

112TH CONGRESS
1ST SESSION

H. R. 2495

To amend the Internal Revenue Code of 1986 to eliminate certain tax expenditures.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2011

Mr. TIERNEY (for himself, Mr. ELLISON, Mr. GRIJALVA, Mr. JACKSON of Illinois, and Ms. MCCOLLUM) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to eliminate certain tax expenditures.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Tax Equity and Middle Class Fairness Act of 2011”.

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

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

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

Sec. 1. Short title; table of contents; etc.

TITLE I—TERMINATION OF OIL AND GAS TAX PREFERENCES

- Sec. 101. Termination of enhanced oil recovery credit.
- Sec. 102. Termination of credit for producing oil and gas from marginal wells.
- Sec. 103. Termination of deduction for intangible drilling and development costs.
- Sec. 104. Termination of deduction for tertiary injectants.
- Sec. 105. Repeal exception to passive loss limitation for working interests in oil and natural gas properties.
- Sec. 106. Repeal percentage depletion for oil and natural gas wells.
- Sec. 107. Repeal domestic manufacturing tax deduction for oil and natural gas companies.
- Sec. 108. Increase geological and geophysical amortization period for independent producers to seven years.

TITLE II—TERMINATION OF CERTAIN COAL TAX PREFERENCES

- Sec. 201. Repeal of deduction for development and exploration expenditures with respect to coal, lignite, or oil shale.
- Sec. 202. Repeal of domestic production activities deduction with respect to production of coal, lignite, or oil shale.
- Sec. 203. Repeal of percentage depletion with respect to coal, lignite, and oil shale.
- Sec. 204. Repeal of capital gain treatment of coal and lignite royalties.

TITLE III—MODIFICATION OF ACCOUNTING RULES

- Sec. 301. Repeal of last-in, first-out method of inventory.
- Sec. 302. Repeal of lower of cost or market method of inventory.

TITLE IV—INDIVIDUAL TAX EXPENDITURES

- Sec. 401. Limitation on itemized deductions to 28-percent rate bracket.
- Sec. 402. Repeal of foreign earned income exclusion.
- Sec. 403. Phase-out of health savings accounts.
- Sec. 404. Phase-out of Archer MSAs.

TITLE V—BUSINESS RELATED TAX EXPENDITURES

Subtitle A—Partnership Interests Held by Partners Providing Services

- Sec. 501. Partnership interests transferred in connection with performance of services.
- Sec. 502. Income of partners for performing investment management services treated as ordinary income received for performance of services.

Subtitle B—Tax Expenditures Relating to Agribusiness

- Sec. 511. Elimination of expensing for fertilizer, etc., otherwise chargeable to a capital account.
- Sec. 512. Elimination of expensing for multi-period livestock and crop production costs.
- Sec. 513. Repeal of capital gain treatment with respect to the sale of timber.
- Sec. 514. Elimination of expensing for timber and ornamental trees.
- Sec. 515. Elimination of amortization of reforestation expenditures.
- Sec. 516. Repeal of tax expenditure for horse breeders.

Subtitle C—Other Business Tax Expenditures

- Sec. 521. Termination of \$25,000 exemption from passive loss rules for rental real estate activities.
- Sec. 522. Elimination of deduction for certain meal and entertainment expenses.
- Sec. 523. State and local bonds converted to direct subsidy bonds.
- Sec. 524. 28-percent rate for expanded direct subsidy build America bonds.

TITLE VI—INTERNATIONAL TAX EXPENDITURES

- Sec. 601. Allocation of expenses and taxes on basis of repatriation of foreign income.
- Sec. 602. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.
- Sec. 603. Limitations on income shifting through intangible property transfers.
- Sec. 604. Modifications of foreign tax credit rules applicable to dual capacity taxpayers.

TITLE VII—TAX EXPENDITURE STUDY

- Sec. 701. Study of extended tax expenditures.

1 **TITLE I—TERMINATION OF OIL**
 2 **AND GAS TAX PREFERENCES**

3 **SEC. 101. TERMINATION OF ENHANCED OIL RECOVERY**
 4 **CREDIT.**

5 (a) IN GENERAL.—Section 43 is amended by adding
 6 at the end the following new subsection:

7 “(f) TERMINATION.—This section shall not apply to
 8 any taxable year beginning after the date of the enactment
 9 of this subsection.”.

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

4 **SEC. 102. TERMINATION OF CREDIT FOR PRODUCING OIL**
5 **AND GAS FROM MARGINAL WELLS.**

6 (a) IN GENERAL.—Section 45I is amended by adding
7 at the end the following new subsection:

8 “(e) TERMINATION.—This section shall not apply to
9 any taxable year beginning after the date of the enactment
10 of this subsection.”.

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

14 **SEC. 103. TERMINATION OF DEDUCTION FOR INTANGIBLE**
15 **DRILLING AND DEVELOPMENT COSTS.**

16 (a) IN GENERAL.—Section 263(c) is amended by
17 adding at the end the following new sentence: “This sub-
18 section shall not apply to any taxable year beginning after
19 the date of the enactment of this sentence.”.

20 (b) CONFORMING AMENDMENTS.—Paragraphs (2)
21 and (3) of section 291(b) are each amended by striking
22 “section 263(c), 616(a),” and inserting “section 616(a)”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to costs paid or incurred in taxable

1 years beginning after the date of the enactment of this
2 Act.

3 **SEC. 104. TERMINATION OF DEDUCTION FOR TERTIARY**
4 **INJECTANTS.**

5 (a) IN GENERAL.—Section 193 is amended by adding
6 at the end the following new subsection:

7 “(d) TERMINATION.—This section shall not apply to
8 any taxable year beginning after the date of the enactment
9 of this subsection.”.

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

13 **SEC. 105. REPEAL EXCEPTION TO PASSIVE LOSS LIMITA-**
14 **TION FOR WORKING INTERESTS IN OIL AND**
15 **NATURAL GAS PROPERTIES.**

16 (a) IN GENERAL.—Subsection (c) of section 469 is
17 amended by striking paragraph (3).

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

21 **SEC. 106. REPEAL PERCENTAGE DEPLETION FOR OIL AND**
22 **NATURAL GAS WELLS.**

23 (a) IN GENERAL.—Section 613A is amended by add-
24 ing at the end the following new subsection:

1 “(f) TERMINATION.—After December 31, 2010, this
2 section and section 611 shall not apply to any oil or gas
3 well.”.

4 (b) CONFORMING AMENDMENT.—Section 613A(e)(1)
5 is amended by striking “subsection (d)” and inserting
6 “subsections (d) and (f)”.

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

10 **SEC. 107. REPEAL DOMESTIC MANUFACTURING TAX DE-**
11 **DUCTION FOR OIL AND NATURAL GAS COM-**
12 **PANIES.**

13 (a) IN GENERAL.—Subparagraph (B) of section
14 199(e)(4) is amended by striking “and” at the end of
15 clause (ii), by striking the period at the end of clause (iii)
16 and inserting “, and”, and by inserting after clause (iii)
17 the following new clause:

18 “(iv) production or extraction relating
19 to any oil or gas.”.

20 (b) CONFORMING AMENDMENT.—Section
21 199(e)(4)(A)(i)(III) is amended by striking “, natural
22 gas,”.

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

1 **SEC. 108. INCREASE GEOLOGICAL AND GEOPHYSICAL AM-**
 2 **ORTIZATION PERIOD FOR INDEPENDENT**
 3 **PRODUCERS TO SEVEN YEARS.**

4 (a) IN GENERAL.—Paragraphs (1) and (4) of section
 5 167(h) is amended by striking “24-month” both places it
 6 appears and inserting “7-year”.

7 (b) CONFORMING AMENDMENT.—Section 167(h) is
 8 amended by striking paragraph (5).

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to amounts paid or incurred in tax-
 11 able years beginning after the date of the enactment of
 12 this Act.

13 **TITLE II—TERMINATION OF CER-**
 14 **TAIN COAL TAX PREF-**
 15 **ERENCES**

16 **SEC. 201. REPEAL OF DEDUCTION FOR DEVELOPMENT AND**
 17 **EXPLORATION EXPENDITURES WITH RE-**
 18 **SPECT TO COAL, LIGNITE, OR OIL SHALE.**

19 (a) DEVELOPMENT EXPENDITURES.—Section 616 is
 20 amended by redesignating subsection (e) as subsection (f)
 21 and by inserting after subsection (d) the following new
 22 subsection:

23 “(e) SPECIAL RULE FOR EXPENDITURES FOR DE-
 24 VELOPMENT OF COAL MINE OR DEPOSIT.—No deduction
 25 shall be allowed under this section for expenditures paid
 26 or incurred with respect to the development of a mine or

1 other natural deposit for the production of coal, lignite,
2 or oil shale.”.

