 88–22, 1988–1 C.B. 785).

of complying with the Highway Diesel Fuel Sulfur Control Requirement of the Environmental Protection Agency.

EXPLANATION OF PROVISION

The provision permits small business refiners to claim an immediate deduction (i.e., expensing) for up to 75 percent of the costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency. In addition, the proposal provides that a small business refiner may claim credit equal to five cents per gallon for each gallon of low sulfur diesel fuel produced during the taxable year. The total production credit claimed by the taxpayer is limited to 25 percent of the capital costs incurred to come into compliance with the EPA diesel fuel requirements. The taxpayer's basis in such property is reduced by the amount of production credit claimed.

For these purposes a small business refiner is a taxpayer who within the business of refining petroleum products engages not more than 1,500 persons directly in refining on business days and has less that 205,000 barrels per day of total domestic refinery capacity.[8] The credit and deduction phase out for refiners with capacity in excess of 155,000 barrels per day.

EFFECTIVE DATE

The provision is effective for expenses paid or incurred after March 31, 2003.

E. DETERMINATION OF SMALL REFINER EXCEPTION TO OIL DEPLETION DEDUCTION

(Sec. 206 of the bill and sec. 613A of the Code)

PRESENT LAW

Present law classifies oil and gas producers as independent producers or integrated companies. The Code provides numerous special tax rules for operations by independent producers. One such rule allows independent producers to claim percentage depletion deductions rather than deducting the costs of their asset, a producing well, based on actual production from the well (i.e., cost depletion).

A producer is an independent producer only if its refining and retail operations are relatively small. For example, an independent producer may not have refining operations the runs from which exceed 50,000 barrels on any day in the taxable year during which independent producer status is claimed.

REASONS FOR CHANGE

The Committee notes that technological advances have permitted a number of small refineries to refine more petroleum without building out their facilities. The Committee believes that the goal

[8] The refining capacities of all persons that are part of a related group are aggregated for purposes of this definition. In addition, in any case where refinery through-put or retained production of the refinery differs substantially from its average daily output of refined product, the Committee intends that capacity be measured by reference to the average daily output of refined product.

of present law, to identify producers without significant refining capacity, can be achieved while permitting more flexibility to refinery operations.

EXPLANATION OF PROVISION

The provision increases the current 50,000 barrel per day limitation to 75,000. In addition, the provision changes the refinery limitation on claiming independent producer status from a limit based on actual daily production to a limit based on average daily production for the taxable year. Accordingly, the average daily refinery run for the taxable year may not exceed 75,000 barrels. For this purpose, the taxpayer calculates average daily production by dividing total production for the taxable year by the total number of days in the taxable year.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2003.

F. Sales or Dispositions To Implement Federal Energy Regulatory Commission or State Electric Restructuring Policy

(Sec. 207 of the bill and sec. 451 of the Code)

PRESENT LAW

Generally, a taxpayer recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

REASONS FOR CHANGE

The Committee recognizes that electric deregulation has been occurring, and is continuing to occur, at both the Federal and State level. Federal and State energy regulators are calling for the "unbundling" of electric transmission assets held by vertically integrated utilities, with the transmission assets ultimately placed under the ownership or control of independent transmission providers (or other similarly-approved operators). This policy is intended to improve transmission management and facilitate the formation of competitive markets. To facilitate the implementation of these policy objectives, the Committee believes it is appropriate to assist taxpayers in moving forward with industry restructuring by providing a tax deferral for gain associated with certain dispositions of electric transmission assets. The Committee believes it is important that proceeds of such dispositions be reinvested in utility property to assist in modernizing our energy infrastructure. Thus, a tax deferral will only be available if the proceeds of such disposition are reinvested in utility property.

EXPLANATION OF PROVISION

The provision permits a taxpayer to elect to recognize gain from a qualifying electric transmission transaction ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to purchase exempt utility property within the applicable period[9] (the "reinvestment property"). If the amount realized exceeds the amount used to purchase reinvestment property, any realized gain shall be recognized to the extent of such excess in the year of the qualifying electric transmission transaction. Any remaining realized gain is recognized ratably over the eight-year period.

A qualifying electric transmission transaction is the sale or other disposition of property used by the taxpayer in the trade or business of providing electric transmission services, or an ownership interest in such an entity, to an independent transmission company prior to January 1, 2007. In general, an independent transmission company is defined as: (1) an independent transmission provider[10] approved by the FERC; (2) a person (i) who the FERC determines under section 203 of the Federal Power Act (or by declaratory order) is not a "market participant" and (ii) whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider before the close of the period specified in such authorization, but not later than January 1, 2007; or (3) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas, (i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization, or (ii) a political subdivision, or affiliate thereof, whose transmission facilities are under the operational control of an organization described in (i).

Exempt utility property is defined as: (1) property used in the trade or business of generating, transmitting, distributing, or selling electricity or producing, transmitting, distributing, or selling natural gas, or (2) stock in a controlled corporation whose principal trade or business consists of the activities described in (1).

If a taxpayer is a member of an affiliated group of corporations filing a consolidated return, the provision permits the reinvestment property to be purchased by any member of the affiliated group (in lieu of the taxpayer).

If a taxpayer elects the application of the provision, then the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain eligible for the provision is realized, attributable to such gain shall not expire prior to the expiration of three years from the date the Secretary of the Treasury is notified by the taxpayer of the reinvestment property or an intention not to reinvest.

An electing taxpayer is required to attach a statement to that effect in the tax return for the taxable year in which the transaction takes place in the manner as the Secretary shall prescribe. The election shall be binding for that taxable year and all subsequent taxable years.[11] In addition, an electing taxpayer is required to attach a statement that identifies the reinvestment property in the manner as the Secretary shall prescribe.

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[9] The applicable period for a taxpayer to reinvest the proceeds is four years after the close of the taxable year in which the qualifying electric transmission transaction occurs.

[10] For example, a regional transmission organization, an independent system operator, or and independent transmission company.

[11] The provision also provides that the installment sale rules shall not apply to any qualifying electric transmission transaction for which a taxpayer elects the application of this provision.

EFFECTIVE DATE

The provision is effective for transactions occurring after the date of enactment.

G. Modification to Special Rules for Nuclear Decommissioning Costs

(Sec. 208 of the bill and sec. 468A of the Code)

PRESENT LAW

Overview

Special rules dealing with nuclear decommissioning reserve funds were adopted by Congress in the Deficit Reduction Act of 1984 ("1984 Act"), when tax issues regarding the time value of money were addressed generally. Under general tax accounting rules, a deduction for accrual basis taxpayers is deferred until there is economic performance for the item for which the deduction is claimed. However, the 1984 Act contains an exception under which a taxpayer responsible for nuclear powerplant decommissioning may elect to deduct contributions made to a qualified nuclear decommissioning fund for future decommissioning costs. Taxpayers who do not elect this provision are subject to general tax accounting rules.

Qualified nuclear decommissioning fund

A qualified nuclear decommissioning fund (a "qualified fund") is a segregated fund established by a taxpayer that is used exclusively for the payment of decommissioning costs, taxes on fund income, management costs of the fund, and for making investments. The income of the fund is taxed at a reduced rate of 20 percent for taxable years beginning after December 31, 1995.[12]

Contributions to a qualified fund are deductible in the year made to the extent that these amounts were collected as part of the cost of service to ratepayers (the "cost of service requirement").[13] Funds withdrawn by the taxpayer to pay for decommissioning costs are included in the taxpayer's income, but the taxpayer also is entitled to a deduction for decommissioning costs as economic performance for such costs occurs.

Accumulations in a qualified fund are limited to the amount required to fund decommissioning costs of a nuclear powerplant for the period during which the qualified fund is in existence (generally post-1984 decommissioning costs of a nuclear powerplant). For this purpose, decommissioning costs are considered to accrue ratably over a nuclear powerplant's estimated useful life. In order to prevent accumulations of funds over the remaining life of a nuclear powerplant in excess of those required to pay future decommissioning costs of such nuclear powerplant and to ensure that contributions to a qualified fund are not deducted more rapidly

[12] As originally enacted in 1984, a qualified fund paid tax on its earnings at the top corporate rate and, as a result, there was no present-value tax benefit of making deductible contributions to a qualified fund. Also, as originally enacted, the funds in the trust could be invested only in certain low risk investments. Subsequent amendments to the provision have reduced the rate of tax on a qualified fund to 20 percent and removed the restrictions on the types of permitted investments that a qualified fund can make.

[13] Taxpayers are required to include in gross income customer charges for decommissioning costs (sec. 88).

than level funding (taking into account an appropriate discount rate), taxpayers must obtain a ruling from the IRS to establish the maximum annual contribution that may be made to a qualified fund (the "ruling amount"). In certain instances (e.g., change in estimates), a taxpayer is required to obtain a new ruling amount to reflect updated information.

A qualified fund may be transferred in connection with the sale, exchange or other transfer of the nuclear powerplant to which it relates. If the transferee is a regulated public utility and meets certain other requirements, the transfer will be treated as a nontaxable transaction. No gain or loss will be recognized on the transfer of the qualified fund and the transferee will take the transferor's basis in the fund.[14] The transferee is required to obtain a new ruling amount from the IRS or accept a discretionary determination by the IRS.[15]

Nonqualified nuclear decommissioning funds

Federal and State regulators may require utilities to set aside funds for nuclear decommissioning costs in excess of the amount allowed as a deductible contribution to a qualified fund. In addition, taxpayers may have set aside funds prior to the effective date of the qualified fund rules.[16] The treatment of amounts set aside for decommissioning costs prior to 1984 varies. Some taxpayers may have received no tax benefit while others may have deducted such amounts or excluded such amounts from income. Since 1984, taxpayers have been required to include in gross income customer charges for decommissioning costs (sec. 88), and a deduction has not been allowed for amounts set aside to pay for decommissioning costs except through the use of a qualified fund. Income earned in a nonqualified fund is taxable to the fund's owner as it is earned.

REASONS FOR CHANGE

The Committee recognizes the national importance of reserving funds to pay for decommissioning costs and the need for appropriate incentives to ensure that adequate funds are available for such costs. The Committee believes that it is appropriate to permit all decommissioning costs associated with a nuclear powerplant to be funded through a qualified fund. In addition, the Committee does not believe a utility should be denied the opportunity to contribute to a qualified fund simply because it operates in a deregulated environment.

EXPLANATION OF PROVISION

Repeal of cost of service requirement

The provision repeals the cost of service requirement for deductible contributions to a nuclear decommissioning fund. Thus, all taxpayers, including unregulated taxpayers, are allowed a deduction for amounts contributed to a qualified fund.

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[14] Treas. reg. sec. 1.468A–6.
[15] Treas. reg. sec. 1.468A–6(f).
[16] These funds are generally referred to as "nonqualified funds."

Permit contributions to a qualified fund for pre-1984 decommissioning costs

The provision also repeals the limitation that a qualified fund only accumulate an amount sufficient to pay for a nuclear powerplant's decommissioning costs incurred during the period that the qualified fund is in existence (generally post-1984 decommissioning costs). Thus, any taxpayer is permitted to accumulate an amount sufficient to cover the present value of 100 percent of a nuclear powerplant's estimated decommissioning costs in a qualified fund. The provision does not change the requirement that contributions to a qualified fund not be deducted more rapidly than level funding.

Exception to ruling amount for certain decommissioning costs

The provision permits a taxpayer to make contributions to a qualified fund in excess of the ruling amount in one circumstance. Specifically, a taxpayer is permitted to contribute up to the present value of the amount required to fund a nuclear powerplant's decommissioning costs which under present law section 468(d)(2)(A) is not permitted to be accumulated in a qualified fund (generally pre-1984 decommissioning costs).[17] It is anticipated that an amount that is permitted to be contributed under this special rule shall be determined using the estimate of total decommissioning costs used for purposes of determining the taxpayer's most recent ruling amount. Any amount transferred to the qualified fund under this special rule that has not previously been deducted or excluded from gross income is allowed as a deduction over the remaining useful life of the nuclear powerplant.[18] If a qualified fund that has received amounts under this rule is transferred to another person, the transferor will be permitted a deduction for any remaining deductible amounts at the time of transfer.

Contributions to a qualified fund after useful life of powerplant

The provision also allows deductible contributions to a qualified fund subsequent to the end of a nuclear powerplant's estimated useful life. Such payments are permitted to the extent they do not cause the assets of the qualified fund to exceed the present value of the taxpayer's allocable share (current or former) of the nuclear decommissioning costs of such nuclear powerplant.

Clarify treatment of transfers of qualified funds

The provision clarifies the Federal income tax treatment of the transfer of a qualified fund. No gain or loss would be recognized to the transferor or the transferee as a result of the transfer of a qualified fund in connection with the transfer of the power plant with respect to which such fund was established.

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[17] The ability to transfer property into a qualified fund under this special rule is available only to the extent the taxpayer has not obtained a new ruling amount incorporating the repeal of the limitation that a qualified fund only accumulate an amount sufficient to pay for decommissioning costs of a nuclear powerplant incurred during the period that the fund is in existence (generally post 1984 decommissioning costs).

[18] A taxpayer recognizes no gain or loss on the contribution of property to a qualified fund under this special rule. The qualified fund will take a transferred (carryover) basis in such property. Correspondingly, a taxpayer's deduction (over the estimated life of the nuclear powerplant) is to be based on the adjusted tax basis of the property contributed rather than the fair market value of such property.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2003.

H. Treatment of Certain Income of Electric Cooperatives

(Sec. 209 of the bill and sec. 501 of the Code)

PRESENT LAW

In general

Under present law, an entity must be operated on a cooperative basis in order to be treated as a cooperative for Federal income tax purposes. Although not defined by statute or regulation, the two principal criteria for determining whether an entity is operating on a cooperative basis are: (1) ownership of the cooperative by persons who patronize the cooperative; and (2) return of earnings to patrons in proportion to their patronage. The IRS requires that cooperatives must operate under the following principles: (1) subordination of capital in control over the cooperative undertaking and in ownership of the financial benefits from the cooperative; (2) democratic control by the members of the cooperative; (3) vesting in and allocation among the members of all excess of operating revenues over the expenses incurred to generate revenues in proportion to their participation in the cooperative (patronage); and (4) operation at cost (not operating for profit or below cost).[19]

In general, cooperative members are those who participate in the management of the cooperative and who share in patronage capital. As described below, income from the sale of electric energy by an electric cooperative may be member or non-member income to the cooperative, depending on the membership status of the purchaser. A municipal corporation may be a member of a cooperative.

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception—the cooperative may exclude from its taxable income distributions of patronage dividends. In general, patronage dividends are the profits of the cooperative that are rebated to its patrons pursuant to a pre-existing obligation of the cooperative to do so. The rebate must be made in some equitable fashion on the basis of the quantity or value of business done with the cooperative.

Except for tax-exempt farmers' cooperatives, cooperatives that are subject to the cooperative tax rules of subchapter T of the Code (sec. 1381, et seq.) are permitted a deduction for patronage dividends from their taxable income only to the extent of net income that is derived from transactions with patrons who are members of the cooperative (sec. 1382). The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

Cooperatives that qualify as tax-exempt farmers' cooperatives are permitted to exclude patronage dividends from their taxable income to the extent of all net income, including net income that is derived from transactions with patrons who are not members of the cooper-

[19] Announcement 96–24, Proposed Examination Guidelines Regarding Rural Electric Cooperatives, 1996–16 I.R.B. 35.

ative, provided the value of transactions with patrons who are not members of the cooperative does not exceed the value of transactions with patrons who are members of the cooperative (sec. 521).

Taxation of electric cooperatives exempt from subchapter T

In general, the cooperative tax rules of subchapter T apply to any corporation operating on a cooperative basis (except mutual savings banks, insurance companies, other tax-exempt organizations, and certain utilities), including tax-exempt farmers' cooperatives (described in sec. 521(b)). However, subchapter T does not apply to an organization that is "engaged in furnishing electric energy, or providing telephone service, to persons in rural areas" (sec. 1381(a)(2)(C)). Instead, electric cooperatives are taxed under rules that were generally applicable to cooperatives prior to the enactment of subchapter T in 1962. Under these rules, an electric cooperative can exclude patronage dividends from taxable income to the extent of all net income of the cooperative, including net income derived from transactions with patrons who are not members of the cooperative.[20]

Tax exemption of rural electric cooperatives

Section 501(c)(12) provides an income tax exemption for rural electric cooperatives if at least 85 percent of the cooperative's income consists of amounts collected from members for the sole purpose of meeting losses and expenses of providing service to its members. The IRS takes the position that rural electric cooperatives also must comply with the fundamental cooperative principles described above in order to qualify for tax exemption under section 501(c)(12).[21] The 85-percent test is determined without taking into account any income from qualified pole rentals and cancellation of indebtedness income from the prepayment of a loan under sections 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987). The exclusion for cancellation of indebtedness income applies to such income arising in 1987, 1988, or 1989 on debt that either originated with, or is guaranteed by, the Federal Government. Rural electric cooperatives generally are subject to the tax on unrelated trade or business income under section 511.

REASONS FOR CHANGE

The purpose of the 85-percent test under section 501(c)(12) is to ensure that the primary activities of an electric cooperative fulfill the statutory tax-exempt purpose of providing electricity services to the members of the cooperative. Similarly, the fundamental cooperative principles described above are the defining characteristics of a cooperative upon which the Federal tax rules condition conduit treatment.

The Committee believes that the nature of an electric cooperative's activities does not change because it has income from certain transmission-related open access transactions with non-members, nuclear decommissioning transactions, or asset exchange or conversion transactions (as these terms are defined in the bill). Accord-

[20] See Rev. Rul. 83–135, 1983–2 C.B. 149. Tax exemption of rural electric cooperatives
[21] Rev. Rul. 72–36, 1972–1 C.B. 151.

ingly, the Committee believes that the 85-percent test for tax exemption under present law should be applied without regard to such income. The Committee intends that the exclusion for certain transmission-related open access transactions with non-members shall be applied in a manner that allows an electric cooperative to carry out its statutory purpose in a restructured electric energy market environment without adversely impacting its tax-exempt status.

The Committee further believes that electric energy sales to nonmembers should not result in a loss of tax-exempt status or cooperative status to the extent that such sales are necessary to replace lost sales of electric energy to members as a result of restructuring of the electric energy industry. Accordingly, the Committee believes that replacement electric energy sales to non-members (defined as "load loss transactions" in the bill) should be treated, for a limited period of time, as member income in applying the 85-percent test for tax exemption of rural electric cooperatives. The Committee believes that such treatment also should apply for purposes of determining whether tax-exempt and taxable electric cooperatives comply with the fundamental cooperative principles. Finally, the Committee believes that income from replacement electric energy sales should not be subject to the tax on unrelated trade or business income under Code section 511.

EXPLANATION OF PROVISION

Treatment of income from open access transactions

The bill provides that income received or accrued by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy transmission services or ancillary services on a nondiscriminatory open access basis under an independent transmission provider agreement approved by FERC (including an agreement providing for the transfer of control—but not ownership—of transmission facilities)[22] is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12).

For purposes of the 85-percent test, the bill also provides that income received or accrued by a rural electric cooperative is treated as an amount collected from members for the sole purpose of meeting losses and expenses if the income is received or accrued indirectly from a member of the cooperative, provided that such income is derived from a "like organization" activity of the cooperative under present law.[23]

Treatment of income from nuclear decommissioning transactions

The bill provides that income received or accrued by a rural electric cooperative from any "nuclear decommissioning transaction" also is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section

[22] Under this provision, references to FERC are treated as including references to the Public Utility Commission of Texas.

[23] See, e.g., Rev. Rul. 2002–54, 2002–37 I.R.B. 527; Rev. Rul. 83–170, 1983–2 C.B. 97; Rev. Rul. 65–201, 1965–2 C.B. 170.