3 (b) EXPLORATION EXPENDITURES.—Section 617 is
4 amended by redesignating subsection (i) as subsection (j)
5 and by inserting after subsection (h) the following new
6 subsection:

7 “(i) SPECIAL RULE FOR COAL EXPLORATION EX-
8 PENDITURES.—No deduction shall be allowed under this
9 section for expenditures paid or incurred before the devel-
10 opment stage for the purpose of ascertaining the existence,
11 location, extent, or quality of any deposit of coal, lignite,
12 or oil shale.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to expenditures paid or incurred
15 after the date of the enactment of this Act.

16 **SEC. 202. REPEAL OF DOMESTIC PRODUCTION ACTIVITIES**
17 **DEDUCTION WITH RESPECT TO PRODUCTION**
18 **OF COAL, LIGNITE, OR OIL SHALE.**

19 (a) IN GENERAL.—Subparagraph (B) of section
20 199(c)(4), as amended by this Act, is amended by striking
21 “or” at the end of clause (iii), by striking the period at
22 the end of clause (iv) and inserting “, or”, and by adding
23 at the end the following new clause:

1 “(v) the lease, rental, license, sale, ex-
2 change, or other disposition of coal, lignite,
3 or oil shale).”.

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

7 **SEC. 203. REPEAL OF PERCENTAGE DEPLETION WITH RE-**
8 **SPECT TO COAL, LIGNITE, AND OIL SHALE.**

9 (a) OIL SHALE.—Paragraph (2) of section 613(b) is
10 amended—

11 (1) by striking subparagraph (B), and

12 (2) by striking “United States—” and all that
13 follows through “ore, and” and inserting the fol-
14 lowing: “United States—gold, silver, copper, and
15 iron ore.”.

16 (b) COAL AND LIGNITE.—Paragraph (4) of section
17 613(b) is amended by striking “coal, lignite”.

18 (c) CONFORMING AMENDMENT.—Subparagraph (A)
19 of section 613(b)(6) is amended by striking “except shale
20 described in paragraph (2)(B) or (5)” and inserting “ex-
21 cept oil shale or shale described in paragraph (5)”.

22 **SEC. 204. REPEAL OF CAPITAL GAIN TREATMENT OF COAL**
23 **AND LIGNITE ROYALTIES.**

24 (a) IN GENERAL.—

25 (1) Subsection (c) of section 631 is amended—

1 (A) by striking “coal (including lignite),
2 or”,

3 (B) by striking “coal or” each place it ap-
4 pears, and

5 (C) by striking “or coal” each place it ap-
6 pears.

7 (2) Paragraph (2) of section 1231(b) is amend-
8 ed by striking “, coal,”.

9 (b) CLERICAL AMENDMENTS.—

10 (1) The heading for section 631(c) is amended
11 by striking “COAL OR”.

12 (2) The heading for section 1231(b)(2) is
13 amended by striking “, COAL,”.

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

17 **TITLE III—MODIFICATION OF**
18 **ACCOUNTING RULES**

19 **SEC. 301. REPEAL OF LAST-IN, FIRST-OUT METHOD OF IN-**
20 **VENTORY.**

21 (a) IN GENERAL.—Subpart D of part II of sub-
22 chapter E of chapter 1 is amended by striking sections
23 472 (relating to last-in, first-out inventories), 473 (relat-
24 ing to qualified liquidations of LIFO inventories), and 474

1 (relating to simplified dollar-value LIFO method for cer-
2 tain small businesses).

3 (b) CONFORMING AMENDMENTS.—

4 (1)(A) Section 312(n) is amended by striking
5 paragraph (4) and by redesignating paragraphs (5)
6 through (8) as paragraphs (4) through (7), respec-
7 tively.

8 (B) Section 312(n)(7), as redesignated by sub-
9 paragraph (A), is amended—

10 (i) by striking “paragraphs (4) and (6)” in
11 subparagraph (A) and inserting “paragraph
12 (5)”, and

13 (ii) by striking “paragraph (5)” in sub-
14 paragraph (B) and inserting “paragraph (4)”.

15 (C) Section 56(g)(4)(D) is amended by striking
16 clause (iii) and by redesignating clause (iv) as clause
17 (iii).

18 (2) Section 1363 is amended by striking sub-
19 section (d).

20 (c) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to taxable years beginning
23 after the date of the enactment of this Act.

24 (2) CHANGE IN METHOD OF ACCOUNTING.—In
25 the case of any taxpayer required by the amend-

1 ments made by this section to change its method of
2 accounting for its first taxable year beginning after
3 the date of the enactment of this Act—

4 (A) such change shall be treated as initi-
5 ated by the taxpayer,

6 (B) such change shall be treated as made
7 with the consent of the Secretary of the Treas-
8 ury, and

9 (C) if the net amount of the adjustments
10 required to be taken into account by the tax-
11 payer under section 481 of the Internal Rev-
12 enue Code of 1986 is positive, such amount
13 shall be taken into account over a period of 8
14 years beginning with such first taxable year.

15 **SEC. 302. REPEAL OF LOWER OF COST OR MARKET METH-**
16 **OD OF INVENTORY.**

17 (a) **IN GENERAL.**—Section 471 is amended by redес-
18 ignating subsection (c) as subsection (d) and by inserting
19 after subsection (b) the following new subsection:

20 “(c) **INVENTORIES TAKEN INTO ACCOUNT AT**
21 **COST.**—A method of determining inventories shall not be
22 treated as clearly reflecting income unless such method
23 provides that inventories shall be taken into account at
24 cost.”.

25 (b) **EFFECTIVE DATE.**—

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

4 (2) CHANGE IN METHOD OF ACCOUNTING.—In
5 the case of any taxpayer required by the amend-
6 ments made by this section to change its method of
7 accounting for its first taxable year beginning after
8 the date of the enactment of this Act—

9 (A) such change shall be treated as initi-
10 ated by the taxpayer,

11 (B) such change shall be treated as made
12 with the consent of the Secretary of the Treas-
13 ury, and

14 (C) if the net amount of the adjustments
15 required to be taken into account by the tax-
16 payer under section 481 of the Internal Rev-
17 enue Code of 1986 is positive, such amount
18 shall be taken into account over a period of 8
19 years beginning with such first taxable year.

1 **TITLE IV—INDIVIDUAL TAX**
2 **EXPENDITURES**

3 **SEC. 401. LIMITATION ON ITEMIZED DEDUCTIONS TO 28-**
4 **PERCENT RATE BRACKET.**

5 (a) IN GENERAL.—The Internal Revenue Code of
6 1986 is amended by inserting after section 68 the fol-
7 lowing new section:

8 **“SEC. 68A. BENEFIT OF ITEMIZED DEDUCTIONS LIMITED**
9 **TO 28-PERCENT RATE BRACKET.**

10 “(a) IN GENERAL.—In the case of an individual
11 whose adjusted gross income exceeds \$200,000 (\$250,000
12 in the case of a joint return), the amount of the itemized
13 deductions otherwise allowable for the taxable year shall
14 be reduced by an amount necessary to increase the amount
15 of regular tax liability of the taxpayer to an amount that
16 would be imposed if such deductions reduced the regular
17 tax liability by not more than the amount such deductions
18 would reduce the tax imposed by section 1 on taxable in-
19 come within the 28-percent bracket amount.

20 “(b) REGULAR TAX LIABILITY.—For purposes of
21 this section, the term ‘regular tax liability’ has the mean-
22 ing given such term by section 26(b).

23 “(c) COORDINATION WITH SECTION 68.—This sec-
24 tion shall apply after the application of section 68.”.

25 (b) ALTERNATIVE MINIMUM TAX.—

1 (1) IN GENERAL.—Subsection (b) of section 55
2 is amended by adding at the end the following new
3 paragraph:

4 “(5) COORDINATION WITH SECTION 68A.—In
5 the case of an individual, for purposes of paragraph
6 (2), alternative minimum taxable income shall be de-
7 termined by reducing the amount of any itemized
8 deductions otherwise allowed in determining alter-
9 native minimum taxable income by an amount which
10 bears the same ratio to the amount by which the
11 itemized deductions of the taxpayer were reduced for
12 the taxable year under section 68A as—

13 “(A) the amount of itemized deductions
14 otherwise allowed in determining the alternative
15 minimum taxable income for the taxable year,
16 bears to

17 “(B) the aggregate amount of itemized de-
18 ductions of the taxpayer for the taxable year
19 (determined without regard to section 68A).”.

20 (2) CONFORMING AMENDMENT.—Paragraph (1)
21 of section 56(b) is amended by adding at the end the
22 following new subparagraph:

23 “(G) SECTION 68A NOT APPLICABLE.—
24 Section 68A shall not apply.”.

1 (c) CLERICAL AMENDMENT.—The table of sections
2 for part I of subchapter B of chapter 1 is amended by
3 adding at the end the following new item:

“Sec. 68A. Benefit of itemized deductions limited to 28-percent rate bracket.”.

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

7 **SEC. 402. REPEAL OF FOREIGN EARNED INCOME EXCLU-**
8 **SION.**

9 (a) IN GENERAL.—Subsection (a) of section 911 is
10 amended by striking “for any taxable year—” and all that
11 follows through the end and inserting “for any taxable
12 year the housing cost amount of such individual.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Subsection (f) of section 86 is amended by
15 inserting “and” at the end of paragraph (2), by
16 striking “, and” at the end of paragraph (3) and in-
17 serting a period, and by striking paragraph (4).

18 (2) Section 1401(a) is amended by striking
19 paragraph (11).

20 (3)(A) Clause (i) of section 1411(a)(1)(B) is
21 amended by striking “modified”.

22 (B) Section 1411 is amended by striking sub-
23 section (d) and by redesignating subsection (e) as
24 subsection (d).

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

4 **SEC. 403. PHASE-OUT OF HEALTH SAVINGS ACCOUNTS.**

5 Section 223 is amended by adding at the end the fol-
6 lowing new subsection:

7 “(i) TERMINATION.—

8 “(1) DEDUCTION.—No deduction shall be al-
9 lowed under subsection (a) with respect to amounts
10 paid to health savings accounts after the date of the
11 enactment of this subsection.

12 “(2) TAX TREATMENT ACCOUNTS.—Subsection
13 (e) shall not apply with respect to income derived in
14 taxable years beginning more than 2 years after the
15 date of the enactment of this subsection.”.

16 **SEC. 404. PHASE-OUT OF ARCHER MSAS.**

17 Section 220 is amended by adding at the end the fol-
18 lowing new subsection:

19 “(i) TERMINATION.—

20 “(1) DEDUCTION.—No deduction shall be al-
21 lowed under subsection (a) with respect to amounts
22 paid to an Archer MSA after the date of the enact-
23 ment of this subsection.

24 “(2) TAX TREATMENT OF ACCOUNTS.—Sub-
25 section (e) shall not apply with respect to income de-

1 rived in taxable years beginning more than 2 years
2 after the date of the enactment of this subsection.”.

3 **TITLE V—BUSINESS RELATED**
4 **TAX EXPENDITURES**

5 **Subtitle A—Partnership Interests**
6 **Held by Partners Providing**
7 **Services**

8 **SEC. 501. PARTNERSHIP INTERESTS TRANSFERRED IN**
9 **CONNECTION WITH PERFORMANCE OF SERV-**
10 **ICES.**

11 (a) MODIFICATION TO ELECTION TO INCLUDE PART-
12 NERSHIP INTEREST IN GROSS INCOME IN YEAR OF
13 TRANSFER.—Subsection (c) of section 83 is amended by
14 redesignating paragraph (4) as paragraph (5) and by in-
15 serting after paragraph (3) the following new paragraph:

16 “(4) PARTNERSHIP INTERESTS.—Except as
17 provided by the Secretary, in the case of any trans-
18 fer of an interest in a partnership in connection with
19 the provision of services to (or for the benefit of)
20 such partnership—

21 “(A) the fair market value of such interest
22 shall be treated for purposes of this section as
23 being equal to the amount of the distribution
24 which the partner would receive if the partner-
25 ship sold (at the time of the transfer) all of its

1 assets at fair market value and distributed the
2 proceeds of such sale (reduced by the liabilities
3 of the partnership) to its partners in liquidation
4 of the partnership, and

5 “(B) the person receiving such interest
6 shall be treated as having made the election
7 under subsection (b)(1) unless such person
8 makes an election under this paragraph to have
9 such subsection not apply.”.

10 (b) CONFORMING AMENDMENT.—Paragraph (2) of
11 section 83(b) is amended by inserting “or subsection
12 (c)(4)(B)” after “paragraph (1)”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to interests in partnerships trans-
15 ferred after the date of the enactment of this Act.

16 **SEC. 502. INCOME OF PARTNERS FOR PERFORMING IN-**
17 **VESTMENT MANAGEMENT SERVICES TREAT-**
18 **ED AS ORDINARY INCOME RECEIVED FOR**
19 **PERFORMANCE OF SERVICES.**

20 (a) IN GENERAL.—Part I of subchapter K of chapter
21 1 is amended by adding at the end the following new sec-
22 tion:

1 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
2 **VESTMENT MANAGEMENT SERVICES TO**
3 **PARTNERSHIP.**

4 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF
5 PARTNERSHIP ITEMS.—For purposes of this title, in the
6 case of an investment services partnership interest—

7 “(1) IN GENERAL.—Notwithstanding section
8 702(b)—

9 “(A) any net income with respect to such
10 interest for any partnership taxable year shall
11 be treated as ordinary income, and

12 “(B) any net loss with respect to such in-
13 terest for such year, to the extent not dis-
14 allowed under paragraph (2) for such year,
15 shall be treated as an ordinary loss.

16 All items of income, gain, deduction, and loss which
17 are taken into account in computing net income or
18 net loss shall be treated as ordinary income or ordi-
19 nary loss (as the case may be).

20 “(2) TREATMENT OF LOSSES.—

21 “(A) LIMITATION.—Any net loss with re-
22 spect to such interest shall be allowed for any
23 partnership taxable year only to the extent that
24 such loss does not exceed the excess (if any)
25 of—

1 “(i) the aggregate net income with re-
2 spect to such interest for all prior partner-
3 ship taxable years, over

4 “(ii) the aggregate net loss with re-
5 spect to such interest not disallowed under
6 this subparagraph for all prior partnership
7 taxable years.

8 “(B) CARRYFORWARD.—Any net loss for
9 any partnership taxable year which is not al-
10 lowed by reason of subparagraph (A) shall be
11 treated as an item of loss with respect to such
12 partnership interest for the succeeding partner-
13 ship taxable year.

14 “(C) BASIS ADJUSTMENT.—No adjustment
15 to the basis of a partnership interest shall be
16 made on account of any net loss which is not
17 allowed by reason of subparagraph (A).

18 “(D) PRIOR PARTNERSHIP YEARS.—Any
19 reference in this paragraph to prior partnership
20 taxable years shall only include prior partner-
21 ship taxable years to which this section applies.

22 “(3) NET INCOME AND LOSS.—For purposes of
23 this section—

24 “(A) NET INCOME.—The term ‘net in-
25 come’ means, with respect to any investment

1 services partnership interest for any partner-
2 ship taxable year, the excess (if any) of—

3 “(i) all items of income and gain
4 taken into account by the holder of such
5 interest under section 702 with respect to
6 such interest for such year, over

7 “(ii) all items of deduction and loss so
8 taken into account.

9 “(B) NET LOSS.—The term ‘net loss’
10 means, with respect to such interest for such
11 year, the excess (if any) of the amount de-
12 scribed in subparagraph (A)(ii) over the amount
13 described in subparagraph (A)(i).

14 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

15 “(1) GAIN.—Any gain on the disposition of an
16 investment services partnership interest shall be
17 treated as ordinary income and shall be recognized
18 notwithstanding any other provision of this subtitle.

19 “(2) LOSS.—Any loss on the disposition of an
20 investment services partnership interest shall be
21 treated as an ordinary loss to the extent of the ex-
22 cess (if any) of—

23 “(A) the aggregate net income with respect
24 to such interest for all partnership taxable
25 years, over

1 “(B) the aggregate net loss with respect to
2 such interest allowed under subsection (a)(2)
3 for all partnership taxable years.

4 “(3) DISPOSITION OF PORTION OF INTEREST.—
5 In the case of any disposition of an investment serv-
6 ices partnership interest, the amount of net loss
7 which otherwise would have (but for subsection
8 (a)(2)(C)) applied to reduce the basis of such inter-
9 est shall be disregarded for purposes of this section
10 for all succeeding partnership taxable years.

11 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
12 ERTY.—In the case of any distribution of property
13 by a partnership with respect to any investment
14 services partnership interest held by a partner—

15 “(A) the excess (if any) of—

16 “(i) the fair market value of such
17 property at the time of such distribution,
18 over

19 “(ii) the adjusted basis of such prop-
20 erty in the hands of the partnership,

21 shall be taken into account as an increase in
22 such partner’s distributive share of the taxable
23 income of the partnership (except to the extent
24 such excess is otherwise taken into account in

1 determining the taxable income of the partner-
2 ship),

3 “(B) such property shall be treated for
4 purposes of subpart B of part II as money dis-
5 tributed to such partner in an amount equal to
6 such fair market value, and

7 “(C) the basis of such property in the
8 hands of such partner shall be such fair market
9 value.