501(c)(12). The term “nuclear decommissioning transaction” is defined as—

(1) Any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the cooperative’s interest in a nuclear powerplant or nuclear powerplant unit;

(2) Any distribution from a trust, fund, or instrument established to pay any nuclear decommissioning costs; or

(3) Any earnings from a trust, fund, or instrument established to pay any nuclear decommissioning costs.

Treatment of income from asset exchange or conversion transactions

The bill provides that gain realized by a tax-exempt rural electric cooperative from a voluntary exchange or involuntary conversion of certain property is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). This provision only applies to the extent that: (1) the gain would qualify for deferred recognition under section 1031 (relating to exchanges of property held for productive use or investment) or section 1033 (relating to involuntary conversions); and (2) the replacement property that is acquired by the cooperative pursuant to section 1031 or section 1033 (as the case may be) constitutes property that is used, or to be used, for the purpose of generating, transmitting, distributing, or selling electricity or methane-based natural gas.

Treatment of income from load loss transactions

Tax-exempt rural electric cooperatives.—The bill provides that income received or accrued by a tax-exempt rural electric cooperative from a “load loss transaction” is treated under 501(c)(12) as income collected from members for the sole purpose of meeting losses and expenses of providing service to its members. Therefore, income from load loss transactions is treated as member income in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The bill also provides that income from load loss transactions does not cause a tax-exempt electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

The term “load loss transaction” is generally defined as any wholesale or retail sale of electric energy (other than to a member of the cooperative) to the extent that the aggregate amount of such sales during a seven-year period beginning with the “start-up year” does not exceed the reduction in the amount of sales of electric energy during such period by the cooperative to members. The “start-up year” is defined as the calendar year which includes the date of enactment of this provision or, if later, at the election of the cooperative: (1) the first year that the cooperative offers nondiscriminatory open access; or (2) the first year in which at least 10 percent of the cooperative’s sales of electric energy are to patrons who are not members of the cooperative.

The bill also excludes income received or accrued by rural electric cooperatives from load loss transactions from the tax on unrelated trade or business income.

Taxable electric cooperatives.—The bill provides that the receipt or accrual of income from load loss transactions by taxable electric cooperatives is treated as income from patrons who are members of the cooperative. Thus, income from a load loss transaction is excludible from the taxable income of a taxable electric cooperative if the cooperative distributes such income pursuant to a pre-existing contract to distribute the income to a patron who is not a member of the cooperative. The bill also provides that income from load loss transactions does not cause a taxable electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

EFFECTIVE DATE

This provision is effective for taxable years beginning after the date of enactment.

I. EXEMPT CERTAIN PREPAYMENTS FOR NATURAL GAS FROM TAX-EXEMPT BOND ARBITRAGE RULES

(Sec. 210 of the bill and sec. 148 of the Code)

PRESENT LAW

Interest on bonds issued by States or local governments to finance activities carried out or paid for by those entities generally is exempt from income tax (sec. 103). Restrictions are imposed on the ability of States or local governments to invest the proceeds of these bonds for profit (the "arbitrage restrictions"). One such restriction limits the use of bond proceeds to acquire "investment-type property." The term investment-type property includes the acquisition of property in a transaction involving a prepayment. A prepayment can produce prohibited arbitrage profits when the discount received for prepaying the costs exceeds the yield on the tax-exempt bonds. In general, prohibited prepayments include all prepayments that are not customary in an industry by both beneficiaries of tax-exempt bonds and other persons using taxable financing for the same transaction.

On April 17, 2002, the Department of the Treasury issued proposed regulations regarding arbitrage and private activity restrictions applicable to tax-exempt bonds issued by State and local governments. The proposed regulations add an exception to the definition of investment-type property for certain natural gas prepayments that are made by or for one or more utilities that are owned by a governmental person.[24] The exception applies if at least 95 percent of the natural gas purchased with the prepayment is to be (1) consumed by retail customers in the service area of a municipal gas utility, or (2) used to produce electricity that will be furnished to retain customers that a municipal electric utility is obligated to serve under State or Federal law. An obligation that arises solely because of a contract is not an obligation to serve under State or Federal law. For this purpose, the service area of a municipal gas utility is defined as (1) any area throughout which the municipal utility provided (at all times during the five-year period ending on

[24] Prop. Treas. Reg. sec. 1.148–1(e)(2)(ii).

the issue date) gas transmission or distribution service, and any area that is contiguous to such an area, or (2) any area where the municipal utility is obligated under State or Federal law to provide gas distribution services as provided in such law. Issuers may apply principles similar to the rules governing private use to cure a violation of the 95 percent requirement.[25]

A prepayment will not fail to meet the requirements for prepaid gas contracts by reason of any commodity swap contract that may be entered into between the issuer and an unrelated party (other than the gas supplier), or between the gas supplier and an unrelated party (other than the issuer), so long as each swap contract is an independent contract. A swap contract is an independent contract is not dependent on performance by any person (other than the party to the swap contract) under another contract (for example, a gas contract or another swap contract). A natural gas commodity swap contract will not fail to be an independent contract solely because the swap contract may terminate in the event of a failure of a gas supplier to deliver gas for which the swap contract is a hedge.[26] The Commissioner may, by published guidance, set forth additional circumstances in which a prepayment does not give rise to investment-type property.

REASONS FOR CHANGE

The Committee determined that it was appropriate to complement the proposed Treasury regulations with a safe harbor that provides certainty on the date of issuance that prepayments for natural gas within the safe harbor will not violate the arbitrage rules. This provision will ensure adequate supplies of natural gas at predictable prices for natural gas utility customers without sacrificing to a great degree the appropriate present-law limitations regarding tax-exempt bond issuance for the purchase of investment property. The Committee believes that this proposal strikes an appropriate balance between these two competing policies.

EXPLANATION OF PROVISION

In general

The provision creates a safe harbor exception to the general rule that tax-exempt bond-financed prepayments violate the arbitrage restrictions. The term "investment type property" does not include a prepayment under a qualified natural gas supply contract. The provision also provides that such prepayments are not treated as private loans for purposes of the private business tests.

Under the provision, a prepayment financed with tax-exempt bond proceeds for the purpose of obtaining a supply of natural gas for service area customers of a governmental utility is not treated as the acquisition of investment-type property. A contract is a qualified natural gas contract if the volume of natural gas secured for any year covered by the prepayment does not exceed the sum of (1) the average annual natural gas purchased (other than for resale) by customers of the utility within the service area of the utility ("retail natural gas consumption") during the testing period,

[25] See Treas. Reg. 1.141–12.
[26] Internal Revenue Service, Clarification of Proposed Regulations Relating to Tax-Exempt Bonds Issued by State or Local Governments, Notice 2002–52, 2002–30 IRB 1 (July 03, 2002).

and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility. The testing period is the 5-calendar-year period immediately preceding the calendar year in which the bonds are issued. A retail customer is one who does not purchase natural gas for resale. Natural gas used to generate electricity by a governmental utility is counted as retail natural gas consumption if the electricity was sold to retail customers within the service area of the governmental electric utility.

Adjustments

The volume of gas permitted by the general rule is reduced by natural gas otherwise available on the date of issuance. Specifically, the amount of natural gas permitted to be acquired under a qualified natural gas contract for any period is to be reduced by natural gas held by the utility on the date of issuance of the bonds and natural gas that the utility has a right to acquire for the prepayment period (determined as of the date of issuance).[27] For purposes of the preceding sentence, applicable share means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

For purposes of the safe harbor, if after the close of the testing period and before the issue date of the bonds (1) the government utility enters into a contract to supply natural gas (other than for resale) for a commercial person for use at a property within the service area of such utility and (2) the gas consumption for such property was not included in the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period, then the amount of gas permitted to be purchased may be increased to accommodate the contract.

The average annual retail natural gas consumption calculation for purposes of the safe harbor, however, is not to exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

Intentional acts

The safe harbor does not apply if the utility engages in intentional acts to render (1) the volume of natural gas covered by the prepayment to be in excess of that needed for retail natural gas consumption, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility.

Definition of service area

Service area is defined as (1) any area throughout which the governmental utility provided (at all times during the testing period) in the case of a natural gas utility, natural gas transmission or dis-

[27] For example, natural gas otherwise available on the date the bonds are issued includes supply covered by other prepayment contracts for the period, and supply held in storage or subject to an option to purchase by such utility that is available for retail natural gas consumption during the period covered by the prepayment. It does not include supply that could be purchased on the open market during the prepayment period.

tribution service, or in the case of an electric utility, electric distribution service; (2) limited areas contiguous to such areas, and (3) any area recognized as the service area of the governmental utility under State or Federal law. Contiguous areas are limited to any area within a county contiguous to the area described in (1) in which retail customers of the utility are located if such area is not also served by another utility providing the same service.

Ruling request for higher prepayment amounts

Upon written request, the Secretary may allow an issuer to prepay for an amount of gas greater than that allowed by the safe harbor based on objective evidence of growth in gas consumption or population that demonstrates that the amount permitted by the exception is insufficient.

EFFECTIVE DATE

The provision is effective for obligations issued after the date of enactment.

J. PREPAYMENT OF PREMIUM LIABILITY FOR COAL MINER HEALTH BENEFITS

(Sec. 211 of the bill and sec. 9704 of the Code)

PRESENT LAW

The United Mine Workers of America ("UMWA") Combined Benefit Fund was established by the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act") to assume responsibility of payments for medical care expenses of retired miners and their dependents who were eligible for heath care from the private 1950 and 1974 UMWA Benefit Plans. The Combined Benefit Fund is financed by assessments on current and former signatories to labor agreements with the UMWA, past transfers from an overfunded United Mine Workers pension fund, and transfers from the Abandoned Mine Reclamation Fund. The Social Security Administration is responsible for assigning eligible retired miners and their dependents to current and former signatories to labor agreements with the UMWA and calculating annual contributions to be paid by each such signatory for each beneficiary assigned to the signatory. The Coal Act uses the term "assigned operator" to refer to the signatory to which liability for a particular beneficiary of the Combined Benefit Fund has been assigned. Under the Coal Act, related persons to signatories to the relevant labor agreements may have liability for premium payments. In addition, successors to assigned operators may also have such liability.

REASONS FOR CHANGE

The Committee is concerned about the ongoing viability of companies in the coal industry. The Committee understands that because assigned operators that are members of controlled groups of corporations must reflect Coal Act liabilities in attempting to arrange financing for their businesses, such companies have difficulty undertaking regular business transactions. Accordingly, the Committee believes that an assigned operator that is a member of controlled group of corporations should be permitted to prepay its premium liability to the Combined Benefit Fund while the common parent of such group remains liable for any premium for which the operator would otherwise be liable.

EXPLANATION OF PROVISION

The provision allows assigned operators that are members of a controlled group of corporations to prepay their premium liability to the Combined Benefit Fund. Under the provision, only the common parent (and no other person) is liable for the premiums of an assigned operator which is a member of the parent's controlled group if: (1) the assigned operator makes a payment to the Combined Benefit Fund meeting certain requirements; (2) the parent is jointly and severally liable for any premium which would otherwise be required to be paid by the operator; and (3) the parent provides certain security.

Under the provision, in order for the relief from liability to apply to the assigned operator: (1) the payment by the assigned operator (described in (1) above) must be no less than the present value of the total premium liability of the assigned operator, as determined by the operator's enrolled actuary, using actuarial methods and assumptions each of which is reasonable and which are reasonable in the aggregate (as determined by such actuary); (2) the enrolled actuary must file with the Department of Labor an actuarial report regarding the valuation made by the actuary; and (3) the parent must file a description of the security provided with the Secretary of Labor. The Secretary of Labor has 30 days after the filing of the reports in (2) and (3) to notify the operator if the Secretary believes the applicable requirements have not been satisfied.

The security provided by the parent must be provided to the trustees of the 1992 UMWA Benefit Plan, solely for the purpose of paying premiums for eligible beneficiaries, and must be equal to one year's premium liability of the assigned operator (determined using the average cost of the operator's liability during the prior three years). The security must remain in place for five years. The security must be in the form of a bond, letter of credit or cash escrow.

Any prepayment made under the provision is to be used exclusively to pay premiums for which the operator would otherwise be liable.

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. PRODUCTION

A. Tax Credit for Oil and Gas Production From Marginal Wells

(Sec. 301 of the bill and new sec. 45J of the Code)

PRESENT LAW

There is no credit for the production of oil and gas from marginal wells. The costs of such production may be recovered under the Code's depreciation and depletion rules and in other cases as a deduction for ordinary and necessary business expenses.

REASONS FOR CHANGE

The highly volatile price of oil and gas can result in lost production during periods when prices are low. The Committee has learned that once a producing well is shut in, that source of supply may be forever lost. To increase domestic supply, the Committee determined that a tax credit will help ensure that supply is not lost as a result of low market prices.

EXPLANATION OF PROVISION

The provision creates a new, $3 per barrel credit for the production of crude oil and a $0.50 per 1,000 cubic feet of qualified natural gas production. The maximum amount of production on which credit can be claimed is 1,095 barrels or barrel equivalents. In both cases, the credit is available only for production from a "qualified marginal well." The credit is not available to production occurring if the reference price of oil exceeds $18 ($2.00 for natural gas). The credit is reduced proportionately for reference prices between $15 and $18 ($1.67 and $2.00 for natural gas). Reference prices are determined on a one-year look-back basis.

A qualified marginal well is defined as (1) a domestic well the production from which is treated as marginal production for purposes of the Code percentage depletion rules or (2) a domestic well that during the taxable year had (a) average daily production of not more than 25 barrel equivalents and (b) produced water at a rate of not less than 95 percent of total well effluent.

The credit is treated as a general business credit but is allowed against the alternative minimum tax. Additionally, unused credits can be carried back for up to 10 years rather than the generally applicable carryback period of one year.

EFFECTIVE DATE

The provision is effective for production in taxable years beginning after December 31, 2003.

B. Temporary Suspension of Limitation Based on 65 Percent of Taxable Income and Extension of Suspension of Taxable Income Limit With Respect to Marginal Production

(Sec. 302 of the bill and sec. 613A of the Code)

PRESENT LAW

In general

Depletion, like depreciation, is a form of capital cost recovery. In both cases, the taxpayer is allowed a deduction in recognition of the fact that an asset—in the case of depletion for oil or gas interests, the mineral reserve itself—is being expended in order to produce income. Certain costs incurred prior to drilling an oil or gas property are recovered through the depletion deduction. These include costs of acquiring the lease or other interest in the property and geological and geophysical costs (in advance of actual drilling).

Depletion is available to any person having an economic interest in a producing property. An economic interest is possessed in every case in which the taxpayer has acquired by investment any interest in minerals in place, and secures, by any form of legal relationship, income derived from the extraction of the mineral, to which it must look for a return of its capital.[28] Thus, for example, both working interests and royalty interests in an oil- or gas-producing property constitute economic interests, thereby qualifying the interest holders for depletion deductions with respect to the property. A taxpayer who has no capital investment in the mineral deposit does not possess an economic interest merely because it possesses an economic or pecuniary advantage derived from production through a contractual relation.

Cost depletion

Two methods of depletion are currently allowable under the Internal Revenue Code (the "Code"): (1) the cost depletion method, and (2) the percentage depletion method (secs. 611–613). Under the cost depletion method, the taxpayer deducts that portion of the adjusted basis of the depletable property which is equal to the ratio of units sold from that property during the taxable year to the number of units remaining as of the end of taxable year plus the number of units sold during the taxable year. Thus, the amount recovered under cost depletion may never exceed the taxpayer's basis in the property.

Percentage depletion and related income limitations

The Code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners.[29] Generally, under the percentage depletion method 15 percent of the taxpayer's gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year (sec. 613A(c)). The amount deducted generally may not exceed 100 percent of the net income from that property in any year (the "net-income limitation") (sec. 613(a)). By contrast, for any other mineral qualifying for the percentage depletion deduction, such deduction may not exceed 50 percent of the taxpayer's taxable income from the depletable property. A similar 50-percent net-income limitation applied to oil and gas properties for taxable years beginning before 1991. Section 11522(a) of the Omnibus Budget Reconciliation Act of 1990 prospectively changed the net-income limitation threshold to 100 percent only for oil and gas properties, effective for taxable years beginning after 1990. The 100-percent net-income limitation for marginal wells has been suspended for taxable years beginning after December 31, 1997, and before January 1, 2004.

Additionally, the percentage depletion deduction for all oil and gas properties may not exceed 65 percent of the taxpayer's overall taxable income (determined before such deduction and adjusted for certain loss carrybacks and trust distributions) (sec. 613A(d)(1)).[30] Because percentage depletion, unlike cost depletion, is computed without regard to the taxpayer's basis in the depletable property, cumulative depletion deductions may be greater than the amount expended by the taxpayer to acquire or develop the property.

A taxpayer is required to determine the depletion deduction for each oil or gas property under both the percentage depletion meth-

[28] Treas. Reg. sec. 1.611–1(b)(1).
[29] Sec. 613A.
[30] Amounts disallowed as a result of this rule may be carried forward and deducted in subsequent taxable years, subject to the 65-percent taxable income limitation for those years.

od (if the taxpayer is entitled to use this method) and the cost depletion method. If the cost depletion deduction is larger, the taxpayer must utilize that method for the taxable year in question (sec. 613(a)).

Limitation of oil and gas percentage depletion to independent producers and royalty owners

Generally, only independent producers and royalty owners (as contrasted to integrated oil companies) are allowed to claim percentage depletion. Percentage depletion for eligible taxpayers is allowed only with respect to up to 1,000 barrels of average daily production of domestic crude oil or an equivalent amount of domestic natural gas (sec. 613A(c)). For producers of both oil and natural gas, this limitation applies on a combined basis.

In addition to the independent producer and royalty owner exception, certain sales of natural gas under a fixed contract in effect on February 1, 1975, and certain natural gas from geopressured brine,[31] are eligible for percentage depletion, at rates of 22 percent and 10 percent, respectively. These exceptions apply without regard to the 1,000-barrel-per-day limitation and regardless of whether the producer is an independent producer or an integrated oil company.

REASONS FOR CHANGE

The Committee is concerned that, while current oil and gas operations may be profitable, the highly volatile nature of oil and gas prices could quickly create economic hardships in the industry. The potential problem could be particularly acute in those communities where a large percentage of jobs are related to the oil and gas industry. Thus, to help minimize the adverse effects of future price fluctuations, the Committee believes it is appropriate to suspend 100-percent net-income limitation for marginal wells and the 65-percent of taxable income limitation. The Committee believes that mitigating the effects of future price fluctuations will help ensure current and future domestic supply.

EXPLANATION OF PROVISION

The limit on percentage depletion deductions to no more than 65 percent of the taxpayer's overall taxable income is suspended for taxable years beginning after December 31, 2003, and before January 1, 2007. The suspension of the 100-percent net-income limitation for marginal wells is extended through taxable years beginning before January 1, 2007.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2003.

[31] This exception is limited to wells, the drilling of which began between September 30, 1978, and January 1, 1984.

C. Amortization of Delay Rental Payments

(Sec. 303 of the bill and new sec. 199A of the Code)

PRESENT LAW

Present law generally requires costs associated with inventory and property held for resale to be capitalized rather than currently deducted as they are incurred. (sec. 263). Oil and gas producers typically contract for mineral production in exchange for royalty payments. If mineral production is delayed, these contracts provide for "delay rental payments" as a condition of their extension. The Treasury Department has taken the position that the uniform capitalization rules of section 263A require delay rental payments to be capitalized.

REASONS FOR CHANGE

The Committee believes that substantial simplification for taxpayers and significant gains in taxpayer compliance and reductions in administrative cost can be contained by establishing the simple rule that all delay rental payments may be amortized over two years, including the basis of abandoned property.

EXPLANATION OF PROVISION

The provision allows delay rental payments incurred in connection with the development of oil or gas within the United States to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

EFFECTIVE DATE

The provision applies to delay rental payments paid or incurred in taxable years beginning after December 31, 2003. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date delay rental payments.

D. Amortization of Geological and Geophysical Expenditures

(Sec. 304 of the bill and new sec. 199 of the Code)

PRESENT LAW

In general

Geological and geophysical expenditures ("G&G costs") are costs incurred by a taxpayer for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. A key issue with respect to the tax treatment of such expenditures is whether or not they are capital in nature. Capital expenditures are not currently deductible as ordinary and necessary business expenses, but are allocated to the cost of the property.[32]

[32] Under section 263, capital expenditures are defined generally as any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. Treasury regulations define capital expenditures to include amounts paid or

Continued

Courts have held that G&G costs are capital, and therefore are allocable to the cost of the property[33] acquired or retained.[34] The costs attributable to such exploration are allocable to the cost of the property acquired or retained. As described further below, IRS administrative rulings have provided further guidance regarding the definition and proper tax treatment of G&G costs.

Revenue Ruling 77–188

In Revenue Ruling 77–188[35] (hereinafter referred to as the "1977 ruling"), the IRS provided guidance regarding the proper tax treatment of G&G costs. The ruling describes a typical geological and geophysical exploration program as containing the following elements:

- It is customary in the search for mineral producing properties for a taxpayer to conduct an exploration program in one or more identifiable project areas. Each project area encompasses a territory that the taxpayer determines can be explored advantageously in a single integrated operation. This determination is made after analyzing certain variables such as (1) the size and topography of the project area to be explored, (2) the existing information available with respect to the project area and nearby areas, and (3) the quantity of equipment, the number of personnel, and the amount of money available to conduct a reasonable exploration program over the project area.
- The taxpayer selects a specific project area from which geological and geophysical data are desired and conducts a reconnaissance-type survey utilizing various geological and geophysical exploration techniques. These techniques are designed to yield data that will afford a basis for identifying specific geological features with sufficient mineral potential to merit further exploration.
- Each separable, noncontiguous portion of the original project area in which such a specific geological feature is identified is a separate "area of interest." The original project area is subdivided into as many small projects as there are areas of interest located and identified within the original project area. If the circumstances permit a detailed exploratory survey to be conducted without an initial reconnaissance-type survey, the project area and the area of interest will be coextensive.
- The taxpayer seeks to further define the geological features identified by the prior reconnaissance-type surveys by additional, more detailed, exploratory surveys conducted with respect to each area of interest. For this purpose, the taxpayer engages in more intensive geological and geophysical exploration employing methods that are designed to yield sufficiently accurate sub-surface data to afford a basis for a decision to acquire or retain properties within

incurred (1) to add to the value, or substantially prolong the useful life, of property owned by the taxpayer or (2) to adapt property to a new or different use. Treas. Reg. sec. 1.263(a)–1(b).

[33] "Property" means an interest in a property as defined in section 614 of the Code, and includes an economic interest in a tract or parcel of land notwithstanding that a mineral deposit has not been established or proved at the time the costs are incurred.

[34] See, e.g., *Schermerhorn Oil Corporation* v. *Commissioner,* 46 B.T.A. 151 (1942). By contrast, section 617 of the Code permits a taxpayer to elect to deduct certain expenditures incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (but not oil and gas). These deductions are subject to recapture if the mine with respect to which the expenditures were incurred reaches the producing stage.

[35] 1977–1 C.B. 76.

or adjacent to a particular area of interest or to abandon the entire area of interest as unworthy of development by mine or well.

The 1977 ruling provides that if, on the basis of data obtained from the preliminary geological and geophysical exploration operations, only one area of interest is located and identified within the original project area, then the entire expenditure for those exploratory operations is to be allocated to that one area of interest and thus capitalized into the depletable basis of that area of interest. On the other hand, if two or more areas of interest are located and identified within the original project area, the entire expenditure for the exploratory operations is to be allocated equally among the various areas of interest.

If no areas of interest are located and identified by the taxpayer within the original project area, then the 1977 ruling states that the entire amount of the G&G costs related to the exploration is deductible as a loss under section 165. The loss is claimed in the taxable year in which that particular project area is abandoned as a potential source of mineral production.

A taxpayer may acquire or retain a property within or adjacent to an area of interest, based on data obtained from a detailed survey that does not relate exclusively to any discrete property within a particular area of interest. Generally, under the 1977 ruling, the taxpayer allocates the entire amount of G&G costs to the acquired or retained property as a capital cost under section 263(a). If more than one property is acquired, it is proper to determine the amount of the G&G costs allocable to each such property by allocating the entire amount of the costs among the properties on the basis of comparative acreage.

If, however, no property is acquired or retained within or adjacent to that area of interest, the entire amount of the G&G costs allocable to the area of interest is deductible as a loss under section 165 for the taxable year in which such area of interest is abandoned as a potential source of mineral production.

In 1983, the IRS issued Revenue Ruling 83–105,[36] which elaborates on the positions set forth in the 1977 ruling by setting forth seven factual situations and applying the principles of the 1977 ruling to those situations. In addition, Revenue Ruling 83–105 explains what constitutes “abandonment as a potential source of mineral production.”

REASONS FOR CHANGE

The Committee believes that substantial simplification for taxpayers, significant gains in taxpayer compliance, and reductions in administrative cost can be obtained by establishing the simple rule that all geological and geophysical costs may be amortized over two years, including the basis of abandoned property.

The Committee recognizes that, on average, a two-year amortization period accelerates recovery of geological and geophysical expenses. The Committee believes that more rapid recovery of such expenses will foster increased exploration for new sources of supply.

[36] 1983–2 C.B. 51.

EXPLANATION OF PROVISION

The provision allows geological and geophysical costs incurred in connection with oil and gas exploration in the United States to be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

EFFECTIVE DATE

The provision is effective for G&G costs paid or incurred in taxable years beginning after December 31, 2003. No inference is intended from the prospective effective date of this proposal as to the proper treatment of pre-effective date geological and geophysical costs.

E. EXTENSION AND MODIFICATION OF CREDIT FOR PRODUCING FUEL FROM A NON-CONVENTIONAL SOURCE

(Sec. 305 of the bill and sec. 29 and new sec. 45J of the Code)

PRESENT LAW

Certain fuels produced from "non-conventional sources" and sold to unrelated parties are eligible for an income tax credit equal to $3 (generally adjusted for inflation)[37] per barrel or Btu oil barrel equivalent (sec. 29). Qualified fuels must be produced within the United States.

Qualified fuels include:

(1) oil produced from shale and tar sands;

(2) gas produced from geopressured brine, Devonian shale, coal seams, tight formations ("tight sands"), or biomass; and

(3) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

In general, the credit is available only with respect to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit may be claimed for qualified fuels produced and sold before January 1, 2003 in the case of non-conventional sources subject to the January 1, 1993 expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

REASONS FOR CHANGE

The Committee concludes that the section 29 credit has brought forth oil and natural gas from domestic sources and that in the absence of these non-conventional sources the demand for imported fuels may have increased. To increase domestic sources of supply, the Committee believes it is appropriate to extend the section 29 credit to help foster new domestic fuel sources. The Committee is

[37] The value of the section 29 credit for production in 2001 was $6.28 per barrel of oil equivalent.

also concerned that, because of the higher extraction costs of these non-conventional sources, the expiration of existing section 29 benefits could lead to the loss of needed domestic fuel production. Therefore, the Committee believes it is appropriate to extend the credit for certain fuels produced from existing wells or facilities.

The Committee recognizes that the world price of oil has not risen to levels forecast in 1978. Therefore, the Committee believes it is appropriate to restart the section 29 credit at a level lower than that currently available to existing production.

The Committee recognizes that section 29 is not part of the general business credits and therefore no carryback or carryforward is available for the credit. The Committee believes that the carryback and carryforward rules should apply to the section 29 credit, and therefore believes it is appropriate to treat the section 29 credit as part of the general business credits.

EXPLANATION OF PROVISION

The provision permits taxpayers to claim the sec. 29 credit for production of certain non-conventional fuels produced at wells placed in service after April 1, 2003 and before January 1, 2007. Qualifying fuels are oil from shale or tar sands, and gas from geopressured brine, Devonian shale, coal seams or a tight formation. The value of the credit is $3.00 for production in 2003 and is indexed for inflation commencing with the credit amount for 2004. The credit could be claimed for production from the well for each of the first four years of production, but not for any production occurring after December 31, 2009.

The provision further permits production from certain existing wells (any well drilled after December 31, 1979 and before January 1, 1993) to claim a credit equal to the newly re-indexed value of $3.00 for production in 2003 after date of enactment through 2006.

The provision also permits landfill gas sold to a third party from facilities placed in service after June 30, 1998 and before January 1, 2007 to be eligible for five years of credit from the later of the date of enactment or the date the facility is placed in service. The amount of credit is $3.00 per barrel equivalent in 2003 and is indexed for inflation commencing with the credit amount for 2004. In the case of a landfill subject to the Environmental Protection Agency's 1996 New Source Performance Standards/Emissions Guidelines the amount of credit is $2.00 per barrel equivalent in 2003 and is indexed for inflation commencing with the credit amount for 2004.

Under the provision, the taxpayer may not claim any credit for production in excess of a daily average of 200,000 cubic feet of gas (or barrel of oil equivalent) from a qualifying well or facility.[38]

The provision also adds section 29 to the list of general business credits.

EFFECTIVE DATE

The provision applies to fuel sold from qualifying wells and facilities after the April 1, 2003.

[38] The daily average is computed as total production divided by the total number of days the well or facility was in production during the year.

F. Allow Certain Business Energy Credits Against the Alternative Minimum Tax

(Sec. 306 of the bill and sec. 38 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax on individuals and corporations in an amount equal to the excess of the tentative minimum tax over the regular tax liability. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount.

Generally, business credits may not exceed the excess of the regular tax liability over the tentative minimum tax.

REASONS FOR CHANGE

Under present law, the alternative minimum tax limits the intended incentive effects of tax credits for some taxpayers. The Committee believes that the incentive effects of business energy credits should be available to taxpayers regardless of their alternative minimum tax status. Accordingly, the bill provides that the certain business energy credits can be utilized by offsetting both the regular tax and the alternative minimum tax.

EXPLANATION OF PROVISION

The provision makes the minimum tax limitation inapplicable to the business energy credits added by the bill. These credits include the credit for construction of new energy efficient homes (sec. 45G), the credit for production of low sulphur diesel fuel (sec. 45H), and the credit for oil and gas production from marginal wells (sec. 45I).

In addition, the minimum tax limitation is inapplicable to the credit for electricity produced from certain renewable sources (sec. 45) to the extent attributable to a wind energy facility placed in service after the date of enactment of this bill and during the 4–year period beginning on the date the facility is originally placed in service.

EFFECTIVE DATE

The provision applies to taxable years ending after the date of enactment.

G. Repeal Alternative Minimum Tax Intangible Drilling Costs ("IDC") Preference for Oil and Gas Production

(Sec. 307 of the bill and sec. 57 of the Code)

PRESENT LAW

Taxpayers who pay or incur intangible drilling or development costs ("IDCs") in the development of domestic oil or gas production may elect to either expense or capitalize these amounts. If an election to expense IDCs is made, the taxpayer deducts the amount of the IDCs as an expense in the taxable year the cost is paid or incurred.

The difference between the amount of a taxpayer's IDC deduction and the amount which would have been currently deductible had

IDCs been capitalized and recovered over a 10–year period is an item of tax preference for the alternative minimum tax ("AMT") to the extent that this amount exceeds 65 percent of the taxpayer's net income from oil and gas properties for the taxable year. This preference applies to taxpayers other than integrated oil companies only to the extent that the failure to apply the preference would result in a reduction of the taxpayer's alternative minimum taxable income by more than 40 percent.

REASONS FOR CHANGE

Under present law, the alternative minimum tax limits the intended incentive effects of IDC expensing for some taxpayers. The Committee wishes to increase the effectiveness of the IDC expensing provision by repealing the AMT preference for taxpayers other than integrated oil companies. The Committee believes this will increase the supply of oil and gas.

EXPLANATION OF PROVISION

The provision repeals, for two years, the AMT preference for intangible drilling costs for oil and gas wells for taxpayers other than integrated oil companies.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2003, and before January 1, 2006.

H. ALLOW ENHANCED OIL RECOVERY CREDIT AGAINST THE ALTERNATIVE MINIMUM TAX

(Sec. 308 of the bill and sec. 38 of the Code)

PRESENT LAW

Present law imposes an alternative minimum tax on individuals and corporations in an amount equal to the excess of the tentative minimum tax over the regular tax liability. The tentative minimum tax is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount.

Generally, business credits may not exceed the excess of the regular tax liability over the tentative minimum tax. One of these credits is the enhanced oil recovery credit (sec. 43).

REASONS FOR CHANGE

Under present law, the alternative minimum tax limits the intended incentive effect of the enhanced oil recovery credit for some taxpayers. The Committee believes that the enhanced oil recovery credit should be utilized by offsetting both the regular tax and the alternative minimum tax. The Committee believes this will increase the supply of oil.

EXPLANATION OF PROVISION

The provision repeals, for two years, the minimum tax limitation on the enhanced oil recovery credit.

EFFECTIVE DATE

The provision applies to taxable years beginning after December 31, 2003, and beginning before January 1, 2006.

IV. CORPORATE EXPATRIATION

A. TAX TREATMENT OF CORPORATE EXPATRIATION

(Sec. 401 of the bill and new sec. 7874 of the Code)

PRESENT LAW

Determination of corporate residence

The U.S. tax treatment of a multinational corporate group depends significantly on whether the top-tier parent corporation of the group is domestic or foreign. For purposes of U.S. tax law, a corporation is treated as domestic if it is incorporated under the law of the United States or of any State. All other corporations (i.e., those incorporated under the laws of foreign countries) are treated as foreign.

U.S. taxation of domestic corporations

The United States employs a "worldwide" tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. In order to mitigate the double taxation that may arise from taxing the foreign-source income of a domestic corporation, a foreign tax credit for income taxes paid to foreign countries is provided to reduce or eliminate the U.S. tax owed on such income, subject to certain limitations.

Income earned by a domestic parent corporation from foreign operations conducted by foreign corporate subsidiaries generally is subject to U.S. tax when the income is distributed as a dividend to the domestic corporation. Until such repatriation, the U.S. tax on such income is generally deferred. However, certain anti-deferral regimes may cause the domestic parent corporation to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main anti-deferral regimes in this context are the controlled foreign corporation rules of subpart F[39] and the passive foreign investment company rules.[40] A foreign tax credit is generally available to offset, in whole or in part, the U.S. tax owed on this foreign-source income, whether repatriated as an actual dividend or included under one of the anti-deferral regimes.

U.S. taxation of foreign corporations

The United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to U.S. tax only on income that is "effectively connected" with the conduct of a trade or business in the United States. Such "effectively connected income" generally is

[39] Secs. 951–964.
[40] Secs. 1291–1298.

taxed in the same manner and at the same rates as the income of a U.S. corporation. An applicable tax treaty may limit the imposition of U.S. tax on business operations of a foreign corporation to cases in which the business is conducted through a "permanent establishment" in the United States.

In addition, foreign corporations generally are subject to a gross-basis U.S. tax at a flat 30–percent rate on the receipt of interest, dividends, rents, royalties, and certain similar types of income derived from U.S. sources, subject to certain exceptions. The tax generally is collected by means of withholding by the person making the payment. This tax may be reduced or eliminated under an applicable tax treaty.

U.S. tax treatment of inversion transactions

Under present law, U.S. corporations may reincorporate in low-tax foreign jurisdictions and thereby replace the U.S. parent corporation of a multinational corporate group with a foreign parent corporation. These transactions are commonly referred to as inversion transactions. Inversion transactions may take many different forms, including stock inversions, asset inversions, and various combinations of and variations on the two. Most of the known transactions to date have been stock inversions. In one example of a stock inversion, a U.S. corporation forms a foreign corporation, which in turn forms a domestic merger subsidiary. The domestic merger subsidiary then merges into the U.S. corporation, with the U.S. corporation surviving, now as a subsidiary of the new foreign corporation. The U.S. corporation's shareholders receive shares of the foreign corporation and are treated as having exchanged their U.S. corporation shares for the foreign corporation shares. An asset inversion reaches a similar result, but through a direct merger of the top-tier U.S. corporation into a new foreign corporation, among other possible forms. An inversion transaction may be accompanied or followed by further restructuring of the corporate group. For example, in the case of a stock inversion, in order to remove income from foreign operations from the U.S. taxing jurisdiction, the U.S. corporation may transfer some or all of its foreign subsidiaries directly to the new foreign parent corporation or other related foreign corporations.

In addition to removing foreign operations from the U.S. taxing jurisdiction, the corporate group may derive further advantage from the inverted structure by reducing U.S. tax on U.S.-source income through various earnings stripping or other transactions. This may include earnings stripping through payment by a U.S. corporation of deductible amounts such as interest, royalties, rents, or management service fees to the new foreign parent or other foreign affiliates. In this respect, the post-inversion structure enables the group to employ the same tax- reduction strategies that are available to other multinational corporate groups with foreign parents and U.S. subsidiaries, subject to the same limitations.[41]

Inversion transactions may give rise to immediate U.S. tax consequences at the shareholder and/or the corporate level, depending on the type of inversion. In stock inversions, the U.S. shareholders generally recognize gain (but not loss) under section 367(a), based

[41] See, e.g., secs. 163(j) and 482.

on the difference between the fair market value of the foreign corporation shares received and the adjusted basis of the domestic corporation stock exchanged. To the extent that a corporation's share value has declined, and/or it has many foreign or tax-exempt shareholders, the impact of this section 367(a) "toll charge" is reduced. The transfer of foreign subsidiaries or other assets to the foreign parent corporation also may give rise to U.S. tax consequences at the corporate level (e.g., gain recognition and earnings and profits inclusions under sections 1001, 311(b), 304, 367, 1248 or other provisions). The tax on any income recognized as a result of these restructurings may be reduced or eliminated through the use of net operating losses, foreign tax credits, and other tax attributes.

In asset inversions, the U.S. corporation generally recognizes gain (but not loss) under section 367(a) as though it had sold all of its assets, but the shareholders generally do not recognize gain or loss, assuming the transaction meets the requirements of a reorganization under section 368.

REASONS FOR CHANGE

The Committee is concerned about the reductions in taxes that some U.S. business enterprises may seek to achieve through inversion transactions. These transactions permit corporations and other entities to continue to conduct business in substantially the same manner as they did prior to the inversion, but with the result that the inverted entity avoids U.S. tax on income from foreign operations and may use earnings-stripping techniques to avoid U.S. tax on income from domestic operations. The Committee believes that it is inappropriate to allow U.S. business enterprises to achieve these tax benefits by means of transactions that have relatively little operational significance.

At the same time, the Committee believes that the U.S. tax laws place domestically owned companies at a competitive disadvantage relative to foreign-owned companies, and thus create an incentive for domestically owned companies to become foreign-owned, via inversion or otherwise. The Committee believes that tax reform is needed to address these underlying problems, and that to enact permanent anti-inversion legislation without such reform would be to treat only one symptom of a deeper illness in the system.

Balancing these concerns, the Committee believes that it is appropriate to impose a moratorium on inversion transactions while the Congress develops a solution to the relevant underlying problems in the tax system.

EXPLANATION OF PROVISION

The provision denies the tax benefits of corporate inversion transactions completed after March 4, 2003 and before January 1, 2005, effectively imposing a moratorium on such transactions.