10 Subsection (b) of section 734 shall be applied with-
11 out regard to the preceding sentence.

12 “(5) APPLICATION OF SECTION 751.—In apply-
13 ing section 751(a), an investment services partner-
14 ship interest shall be treated as an inventory item.

15 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-
16 EST.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘investment serv-
18 ices partnership interest’ means any interest in a
19 partnership which is held (directly or indirectly) by
20 any person if it was reasonably expected (at the time
21 that such person acquired such interest) that such
22 person (or any person related to such person) would
23 provide (directly or indirectly) a substantial quantity
24 of any of the following services with respect to assets
25 held (directly or indirectly) by the partnership:

1 “(A) Advising as to the advisability of in-
2 vesting in, purchasing, or selling any specified
3 asset.

4 “(B) Managing, acquiring, or disposing of
5 any specified asset.

6 “(C) Arranging financing with respect to
7 acquiring specified assets.

8 “(D) Any activity in support of any service
9 described in subparagraphs (A) through (C).

10 For purposes of this paragraph, the term ‘specified
11 asset’ means securities (as defined in section
12 475(c)(2) without regard to the last sentence there-
13 of), real estate held for rental or investment, inter-
14 ests in partnerships, commodities (as defined in sec-
15 tion 475(e)(2)), or options or derivative contracts
16 with respect to any of the foregoing.

17 “(2) EXCEPTION FOR CERTAIN CAPITAL INTER-
18 ESTS.—

19 “(A) IN GENERAL.—In the case of any
20 portion of an investment services partnership
21 interest which is a qualified capital interest, all
22 items of income, gain, loss, and deduction which
23 are allocated to such qualified capital interest
24 shall not be taken into account under sub-
25 section (a) if—

1 “(i) allocations of items are made by
2 the partnership to such qualified capital
3 interest in the same manner as such allo-
4 cations are made to other qualified capital
5 interests held by partners who do not pro-
6 vide any services described in paragraph
7 (1) and who are not related to the partner
8 holding the qualified capital interest, and

9 “(ii) the allocations made to such
10 other interests are significant compared to
11 the allocations made to such qualified cap-
12 ital interest.

13 “(B) SPECIAL RULE FOR NO OR INSIGNIFI-
14 CANT ALLOCATIONS TO NONSERVICE PRO-
15 VIDERS.—To the extent provided by the Sec-
16 retary in regulations or other guidance, in any
17 case in which the requirements of subparagraph
18 (A)(ii) are not satisfied, items of income, gain,
19 loss, and deduction shall not be taken into ac-
20 count under subsection (a) to the extent that
21 such items are properly allocable under such
22 regulations or other guidance to qualified cap-
23 ital interests.

24 “(C) SPECIAL RULE FOR DISPOSITIONS.—
25 In the case of any investment services partner-

1 ship interest any portion of which is a qualified
2 capital interest, subsection (b) shall not apply
3 to so much of any gain or loss as bears the
4 same proportion to the entire amount of such
5 gain or loss as—

6 “(i) the distributive share of gain or
7 loss that would have been allocable to the
8 qualified capital interest under subpara-
9 graph (A) if the partnership sold all of its
10 assets immediately before the disposition,
11 bears to

12 “(ii) the distributive share of gain or
13 loss that would have been so allocable to
14 the investment services partnership inter-
15 est of which such qualified capital interest
16 is a part.

17 “(D) QUALIFIED CAPITAL INTEREST.—For
18 purposes of this paragraph, the term ‘qualified
19 capital interest’ means so much of a partner’s
20 interest in the capital of the partnership as is
21 attributable to—

22 “(i) the fair market value of any
23 money or other property contributed to the
24 partnership in exchange for such interest

1 (determined without regard to section
2 752(a)),

3 “(ii) any amounts which have been in-
4 cluded in gross income under section 83
5 with respect to the transfer of such inter-
6 est, and

7 “(iii) the excess (if any) of—

8 “(I) any items of income and
9 gain taken into account under section
10 702 with respect to such interest for
11 taxable years to which this section ap-
12 plies, over

13 “(II) any items of deduction and
14 loss so taken into account.

15 The qualified capital interest shall be reduced
16 by distributions from the partnership with re-
17 spect to such interest for taxable years to which
18 this section applies and by the excess (if any)
19 of the amount described in clause (iii)(II) over
20 the amount described in clause (iii)(I).

21 “(E) TREATMENT OF CERTAIN LOANS.—

22 “(i) PROCEEDS OF PARTNERSHIP
23 LOANS NOT TREATED AS QUALIFIED CAP-
24 ITAL INTEREST OF SERVICE PROVIDING
25 PARTNERS.—For purposes of this para-

1 graph, an investment services partnership
2 interest shall not be treated as a qualified
3 capital interest to the extent that such in-
4 terest is acquired in connection with the
5 proceeds of any loan or other advance
6 made or guaranteed, directly or indirectly,
7 by any other partner or the partnership (or
8 any person related to any such other part-
9 ner or the partnership).

10 “(ii) REDUCTION IN ALLOCATIONS TO
11 QUALIFIED CAPITAL INTERESTS FOR
12 LOANS FROM NONSERVICE PROVIDING
13 PARTNERS TO THE PARTNERSHIP.—For
14 purposes of this paragraph, any loan or
15 other advance to the partnership made or
16 guaranteed, directly or indirectly, by a
17 partner not providing services described in
18 paragraph (1) to the partnership (or any
19 person related to such partner) shall be
20 taken into account in determining the
21 qualified capital interests of the partners
22 in the partnership.

23 “(3) RELATED PERSONS.—A person shall be
24 treated as related to another person if the relation-

1 ship between such persons would result in a dis-
2 allowance of losses under section 267 or 707(b).

3 “(d) OTHER INCOME AND GAIN IN CONNECTION
4 WITH INVESTMENT MANAGEMENT SERVICES.—

5 “(1) IN GENERAL.—If—

6 “(A) a person performs (directly or indi-
7 rectly) investment management services for any
8 entity,

9 “(B) such person holds (directly or indi-
10 rectly) a disqualified interest with respect to
11 such entity, and

12 “(C) the value of such interest (or pay-
13 ments thereunder) is substantially related to
14 the amount of income or gain (whether or not
15 realized) from the assets with respect to which
16 the investment management services are per-
17 formed,

18 any income or gain with respect to such interest
19 shall be treated as ordinary income. Rules similar to
20 the rules of subsection (c)(2) shall apply for pur-
21 poses of this subsection.

22 “(2) DEFINITIONS.—For purposes of this sub-
23 section—

24 “(A) DISQUALIFIED INTEREST.—

1 “(i) IN GENERAL.—The term ‘dis-
2 qualified interest’ means, with respect to
3 any entity—

4 “(I) any interest in such entity
5 other than indebtedness,

6 “(II) convertible or contingent
7 debt of such entity,

8 “(III) any option or other right
9 to acquire property described in sub-
10 clause (I) or (II), and

11 “(IV) any derivative instrument
12 entered into (directly or indirectly)
13 with such entity or any investor in
14 such entity.

15 “(ii) EXCEPTIONS.—Such term shall
16 not include—

17 “(I) a partnership interest,

18 “(II) except as provided by the
19 Secretary, any interest in a taxable
20 corporation, and

21 “(III) except as provided by the
22 Secretary, stock in an S corporation.

23 “(B) TAXABLE CORPORATION.—The term
24 ‘taxable corporation’ means—

25 “(i) a domestic C corporation, or

1 “(ii) a foreign corporation substan-
2 tially all of the income of which is—

3 “(I) effectively connected with
4 the conduct of a trade or business in
5 the United States, or

6 “(II) subject to a comprehensive
7 foreign income tax (as defined in sec-
8 tion 457A(d)(2)).

9 “(C) INVESTMENT MANAGEMENT SERV-
10 ICES.—The term ‘investment management serv-
11 ices’ means a substantial quantity of any of the
12 services described in subsection (c)(1).

13 “(e) REGULATIONS.—The Secretary shall prescribe
14 such regulations or other guidance as is necessary or ap-
15 propriate to carry out the purposes of this section, includ-
16 ing regulations or other guidance to—

17 “(1) provide modifications to the application of
18 this section (including treating related persons as
19 not related to one another) to the extent such modi-
20 fication is consistent with the purposes of this sec-
21 tion,

22 “(2) prevent the avoidance of the purposes of
23 this section, and

24 “(3) coordinate this section with the other pro-
25 visions of this title.

1 “(f) CROSS REFERENCE.—For 40 percent penalty on
2 certain underpayments due to the avoidance of this sec-
3 tion, see section 6662.”.