For purposes of the provision, a corporate inversion transaction is a transaction in which, pursuant to a plan or a series of related transactions: (1) a U.S. corporation becomes a subsidiary of a foreign-incorporated entity or otherwise transfers substantially all of its properties to such an entity; (2) the former shareholders of the U.S. corporation hold (by reason of holding stock in the U.S. corporation) 80 percent or more (by vote or value) of the stock of the foreign-incorporated entity after the transaction; and (3) the foreign-incorporated entity, considered together with all companies connected to it by a chain of greater than 50 percent ownership (i.e., the "expanded affiliated group"), does not have substantial business activities in the entity's country of incorporation, compared to the total worldwide business activities of the expanded affiliated group. The proposal denies the intended tax benefits of this type of inversion by deeming the top-tier foreign corporation to be a domestic corporation for purposes of the Code.

In determining whether a transaction meets the definition of an inversion under the proposal, stock held by members of the expanded affiliated group that includes the foreign incorporated entity is disregarded. For example, if the former top-tier U.S. corporation receives stock of the foreign incorporated entity (e.g., so-called "hook" stock), the stock would not be considered in determining whether the transaction meets the definition of an inversion. Similarly, if a U.S. parent corporation converts an existing wholly owned U.S. subsidiary into a wholly owned controlled foreign corporation, the stock of the new foreign corporation would be disregarded, and the definition would not be met. Stock sold in a public offering related to the transaction also is disregarded for these purposes.

Transfers of properties or liabilities as part of a plan a principal purpose of which is to avoid the purposes of the proposal are disregarded. In addition, the Treasury Secretary is granted authority to prevent the avoidance of the purposes of the proposal, including avoidance through the use of related persons, pass-through or other noncorporate entities, or other intermediaries, and through transactions designed to qualify or disqualify a person as a related person or a member of an expanded affiliated group. Similarly, the Treasury Secretary is granted authority to treat certain non-stock instruments as stock, and certain stock as not stock, where necessary to carry out the purposes of the proposal.

The provision also applies to partnership transactions in which a foreign-incorporated entity acquires substantially all of the properties constituting a trade or business of a domestic partnership, if after the acquisition at least 80 percent of the stock of the entity is held by former partners of the partnership (by reason of holding their partnership interests), and the "expanded affiliated group" that includes the foreign-incorporated entity does not have substantial business activities in the entity's country of incorporation, compared to the total worldwide business activities of the expanded affiliated group. For purposes of applying this test, all partnerships that are under common control within the meaning of section 482 are treated as one partnership, except as provided otherwise in regulations.

The provision explicitly provides that no treaty obligation shall prevent the application of the provision.

EFFECTIVE DATE

The provision is effective for taxable years ending after March 4, 2003. The provision applies with respect to corporate inversion transactions completed after March 4, 2003 and before January 1, 2005.

B. Sense of the Congress that Tax Reform Is Needed To Address the Issue of Corporate Expatriation

(Sec. 402 of the bill)

PRESENT LAW

The United States employs a "worldwide" tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. Income earned by a domestic parent corporation from foreign operations conducted by foreign corporate subsidiaries generally is subject to U.S. tax when the income is distributed as a dividend to the domestic corporation. Until such repatriation, the U.S. tax on such income is generally deferred. However, certain anti-deferral regimes may cause the domestic parent corporation to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main anti-deferral regimes in this context are the controlled foreign corporation rules of subpart F [42] and the passive foreign investment company rules.[43] A foreign tax credit is generally available to offset, in whole or in part, the U.S. tax owed on this foreign-source income, whether repatriated as an actual dividend or included under one of the anti-deferral regimes.

REASONS FOR CHANGE

The Committee believes that the U.S. tax laws applicable to multinational business enterprises are significantly flawed, and that it is appropriate for the Congress to acknowledge these flaws and to indicate a commitment to remedying them.

EXPLANATION OF PROVISION

The provision finds that the U.S. tax laws are overly complex and burdensome, placing domestically owned companies at a competitive disadvantage relative to foreign-owned companies, and thus creating an incentive for domestically owned companies to become foreign-owned, via inversion or otherwise. The provision expresses the Sense of the Congress "that passage of legislation to fix the underlying problems with our tax laws is essential and should occur as soon as possible, so United States corporations will not face the current pressures to engage in inversion transactions."

EFFECTIVE DATE

The provision is effective on the date of enactment.

V. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 1531.

[42] Secs. 951–964.
[43] Secs. 1291–1298.

MOTION TO REPORT THE BILL

The bill, H.R. 1531, as amended, was ordered favorably reported by a rollcall vote of 24 yeas to 12 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel		X	
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw	X			Mr. Matsui			
Mrs. Johnson	X			Mr. Levin		X	
Mr. Houghton	X			Mr. Cardin		X	
Mr. Herger	X			Mr. McDermott		X	
Mr. McCrery	X			Mr. Kleczka			
Mr. Camp	X			Mr. Lewis (GA)			
Mr. Ramstad	X			Mr. Neal		X	
Mr. Nussle	X			Mr. McNulty			
Mr. Johnson	X			Mr. Jefferson		X	
Ms. Dunn	X			Mr. Tanner		X	
Mr. Collins	X			Mr. Becerra		X	
Mr. Portman	X			Mr. Doggett		X	
Mr. English	X			Mr. Pomeroy		X	
Mr. Hayworth	X			Mr. Sandlin	X		
Mr. Weller	X			Ms. Tubbs Jones		X	
Mr. Hulshof	X						
Mr. McInnis							
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						
Mr. Cantor	X						

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendment to the Chairman's amendment in the nature of a substitute.

Mr. Neal offered an amendment to strike Title IV and insert a new section which would disregard for U.S. tax purposes corporate expatriation transactions completed after September 11, 2001. Corporations that completed expatriation transactions on or before September 11, 2001, would be taxed as U.S. corporations beginning after December 31, 2003. This amendment was defeated by a roll call vote of 14 yeas to 21 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson				Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger				Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka			
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle	X			Mr. McNulty			
Mr. Johnson		X		Mr. Jefferson	X		
Ms. Dunn		X		Mr. Tanner	X		
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mr. Doggett	X		
Mr. English		X		Mr. Pomeroy		X	
Mr. Hayworth		X		Mr. Sandlin			
Mr. Weller		X		Ms. Tubbs Jones	X		
Mr. Hulshof		X					
Mr. McInnis							

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Lewis (KY)	....	X	....	....	....	....	....
Mr. Foley	....	X	....	....	....	....	....
Mr. Brady	....	X	....	....	....	....	....
Mr. Ryan	....	X	....	....	....	....	....
Mr. Cantor	....	X	....	....	....	....	....

VI. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 1531 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2003–2008:

ESTIMATED REVENUE EFFECTS OF H.R. 1531, THE ''ENERGY TAX POLICY ACT OF 2003,'' AS PASSED BY THE COMMITTEE ON WAYS AND MEANS ON APRIL 3, 2003

[Fiscal years 2003–2008, in millions of dollars]

Provision	Effective	2003	2004	2005	2006	2007	2008	2003–08
Conservation Provisions:								
A. 15% Credit for Residential Solar Hot Water (through 12/31/06) and Photovoltaics (through 12/31/08).	tyba 12/31/03	....	−3	−14	−19	−23	−23	−83
B. Extend (facilities placed in service through 12/31/06 Modify the Section 45 Credit for Producing Electricity From Certain Sources.	esfqfa DOE	−34	−162	−275	−302	−396	−393	−1,562
C. Tax Incentives for Fuel Cells:.								
1. Credit for non-business installation of qualifying fuel cells (through 12/31/06).	epoia 12/31/03	....	−1	−6	−10	−11	....	−28
2. Credit for business installation of qualifying fuel cells (through 12/31/06)..	epoia 12/31/03	....	−1	−3	−3	−2	−1	−10
D. Modification of Provisions Relating to Electric Vehicles and Clean-Fuel Vehicles—repeal the phaseout of the deduction under section 179A (clean fuel vehicles) and the credit under section 30 (electric vehicles); sunset 12/31/06; fuel cell credit (sunset 12/31/12); advanced lean burn vehicles credit (sunset 12/31/06).	ppisa 12/31/03	....	−52	−115	−247	−27	88	−353
E. Credit for Energy Efficiency Improvements to Existing Homes	tyba 12/31/03 & ppisb 1/1/07	....	−20	−110	−144	−136	−47	−457
F. Business Credit for Construction of New Energy Efficient Homes	tyba 12/31/03 & ppisb 1/1/07	....	−84	−175	−252	−164	−56	−731
G. Energy Credit for Combined Heat and Power System Property	episa 12/31/03 & episb 1/7/07	....	−52	−51	−23	−8	2	−134
H. Allow New Nonbusiness Energy Credits Against the Alternative Minimum Tax.	tyba 12/31/03	....	−1	−5	−7	−9	−6	−28
I. Repeal General Fund Excise Taxes on Railroad Diesel Fuel and Inland Waterway Barge Fuel.	1/1/04	....	−107	−156	−161	−166	−171	−761
J. Btu-Based Highway Excise Tax Rate for Diesel Fuel Blended with Water	fra 9/30/03	Loss of Less Than $500,000						
Total of Conservation Provisions	....	−34	−483	−910	−1,168	−942	−607	−4,147
Reliability Provisions:								
A. Natural Gas Gathering Pipelines Treated as Seven-Year Property and No Minimum Tax Adjustment.	ppisa DOE	−2	−7	−12	−23	−23	−50	−117
B. Gas Distribution Pipelines Treated as 15-Year Property and No Minimum Tax Adjustment.	ppisa DOE	−5	−23	−50	−79	−109	−136	−402
C. Electricity Transmission Property Rated 69kV or Greater Treated as 15-year Property and No Minimum Tax Adjustment.	ppisa DOE	−10	−36	−69	−119	−162	−202	−598

ESTIMATED REVENUE EFFECTS OF H.R. 1531, THE ''ENERGY TAX POLICY ACT OF 2003,'' AS PASSED BY THE COMMITTEE ON WAYS AND MEANS ON APRIL 3, 2003—Continued

[Fiscal years 2003–2008, in millions of dollars]

Provision	Effective	2003	2004	2005	2006	2007	2008	2003–08
D. Expensing of Capital Costs Incurred and Credit for Production in Complying with Environmental Protection Agency Sulfur Regulations for Small Refiners.	epoia doi	....	....	....	−7	−13	−25	−45
E. Determination of Small Refiner Exception to Oil Depletion Deduction—modify definition of independent refiner from daily maximum run less than 50,000 barrels to average daily run less than 75,000 barrels.	tyba 12/31/03	....	−8	−12	−12	−13	−13	−57
F. Election to Recognize Gain From Sale or Disposition of Electric Transmission Property to Implement Federal Energy Regulatory Commission or State Electric Restructuring Policy Ratably Over Eight-Year Period Subject to Qualified Reinvestment (applies to sales or dispositions complete prior to January 1, 2007).	ta DOE	−403	−1,368	−1,592	−1,312	185	952	−3,536
G. Modification to Special Rules for Nuclear Decommissioning Costs—transfer of non-qualified funds (seller gets deduction on sale); eliminate cost of service requirement; permit full funding in qualified fund; and clarify treatment of fund transfers.	tyba 2003	....	−86	−181	−198	−186	−167	−818
H. Treatment of Certain Income of Electric Cooperatives	tyba DOE	([1])	−8	−18	−21	−23	−25	−26
I. Exempt Certain Prepayments of Natural Gas From Tax-Exempt Bond Arbitrage Rules.	generally DOE	([1])	([1])	−1	−1	−2	−3	−7
J. Liability for Coal Miner Health Benefits [2]		Estimate to be Provided by the Congressional Budget Office						
Total of Reliability Provisions	—	−420	−1,536	−1,935	−1,772	−346	331	−5,675
Production Provisions:								
A. Tax Credit for Oil and Gas Production From Marginal Wells	pi tyba 12/31/03	No Revenue Effect						
B. Temporary Suspension of Limitation Based on 65 Percent of Taxable Income (through 12/31/06).	tyba 12/31/03	....	−112	−173	−181	−65	....	−531
C. Extension of Suspension of 100 Percent of Taxable Income Limit With Respect to Marginal Production (through 12/31/06).	tyba 12/31/03	....	−22	−35	−36	−13	....	−106
D. Amortize Delay Rental Payments Over 2 Years	apoii tyba 12/31/03	....	82	25	−63	−66	−40	−63
F. Extension and Modification of Credit for Producing Fuel From a Non-Conventional Source (placed in service through 12/31/06).	fsfqfa 4/1/03	−64	−178	−324	−504	−603	−540	−2,213
G. Allow Certain Business Energy Credits Against the Alternative Minimum Tax.	tyea DOE	....	−47	−32	−8	26	33	−28

H. Temporary Repeal of Alternative Minimum Tax Intangible Drilling Costs (“IDC”) Preference.	tyba 12/31/03 & tybb 1/1/06	....	−33	−49	−10	9	8	−75
I. Temporary Allowance of Enhanced Oil Recovery Credit Against the Alternative Minimum Tax.	tyba 12/31/03 & tybb 1/1/06	....	−88	−137	−142	−37	20	−383
Total of Production Provisions		−64	−331	−893	−1,396	−1,198	−850	−4,733
Tax Treatment of Expatriated Entities (sunset 12/31/04)	tca 3/4/03	....	6	62	12	3	....	83
Net Total		−518	−2,344	−3,676	−4,324	−2,483	−1,126	−14,472

[1] Loss of less than $1 million.

[2] Estimate provided by the Congressional Budget Office.

Legend for “Effective” column: apoii = amounts paid or incurred in; cpoii = costs paid or incurred in; DOE = date of enactment; doi = date of introduction; epoia = expenses paid or incurred after; episa = equipments placed in service after; episb = equipment placed in service before; esfqfa = electricity sold from qualifying facilities after; fra = fuels removed after; fsfqfa = fuel sold from qualifying facilities after; pi = production in; ppisa = property placed in service after.

Note.—Details may not add to totals due to rounding. Date of enactment is assumed to be July 1, 2003. Source Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue reducing income tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 7, 2003.

Hon. William "Bill" M. Thomas,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed estimate for H.R. 1531, the Energy Tax Policy Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Annie Bartsch (for federal revenues) and Alexis Ahlstrom (for federal spending).

Sincerely,

Douglas Holtz-Eakin,
Director.

Enclosure.

H.R. 1531—Energy Tax Policy Act of 2003

Summary: H.R. 1531 would amend existing tax law and establish new laws relating to energy production and consumption. The bill also would alter the tax treatment of inversion transactions undertaken by certain expatriating entities and allow certain coal companies to prepay liabilities to the United Mine Workers of America Combined Benefit Fund (CBF).

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that H.R. 1531 would decrease governmental receipts by $474 million in 2003, by about $14.5 billion over the 2003–2008 period, and by about $18.7 billion over the 2003–2013 period. CBO estimates that the bill would increase direct spending by $10 million over the 2004–2013 period.

CBO has reviewed section 211 of H.R. 1531 and determined that this section contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), and would impose no costs on state, local, or tribal governments. JCT has determined that the other provisions of H.R. 1531 contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

JCT has determined that the provision of the bill relating to the tax treatment of inversion transactions contains a private-sector mandate. The total cost of complying with the mandate would not exceed the threshold established by UMRA ($117 million in 2003, adjusted annually for inflation).

Estimated cost to the Federal Government: The following table summarizes the estimated budgetary impact of H.R. 1531.

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
CHANGES IN REVENUES						
Extend and modify Section 45 credit	−34	−162	−275	−302	−396	−393
Extend and modify credit for non-conventional fuels	−64	−178	−324	−504	−603	−540
Allow amortizing of geological expenses	0	67	−168	−452	−449	−331
Modify depreciation rules for electric transmission property	−10	−36	−69	−119	−162	−202
Repeal general fund excise taxes on railroad and certain barge fuel	0	−107	−156	−161	−166	−171
Modify deductibility of nuclear decommissioning costs	0	−86	−181	−198	−186	−167
Modify depreciation rules for gas distribution pipelines	−5	−23	−50	−79	−109	−136
Modify capital gain recognition on sale of certain electric transmission property	−403	−1,368	−1,592	−1,312	185	952
Provide other energy incentives	−2	−457	−923	−1,209	−600	−138
Allow prepayment of Combined Benefit Fund premiums	44	−6	−6	−2	−5	−5
Modify treatment of inversions	***0***	***6***	***62***	***12***	***3***	***0***
Total Changes in Revenues	−474	−2,350	−3,682	−4,326	2,488	−1,131
CHANGES IN DIRECT SPENDING						
Combined Benefit Fund Outlays	0	1	1	1	1	1

Sources: CBO and the Joint Committee on Taxation.

Revenues

All estimates, with the exception of that for the provision allowing the prepayment of premiums to the Combined Benefit Fund, were provided by JCT.

H.R. 1531 contains numerous provisions altering existing laws and establishing new laws relating to energy production and consumption. CBO and JCT estimate that, together, the provisions contained in H.R. 1531 would decrease federal revenues by $474 million in 2003 by about $14.5 billion over the 2003–2008 period, and by about $18.7 billion over the 2003–2013 period.

The following provisions in the bill would have the most significant effects on the collection of governmental receipts:

- H.R. 1531 would extend and modify the Section 45 credit for producing electricity from certain sources including wind, open- and closed-loop biomass, and trash-to-energy facilities. JCT estimates that this provision would reduce governmental receipts by $34 million in 2003, by about $1.6 billion over the 2003–2008 period, and by about $3.2 billion over the 2003–2013 period.
- H.R. 1531 would also extend and modify the tax credit for the production of certain non-conventional fuels. JCT estimates that enacting this provision would reduce federal revenues by $64 million in 2003, by about $2.2 billion over the 2003–2008 period, and by about $3.0 billion over the 2003–2013 period.
- The bill would allow certain geological exploration expenditures to be amortized over a two-year period. JCT estimates that

enacting this provision would reduce governmental receipts by about $1.3 billion over the 2004–2008 period and $2.4 billion over the 2004–2013 period.

- The bill would also repeal general fund excise taxes on railroad diesel fuel and inland waterway barge fuel. JCT estimates that enacting this provision would reduce governmental receipts by $761 million over the 2004–2008 period, and by about $1.7 billion over the 2004–2013 period.
- H.R. 1531 would modify the depreciation rules pertaining to certain electricity transmission property and certain gas distribution pipelines. JCT estimates that these provisions would reduce federal revenues by about $2.2 billion and $1.5 billion over the 2003–2013 period, respectively.
- JCT estimates that modifying special rules for nuclear decommissioning costs would also reduce governmental receipts by $1.5 billion over the 2003–2013 period.
- The bill would allow taxpayers to elect to recognize certain gains from the sale or disposition of electric transmission property over an eight-year period. JCT estimates that this provision would decrease governmental receipts by $403 million in 2003 and by $3.5 billion over the 2003–2008 period, and that it would increase governmental receipts by $403 million over the 2003–2013 period.

In addition, H.R. 1531, contains several other provisions also relating to energy production and consumption that, if enacted, would affect governmental receipts. JCT estimates that, together, these provisions would increase governmental receipts by $2 million in 2003, by about $3.3 billion over the 2003–2008 period, and by about $3.8 billion over the 2004–2013 period. The bill would also allow certain assigned operators of coal facilities and related companies to prepay their premium liability to the United Mine Workers of America Combined Benefit Fund. Such premiums are considered federal revenues and are used to cover medical care expenses for certain retired miners and their dependents. CBO estimates that allowing prepayment would increase federal revenues by $44 million in 2004, but would decrease revenues in later years, for a net increase of only $1 million over the 2004–2013 period.

Lastly, H.R. 1531 would modify the tax treatment of expatriating entities. The provisions would apply to inversion transactions undertaken between March 4, 2003, and December 31, 2004. JCT estimates that enacting this provision would increase federal revenues by $83 million over the 2004–2007 period, but would have no effect thereafter.