4 (b) INCOME FROM INVESTMENT SERVICES PART-
5 NERSHIP INTERESTS NOT TREATED AS QUALIFYING IN-
6 COME OF PUBLICLY TRADED PARTNERSHIPS.—Sub-
7 section (d) of section 7704 is amended by adding at the
8 end the following new paragraph:

9 “(6) INCOME FROM INVESTMENT SERVICES
10 PARTNERSHIP INTERESTS NOT QUALIFIED.—

11 “(A) IN GENERAL.—Items of income and
12 gain shall not be treated as qualifying income
13 if such items are treated as ordinary income by
14 reason of the application of section 710 (relat-
15 ing to special rules for partners providing in-
16 vestment management services to partnership).

17 “(B) SPECIAL RULES FOR CERTAIN PART-
18 NERSHIPS.—

19 “(i) CERTAIN PARTNERSHIPS OWNED
20 BY REAL ESTATE INVESTMENT TRUSTS.—
21 Subparagraph (A) shall not apply in the
22 case of a partnership which meets each of
23 the following requirements:

24 “(I) Such partnership is treated
25 as publicly traded under this section

1 solely by reason of interests in such
2 partnership being convertible into in-
3 terests in a real estate investment
4 trust which is publicly traded.

5 “(II) Fifty percent or more of
6 the capital and profits interests of
7 such partnership are owned, directly
8 or indirectly, at all times during the
9 taxable year by such real estate in-
10 vestment trust (determined with the
11 application of section 267(c)).

12 “(III) Such partnership meets
13 the requirements of paragraphs (2),
14 (3), and (4) of section 856(c).

15 “(ii) CERTAIN PARTNERSHIPS OWN-
16 ING OTHER PUBLICLY TRADED PARTNER-
17 SHIPS.—Subparagraph (A) shall not apply
18 in the case of a partnership which meets
19 each of the following requirements:

20 “(I) Substantially all of the as-
21 sets of such partnership consist of in-
22 terests in one or more publicly traded
23 partnerships (determined without re-
24 gard to subsection (b)(2)).

1 “(II) Substantially all of the in-
2 come of such partnership is ordinary
3 income or section 1231 gain (as de-
4 fined in section 1231(a)(3)).

5 “(C) TRANSITIONAL RULE.—In the case of
6 a partnership which is a publicly traded part-
7 nership on the date of the enactment of this
8 paragraph, subparagraph (A) shall not apply to
9 any taxable year of the partnership beginning
10 before the date which is 10 years after the date
11 of the enactment of this paragraph.”.

12 (c) IMPOSITION OF PENALTY ON UNDERPAY-
13 MENTS.—

14 (1) IN GENERAL.—Subsection (b) of section
15 6662, as amended by section 512, is amended by in-
16 serting after paragraph (6) the following new para-
17 graph:

18 “(7) The application of subsection (d) of section
19 710 or the regulations prescribed under section
20 710(e) to prevent the avoidance of the purposes of
21 section 710.”.

22 (2) AMOUNT OF PENALTY.—

23 (A) IN GENERAL.—Section 6662, as
24 amended by section 512, is amended by adding
25 at the end the following new subsection:

1 “(j) INCREASE IN PENALTY IN CASE OF PROPERTY
2 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-
3 ICES.—In the case of any portion of an underpayment to
4 which this section applies by reason of subsection (b)(7),
5 subsection (a) shall be applied with respect to such portion
6 by substituting ‘40 percent’ for ‘20 percent’.”.

7 (B) CONFORMING AMENDMENTS.—Sub-
8 paragraph (B) of section 6662A(e)(2) is
9 amended—

10 (i) by striking “section 6662(h)” and
11 inserting “subsection (h) or (i) of section
12 6662”, and

13 (ii) by striking “GROSS VALUATION
14 MISSTATEMENT PENALTY” in the heading
15 and inserting “CERTAIN INCREASED UN-
16 DERPAYMENT PENALTIES”.

17 (3) SPECIAL RULES FOR APPLICATION OF REA-
18 SONABLE CAUSE EXCEPTION.—Subsection (c) of sec-
19 tion 6664 is amended—

20 (A) by redesignating paragraphs (2) and
21 (3) as paragraphs (3) and (4), respectively,

22 (B) by striking “paragraph (2)” in para-
23 graph (4), as so redesignated, and inserting
24 “paragraph (3)”, and

1 (C) by inserting after paragraph (1) the
2 following new paragraph:

3 “(2) SPECIAL RULE FOR UNDERPAYMENTS AT-
4 TRIBUTABLE TO INVESTMENT MANAGEMENT SERV-
5 ICES.—

6 “(A) IN GENERAL.—Paragraph (1) shall
7 not apply to any portion of an underpayment to
8 which this section applies by reason of sub-
9 section (b)(7) unless—

10 “(i) the relevant facts affecting the
11 tax treatment of the item are adequately
12 disclosed,

13 “(ii) there is or was substantial au-
14 thority for such treatment, and

15 “(iii) the taxpayer reasonably believed
16 that such treatment was more likely than
17 not the proper treatment.

18 “(B) RULES RELATING TO REASONABLE
19 BELIEF.—Rules similar to the rules of sub-
20 section (d)(3) shall apply for purposes of sub-
21 paragraph (A)(iii).”.

22 (d) INCOME AND LOSS FROM INVESTMENT SERVICES
23 PARTNERSHIP INTERESTS TAKEN INTO ACCOUNT IN DE-
24 TERMINING NET EARNINGS FROM SELF-EMPLOYMENT.—

1 (1) INTERNAL REVENUE CODE.—Section
2 1402(a) is amended by striking “and” at the end of
3 paragraph (16), by striking the period at the end of
4 paragraph (17) and inserting “; and”, and by insert-
5 ing after paragraph (17) the following new para-
6 graph:

7 “(18) Notwithstanding the preceding provisions
8 of this subsection, in the case of any individual en-
9 gaged in the trade or business of providing services
10 described in section 710(c)(1) with respect to any
11 entity, any amount treated as ordinary income or or-
12 dinary loss of such individual under section 710 with
13 respect to such entity shall be taken into account in
14 determining the net earnings from self-employment
15 of such individual.”.

16 (2) SOCIAL SECURITY ACT.—Section 211(a) of
17 the Social Security Act is amended by inserting after
18 paragraph (16) the following new paragraph:

19 “(17) Notwithstanding the preceding provisions
20 of this subsection, in the case of any individual en-
21 gaged in the trade or business of providing services
22 described in section 710(c)(1) of the Internal Rev-
23 enue Code of 1986 with respect to any entity, any
24 amount treated as ordinary income or ordinary loss
25 of such individual under section 710 of such Code

1 with respect to such entity shall be taken into ac-
2 count in determining the net earnings from self-em-
3 ployment of such individual.”.

4 (e) CONFORMING AMENDMENTS.—

5 (1) Subsection (d) of section 731 is amended by
6 inserting “section 710(b)(4) (relating to distribu-
7 tions of partnership property),” after “to the extent
8 otherwise provided by”.

9 (2) Section 741 is amended by inserting “or
10 section 710 (relating to special rules for partners
11 providing investment management services to part-
12 nership)” before the period at the end.

13 (3) The table of sections for part I of sub-
14 chapter K of chapter 1 is amended by adding at the
15 end the following new item:

“Sec. 710. Special rules for partners providing investment management services
to partnership.”.

16 (f) EFFECTIVE DATE.—

17 (1) IN GENERAL.—Except as otherwise pro-
18 vided in this subsection, the amendments made by
19 this section shall apply to taxable years ending after
20 December 31, 2009.

21 (2) PARTNERSHIP TAXABLE YEARS WHICH IN-
22 CLUDE EFFECTIVE DATE.—In applying section
23 710(a) of the Internal Revenue Code of 1986 (as
24 added by this section) in the case of any partnership

1 taxable year which includes December 31, 2009, the
2 amount of the net income referred to in such section
3 shall be treated as being the lesser of the net income
4 for the entire partnership taxable year or the net in-
5 come determined by only taking into account items
6 attributable to the portion of the partnership taxable
7 year which is after such date.

8 (3) DISPOSITIONS OF PARTNERSHIP INTER-
9 ESTS.—Section 710(b) of the Internal Revenue Code
10 of 1986 (as added by this section) shall apply to dis-
11 positions and distributions after December 31, 2009.

12 (4) OTHER INCOME AND GAIN IN CONNECTION
13 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-
14 tion 710(d) of such Code (as added by this section)
15 shall take effect on January 1, 2010.

16 (5) PUBLICLY TRADED PARTNERSHIPS.—The
17 amendment made by subsection (b) shall apply to
18 taxable years beginning after December 31, 2009.

19 **Subtitle B—Tax Expenditures**

20 **Relating to Agribusiness**

21 **SEC. 511. ELIMINATION OF EXPENSING FOR FERTILIZER,**

22 **ETC., OTHERWISE CHARGEABLE TO A CAP-**

23 **ITAL ACCOUNT.**

24 Section 180 is amended by adding at the end the fol-
25 lowing new subsection:

1 “(d) TERMINATION.—This section shall not apply to
2 taxable years beginning after December 31, 2011.”.

3 **SEC. 512. ELIMINATION OF EXPENSING FOR MULTI-PERIOD**
4 **LIVESTOCK AND CROP PRODUCTION COSTS.**

5 Subsection (d) of section 263A is amended by adding
6 at the end the following new paragraph:

7 “(4) TERMINATION.—This subsection shall not
8 apply to costs incurred after December 31, 2011, in
9 taxable year ending after such date.”.

10 **SEC. 513. REPEAL OF CAPITAL GAIN TREATMENT WITH RE-**
11 **SPECT TO THE SALE OF TIMBER.**

12 (a) IN GENERAL.—Paragraph (2) of section 1231(b)
13 as amended by this Act, is amended—

14 (1) by striking “timber and”, and

15 (2) by striking “TIMBER OR”.

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

19 **SEC. 514. ELIMINATION OF EXPENSING FOR TIMBER AND**
20 **ORNAMENTAL TREES.**

21 (a) IN GENERAL.—Paragraph (5) of section 263A(c)
22 is amended by striking “This section” and inserting “In
23 the case of costs incurred before January 1, 2012, in tax-
24 able year ending after such date, this section”.

1 (b) CONFORMING AMENDMENT.—Subparagraph (B)
2 of section 448(d)(1) is amended by inserting before the
3 period at the end the following: “(as in effect on the day
4 before the date of the enactment of the Tax Equity and
5 Middle Class Fairness Act of 2011)”.

6 **SEC. 515. ELIMINATION OF AMORTIZATION OF REFOREST-**
7 **ATION EXPENDITURES.**

8 Section 194 is amended by adding at the end the fol-
9 lowing new subsection:

10 “(e) TERMINATION.—This section shall not apply
11 with respect to expenditures paid or incurred after Decem-
12 ber 31, 2011.”.

13 **SEC. 516. REPEAL OF TAX EXPENDITURE FOR HORSE**
14 **BREEDERS.**

15 (a) IN GENERAL.—Clause (i) of section 168(e)(3) is
16 amended to read as follows:

17 “(i) any race horse which is more
18 than 2 years old at the time it is placed in
19 service,”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply to property placed in service after
22 the date of the enactment of this Act.

1 **Subtitle C—Other Business Tax**
2 **Expenditures**

3 **SEC. 521. TERMINATION OF \$25,000 EXEMPTION FROM PAS-**
4 **SIVE LOSS RULES FOR RENTAL REAL ESTATE**
5 **ACTIVITIES.**

6 (a) **IN GENERAL.**—Section 469 is amended by strik-
7 ing subsection (i).

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 this section shall apply to taxable years beginning after
10 the date of the enactment of this Act.

11 **SEC. 522. ELIMINATION OF DEDUCTION FOR CERTAIN**
12 **MEAL AND ENTERTAINMENT EXPENSES.**

13 (a) **IN GENERAL.**—Paragraph (1) of section 274(n)
14 is amended—

15 (1) by striking “The amount allowable as a de-
16 duction” and inserting “No deduction shall be al-
17 lowed”, and

18 (2) by striking “activity,” and all that follows
19 through the period at the end and inserting “activ-
20 ity.”.

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

1 **SEC. 523. STATE AND LOCAL BONDS CONVERTED TO DI-**
2 **RECT SUBSIDY BONDS.**

3 (a) **TERMINATION OF TAX EXEMPT STATUS OF**
4 **STATE AND LOCAL BONDS.**—Section 103 is amended by
5 adding at the end the following new subsection:

6 “(d) **TERMINATION.**—This section shall not apply to
7 any obligations issued after December 31, 2011.”.

8 (b) **STATE AND LOCAL BONDS TREATED AS BUILD**
9 **AMERICA BONDS.**—

10 (1) **IN GENERAL.**—Paragraph (1) of section
11 54AA(d) is amended—

12 (A) by striking subparagraph (B) and by
13 inserting “and” at the end of subparagraph
14 (A), and

15 (B) in subparagraph (A) by inserting “(de-
16 termined without regard to subsection (d)
17 thereof)” after “section 103”.

18 (2) **DIRECT SUBSIDY.**—

19 (A) Subsection (g) of section 54AA is
20 amended to read as follows:

21 “(g) **DIRECT SUBSIDY FOR BUILD AMERICA BONDS**
22 **ISSUED AFTER 2011.**—

23 “(1) **IN GENERAL.**—In the case of build Amer-
24 ica bonds issued after December 31, 2011, no credit
25 shall be allowed under this section with respect to
26 such bond.

1 “(2) CROSS REFERENCE.—For the credit to the
2 issuer of build America bonds, see section 6431.”.

3 (B) Section 6431 is amended—

4 (i) by striking “In the case of a quali-
5 fied bond issued before January 1, 2011,”
6 in subsection (a) and inserting “In the
7 case of any build America bond (as defined
8 in section 54AA(d)) issued after December
9 31, 2011,”,

10 (ii) by striking subsections (e) and (f),

11 and

12 (iii) by striking “**QUALIFIED**
13 **BONDS**” in the heading thereof and insert-
14 ing “**BUILD AMERICA BONDS**”.

15 (3) PRIVATE ACTIVITY BONDS INCLUDED.—

16 Paragraph (1) of section 54AA(d) of such Code is
17 amended by striking “(other than a private activity
18 bond)”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to obligations issued after Decem-
21 ber 31, 2011.

1 **SEC. 524. 28-PERCENT RATE FOR EXPANDED DIRECT SUB-**
 2 **SIDY BUILD AMERICA BONDS.**

3 Subsection (b) of section 6431 is amended by insert-
 4 ing “(28 percent in the case of obligations issued after
 5 December 31, 2011)” after “35 percent”.

6 **TITLE VI—INTERNATIONAL TAX**
 7 **EXPENDITURES**

8 **SEC. 601. ALLOCATION OF EXPENSES AND TAXES ON BASIS**
 9 **OF REPATRIATION OF FOREIGN INCOME.**

10 (a) IN GENERAL.—Part III of subchapter N of chap-
 11 ter 1 is amended by inserting after subpart G the following
 12 new subpart:

13 **“Subpart H—Special Rules for Allocation of Foreign-**
 14 **Related Interest Deductions and Foreign Tax Credits**

“Sec. 975. Deductions allocated to deferred foreign income may not offset
 United States source income.

“Sec. 976. Amount of foreign taxes computed on overall basis.

“Sec. 977. Application of subpart.

15 **“SEC. 975. INTEREST DEDUCTIONS ALLOCATED TO DE-**
 16 **FERRED FOREIGN INCOME MAY NOT OFFSET**
 17 **UNITED STATES SOURCE INCOME.**

18 “(a) CURRENT YEAR DEDUCTIONS.—For purposes
 19 of this chapter, foreign-related interest deductions for any
 20 taxable year—

21 “(1) shall be taken into account for such tax-
 22 able year only to the extent that such deductions are
 23 allocable to currently-taxed foreign income, and

1 “(2) to the extent not so allowed, shall be taken
2 into account in subsequent taxable years as provided
3 in subsection (b).

4 Foreign-related interest deductions shall be allocated to
5 currently-taxed foreign income in the same proportion
6 which currently-taxed foreign income bears to the sum of
7 currently-taxed foreign income and deferred foreign in-
8 come.

9 “(b) INTEREST DEDUCTIONS RELATED TO REPATRI-
10 ATED DEFERRED FOREIGN INCOME.—

11 “(1) IN GENERAL.—If there is repatriated for-
12 eign income for a taxable year, the portion of the
13 previously deferred interest deductions allocated to
14 the repatriated foreign income shall be taken into
15 account for the taxable year as a deduction for inter-
16 est expense allocated to income from sources outside
17 the United States. Any such amount shall not be in-
18 cluded in foreign-related interest deductions for pur-
19 poses of applying subsection (a) to such taxable
20 year.

21 “(2) PORTION OF PREVIOUSLY DEFERRED IN-
22 TEREST DEDUCTIONS.—For purposes of paragraph
23 (1), the portion of the previously deferred interest
24 deductions allocated to repatriated foreign income
25 is—

1 “(A) the amount which bears the same
2 proportion to such deductions, as

3 “(B) the repatriated income bears to the
4 previously deferred foreign income.