Direct spending

As noted above, H.R. 1531 would allow certain coal companies with liabilities to the Combined Benefit Fund to prefund those liabilities. CBO assumes that over the 2004–2013 period, companies representing about 10 percent of retirees would choose to prefund. Prefunding would increase revenues into the fund over the 2004–2013 period, but would reduce revenues over the life of the fund. This would occur because the premium liability calculation would be based on the present value of that liability. CBO assumes that the CBF would buy Treasury notes with prefunded amounts and earn interest on those notes. This interest would be used to pay for health care for retirees, and would supplement the reduced premium income over the life of the fund from the private sector. CBO estimates that the CBF would receive $75 million in premiums from companies choosing to prefund, which is $5 million more than we estimate the fund would receive under current law over the 2004–2013 period. Under H.R. 1531, CBO estimates that the CBF would spend an additional $10 million over the 2004–2013 period on health care benefits.

Summary of the effect on revenues and direct spending: The overall effect of H.R. 1531 on revenues and direct spending is shown in the following table.

	By fiscal year, in millions of dollars—										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in receipts	−474	−2,350	−3,682	−4,326	−2,488	−1,131	−852	−647	−625	−919	−1,174
Changes in outlays	0	1	1	1	1	1	1	1	1	1	1

Sources: CBO and the Joint Committee on Taxation.

Estimated impact on state, local, and tribal governments: CBO and JCT have determined that H.R. 1531 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: JCT has determined that the provision of the bill relating to the tax treatment of inversion transactions contains a private-sector mandate, however, the mandate would not exceed the threshold established by UMRA ($117 million in 2003, adjusted annually for inflation).

Estimate prepared by: Federal revenues: Annie Bartsch; Federal spending; Alexis Ahlstrom; State, local, and tribal impact: Greg Waring.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis; Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

VII. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the tax burden on taxpayers that the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises. . ."), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

SUBTITLE A—INCOME TAXES

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter A—Determination of Tax Liability

* * * * * * *

PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart A—Nonrefundable Person Credits

Sec. 21. Expenses for household and dependent care services necessary for gainful employment.

* * * * * * *

Sec. 25C. Residential solar energy property.
Sec. 25D. Nonbusiness qualified fuel cell power plant.
Sec. 25E. Energy efficiency improvements to existing homes.

* * * * * * *

SEC. 23. ADOPTION EXPENSES.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

* * * * * * *

(4) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(A) * * *

(B) the sum of the credits allowable under this subpart (other than this section *and sections 25C, 25D, and 25E*) and section 27 for the taxable year.

(c) CARRYFORWARDS OF UNUSED CREDIT.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and ❲section 1400C❳ *sections 25E and 1400C*), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

* * * * * * *

SEC. 24. CHILD TAX CREDIT.

(a) * * *

(b) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

(1) * * *

* * * * * * *

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

(A) * * *

(B) the sum of the credits allowable under this subpart (other than this section and sections 23 【and 25B】*, 25B, 25C, 25D, and 25E*) and section 27 for the taxable year.

* * * * * * *

SEC. 25. INTEREST ON CERTAIN HOME MORTGAGES.

(a) * * *

* * * * * * *

(e) SPECIAL RULES AND DEFINITIONS.—For purposes of this section—

(1) CARRYFORWARD OF UNUSED CREDIT.—

(A) * * *

* * * * * * *

(C) APPLICABLE TAX LIMIT.—For purposes of this paragraph, the term "applicable tax limit" means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 24, 25B, *25C, 25D, and 25E* and 1400C).

* * * * * * *

SEC. 25B. ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS.

(a) * * *

* * * * * * *

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

(1) * * *

(2) the sum of the credits allowable under this subpart (other than this section and 【section 23】 *sections 23, 25C, 25D, and 25E*) and section 27 for the taxable year.

* * * * * * *

SEC. 25C. RESIDENTIAL SOLAR ENERGY PROPERTY.

(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) 15 percent of the qualified photovoltaic property expenditures made by the taxpayer during such year, and

(2) 15 percent of the qualified solar water heating property expenditures made by the taxpayer during the taxable year.

(b) LIMITATIONS.—

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

(A) $2,000 for each system of property described in subsection (c)(1), and

(B) $2,000 for each system of property described in subsection (c)(2).

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

(A) in the case of solar water heating equipment, such equipment is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed, and

(B) in the case of a photovoltaic system, such system meets appropriate fire and electric code requirements.

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

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section and section 25D and 25E) and section 27 for the taxable year.

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

(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term "qualified solar water heating property expenditure" means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun.

(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term "qualified photovoltaic property expenditure" means an expenditure for property which uses solar energy to generate electricity for use in a dwelling unit.

(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

(4) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property described in paragraph (1) or (2) and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

(5) SWIMMING POOLS, ETC., USED AS STORAGE MEDIUM.—Expenditures which are properly allocable to a swimming pool, hot tub, or any other energy storage medium which has a function other than the function of such storage shall not be taken into account for purposes of this section.

(d) SPECIAL RULES.—

(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used

during any calendar year as a residence by 2 or more individuals the following shall apply:

(A) The amount of the credit allowable under subsection (a) by reason of expenditures made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

(B) There shall be allowable with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

(C) Subparagraphs (A) and (B) shall be applied separately with respect to qualified solar water heating property expenditures and qualified photovoltaic property expenditures.

(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(3) CONDOMINIUMS.—

(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(4) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

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

(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing (as defined in section 48(a)(4)(A)).

(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(f) TERMINATION.—The credit allowed under this section shall not apply to taxable years beginning after December 31, 2006 (December 31, 2008, with respect to qualified photovoltaic property expenditures).

SEC. 25D. NONBUSINESS QUALIFIED FUEL CELL POWER PLANT.

(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 10 percent of the qualified fuel cell power plant expenditures which are paid or incurred during such year.

(b) LIMITATIONS.—

(1) IN GENERAL.—The credit allowed under subsection (a) with respect to any qualified fuel cell power plant for any taxable year shall not exceed—

(A) $500 for each ½ kilowatt of capacity of the power plant, reduced by

(B) the aggregate energy credits allowed with respect to such power plant for all prior taxable years.

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

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section and section 25E) and section 27 for the taxable year.

(c) QUALIFIED FUEL CELL POWER PLANT EXPENDITURES.—For purposes of this section, the term "qualified fuel cell power plant expenditures" means expenditures by the taxpayer for any qualified fuel cell power plant (as defined in section 48(a)(4))—

(1) which meets the requirements of subparagraphs (B) and (D) of section 48(a)(3), and

(2) which is installed on or in connection with a dwelling unit—

(A) which is located in the United States, and

(B) which is used by the taxpayer as a residence.

Such term includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the property.

(d) SPECIAL RULES.—For purposes of this section, rules similar to the rules of section 25C(d) shall apply.

(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any

property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(f) TERMINATION.—This section shall not apply to any expenditure made after December 31, 2006.

SEC. 25E. ENERGY EFFICIENCY IMPROVEMENTS TO EXISTING HOMES.

(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 20 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during such taxable year.

(b) LIMITATIONS.—

(1) MAXIMUM CREDIT.—The credit allowed by this section with respect to a dwelling shall not exceed $2,000.

(2) PRIOR CREDIT AMOUNTS FOR TAXPAYER ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed to the taxpayer under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of $2,000 reduced by the sum of the credits allowed under subsection (a) to the taxpayer with respect to the dwelling for all prior taxable years.

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

(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.

(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by subsection (b)(3) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(d) QUALIFIED ENERGY EFFICIENCY IMPROVEMENTS.—For purposes of this section, the term "qualified energy efficiency improvements" means any energy efficient building envelope component which meets the prescriptive criteria for such component established by the 2000 International Energy Conservation Code (or, in the case of metal roofs with appropriate pigmented coatings, meets the Energy Star program requirements), if—

(1) such component is installed in or on a dwelling—

(A) located in the United States, and

(B) owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of section 121),

(2) the original use of such component commences with the taxpayer, and

(3) such component reasonably can be expected to remain in use for at least 5 years.

If the aggregate cost of such components with respect to any dwelling exceeds $1,000, such components shall be treated as qualified energy efficiency improvements only if such components are also certified in accordance with subsection (e) as meeting such criteria.

(e) CERTIFICATION.—The certification described in subsection (d) shall be—

(1) determined on the basis of the technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency, based upon energy use or building envelope component performance, for the energy efficient building envelope component,

(2) provided by a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agency (IPIA), or an accredited home energy rating system provider who is accredited by or otherwise authorized to use approved energy performance measurement methods by the Residential Energy Services Network (RESNET), and

(3) made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components installed and their respective energy efficiency levels.

(f) DEFINITIONS AND SPECIAL RULES.—

(1) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having paid his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of the cost of qualified energy efficiency improvements made by such corporation.

(2) CONDOMINIUMS.—

(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having paid his proportionate share of the cost of qualified energy efficiency improvements made by such association.

(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(3) BUILDING ENVELOPE COMPONENT.—The term "building envelope component" means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.

(4) MANUFACTURED HOMES INCLUDED.—For purposes of this section, the term "dwelling" includes a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003).

(g) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(h) APPLICATION OF SECTION.—This section shall apply to qualified energy efficiency improvements installed after December 31, 2003, and before January 1, 2007.

SEC. 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

(a) LIMITATION BASED ON AMOUNT OF TAX.—

(1) IN GENERAL.—The aggregate amount of credits allowed by this subpart (other than sections 23, 24, [and 25B] *25B, 25C, 25D, and 25E*) for the taxable year shall not exceed the excess (if any) of—

(A) * * *

* * * * * * *

Subpart B—Other Credits

Sec. 27. Taxes of foreign countries and possessions of the United States; possession tax credit.
[Sec. 29. Credit for producing fuel from a nonconventional source.]
* * * * * * *
Sec. 30B. Alternative motor vehicle credit.

* * * * * * *

SEC. 30. CREDIT FOR QUALIFIED ELECTRIC VEHICLES.

(a) * * *

(b) LIMITATIONS.—

(1) * * *

[(2) PHASEOUT.—In the case of any qualified electric vehicle placed in service after December 31, 2003, the credit otherwise allowable under subsection (a) (determined after the application of paragraph (1)) shall be reduced by—

[(A) 25 percent in the case of property placed in service in calendar year 2004,

[(B) 50 percent in the case of property placed in service in calendar year 2005, and

[(C) 75 percent in the case of property placed in service in calendar year 2006.]

[(3)] *(2)* APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and [sections 27 and 29] *section 27*, over—

* * * * * * *

SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

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

(2) the advanced lean burn technology motor vehicle credit determined under subsection (c).

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

(1) IN GENERAL.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this

subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

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

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

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

(2) INCREASE FOR FUEL EFFICIENCY.—

(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy,

(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2000 model year city fuel economy,

(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2000 model year city fuel economy, and

(vii) $4,000, if such vehicle achieves at least 300 percent of the 2000 model year city fuel economy.

(B) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2000 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

(i) In the case of a passenger automobile:

If vehicle inertia weight class is:	***The 2000 model year city fuel economy is:***
1,500 or 1,750 lbs	*43.7 mpg*
2,000 lbs	*38.3 mpg*
2,250 lbs	*34.1 mpg*
2,500 lbs	*30.7 mpg*
2,750 lbs	*27.9 mpg*
3,000 lbs	*25.6 mpg*
3,500 lbs	*22.0 mpg*
4,000 lbs	*19.3 mpg*
4,500 lbs	*17.2 mpg*
5,000 lbs	*15.5 mpg*
5,500 lbs	*14.1 mpg*
6,000 lbs	*12.9 mpg*
6,500 lbs	*11.9 mpg*
7,000 or 8,500 lbs	*11.1 mpg.*

(ii) In the case of a light truck:

If vehicle inertia weight class is:	*The 2000 model year city fuel economy is:*
1,500 or 1,750 lbs	*37.6 mpg*
2,000 lbs	*33.7 mpg*
2,250 lbs	*30.6 mpg*
2,500 lbs	*28.0 mpg*
2,750 lbs	*25.9 mpg*
3,000 lbs	*24.1 mpg*
3,500 lbs	*21.3 mpg*
4,000 lbs	*19.0 mpg*
4,500 lbs	*17.3 mpg*
5,000 lbs	*15.8 mpg*
5,500 lbs	*14.6 mpg*
6,000 lbs	*13.6 mpg*
6,500 lbs	*12.8 mpg*
7,000 or 8,500 lbs	*12.0 mpg.*

(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term "vehicle inertia weight class" has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(3) NEW QUALIFIED FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term "new qualified fuel cell motor vehicle" means a motor vehicle—

(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

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

(i) for 2004 and later model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

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

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

(E) which is made by a manufacturer.

(c) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

(1) IN GENERAL.—For purposes of subsection (a), the advanced lean burn technology motor vehicle credit determined under this subsection with respect to a new qualified advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

(2) CREDIT AMOUNT.—

(A) INCREASE FOR FUEL EFFICIENCY.—The credit amount determined under this paragraph shall be—

(i) $500, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

(ii) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

(iii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

(iv) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

(v) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

(vi) $3,000, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

For purposes of clause (i), the 2000 model year city fuel economy with respect to a vehicle shall be determined using the tables provided in subsection (b)(2)(B) with respect to such vehicle.

(B) CONSERVATION CREDIT.—The amount determined under subparagraph (A) with respect to an advanced lean burn technology motor vehicle shall be increased by—

(i) $250, if such vehicle achieves a lifetime fuel savings of at least 1,500 gallons of gasoline, and

(ii) $500, if such vehicle achieves a lifetime fuel savings of at least 2,500 gallons of gasoline.

(C) OPTION TO USE LIKE VEHICLE.—At the option of the vehicle manufacturer, the increase for fuel efficiency and conservation credit may be calculated by comparing the new advanced lean-burn technology motor vehicle to a like vehicle.

(3) DEFINITIONS.—For purposes of this subsection—

(A) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE.—The term "advanced lean burn technology motor vehicle" means a motor vehicle with an internal combustion engine that—

(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

(ii) incorporates direct injection,

(iii) achieves at least 125 percent of the 2000 model year city fuel economy, and

(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 8 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle.

(B) LIKE VEHICLE.—The term "like vehicle" for an advanced lean burn technology motor vehicle derived from a conventional production vehicle produced in the same

model year means a model that is equivalent in the following areas:

(i) Body style (2-door or 4-door).

(ii) Transmission (automatic or manual).

(iii) Acceleration performance (± 0.05 seconds).

(iv) Drivetrain (2-wheel drive or 4-wheel drive).

(v) Certification by the Administrator of the Environmental Protection Agency.

(C) LIFETIME FUEL SAVINGS.—The term "lifetime fuel savings" shall be calculated by dividing 120,000 by the difference between the 2000 model year city fuel economy for the vehicle inertia weight class and the city fuel economy for the new qualified hybrid motor vehicle.

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

(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

(2) the sum of the credits allowable under subpart A and sections 27 and 30A for the taxable year.

(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) CONSUMABLE FUEL.—The term "consumable fuel" means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

(2) MOTOR VEHICLE.—The term "motor vehicle" has the meaning given such term by section 30(c)(2).

(3) 2000 MODEL YEAR CITY FUEL ECONOMY.—The 2000 model year city fuel economy with respect to any vehicle shall be measured under rules similar to the rules under section 4064(c).

(4) OTHER TERMS.—The terms "automobile", "passenger automobile", "light truck", and "manufacturer" have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

(5) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit so allowed.

(6) NO DOUBLE BENEFIT.—The amount of any deduction or credit allowable under this chapter (other than the credit allowable under this section), with respect to a vehicle described under subsection (b), shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

(7) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in

any sale or lease document the specific amount of any credit otherwise allowable to the entity under this section.

(8) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

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

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

(11) CARRYFORWARD ALLOWED.—

(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year (referred to as the "unused credit year" in this paragraph), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under subparagraph (A).

(12) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

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

(f) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

(2) DETERMINATION OF MOTOR VEHICLE ELIGIBILITY.—The Secretary, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

(g) TERMINATION.—This section shall not apply to any property placed in service after—

(1) in the case of a new qualified fuel cell motor vehicle (as described in subsection (b)), December 31, 2012, and

(2) in the case of any other property, December 31, 2006.

* * * * * * *

Subpart D—Business Related Credits

Sec. 38. General business credit.

* * * * * * *

Sec. 45G. New energy efficient home credit.
Sec. 45H. Credit for production of low sulfur diesel fuel.
Sec. 45I. Credit for producing oil and gas from marginal wells.
Sec. 45J. Credit for producing fuel from a nonconventional source.

* * * * * * *

SEC. 38. GENERAL BUSINESS CREDIT.

(a) * * *

(b) CURRENT YEAR BUSINESS CREDIT.—For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) * * *

* * * * * * *

(14) in the case of an eligible employer (as defined in section 45E(c)), the small employer pension plan startup cost credit determined under section 45E(a), **[**plus**]**

(15) the employer-provided child care credit determined under section 45F(a)**[**.**]***,*

(16) the new energy efficient home credit determined under section 45G,

(17) in the case of a small business refiner, the low sulfur diesel fuel production credit determined under section 45H(a),

(18) the marginal oil and gas well production credit determined under section 45I(a), plus

(19) the nonconventional source production credit determined under section 45J(a).

(c) LIMITATION BASED ON AMOUNT OF TAX.—

(1) * * *

(2) EMPOWERMENT ZONE EMPLOYMENT CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

(A) IN GENERAL.—In the case of the empowerment zone employment credit—

(i) * * *

(ii) for purposes of applying paragraph (1) to such credit

(I) * * *

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the empowerment zone employment credit or the New York Liberty Zone business employee credit *or the specified energy credits*).

* * * * * * *

(3) SPECIAL RULES FOR NEW YORK LIBERTY ZONE BUSINESS EMPLOYEE CREDIT.—

(A) IN GENERAL.—In the case of the New York Liberty Zone business employee credit—

(i) * * *

(ii) in applying paragraph (1) to such credit—

(I) * * *

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the New York Liberty Zone business employee credit *or the specified energy credits*).

(4) SPECIAL RULES FOR SPECIFIED ENERGY CREDITS.—

(A) IN GENERAL.—In the case of specified energy credits—

(i) this section and section 39 shall be applied separately with respect to such credits, and

(ii) in applying paragraph (1) to such credits—

(I) the tentative minimum tax shall be treated as being zero, and

(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified energy credits).

(B) SPECIFIED ENERGY CREDITS.—For purposes of this subsection, the term "specified energy credits" means the credits determined under sections 45G, 45H, and 45I.

(C) SPECIAL RULE FOR QUALIFIED WIND FACILITIES.—For purposes of this subsection, the term "specified energy credits" shall include the credit determined under section 45 to the extent that such credit is attributable to electricity produced—

(i) at a facility using wind to produce electricity which is originally placed in service after the date of the enactment of this paragraph, and

(ii) during the 4-year period beginning on the date that such facility was originally placed in service.

【(4)】 *(5)* SPECIAL RULES.—

(A) * * *

(B) CONTROLLED GROUPS.—In the case of a controlled group, the $25,000 amount specified under subparagraph (B) of paragraph (1) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by section 1563(a). *For taxable years beginning after December 31, 2003, and before January 1, 2006, such term includes the credit determined under section 43.*

* * * * * * *

SEC. 39. CARRYBACK AND CARRYFORWARD OF UNUSED CREDITS.

(a) IN GENERAL.—

(1) * * *

* * * * * * *

(3) 10-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—In the case of the marginal oil and gas well production credit—

(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

(B) paragraph (1) shall be applied by substituting "10 taxable years" for "1 taxable years" in subparagraph (A) thereof, and

(C) paragraph (2) shall be applied—

(i) by substituting "31 taxable years" for "21 taxable years" in subparagraph (A) thereof, and

(ii) by substituting "30 taxable years" for "20 taxable years" in subparagraph (A) thereof.

(d) TRANSITIONAL RULES.—

(1) * * *

* * * * * * *

(11) NO CARRYBACK OF NEW ENERGY EFFICIENT HOME CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit determined under section 45G may be carried back to any taxable year ending before January 1, 2004.

(12) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(5) may be carried back to a taxable year ending before January 1, 2004.

(13) NO CARRYBACK FOR NONCONVENTIONAL SOURCE PRODUCTION CREDIT.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 45J may be carried back to a taxable year ending before April 1, 2003.

* * * * * * *

SEC. 43. ENHANCED OIL RECOVERY CREDIT.

(a) * * *

(b) PHASE-OUT OF CREDIT AS CRUDE OIL PRICES INCREASE.—

(1) * * *

(2) REFERENCE PRICE.—For purposes of this subsection, the term "reference price" means, with respect to any calendar year, the reference price determined for such calendar year under ⟦section 29(d)(2)(C)⟧ *section 45J(d)(2)(C).*

* * * * * * *

SEC. 45. ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) * * *

* * * * * * *

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

⟦(1) QUALIFIED ENERGY RESOURCES.—The term "qualified energy resources" means—

⟦(A) wind,

⟦(B) closed-loop biomass, and

⟦(C) poultry waste.⟧

(1) QUALIFIED ENERGY RESOURCES.—The term "qualified energy resources" means any resource described in paragraph (3) which is used to generate electricity at a qualified facility.

* * * * * * *

(3) QUALIFIED FACILITY.—

(A) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, [2004] *2007*.

(B) CLOSED-LOOP BIOMASS FACILITY.—In the case of a facility using closed-loop biomass to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, [2004] *2007*.

* * * * * * *

(D) OPEN-LOOP BIOMASS FACILITIES.—In the case of a facility using open-loop biomass to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

(E) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

(F) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term "qualified facility" means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this subparagraph and before January 1, 2007.

* * * * * * *

(5) OPEN-LOOP BIOMASS.—The term "open-loop biomass" means any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

(A) any of the following forest-related resources: mill residues, precommercial thinnings, slash, and brush,

(B) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled, or

(C) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass.

(6) REDUCED CREDIT FOR CERTAIN PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (D) or (E) of paragraph (3) which is placed in service before the date of the enactment of this paragraph—

(A) subsection (a)(1) shall be applied by substituting "1.0 cents" for "1.5 cents", and

(B) the 5-year period beginning on the date of the enactment of this paragraph shall be substituted in lieu of the 10-year period in subsection (a)(2)(A)(ii).

(7) CREDIT ELIGIBILITY FOR OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in paragraph (3)(D) which is placed in service before the date of enactment of this paragraph, if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) is the lessee or the operator of such facility.

(8) LIMIT ON REDUCTIONS FOR GRANTS, ETC., FOR OPEN-LOOP BIOMASS FACILITIES.—If the amount of the credit determined under subsection (a) with respect to any open-loop biomass facility is required to be reduced under paragraph (3) of subsection (b), the fraction under such paragraph shall in no event be greater than 1/2.

(9) COORDINATION WITH SECTION 45J.—The term "qualified facility" shall not include any facility the production from which is allowed as a credit under section 45J for the taxable year or any prior taxable year.

* * * * * * *

SEC. 45G. NEW ENERGY EFFICIENT HOME CREDIT.

(a) IN GENERAL.—For purposes of section 38, in the case of an eligible contractor, the credit determined under this section for the taxable year is an amount equal to the aggregate adjusted bases of all energy efficient property installed in a qualified new energy efficient home during construction of such home.

(b) LIMITATIONS.—

(1) MAXIMUM CREDIT.—

(A) IN GENERAL.—The credit allowed by this section with respect to a dwelling shall not exceed $2,000.

(B) PRIOR CREDIT AMOUNTS ON SAME DWELLING TAKEN INTO ACCOUNT.—If a credit was allowed under subsection (a) with respect to a dwelling in 1 or more prior taxable years, the amount of the credit otherwise allowable for the taxable year with respect to that dwelling shall not exceed the amount of $2,000 reduced by the sum of the credits allowed under subsection (a) with respect to the dwelling for all prior taxable years.

(2) COORDINATION WITH REHABILITATION AND ENERGY CREDITS.—For purposes of this section—

(A) the basis of any property referred to in subsection (a) shall be reduced by that portion of the basis of any property which is attributable to qualified rehabilitation expenditures (as defined in section 47(c)(2)) or to the energy percentage of energy property (as determined under section 48(a)), and

(B) expenditures taken into account under either section 47 or 48(a) shall not be taken into account under this section.

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

(1) ELIGIBLE CONTRACTOR.—The term "eligible contractor" means the person who constructed the new energy efficient home, or in the case of a manufactured home which conforms to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003), the manufactured home producer of such home.

(2) ENERGY EFFICIENT PROPERTY.—The term "energy efficient property" means any energy efficient building envelope component, and any energy efficient heating or cooling appliance.

(3) QUALIFIED NEW ENERGY EFFICIENT HOME.—The term "qualified new energy efficient home" means a dwelling—

(A) located in the United States,

(B) the construction of which is substantially completed after December 31, 2003,

(C) the original use of which is as a principal residence (within the meaning of section 121) which commences with the person who acquires such dwelling from the eligible contractor, and

(D) which is certified to have a level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a comparable dwelling constructed in accordance with the standards of the 2000 International Energy Conservation Code and to have building envelope component improvements account for 1/3 of such 30 percent.

(4) CONSTRUCTION.—The term "construction" includes reconstruction and rehabilitation.

(5) ACQUIRE.—The term "acquire" includes purchase and, in the case of reconstruction and rehabilitation, such term includes a binding written contract for such reconstruction or rehabilitation.

(6) BUILDING ENVELOPE COMPONENT.—The term "building envelope component" means insulation material or system which is specifically and primarily designed to reduce the heat loss or gain of a dwelling when installed in or on such dwelling, exterior windows (including skylights) and doors, and metal roofs with appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of a dwelling when installed in or on such dwelling.

(7) MANUFACTURED HOME INCLUDED.—The term "dwelling" includes a manufactured home conforming to Federal Manufactured Home Construction and Safety Standards (section 3280 of title 24, Code of Federal Regulations, as in effect on April 3, 2003).

(d) CERTIFICATION.—

(1) METHOD.—A certification described in subsection (c)(3)(D) shall be determined on the basis of one of the following methods:

(A) The technical specifications or applicable ratings (including product labeling requirements) for the measurement of energy efficiency for the energy efficient building envelope component or energy efficient heating or cooling appliance, based upon energy use or building envelope component performance.

(B) An energy performance measurement method that utilizes computer software approved by organizations designated by the Secretary.

(2) PROVIDER.—Such certification shall be provided by—

(A) in the case of a method described in paragraph (1)(A), a local building regulatory authority, a utility, a manufactured home production inspection primary inspection agen-

cy (IPIA), or an accredited home energy rating systems provider who is accredited by, or otherwise authorized to use, approved energy performance measurement methods by the Home Energy Ratings Systems Council or the National Association of State Energy Officials, or

(B) in the case of a method described in paragraph (1)(B), an individual recognized by an organization designated by the Secretary for such purposes.

(3) FORM.—Such certification shall be made in writing in a manner that specifies in readily verifiable fashion the energy efficient building envelope components and energy efficient heating or cooling appliances installed and their respective energy efficiency levels, and in the case of a method described in subparagraph (B) of paragraph (1), accompanied by written analysis documenting the proper application of a permissible energy performance measurement method to the specific circumstances of such dwelling.

(4) REGULATIONS.—

(A) IN GENERAL.—In prescribing regulations under this subsection for energy performance measurement methods, the Secretary shall prescribe procedures for calculating annual energy costs for heating and cooling and cost savings and for the reporting of the results. Such regulations shall—

(i) be based on the National Home Energy Rating Technical Guidelines of the National Association of State Energy Officials, the Home Energy Rating Guidelines of the Home Energy Rating Systems Council, or the modified 2001 California Residential ACM manual,

(ii) provide that any calculation procedures be developed such that the same energy efficiency measures allow a home to qualify for the credit under this section regardless of whether the house uses a gas or oil furnace or boiler or an electric heat pump, and

(iii) require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and explanations for the homebuyer of the energy efficient features that were used to comply with the requirements of this section.

(B) PROVIDERS.—For purposes of paragraph (2)(B), the Secretary shall establish requirements for the designation of individuals based on the requirements for energy consultants and home energy raters specified by the National Association of State Energy Officials.

(e) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

(f) APPLICATION OF SECTION.—Subsection (a) shall apply to dwellings purchased during the period beginning on January 1, 2004, and ending on December 31, 2006.

SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) IN GENERAL.—For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

(b) MAXIMUM CREDIT.—

(1) IN GENERAL.—The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

(A) 25 percent of the qualified capital costs incurred by the small business refiner with respect to such facility, reduced by

(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

(2) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on March 31, 2003, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

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

(1) SMALL BUSINESS REFINER.—The term "small business refiner" means, with respect to any taxable year, a refiner of crude oil with respect to which not more than 1,500 persons are engaged in the refinery operations of the business on any day during such taxable year and whose average daily domestic refinery run for the 1-year period ending on March 31, 2003, did not exceed 205,000 barrels.

(2) QUALIFIED CAPITAL COSTS.—The term "qualified capital costs" means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

(3) APPLICABLE EPA REGULATIONS.—The term "applicable EPA regulations" means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

(4) APPLICABLE PERIOD.—The term "applicable period" means, with respect to any facility, the period beginning on April 1, 2003, and ending with the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility.

(5) LOW SULFUR DIESEL FUEL.—The term "low sulfur diesel fuel" means diesel fuel with a sulfur content of 15 parts per million or less.

(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would

(but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

(e) CERTIFICATION.—

(1) REQUIRED.—Not later than the date which is 30 months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is allowed with respect to a facility, the small business refiner must obtain certification from the Secretary, in consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.

(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application.

(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(f) CONTROLLED GROUPS.—For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 taxpayer.

SEC. 45I. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

(1) the credit amount, and

(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

(b) CREDIT AMOUNT.—For purposes of this section—

(1) IN GENERAL.—The credit amount is—

(A) $3 per barrel of qualified crude oil production, and

(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2003, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting "2002" for "1990").

(C) REFERENCE PRICE.—For purposes of this paragraph, the term "reference price" means, with respect to any calendar year—

(i) in the case of qualified crude oil production, the reference price determined under section 45J(d)(2)(C), and

(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

(1) IN GENERAL.—The terms "qualified crude oil production" and "qualified natural gas production" mean domestic crude oil or natural gas which is produced from a qualified marginal well.

(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated or qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel equivalents.

(B) PROPORTIONATE REDUCTIONS.—

(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

(3) DEFINITIONS.—

(A) QUALIFIED MARGINAL WELL.—The term "qualified marginal well" means a domestic well—

(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

(ii) which, during the taxable year—

(I) has average daily production of not more than 25 barrel equivalents, and

(II) produces water at a rate not less than 95 percent of total well effluent.

(B) CRUDE OIL, ETC.—The terms "crude oil", "natural gas", "domestic", and "barrel" have the meanings given such terms by section 613A(e).

(C) BARREL EQUIVALENT.—The term "barrel equivalent" means, with respect to natural gas, a conversation ratio of 6,000 cubic feet of natural gas to 1 barrel of crude oil.

(d) OTHER RULES.—

(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 45J for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 45J with respect to the well.

SEC. [29.] *45J.* CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.

(a) ALLOWANCE OF CREDIT.—[There shall be allowed as a credit against the tax imposed by this chapter for the taxable year] *For purposes of section 38, if the taxpayer elects to have this section apply, the nonconventional source production credit determined under this section for the taxable year is* an amount equal to—

(1) * * *

* * * * * * *

(b) LIMITATIONS AND ADJUSTMENTS.—

(1) * * *

* * * * * * *

[(6) Application with other credits.—The credit allowed by subsection (a) for any taxable year shall not exceed the excess (if any) of—

[(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and section 27, over

[(B) the tentative minimum tax for the taxable year.]

* * * * * * *

(h) EXTENSION FOR OTHER FACILITIES.—

(1) EXTENSION FOR OIL AND CERTAIN GAS.—In the case of a well for producing qualified fuels described in subparagraph (A) or (B)(i) of subsection (c)(1)—

(A) APPLICATION OF CREDIT FOR NEW WELLS.—Notwithstanding subsection (f), this section shall apply with respect to such fuels—

(i) which are produced from a well drilled after the date of the enactment of this subsection and before January 1, 2007, and

(ii) which are sold not later than the close of the 4-year period beginning on the date that such well is drilled, or, if earlier, January 1, 2010.

(B) EXTENSION OF CREDIT FOR OLD WELLS.—Subsection (f)(2) shall be applied by substituting "2007" for "2003" with respect to wells described in subsection (f)(1)(A) with respect to such fuels.

(2) EXTENSION FOR FACILITIES PRODUCING QUALIFIED FUEL FROM LANDFILL GAS.—

(A) IN GENERAL.—In the case of a facility for producing qualified fuel from landfill gas which was placed in service after June 30, 1998, and before January 1, 2007, this section shall apply to fuel produced at such facility during the 5-year period beginning on the later of—

(i) the date such facility was placed in service, or

(ii) the date of the enactment of this subsection.

(B) REDUCTION OF CREDIT FOR CERTAIN LANDFILL FACILITIES.—In the case of a facility to which paragraph (1) applies and which is located at a landfill which is required pursuant to section 60.751(b)(2) or section 60.33c of title 40, Code of Federal Regulations (as in effect on April 3, 2003) to install and operate a collection and control system which captures gas generated within the landfill, subsection (a)(1) shall be applied to gas so captured by substituting "$2" for "$3" for the taxable year during which such system is required to be installed and operated.

(3) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

(A) DAILY LIMIT.—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any project shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the project is placed in service shall not be taken into account in determining such average.

(B) EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT.—In the case of fuels sold during 2003, the dollar amount applicable under subsection (a)(1) shall be $3 (without regard to subsection (b)(2)). In the case of fuels sold after 2003, subparagraph (B) of subsection (d)(2) shall be applied by substituting "2003" for "1979".

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Subpart E—Rules for Computing Investment Credit

* * * * * * *

SEC. 48. ENERGY CREDIT; REFORESTATION CREDIT.

(a) ENERGY CREDIT.—

(1) * * *

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(3) ENERGY PROPERTY.—For purposes of this subpart, the term "energy property" means any property—

(A) which is—

(i) equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, [or]

(ii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage,

(iii) equipment which is part of a qualified fuel cell power plant, or

(iv) combined heat and power system property,

*   *   *   *   *   *   *

(4) QUALIFIED FUEL CELL POWER PLANT.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified fuel cell power plant" means a fuel cell power plant that has an electricity-only generation efficiency greater than 30 percent.

(B) LIMITATION.—The energy credit with respect to any qualified fuel cell power plant for any taxable year shall not exceed—

(i) $500 for each ½ kilowatt of capacity of the power plant, reduced by

(ii) the aggregate energy credits allowed with respect to such power plant for all prior taxable years.

(C) FUEL CELL POWER PLANT.—The term "fuel cell power plant" means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

(D) TERMINATION.—Such term shall not include any property placed in service after December 31, 2006.

(5) COMBINED HEAT AND POWER SYSTEM PROPERTY.—For purposes of this subsection—

(A) COMBINED HEAT AND POWER SYSTEM PROPERTY.—The term "combined heat and power system property" means property comprising a system—

(i) which uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications),

(ii) which has an electrical capacity of more than 50 kilowatts or a mechanical energy capacity of more than 67 horsepower or an equivalent combination of electrical and mechanical energy capacities,

(iii) which produces—

(I) at least 20 percent of its total useful energy in the form of thermal energy, and

(II) at least 20 percent of its total useful energy in the form of electrical or mechanical power (or combination thereof),

(iv) the energy efficiency percentage of which exceeds 60 percent (70 percent in the case of a system with an electrical capacity in excess of 50 megawatts or a mechanical energy capacity in excess of 67,000 horsepower, or an equivalent combination of electrical and mechanical energy capacities), and

(v) which is placed in service after December 31, 2003, and before January 1, 2007.

(B) SPECIAL RULES.—

(i) ENERGY EFFICIENCY PERCENTAGE.—For purposes of subparagraph (A)(iv), the energy efficiency percentage of a system is the fraction—

(I) the numerator of which is the total useful electrical, thermal, and mechanical power produced by the system at normal operating rates, and

(II) the denominator of which is the lower heating value of the primary fuel source for the system.

(ii) DETERMINATIONS MADE ON BTU BASIS.—The energy efficiency percentage and the percentages under subparagraph (A)(iii) shall be determined on a Btu basis.

(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED.—The term "combined heat and power system property" does not include property used to transport the energy source to the facility or to distribute energy produced by the facility.

(iv) PUBLIC UTILITY PROPERTY.—

(I) ACCOUNTING RULE FOR PUBLIC UTILITY PROPERTY.—If the combined heat and power system property is public utility property (as defined in section 168(i)(1)), the taxpayer may only claim the credit under the subsection if, with respect to such property, the taxpayer uses a normalization method of accounting.

(II) CERTAIN EXCEPTION NOT TO APPLY.—The matter in paragraph (3) which follows subparagraph (D) shall not apply to combined heat and power system property.

(C) EXTENSION OF DEPRECIATION RECOVERY PERIOD.—If a taxpayer is allowed credit under this section for combined heat and power system property and such property would (but for this subparagraph) have a class life of 15 years or less under section 168, such property shall be treated as having a 22-year class life for purposes of section 168.

⟦(4)⟧ *(6)* SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING OR INDUSTRIAL DEVELOPMENT BONDS.—

(A) * * *

* * * * * * *

⟦(5)⟧ *(7)* CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE.—Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of this subsection.

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Subpart G—Credit Against Regular Tax for Prior Year Minimum Tax Liability

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SEC. 53. CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY.

(a) * * *

* * * * * * *

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

(1) NET MINIMUM TAX.—

(A) * * *

(B) CREDIT NOT ALLOWED FOR EXCLUSION PREFERENCES.—

(i) * * *

* * * * * * *

(iii) SPECIAL RULE.—The adjusted net minimum tax for the taxable year shall be increased by the amount of the credit not allowed [under section 29 (relating to credit for producing fuel from a nonconventional source) solely by reason of the application of section 29(b)(6)(B), or not allowed] under section 30 solely by reason of the application of section 30(b)(3)(B).

* * * * * * *

PART VI—MINIMUM TAX FOR TAX PREFERENCES

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SEC. 55. ALTERNATIVE MINIMUM TAX IMPOSED.

(a) * * *

* * * * * * *

(c) REGULAR TAX.—

(1) * * *

(2) CROSS REFERENCES.—

For provisions providing that certain credits are not allowable against the tax imposed by this section, see sections 26(a), [29(b)(6),] 30(b)(3) and 38(c).

* * * * * * *

SEC. 56. ADJUSTMENTS IN COMPUTING ALTERNATIVE MINIMUM TAXABLE INCOME.

(a) ADJUSTMENTS APPLICABLE TO ALL TAXPAYERS.—In determining the amount of the alternative minimum taxable income for any taxable year the following treatment shall apply (in lieu of the treatment applicable for purposes of computing the regular tax):

(1) DEPRECIATION.—

(A) * * *

(B) EXCEPTION FOR CERTAIN PROPERTY.—This paragraph shall not apply to property described in paragraph (1), (2), (3), or (4) of section 168(f)*, or in section 168(e)(3)(C)(ii), or in section 168(e)(3)(E)(iv), or in section 168(e)(3)(E)(v)*.

* * * * * * *

SEC. 57. ITEMS OF TAX PREFERENCE.