5 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
6 poses of this section—

7 “(1) FOREIGN-RELATED INTEREST DEDUC-
8 TIONS.—The term ‘foreign-related interest deduc-
9 tions’ means the total amount of deductions for in-
10 terest expenses which would be allocated or appor-
11 tioned to gross income from sources without the
12 United States for the taxable year if both the cur-
13 rently-taxed foreign income and deferred foreign in-
14 come were taken into account.

15 “(2) CURRENTLY-TAXED FOREIGN INCOME.—
16 The term ‘currently-taxed foreign income’ means the
17 amount of gross income from sources without the
18 United States for the taxable year (determined with-
19 out regard to repatriated foreign income for such
20 year).

21 “(3) DEFERRED FOREIGN INCOME.—The term
22 ‘deferred foreign income’ means the excess of—

23 “(A) the amount that would be includible
24 in gross income under subpart F of this part
25 for the taxable year if—

1 “(i) all controlled foreign corporations
2 were treated as one controlled foreign cor-
3 poration, and

4 “(ii) all earnings and profits of all
5 controlled foreign corporations were sub-
6 part F income (as defined in section 952),
7 over

8 “(B) the sum of—

9 “(i) all dividends received during the
10 taxable year from controlled foreign cor-
11 porations, plus

12 “(ii) amounts includible in gross in-
13 come under section 951(a).

14 “(4) PREVIOUSLY DEFERRED FOREIGN IN-
15 COME.—The term ‘previously deferred foreign in-
16 come’ means the aggregate amount of deferred for-
17 eign income for all prior taxable years to which this
18 part applies, determined as of the beginning of the
19 taxable year, reduced by the repatriated foreign in-
20 come for all such prior taxable years.

21 “(5) REPATRIATED FOREIGN INCOME.—The
22 term ‘repatriated foreign income’ means the amount
23 included in gross income on account of distributions
24 out of previously deferred foreign income.

1 “(6) PREVIOUSLY DEFERRED INTEREST DE-
2 DUCTIONS.—The term ‘previously deferred interest
3 deductions’ means the aggregate amount of foreign-
4 related interest deductions not taken into account
5 under subsection (a) for all prior taxable years (de-
6 termined as of the beginning of the taxable year),
7 reduced by any amounts taken into account under
8 subsection (b) for such prior taxable years.

9 “(7) TREATMENT OF CERTAIN FOREIGN
10 TAXES.—

11 “(A) PAID BY CONTROLLED FOREIGN COR-
12 PORATION.—Section 78 shall not apply for pur-
13 poses of determining currently-taxed foreign in-
14 come and deferred foreign income.

15 “(B) PAID BY TAXPAYER.—For purposes
16 of determining currently-taxed foreign income,
17 gross income from sources without the United
18 States shall be reduced by the aggregate
19 amount of taxes described in the applicable
20 paragraph of section 901(b) which are paid by
21 the taxpayer (without regard to sections 902
22 and 960) during the taxable year.

23 “(8) COORDINATION WITH SECTION 976.—In
24 determining currently-taxed foreign income and de-
25 ferred foreign income, the amount of deemed foreign

1 tax credits shall be determined with regard to sec-
2 tion 976.

3 **“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON**
4 **OVERALL BASIS.**

5 “(a) CURRENT YEAR ALLOWANCE.—For purposes of
6 this chapter, the amount taken into account as foreign in-
7 come taxes for any taxable year shall be an amount which
8 bears the same ratio to the total foreign income taxes for
9 that taxable year as—

10 “(1) the currently-taxed foreign income for such
11 taxable year, bears to

12 “(2) the sum of the currently-taxed foreign in-
13 come and deferred foreign income for such year.

14 The portion of the total foreign income taxes for any tax-
15 able year not taken into account under the preceding sen-
16 tence for a taxable year shall only be taken into account
17 as provided in subsection (b) (and shall not be taken into
18 account for purposes of applying sections 902 and 960).

19 “(b) ALLOWANCE RELATED TO REPATRIATED DE-
20 FERRED FOREIGN INCOME.—

21 “(1) IN GENERAL.—If there is repatriated for-
22 eign income for any taxable year, the portion of the
23 previously deferred foreign income taxes paid or ac-
24 crued during such taxable year shall be taken into
25 account for the taxable year as foreign taxes paid or

1 accrued. Any such taxes so taken into account shall
2 not be included in foreign income taxes for purposes
3 of applying subsection (a) to such taxable year.

4 “(2) PORTION OF PREVIOUSLY DEFERRED FOR-
5 EIGN INCOME TAXES.—For purposes of paragraph
6 (1), the portion of the previously deferred foreign in-
7 come taxes allocated to repatriated deferred foreign
8 income is—

9 “(A) the amount which bears the same
10 proportion to such taxes, as

11 “(B) the repatriated deferred income bears
12 to the previously deferred foreign income.

13 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
14 poses of this section—

15 “(1) PREVIOUSLY DEFERRED FOREIGN INCOME
16 TAXES.—The term ‘previously deferred foreign in-
17 come taxes’ means the aggregate amount of total
18 foreign income taxes not taken into account under
19 subsection (a) for all prior taxable years (determined
20 as of the beginning of the taxable year), reduced by
21 any amounts taken into account under subsection
22 (b) for such prior taxable years.

23 “(2) TOTAL FOREIGN INCOME TAXES.—The
24 term ‘total foreign income taxes’ means the sum of
25 foreign income taxes paid or accrued during the tax-

1 able year (determined without regard to section
2 904(c)) plus the increase in foreign income taxes
3 that would be paid or accrued during the taxable
4 year under sections 902 and 960 if—

5 “(A) all controlled foreign corporations
6 were treated as one controlled foreign corpora-
7 tion, and

8 “(B) all earnings and profits of all con-
9 trolled foreign corporations were subpart F in-
10 come (as defined in section 952).

11 “(3) FOREIGN INCOME TAXES.—The term ‘for-
12 eign income taxes’ means any income, war profits, or
13 excess profits taxes paid by the taxpayer to any for-
14 eign country or possession of the United States.

15 “(4) CURRENTLY-TAXED FOREIGN INCOME AND
16 DEFERRED FOREIGN INCOME.—The terms ‘cur-
17 rently-taxed foreign income’ and ‘deferred foreign in-
18 come’ have the meanings given such terms by sec-
19 tion 975(c)).

20 **“SEC. 977. APPLICATION OF SUBPART.**

21 “This subpart—

22 “(1) shall be applied before subpart A, and

23 “(2) shall be applied separately with respect to
24 the categories of income specified in section
25 904(d)(1).”.

1 (b) CLERICAL AMENDMENT.—The table of subparts
 2 for part III of subpart N of chapter 1 is amended by in-
 3 serting after the item relating to subpart G the following
 4 new item:

“SUBPART H. SPECIAL RULES FOR ALLOCATION OF FOREIGN-RELATED
 INTEREST DEDUCTIONS AND FOREIGN TAX CREDITS.”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2011.

8 **SEC. 602. EXCESS INCOME FROM TRANSFERS OF INTANGI-**
 9 **BLES TO LOW-TAXED AFFILIATES TREATED**
 10 **AS SUBPART F INCOME.**

11 (a) IN GENERAL.—Subsection (a) of section 954 is
 12 amended by inserting after paragraph (3) the following
 13 new paragraph:

14 “(4) the foreign base company excess intangible
 15 income for the taxable year (determined under sub-
 16 section (f) and reduced as provided in subsection
 17 (b)(5)), and”.

18 (b) FOREIGN BASE COMPANY EXCESS INTANGIBLE
 19 INCOME.—Section 954 is amended by inserting after sub-
 20 section (e) the following new subsection:

21 “(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE
 22 INCOME.—For purposes of subsection (a)(4) and this sub-
 23 section—

1 “(1) FOREIGN BASE COMPANY EXCESS INTAN-
2 GIBLE INCOME DEFINED.—

3 “(A) IN GENERAL.—The term ‘foreign
4 base company excess intangible income’ means,
5 with respect to any covered intangible, the ex-
6 cess of—

7 “(i) the sum of—

8 “(I) gross income from the sale,
9 lease, license, or other disposition of
10 property in which such covered intan-
11 gible is used directly or indirectly, and

12 “(II) gross income from the pro-
13 vision of services related to such cov-
14 ered intangible or in connection with
15 property in which such covered intan-
16 gible is used directly or indirectly,
17 over

18 “(ii) 115 percent of the costs properly
19 allocated and apportioned to the gross in-
20 come taken into account under clause (i)
21 other than expenses for interest and taxes
22 and any expenses which are not directly al-
23 locable to such gross income.