(a) GENERAL RULE.—For purposes of this part, the items of tax preference determined under this section are—

(1) * * *

(2) INTANGIBLE DRILLING COSTS.—

(A) * * *

* * * * * * *

(E) EXCEPTION FOR INDEPENDENT PRODUCERS.—In the case of any oil or gas well—

(i) * * *

(ii) LIMITATION ON BENEFIT.—The reduction in alternative minimum taxable income by reason of clause (i) for any taxable year shall not exceed 40 percent (30 percent in case of taxable years beginning in 1993) of the alternative minimum taxable income for such year determined without regard to clause (i) and the alternative tax net operating loss deduction under section 56(a)(4). *The preceding sentence shall not apply to taxable years beginning after December 31, 2003, and before January 1, 2006.*

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Subchapter B—Computation of Taxable Income

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PART IV—TAX EXEMPTION REQUIREMENTS FOR STATE AND LOCAL BONDS

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Subpart A—Private Activity Bonds

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SEC. 141. PRIVATE ACTIVITY BOND; QUALIFIED BOND.

(a) * * *

* * * * * * *

(c) PRIVATE LOAN FINANCING TEST.—

(1) * * *

(2) EXCEPTION FOR TAX ASSESSMENT, ETC., LOANS.—For purposes of paragraph (1), a loan is described in this paragraph if such loan—

(A) enables the borrower to finance any governmental tax or assessment of general application for a specific essential governmental function, **[**or**]**

(B) is a nonpurpose investment (within the meaning of section 148(f)(6)(A))**[**.**]***, or*

(C) is a qualified natural gas supply contract (as defined in section 148(b)(4)).

* * * * * * *

Subpart B—Requirements Applicable to All State and Local Bonds

* * * * * * *

SEC. 148. ARBITRAGE.

(a) * * *

(b) HIGHER YIELDING INVESTMENTS.—For purposes of this section—

(1) * * *

* * * * * * *

(4) SAFE HARBOR FOR PREPAID NATURAL GAS.—

(A) IN GENERAL.—The term "investment-type property" does not include a prepayment under a qualified natural gas supply contract.

(B) QUALIFIED NATURAL GAS SUPPLY CONTRACT.—For purposes of this paragraph, the term "qualified natural gas supply contract" means any contract to acquire natural gas for resale by a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of—

(i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and

(ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

(C) NATURAL GAS USED TO GENERATE ELECTRICITY.—Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

(i) only if the electricity is generated by a utility owned by a governmental unit, and

(ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

(D) ADJUSTMENTS FOR CHANGES IN CUSTOMER BASE.—

(i) NEW BUSINESS CUSTOMERS.—If—

(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for a business use at a property within the service area of such utility, and

(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

(ii) LOST CUSTOMERS.—The average under subparagraph (B)(i) shall not exceed the annual amount of nat-

ural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

(E) RULING REQUESTS.—The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

(F) ADJUSTMENT FOR NATURAL GAS OTHERWISE ON HAND.—

(i) IN GENERAL.—The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

(ii) APPLICABLE SHARE.—For purposes of the clause (i), the term "applicable share" means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

(G) INTENTIONAL ACTS.—Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

(ii) the amount of natural gas used to transport such natural gas to the utility.

(H) TESTING PERIOD.—For purposes of this paragraph, the term "testing period" means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

(I) SERVICE AREA.—For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

(i) any area throughout which such utility provided at all times during the testing period—

(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

(II) in the case of an electric utility, electricity distribution services,

(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

(iii) any area recognized as the service area of such utility under State or Federal law.

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec. 161. Allowance of deductions.

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Sec. 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.

* * * * * * *

SEC. 167. DEPRECIATION.

(a) * * *

* * * * * * *

(h) AMORTIZATION OF DELAY RENTAL PAYMENTS FOR DOMESTIC OIL AND GAS WELLS.—

(1) IN GENERAL.—Any delay rental payment paid or incurred in connection with the development of oil or gas wells within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such payment was paid or incurred.

(2) HALF-YEAR CONVENTION.—For purposes of paragraph (1), any payment paid or incurred during the taxable year shall be treated as paid or incurred on the mid-point of such taxable year.

(3) EXCLUSIVE METHOD.—Except as provided in this subsection, no depreciation or amortization deduction shall be allowed with respect to such payments.

(4) TREATMENT UPON ABANDONMENT.—If any property to which a delay rental payment relates is retired or abandoned during the 24-month period described in paragraph (1), no deduction shall be allowed on account of such retirement or abandonment and the amortization deduction under this subsection shall continue with respect to such payment.

(5) DELAY RENTAL PAYMENTS.—For purposes of this subsection, the term "delay rental payment" means an amount paid for the privilege of deferring development of an oil or gas well under an oil or gas lease.

(i) AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES.—

(1) IN GENERAL.—Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the United States (as defined in section 638) shall be allowed as a deduction ratably over the 24-month period beginning on the date that such expense was paid or incurred.

(2) SPECIAL RULES.—For purposes of this subsection, rules similar to the rules of paragraphs (2), (3), and (4) of subsection (h) shall apply.

[(h)] *(j)* CROSS REFERENCES.—

(1) * * *

* * * * * * *

SEC. 168. ACCELERATED COST RECOVERY SYSTEM.

(a) * * *

* * * * * * *

(e) CLASSIFICATION OF PROPERTY.—For purposes of this section—

(1) * * *

* * * * * * *

(3) CLASSIFICATION OF CERTAIN PROPERTY.—

(A) * * *

* * * * * * *

(C) 7-YEAR PROPERTY.—The term "7-year property" includes—

(i) any railroad track, [and]

(ii) any natural gas gathering line, and

[(ii)] *(iii)* any property which—

(I) * * *

* * * * * * *

(E) 15-YEAR PROPERTY.—The term "15-year property" includes—

(i) * * *

(ii) any telephone distribution plant and comparable equipment used for 2-way exchange of voice and data communications, [and]

(iii) any section 1250 property which is a retail motor fuels outlet (whether or not food or other convenience items are sold at the outlet)[.]*,*

(iv) any natural gas distribution line, and

(v) any section 1245 property (as defined in section 1245(a)(3)) used in the transmission at 69 or more kilovolts of electricity for sale.

* * * * * * *

(g) ALTERNATIVE DEPRECIATION SYSTEM FOR CERTAIN PROPERTY.—

(1) * * *

* * * * * * *

(3) SPECIAL RULES FOR DETERMINING CLASS LIFE.—

(A) * * *

(B) SPECIAL RULE FOR CERTAIN PROPERTY ASSIGNED TO CLASSES.—For purposes of paragraph (2), in the case of property described in any of the following subparagraphs of subsection (e)(3), the class life shall be determined as follows:

If property is described in subparagraph:	The class life is:
(A)(iii)	4
(B)(ii)	5
(B)(iii)	9.5
(C)(i)	10
(C)(ii)	*10*
(D)(i)	15
(D)(ii)	20
(E)(i)	24
(E)(ii)	24
(E)(iii)	20

(E)(iv)	*20*
(E)(v)	*20*

* * * * * * *

(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(16) NATURAL GAS GATHERING LINE.—The term "natural gas gathering line" means—

(A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, or

(B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a commonpoint to the point at which such gas first reaches—

(i) a gas processing plant,

(ii) an interconnection with a transmission pipeline certificated by the Federal Energy Regulatory Commission as an interstate transmission pipeline,

(iii) an interconnection with an intrastate transmission pipeline, or

(iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

* * * * * * *

SEC. 179A. DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.

(a) * * *

(b) LIMITATIONS.—

⟦(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—

⟦(A) IN GENERAL.—The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

⟦(i) in the case of a motor vehicle not described in clause (ii) or (iii), $2,000,

⟦(ii) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

⟦(iii) $50,000 in the case of—

⟦(I) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

⟦(II) any bus which has a seating capacity of at least 20 adults (not including the driver).

⟦(B) PHASEOUT.—In the case of any qualified clean-fuel vehicle property placed in service after December 31, 2003, the limit otherwise applicable under subparagraph (A) shall be reduced by—

⟦(i) 25 percent in the case of property placed in service in calendar year 2004,

⟦(ii) 50 percent in the case of property placed in service in calendar year 2005, and

⟦(iii) 75 percent in the case of property placed in service in calendar year 2006.⟧

(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

(A) in the case of a motor vehicle not described in subparagraph (B) or (C), $2,000,

(B) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

(C) $50,000 in the case of—

(i) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

(ii) any bus which has a seating capacity of at least 20 adults (not including the driver).

* * * * * * *

SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) TREATMENT AS EXPENSES.—A small business refiner (as defined in section 45H(c)(1)) may elect to treat 75 percent of qualified capital costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year as expenses which are not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which paid or incurred.

(b) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on March 31, 2003, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

(c) BASIS REDUCTION.—

(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

* * * * * * *

SEC. 196. DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.

(a) * * *

* * * * * * *

(c) QUALIFIED BUSINESS CREDITS.—For purposes of this section, the term "qualified business credits" means—

(1) the investment credit determined under section 46 (but only to the extent attributable to property the basis of which is reduced by section 50(c)),

* * * * * * *

(9) the new markets tax credit determined under section 45D(a), **[**and**]**

(10) the small employer pension plan startup cost credit determined under section 45E(a)**[**.**]***, and*

(11) the new energy efficient home credit determined under section 45G.

* * * * * * *

PART IX—ITEMS NOT DEDUCTIBLE

* * * * * * *

SEC. 263. CAPITAL EXPENDITURES.

(a) GENERAL RULE.—No deduction shall be allowed for—

(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This paragraph shall not apply to—

(A) * * *

* * * * * * *

(G) expenditures for which a deduction is allowed under section 179; **[**or**]**

(H) expenditures for which a deduction is allowed under section 179A**[**.**]***; or*

(I) expenditures for which a deduction is allowed under section 179B.

* * * * * * *

SEC. 280C. CERTAIN EXPENSES FOR WHICH CREDITS ARE ALLOWABLE.

(a) * * *

* * * * * * *

(d) NEW ENERGY EFFICIENT HOME EXPENSES.—No deduction shall be allowed for that portion of expenses for a new energy efficient home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 45G.

(e) LOW SULFUR DIESEL FUEL PRODUCTION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45H(a).

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Subchapter C—Corporate Distributions and Adjustments

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PART I—DISTRIBUTIONS BY CORPORATIONS

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Subpart B—Effects on Corporation

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SEC. 312. EFFECT ON EARNINGS AND PROFITS.

(a) * * *

* * * * * * *

(k) EFFECT OF DEPRECIATION ON EARNINGS AND PROFITS.—
(1) * * *

* * * * * * *

(3) EXCEPTION FOR TANGIBLE PROPERTY.—
(A) * * *
(B) TREATMENT OF AMOUNTS DEDUCTIBLE UNDER SECTION [179 OR 179A] *179, 179A, OR 179B*.—For purposes of computing the earnings and profits of a corporation, any amount deductible under [section 179 or 179A] *section 179, 179A, or 179B* shall be allowed as a deduction ratably over the period of 5 taxable years (beginning with the taxable year for which such amount is deductible under [section 179 or 179A] *section 179, 179A, or 179B*, as the case may be).

* * * * * * *

Subchapter E—Accounting Periods and Methods of Accounting

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PART II—METHODS OF ACCOUNTING

* * * * * * *

Subpart B—Taxable Year for Which Items of Gross Income Included

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SEC. 451. GENERAL RULE FOR TAXABLE YEAR OF INCLUSION.
(a) * * *

* * * * * * *

(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

(1) IN GENERAL.—In the case of any qualifying electric transmission transaction to which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

(ii) any portion of such cost previously taken into account under this subsection, and

(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

(2) QUALIFIED GAIN.—For purposes of this subsection, the term "qualified gain" means, with respect to any qualifying electric transmission transaction in any taxable year—

(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term "qualifying electric transmission transaction" means any sale or other disposition before January 1, 2007, of—

(A) property used in the trade or business of providing electric transmission services, or

(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term "independent transmission company" means—

(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

(B) a person—

(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2), or

(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

(ii) a political subdivision or affiliate thereof whose transmission facilities are under the operational control of a person described in clause (i).

(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection—

(A) IN GENERAL.—The term "exempt utility property" means property used in the trade or business of—

(i) generating, transmitting, distributing, or selling electricity, or

(ii) producing, transmitting, distributing, or selling natural gas.

(B) NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.—Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

(6) SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

(7) TIME FOR ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

(8) PURCHASE.—For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

(9) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

* * * * * * *

Subpart C—Taxable Year for Which Deductions Taken

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SEC. 468A. SPECIAL RULES FOR NUCLEAR DECOMMISSIONING COSTS.

(a) * * *

[(b) LIMITATION ON AMOUNTS PAID INTO FUND.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the lesser of—

[(1) the amount of nuclear decommissioning costs allocable to the Fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or

[(2) the ruling amount applicable to such taxable year.]

(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

(1) IN GENERAL.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such taxable year.

(2) CONTRIBUTIONS AFTER FUNDING PERIOD.—Notwithstanding any other provision of this section, a taxpayer may pay into the Fund in any taxable year after the last taxable year to which the ruling amount applies. Payments may not be made

under the preceding sentence to the extent such payments would cause the assets of the Fund to exceed the nuclear decommissioning costs allocable to the taxpayer's current or former interest in the nuclear power plant to which the Fund relates. The limitation under the preceding sentence shall be determined by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended.

* * * * * * *

(d) RULING AMOUNT.—For purposes of this section—

(1) * * *

(2) RULING AMOUNT.—The term "ruling amount" means, with respect to any taxable year, the amount which the Secretary determines under paragraph (1) to be necessary to—

[(A) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear power plant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear power plant as the period for which the Fund is in effect bears to the estimated useful life of such nuclear power plant, and]

(A) fund the total nuclear decommissioning costs with respect to such power plant over the estimated useful life of such power plant, and

* * * * * * *

(e) NUCLEAR DECOMMISSIONING RESERVE FUND.—

(1) * * *

* * * * * * *

(8) TREATMENT OF FUND TRANSFERS.—If, in connection with the transfer of the taxpayer's interest in a nuclear power plant, the taxpayer transfers the Fund with respect to such power plant to the transferee of such interest and the transferee elects to continue the application of this section to such Fund—

(A) the transfer of such Fund shall not cause such Fund to be disqualified from the application of this section, and

(B) no amount shall be treated as distributed from such Fund, or be includible in gross income, by reason of such transfer.

(f) TRANSFERS INTO QUALIFIED FUNDS.—

(1) IN GENERAL.—Notwithstanding subsection (b), any taxpayer maintaining a Fund to which this section applies with respect to a nuclear power plant may transfer into such Fund up to an amount equal to the excess of the total nuclear decommissioning costs with respect to such nuclear power plant over the portion of such costs taken into account in determining the ruling amount in effect immediately before the transfer.

(2) DEDUCTION FOR AMOUNTS TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the deduction allowed by subsection (a) for any transfer permitted by this subsection shall be allowed ratably over the remaining estimated useful life (within the meaning of

subsection (d)(2)(A)) of the nuclear power plant beginning with the taxable year during which the transfer is made.

(B) DENIAL OF DEDUCTION FOR PREVIOUSLY DEDUCTED AMOUNTS.—No deduction shall be allowed for any transfer under this subsection of an amount for which a deduction was previously allowed or a corresponding amount was not included in gross income. For purposes of the preceding sentence, a ratable portion of each transfer shall be treated as being from previously deducted or excluded amounts to the extent thereof.

(C) TRANSFERS OF QUALIFIED FUNDS.—If—

(i) any transfer permitted by this subsection is made to any Fund to which this section applies, and

(ii) such Fund is transferred thereafter,

any deduction under this subsection for taxable years ending after the date that such Fund is transferred shall be allowed to the transferor for the taxable year which includes such date.

(D) SPECIAL RULES.—

(i) GAIN OR LOSS NOT RECOGNIZED.—No gain or loss shall be recognized on any transfer permitted by this subsection.

(ii) TRANSFERS OF APPRECIATED PROPERTY.—If appreciated property is transferred in a transfer permitted by this subsection, the amount of the deduction shall be the adjusted basis of such property.

(3) NEW RULING AMOUNT REQUIRED.—Paragraph (1) shall not apply to any transfer unless the taxpayer requests from the Secretary a new schedule of ruling amounts in connection with such transfer.

(4) NO BASIS IN QUALIFIED FUNDS.—Notwithstanding any other provision of law, the taxpayer's basis in any Fund to which this section applies shall not be increased by reason of any transfer permitted by this subsection.

【(f)】 *(g)* NUCLEAR POWER PLANT.—For purposes of this section, the term "nuclear power plant" includes any unit thereof.

【(g)】 *(h)* TIME WHEN PAYMENTS DEEMED MADE.—For purposes of this section, a taxpayer shall be deemed to have made a payment to the Fund on the last day of a taxable year if such payment is made on account of such taxable year and is made within 2½ months after the close of such taxable year.

* * * * * * *

Subchapter F—Exempt Organizations

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PART I—GENERAL RULE

* * * * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) * * *

* * * * * * *

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) * * *

* * * * * * *

(12)(A) * * *

* * * * * * *

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, [or]

[(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).]

(ii) from any provision or sale of transmission service or ancillary services if such services are provided on a nondiscriminatory open access basis under an independent transmission provider agreement approved by FERC (other than income received or accrued directly or indirectly from a member),

(iii) from any nuclear decommissioning transaction, or

(iv) from any asset exchange or conversion transaction.

* * * * * * *

(E) For purposes of subparagraph (C)(ii), the term "FERC" means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

(F) For purposes of subparagraph (C)(iii), the term "nuclear decommissioning transaction" means—

(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

(G) For purposes of subparagraph (C)(iv), the term "asset exchange or conversion transaction" means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

(i) generating, transmitting, distributing, or selling electric energy, or

(ii) producing, transmitting, distributing, or selling natural gas.

(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

(ii) For purposes of clause (i), the term "load loss transaction" means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

(II) the megawatt hours of electric energy sold during the base year to such members.

(v) For purposes of clause (iv)(II), the term "base year" means—

(I) the calendar year preceding the start-up year, or

(II) at the election of the electric company, the second or third calendar years preceding the start-up year.

(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

(vii) For purposes of this subparagraph, the start-up year is the calendar year which includes the date of the enactment of this subparagraph or, if later, at the election of the mutual or cooperative electric company—

(I) the first year that such electric company offers nondiscriminatory open access, or

(II) the first year in which at least 10 percent of such electric company's sales are not to members of such electric company.

(viii) A company shall not fail to be treated as a mutual or cooperative company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

* * * * * * *

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

* * * * * * *

SEC. 512. UNRELATED BUSINESS TAXABLE INCOME.

(a) * * *

(b) MODIFICATIONS.—The modifications referred to in subsection (a) are the following:

(1) * * *

* * * * * * *

(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.

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Subchapter I—Natural Resources

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PART I—DEDUCTIONS

* * * * * * *

SEC. 613A. LIMITATIONS ON PERCENTAGE DEPLETION IN CASE OF OIL AND GAS WELLS.

(a) * * *

* * * * * * *

(c) EXEMPTION FOR INDEPENDENT PRODUCERS AND ROYALTY OWNERS.—

(1) * * *

* * * * * * *

(6) OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.—

(A) * * *

* * * * * * *

(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term “applicable percentage” means the percentage (not greater than 25 percent) equal to the sum of—

(i) * * *

* * * * * * *

For purposes of this paragraph, the term “reference price” means, with respect to any calendar year, the reference price determined for such calendar year under ⟦section 29(d)(2)(C)⟧ *section 45J(d)(2)(C)*.

* * * * * * *

(H) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.—The second sentence of subsection (a) of section 613 shall not apply to so much of the allowance for depletion as is determined under subparagraph (A) for any taxable year beginning after December 31, 1997, and before January 1, [2004] *2007*.

* * * * * * *

(d) LIMITATIONS ON APPLICATION OF SUBSECTION (C).—

(1) * * *

* * * * * * *

[(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to such taxpayer if on any day during the taxable year the refinery runs of the taxpayer and such person exceed 50,000 barrels.]

(4) CERTAIN REFINERS EXCLUDED.—If the taxpayer or a related person engages in the refining of crude oil, subsection (c) shall not apply to the taxpayer for a taxable year if the average daily refinery runs of the taxpayer and the related person for the taxable year exceed 75,000 barrels. For purposes of this paragraph, the average daily refinery runs for any taxable year shall be determined by dividing the aggregate refinery runs for the taxable year by the number of days in the taxable year.

* * * * * * *

(6) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT.—Paragraph (1) shall not apply to taxable years beginning after December 31, 2003, and before January 1, 2007, including with respect to amounts carried under the second sentence of paragraph (1) to such taxable years.

* * * * * * *

Subchapter K—Partners and Partnerships

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PART IV—SPECIAL RULES FOR ELECTING LARGE PARTNERSHIPS

* * * * * * *

SEC. 772. SIMPLIFIED FLOW-THROUGH.

(a) GENERAL RULE.—In determining the income tax of a partner of an electing large partnership, such partner shall take into account separately such partner's distributive share of the partnership's—

(1) * * *

* * * * * * *

(9) foreign income taxes, *and*

[(10) the credit allowable under section 29, and]

[(11)] *(10)* other items to the extent that the Secretary determines that the separate treatment of such items is appropriate.

* * * * * * *

(d) OPERATING RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(5) GENERAL CREDITS.—The term "general credits" means any credit other than the low-income housing credit, the rehabilitation credit, [the foreign tax credit, and the credit allowable under section 29] *and the foreign tax credit*.

* * * * * * *

Subchapter N—Tax Based on Income From Sources Within or Without the United States

* * * * * * *

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

* * * * * * *

Subpart A—Foreign Tax Credit

* * * * * * *

SEC. 904. LIMITATION ON CREDIT.

(a) * * *

* * * * * * *

(h) COORDINATION WITH NONREFUNDABLE PERSONAL CREDITS.—In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, [and 25B] *25B, 25C, 25D, and 25E*). This subsection shall not apply to taxable years beginning during 2000, 2001, 2002, or 2003.

* * * * * * *

Subchapter O—Gain or Loss on Disposition of Property

* * * * * * *

PART II—BASIS RULES OF GENERAL APPLICATION

* * * * * * *

SEC. 1016. ADJUSTMENTS TO BASIS.

(a) GENERAL RULE.—Proper adjustment in respect of the property shall in all cases be made—

(1) * * *

* * * * * * *

(27) in the case of a residence with respect to which a credit was allowed under section 1400C, to the extent provided in section 1400C(h), [and]

(28) in the case of a facility with respect to which a credit was allowed under section 45F, to the extent provided in section 45F(f)(1)[.],

(29) to the extent provided in section 25C(e), in the case of amounts with respect to which a credit has been allowed under section 25C,

(30) to the extent provided in section 25D(e), in the case of amounts with respect to which a credit has been allowed under section 25D,

(31) to the extent provided in section 25E(g), in the case of amounts with respect to which a credit has been allowed under section 25E,

(32) to the extent provided in section 30B(e)(5),

(33) to the extent provided in section 179B(c), and

(34) in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d).

* * * * * * *

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

* * * * * * *

SEC. 1245. GAIN FROM DISPOSITIONS OF CERTAIN DEPRECIABLE PROPERTY.

(a) GENERAL RULE.—

(1) * * *

(2) RECOMPUTED BASIS.—For purposes of this section—

(A) * * *

* * * * * * *

(C) CERTAIN DEDUCTIONS TREATED AS AMORTIZATION.—Any deduction allowable under section 179, 179A, *179B,* 190, or 193 shall be treated as if it were a deduction allowable for amortization.

(3) SECTION 1245 PROPERTY.—For purposes of this section, the term "section 1245 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is either—

(A) * * *

* * * * * * *

(C) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169, 179, 179A, *179B,* 185, 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, 193, or 194,

* * * * * * *

Subchapter T—Cooperatives and Their Patrons

* * * * * * *

PART I—TAX TREATMENT OF COOPERATIVES

* * * * * * *

SEC. 1381. ORGANIZATIONS TO WHICH PART APPLIES.

(a) * * *

* * * * * * *

(c) CROSS REFERENCE.—

For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).

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Subchapter W—District of Columbia Enterprise Zone

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SEC. 1400C. FIRST-TIME HOMEBUYER CREDIT FOR DISTRICT OF COLUMBIA.

(a) * * *

* * * * * * *

(d) CARRYOVER OF CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section *and section 25E* and sections 23, 24, [and 25B] *25B, 25C, 25D, and 25E*, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

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Subtitle D—Miscellaneous Excise Taxes

* * * * * * *

CHAPTER 31—RETAIL EXCISE TAXES

* * * * * * *

Subchapter B—Special Fuels

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SEC. 4041. IMPOSITION OF TAX.

(a) DIESEL FUEL AND SPECIAL MOTOR FUELS.—

(1) TAX ON DIESEL FUEL IN CERTAIN CASES.—

(A) IN GENERAL.—There is hereby imposed a tax on any liquid other than gasoline (as defined in section 4083)—

(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, [or a diesel-powered train] for use as a fuel in such vehicle [or train], or

(ii) used by any person as a fuel in a diesel-powered highway vehicle, [or a diesel-powered train] unless there was a taxable sale of such fuel under clause (i).

* * * * * * *

(C) RATE OF TAX.—

(i) * * *

[(ii) RATE OF TAX ON TRAINS.—In the case of any sale for use, or use, of diesel fuel in a train, the rate of tax imposed by this paragraph shall be—

[(I) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995

[(II) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

[(III) 4.3 cents per gallon after October 31, 1998.]

[(iii)] *(ii)* RATE OF TAX ON CERTAIN BUSES.—

(I) * * *

* * * * * * *

(b) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE; REDUCTION IN TAX FOR QUALIFIED METHANOL AND ETHANOL FUEL.—

(1) EXEMPTION FOR OFF-HIGHWAY BUSINESS USE.—

(A) * * *

* * * * * * *

(C) OFF-HIGHWAY BUSINESS USE DEFINED.—For purposes of this subsection, the term "off-highway business use" has the meaning given to such term by section 6421(e)(2)[; except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train.].

* * * * * * *

(d) ADDITIONAL TAXES TO FUND LEAKING UNDERGROUND STORAGE TANK TRUST FUND.—

(1) * * *

* * * * * * *

(3) DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.

[(3)] *(4)* TERMINATION.—The taxes imposed by this subsection shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

* * * * * * *

SEC. 4042. TAX ON FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.

(a) * * *

(b) AMOUNT OF TAX.—

(1) IN GENERAL.—The rate of the tax imposed by subsection (a) is the sum of—

(A) the Inland Waterways Trust Fund financing rate, *and*

(B) the Leaking Underground Storage Tank Trust Fund financing rate[, and].

[(C) the deficit reduction rate.]

(b) AMOUNT OF TAX.—

(1) * * *

(2) For purposes of paragraph (1)—

(A) * * *

* * * * * * *

[(C) The deficit reduction rate is 4.3 cents per gallon.]

* * * * * * *

CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter A—Automotive and Related Items

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PART III—PETROLEUM PRODUCTS

* * * * * * *

Subpart A—Gasoline and Diesel Fuel

* * * * * * *

SEC. 4081. IMPOSITION OF TAX.

(a) TAX IMPOSED.—

(1) * * *

(2) RATES OF TAX.—

(A) * * *

* * * * * * *

(C) DIESEL-WATER FUEL EMULSION.—In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting "19.7 cents" for "24.3 cents".

* * * * * * *

(d) LATER SEPARATION OF FUEL FROM DIESEL-WATER FUEL EMULSION.—If any person separates the taxable fuel from a diesel-water fuel emulsion on which tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(C) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

[(d)] *(e)* TERMINATION.—
(1) * * *

* * * * * * *

[(e)] *(f)* REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

SEC. 4082. EXEMPTIONS FOR DIESEL FUEL AND KEROSENE.

(a) * * *

* * * * * * *

(f) Cross Reference.—

For tax on train and certain bus uses of fuel purchased tax-free, see [section 4041(a)(1)] ***subsections (d)(3) and (a)(1) of section 4041, respectively.***

SEC. 4083. DEFINITIONS; SPECIAL RULE; ADMINISTRATIVE AUTHORITY.

(a) TAXABLE FUEL.—For purposes of this subpart—
(1) * * *

* * * * * * *

(3) DIESEL FUEL.—The term "diesel fuel" means any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, [or a diesel-powered train].

* * * * * * *

Subtitle F—Procedure and Administration

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter B—Rules of Special Application

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SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(a) * * *

* * * * * * *

(d) CREDIT ON RETURNS.—Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return. The preceding sentence shall not apply to the tax imposed by section 4081 in the case of refunds described in [section 4081(e)] *section 4081(f)* or to the tax imposed by section 4091 in the case of refunds described in section 4091(d).

* * * * * * *

SEC. 6421. GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES, USED BY LOCAL TRANSIT SYSTEMS, OR SOLD FOR CERTAIN EXEMPT PURPOSES.

(a) * * *

* * * * * * *

(f) EXEMPT SALES; OTHER PAYMENTS OR REFUNDS AVAILABLE.—

(1) * * *

* * * * * * *

⟦(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to—

⟦(A) the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, and

⟦(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

⟦(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

⟦(ii) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

⟦(iii) 4.3 cents per gallon after October 31, 1998.⟧

(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to the Leaking Underground Storage Tank Trust Fund financing rate under section 4081.

* * * * * * *

SEC. 6427. FUELS NOT USED FOR TAXABLE PURPOSES.

(a) * * *

* * * * * * *

(l) NONTAXABLE USES OF DIESEL FUEL, KEROSENE, AND AVIATION FUEL.—

(1) * * *

* * * * * * *

⟦(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term "nontaxable use" includes fuel used in a diesel-powered train. The preceding sentence shall not apply with respect to—

⟦(A) the Leaking Underground Storage Tank Trust Fund financing rate under sections 4041 and 4081, and

⟦(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

⟦(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

⟦(ii) 5.55 cents per gallon after September 30, 1995, and before November 1, 1998, and

⟦(iii) 4.3 cents per gallon after October 31, 1998.

The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.⟧

(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term "nontaxable use" includes fuel used in a diesel-powered train. The preceding sentence shall not apply to the tax imposed by section 4041(d) and the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 except with respect to fuel sold for exclusive use by a State or any political subdivision thereof.

* * * * * * *

(m) DIESEL FUEL USED TO PRODUCE EMULSION.—

(1) IN GENERAL.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at the regular tax rate is used by any person in producing an emulsion described in section 4081(a)(2)(C) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular tax rate over the incentive tax rate with respect to such fuel.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) REGULAR TAX RATE.—The term "regular tax rate" means the aggregate rate of tax imposed by section 4081 determined without regard to section 4081(a)(2)(C).

(B) INCENTIVE TAX RATE.—The term "incentive tax rate" means the aggregate rate of tax imposed by section 4081 determined with regard to section 4081(a)(2)(C).

⟦(m)⟧ *(n)* REGULATIONS.—The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

⟦(n)⟧ *(o)* PAYMENTS FOR TAXES IMPOSED BY SECTION 4041(d).—For purposes of subsections (a), (b), and (c), the taxes imposed by section 4041(d) shall be treated as imposed by section 4041(a).

⟦(o)⟧ *(p)* GASOHOL USED IN NONCOMMERCIAL AVIATION.—Except as provided in subsection (k), if—

(1) * * *

* * * * * * *

⟦(p)⟧ *(q)* CROSS REFERENCES.—

(1) For civil penalty for excessive claims under this section, see section 6675.

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CHAPTER 66—LIMITATIONS

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Subchapter A—Limitations on Assessment and Collection

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SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) * * *

* * * * * * *

(m) DEFICIENCIES ATTRIBUTABLE TO ELECTION OF CERTAIN CREDITS.—The period for assessing a deficiency attributable to any election under section 30(d)(4), *30B(e)(10),* 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

* * * * * * *

CHAPTER 80—GENERAL RULES

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Subchapter C—Provision Affecting More Than One Subtitle

Sec. 7871. Indian tribal governments treated as States for certain purposes.

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Sec. 7874. Tax treatment of corporate expatriation.

* * * * * * *

SEC. 7874. TAX TREATMENT OF CORPORATE EXPATRIATION.

(a) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

(1) IN GENERAL.—If a foreign incorporated entity is treated as an inverted domestic corporation, then, notwithstanding section 7701(a)(4), such entity shall be treated for purposes of this title as a domestic corporation.

(2) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(A) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(B) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

(ii) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(C) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(3) TERMINATION.—This subsection shall not apply to any acquisition completed after December 31, 2004.

(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) FOREIGN INCORPORATED ENTITY.—The term "foreign incorporated entity" means any entity which is, or but for subsection (a) would be, treated as a foreign corporation for purposes of this title.

(2) EXPANDED AFFILIATED GROUP.—The term "expanded affiliated group" means an affiliated group as defined in section 1504(a) but without regard to paragraphs (2), (3), and (4) of section 1504(b), except that section 1504(a) shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears.

(3) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership under subsection (a)(3)(B)—

(A) stock held by members of the expanded affiliated group which includes the foreign incorporated entity, or

(B) stock of such foreign incorporated entity which is sold in a public offering related to the acquisition described in subsection (a)(3)(A).

(4) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(3)(B) are met, such actions shall be treated as pursuant to a plan.

(5) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(6) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(3)(B) to the acquisition of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is an inverted domestic corporation, including regulations—

(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

(B) to treat stock as not stock.

(c) SPECIAL RULE FOR TREATIES.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

(d) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.

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Subtitle J—Coal Industry Health Benefits

* * * * * * *

CHAPTER 99—COAL INDUSTRY HEALTH BENEFITS

* * * * * * *

PART II—FINANCING

* * * * * * *

SEC. 9704. LIABILITY OF ASSIGNED OPERATORS.

(a) * * *

* * * * * * *

(j) PREPAYMENT OF PREMIUM LIABILITY.—

(1) IN GENERAL.—If—

(A) any assigned operator who is a member of a controlled group of corporations (within the meaning of section 52(a)) makes a payment meeting the requirements of paragraph (2) to the Combined Fund, and

(B) the common parent of such group—

(i) is jointly and severally liable for any premium which would (but for this subsection) be required to be paid by such operator, and

(ii) provides security which meets the requirements of paragraph (3),

then no person (other than such common parent) shall be liable for any premium for which such operator would otherwise be liable.

(2) REQUIREMENTS.—A payment meets the requirements of this paragraph if—

(A) the amount of the payment is not less than the present value of the total premium liability of the assigned operator for its assignees under this chapter with respect to the Combined Fund (as determined by the operator's enrolled actuary, as defined in section 7701(a)(35)), using actuarial methods and assumptions each of which is reasonable and which are reasonable in the aggregate, as determined by such enrolled actuary,

(B) a signed actuarial report is filed with the Secretary of Labor by such enrolled actuary containing—

(i) the date of the actuarial valuation applicable to the report, and

(ii) a statement by the enrolled actuary signing the report that to the best of the actuary's knowledge the report is complete and accurate and that in the actuary's opinion the actuarial assumptions used are in the

aggregate reasonably related to the experience of the operator and to reasonable expectations,

(C) a description of the security described in paragraph (3) is filed with the Secretary of Labor by the common parent, and

(D) 30 calendar days have elapsed after the report required by subparagraph (B), and the description required by subparagraph (C), are filed with the Secretary of Labor, and the Secretary of Labor has not notified the assigned operator in writing that the requirements of this paragraph have not been satisfied.

(3) SECURITY.—Security meets the requirements of this paragraph if—

(A) the security (in the form of a bond, letter of credit, or cash escrow) is provided to the trustees of the 1992 UMWA Benefit Plan, solely for the purpose of paying premiums for beneficiaries described in section 9712(b)(2)(B), equal in amount to one year's liability of the assigned operator under section 9711, determined by using the average cost of such operator's liability during its prior 3 calendar years; and

(B) the security will remain in place for 5 years.

(4) USE OF PREPAYMENT.—Any payment to which this subsection applies (and earnings thereon) shall be used exclusively to pay premiums which would (but for this subsection) be required to be paid by the assigned operator making such payment.

* * * * * * *

IX. DISSENTING VIEWS

The energy issue is an extraordinarily important one for this country. We need a balanced, comprehensive energy program developed in public with broad support that does not sacrifice the environment to meet our energy needs. Such a program must be a balance of conservation measures, incentives for the development of alternative energy sources, and measures to ensure a reliable supply of conventional energy. The committee bill does not meet that standard and, therefore, we cannot support it.

The failure of this nation to have a comprehensive energy program has imposed large costs on our economy and our society as a whole. Energy producers have seen large fluctuations in prices, a cycle of boom and bust not conducive to necessary long term investments. The extraordinarily high electric prices faced by California and other regions early in 2002, followed by the collapse in such prices, is only one example. We are being asked to permit environmental degradation in a heedless rush to develop conventional sources of energy. We are increasingly dependent on oil imported from unstable regions of the world for our energy needs. Regardless of one's view about the current conflict in Iraq, there is no question that Saddam Hussein would not have had the financial resources to remain in power but for the world's need for his oil.

Vice President Cheney's energy task force developed its energy plan in secret at a time when electricity prices were soaring in California and crude oil prices were falling. It used those facts to justify its plan. Now we see dropping electricity prices and soaring crude oil prices, but the plan remains the same. Ideology and special interests, not facts, seem to be the driving elements.

The Committee bill, like Vice President Cheney's energy plan, was developed in secret without hearings or any significant public input. We thought that the Committee Democrats were the only ones excluded from the discussions leading to the development of the Committee bill. We were wrong. Assistant Treasury Secretary Pamela Olson, in an unscheduled appearance before the Committee, made it clear that the Administration had not been involved in the development of the Committee bill. She stated that the Administration supported the Committee bill in order to push the process forward, but was not willing to take a position on the substance of the bill because it had not been shared with the Administration.

The Committee bill contains a large number of unexplained changes to the energy tax bill reported by the Committee in 2001. Many energy conservation measures present in the earlier bill were dropped. New incentives were added without explanation, such as the tax credit for producing electricity from municipal waste or the new provisions providing accelerated depreciation for electric transmission lines. We do not know what influenced these decisions.

The Committee bill is not balanced. It contains relatively few energy conservation incentives and places the primary focus on oil and gas and other traditional energy sources. The Committee bill is deliberately organized in a fashion to hide its lack of balance. The conservation title contains two major provisions that have nothing to do with energy conservation, repeal of the excise tax on diesel fuel used in railroads and inland waterway barges, and extension of the sec. 45 energy production credits. A very small portion of the total cost of the bill is devoted to energy conservation measures.

We also are disappointed that the Committee is continuing its practice of using needed legislation as a vehicle for unrelated measures. Repeal of the excise tax on fuels used by trains and inland waterway barges may be justifiable but has nothing to do with energy policy. The more egregious unrelated provision is the provision that would grandfather from any restrictions those companies that reincorporated overseas for tax avoidance reasons. It is hard to imagine how the Republican members of this Committee can justify that permanent tax benefit for those companies. Those companies will have a permanent competitive advantage over the more patriotic companies that chose not to move their corporate mailbox overseas for tax avoidance. We are confident that the grandfathered companies will expect protection from our Government when they operate overseas and will expect to be able to profit from government contracts. At the same time, they refuse to contribute to the public good by paying their share of the tax burden.

JIM MCDERMOTT.
ROBERT T. MATSUI.
PETE STARK.
STEPHANIE TUBBS JONES.
LLOYD DOGGETT.
WILLIAM J. JEFFERSON.
MICHAEL R. MCNULTY.
RICHARD E. NEAL.
CHARLES B. RANGEL.
SANDER LEVIN.
XAVIER BECERRA.
JOHN LEWIS.
JERRY KLECZKA.
BEN CARDIN.
JOHN TANNER.

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