24 “(B) SAME COUNTRY INCOME NOT TAKEN
25 INTO ACCOUNT.—If—

1 “(i) the sale, lease, license, or other
2 disposition of the property referred to in
3 subparagraph (A)(i)(I) is for use, con-
4 sumption, or disposition in the country
5 under the laws of which the controlled for-
6 eign corporation is created or organized, or

7 “(ii) the services referred to in sub-
8 paragraph (A)(i)(II) are performed in such
9 country,

10 the gross income from such sale, lease, license,
11 or other disposition, or provision of services,
12 shall not be taken into account under subpara-
13 graph (A)(i).

14 “(2) EXCEPTION BASED ON EFFECTIVE FOR-
15 EIGN INCOME TAX RATE.—

16 “(A) IN GENERAL.—Foreign base company
17 excess intangible income shall not include the
18 applicable percentage of any item of income re-
19 ceived by a controlled foreign corporation if the
20 taxpayer establishes to the satisfaction of the
21 Secretary that such income was subject to an
22 effective rate of income tax imposed by a for-
23 eign country in excess of 10 percent.

24 “(B) APPLICABLE PERCENTAGE.—For
25 purposes of subparagraph (A), the term ‘appli-

1 cable percentage' means the ratio (expressed as
2 a percentage), not greater than 100 percent,
3 of—

4 “(i) the number of percentage points
5 by which the effective rate of income tax
6 referred to in subparagraph (A) exceeds 10
7 percentage points, over

8 “(ii) 25 percentage points.

9 “(C) TREATMENT OF LOSSES IN DETER-
10 MINING EFFECTIVE RATE OF FOREIGN INCOME
11 TAX.—For purposes of determining the effective
12 rate of income tax imposed by any foreign
13 country—

14 “(i) such effective rate shall be deter-
15 mined without regard to any losses carried
16 to the relevant taxable year, and

17 “(ii) to the extent the income with re-
18 spect to such intangible reduces losses in
19 the relevant taxable year, such effective
20 rate shall be treated as being the effective
21 rate which would have been imposed on
22 such income without regard to such losses.

23 “(3) COVERED INTANGIBLE.—The term ‘cov-
24 ered intangible’ means, with respect to any con-

1 trolled foreign corporation, any intangible property
2 (as defined in section 936(h)(3)(B))—

3 “(A) which is sold, leased, licensed, or oth-
4 erwise transferred (directly or indirectly) to
5 such controlled foreign corporation from a re-
6 lated person, or

7 “(B) with respect to which such controlled
8 foreign corporation and one or more related
9 persons has (directly or indirectly) entered into
10 any shared risk or development agreement (in-
11 cluding any cost sharing agreement).

12 “(4) RELATED PERSON.—The term ‘related
13 person’ has the meaning given such term in sub-
14 section (d)(3).”.

15 (c) SEPARATE BASKET FOR FOREIGN TAX CRED-
16 IT.—Subsection (d) of section 904 is amended by redesign-
17 ating paragraph (7) as paragraph (8) and by inserting
18 after paragraph (6) the following new paragraph:

19 “(6) SEPARATE APPLICATION TO FOREIGN
20 BASE COMPANY EXCESS INTANGIBLE INCOME.—

21 “(A) IN GENERAL.—Subsections (a), (b),
22 and (c) of this section and sections 902, 907,
23 and 960 shall be applied separately with respect
24 to each item of income which is taken into ac-

1 count under section 954(a)(4) as foreign base
2 company excess intangible income.

3 “(B) REGULATIONS.—The Secretary may
4 issue such regulations or other guidance as is
5 necessary or appropriate to carry out the pur-
6 poses of this subsection, including regulations
7 or other guidance which provides that related
8 items of income may be aggregated for pur-
9 poses of this paragraph.”.

10 (d) CONFORMING AMENDMENTS.—

11 (1) Paragraph (4) of section 954(b) is amended
12 by inserting “foreign base company excess intangible
13 income described in subsection (a)(4) or” before
14 “foreign base company oil-related income” in the
15 last sentence thereof.

16 (2) Subsection (b) of section 954 is amended by
17 adding at the end the following new paragraph:

18 “(7) FOREIGN BASE COMPANY EXCESS INTAN-
19 GIBLE INCOME NOT TREATED AS ANOTHER KIND OF
20 BASE COMPANY INCOME.—Income of a corporation
21 which is foreign base company excess intangible in-
22 come shall not be considered foreign base company
23 income of such corporation under paragraph (2),
24 (3), or (5) of subsection (a).”.

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

4 **SEC. 603. LIMITATIONS ON INCOME SHIFTING THROUGH IN-**
5 **TANGIBLE PROPERTY TRANSFERS.**

6 (a) CLARIFICATION OF DEFINITION OF INTANGIBLE
7 ASSET.—Clause (vi) of section 936(h)(3)(B) is amended
8 by inserting “(including any section 197 intangible de-
9 scribed in subparagraph (A), (B), or (C)(i) of subsection
10 (d)(1) of such section)” after “item”.

11 (b) CLARIFICATION OF ALLOWABLE VALUATION
12 METHODS.—

13 (1) FOREIGN CORPORATIONS.—Paragraph (2)
14 of section 367(d) is amended by adding at the end
15 the following new subparagraph:

16 “(D) REGULATORY AUTHORITY.—For pur-
17 poses of the last sentence of subparagraph (A),
18 the Secretary may require—

19 “(i) the valuation of transfers of in-
20 tangible property on an aggregate basis, or

21 “(ii) the valuation of such a transfer
22 on the basis of the realistic alternatives to
23 such a transfer,

1 in any case in which the Secretary determines
2 that such basis is the most reliable means of
3 valuation of such transfers.”.

4 (2) ALLOCATION AMONG TAXPAYERS.—Section
5 482 is amended by adding at the end the following:
6 “For purposes of the preceding sentence, the Sec-
7 retary may require the valuation of transfers of in-
8 tangible property on an aggregate basis or the valu-
9 ation of such a transfer on the basis of the realistic
10 alternatives to such a transfer, in any case in which
11 the Secretary determines that such basis is the most
12 reliable means of valuation of such transfers.”.

13 (c) EFFECTIVE DATE.—

14 (1) IN GENERAL.—The amendments made by
15 this section shall apply to transfers in taxable years
16 beginning after December 31, 2011.

17 (2) NO INFERENCE.—Nothing in the amend-
18 ment made by subsection (a) shall be construed to
19 create any inference with respect to the application
20 of section 936(h)(3) of the Internal Revenue Code of
21 1986, or the authority of the Secretary of the Treas-
22 ury to provide regulations for such application, on or
23 before the date of the enactment of such amend-
24 ment.

1 **SEC. 604. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**
2 **APPLICABLE TO DUAL CAPACITY TAXPAYERS.**

3 (a) IN GENERAL.—Section 901 is amended by redess-
4 ignating subsection (n) as subsection (o) and by inserting
5 after subsection (m) the following new subsection:

6 “(n) SPECIAL RULES RELATING TO DUAL CAPACITY
7 TAXPAYERS.—

8 “(1) GENERAL RULE.—Notwithstanding any
9 other provision of this chapter, any amount paid or
10 accrued by a dual capacity taxpayer to a foreign
11 country or possession of the United States for any
12 period with respect to combined foreign oil and gas
13 income (as defined in section 907(b)(1)) shall not be
14 considered a tax to the extent such amount exceeds
15 the amount (determined in accordance with regula-
16 tions) which would have been required to be paid if
17 the taxpayer were not a dual capacity taxpayer.

18 “(2) DUAL CAPACITY TAXPAYER.—For pur-
19 poses of this subsection, the term ‘dual capacity tax-
20 payer’ means, with respect to any foreign country or
21 possession of the United States, a person who—

22 “(A) is subject to a levy of such country or
23 possession, and

24 “(B) receives (or will receive) directly or
25 indirectly a specific economic benefit (as deter-

1 (2) A description of the intended purpose of the
2 tax expenditure.

3 (3) An analysis of the overall success of the tax
4 expenditure in achieving such purpose, and evidence
5 supporting such analysis.

6 (4) An analysis of the extent to which further
7 extending the tax expenditure, or making it perma-
8 nent, would contribute to achieving such purpose.

9 (5) A description of the direct and indirect
10 beneficiaries of the tax expenditure, including identi-
11 fying any unintended beneficiaries.

12 (6) An analysis of whether the tax expenditure
13 is the most cost-effective method for achieving the
14 purpose for which it was intended, and a description
15 of any more cost-effective methods through which
16 such purpose could be accomplished.

17 (7) A description of any unintended effects of
18 the tax expenditure that are useful in understanding
19 the tax expenditure's overall value.

20 (8) An analysis of how the tax expenditure
21 could be modified to better achieve its original pur-
22 pose or if such tax expenditure should be eliminated.

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