

104TH CONGRESS
1ST SESSION

S. 1261

To amend the Internal Revenue Code of 1986 to prevent the avoidance of tax through the use of foreign trusts.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19 (legislative day, SEPTEMBER 5), 1995

Mr. MOYNIHAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to prevent the avoidance of tax through the use of foreign trusts.

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.**

4 This Act may be cited as the “Foreign Trust Tax
5 Compliance Act of 1995”.

6 **SEC. 2. IMPROVED INFORMATION REPORTING ON FOREIGN**
7 **TRUSTS.**

8 (a) IN GENERAL.—Section 6048 of the Internal Rev-
9 enue Code of 1986 (relating to returns as to certain for-
10 eign trusts) is amended to read as follows:

1 **“SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN**
2 **FOREIGN TRUSTS.**

3 “(a) NOTICE OF CERTAIN EVENTS.—

4 “(1) GENERAL RULE.—On or before the 90th
5 day (or such later day as the Secretary may pre-
6 scribe) after any reportable event, the responsible
7 party shall provide written notice of such event to
8 the Secretary in accordance with paragraph (2).

9 “(2) CONTENTS OF NOTICE.—The notice re-
10 quired by paragraph (1) shall contain such informa-
11 tion as the Secretary may prescribe, including—

12 “(A) the amount of money or other prop-
13 erty (if any) transferred to the trust in connec-
14 tion with the reportable event, and

15 “(B) the identity of the trust and of each
16 trustee and beneficiary (or class of bene-
17 ficiaries) of the trust.

18 “(3) REPORTABLE EVENT.—For purposes of
19 this subsection—

20 “(A) IN GENERAL.—The term ‘reportable
21 event’ means—

22 “(i) the creation of any foreign trust
23 by a United States person,

24 “(ii) the transfer of any money or
25 property (directly or indirectly) to a for-

1 eign trust by a United States person, in-
2 cluding a transfer by reason of death, and

3 “(iii) the death of a citizen or resident
4 of the United States if—

5 “(I) the decedent was treated as
6 the owner of any portion of a foreign
7 trust under the rules of subpart E of
8 part I of subchapter J of chapter 1,
9 or

10 “(II) any portion of a foreign
11 trust was included in the gross estate
12 of the decedent.

13 “(B) EXCEPTIONS.—

14 “(i) FAIR MARKET VALUE SALES.—
15 Subparagraph (A)(ii) shall not apply to
16 any transfer of property to a trust in ex-
17 change for consideration of at least the fair
18 market value of the transferred property.
19 For purposes of the preceding sentence,
20 consideration other than cash shall be
21 taken into account at its fair market value
22 and the rules of section 679(a)(3) shall
23 apply.

1 “(ii) PENSION AND CHARITABLE
2 TRUSTS.—Subparagraph (A) shall not
3 apply with respect to a trust which is—

4 “(I) described in section
5 404(a)(4) or 404A, or

6 “(II) determined by the Sec-
7 retary to be described in section
8 501(c)(3).

9 “(4) RESPONSIBLE PARTY.—For purposes of
10 this subsection, the term ‘responsible party’
11 means—

12 “(A) the grantor in the case of the cre-
13 ation of an inter vivos trust,

14 “(B) the transferor in the case of a report-
15 able event described in paragraph (3)(A)(ii)
16 other than a transfer by reason of death, and

17 “(C) the executor of the decedent’s estate
18 in any other case.

19 “(b) UNITED STATES GRANTOR OF FOREIGN
20 TRUST.—

21 “(1) IN GENERAL.—If, at any time during any
22 taxable year of a United States person, such person
23 is treated as the owner of any portion of a foreign
24 trust under the rules of subpart E of part I of sub-

1 chapter J of chapter 1, such person shall be respon-
2 sible to ensure that—

3 “(A) such trust makes a return for such
4 year which sets forth a full and complete ac-
5 counting of all trust activities and operations
6 for the year, the name of the United States
7 agent for such trust, and such other informa-
8 tion as the Secretary may prescribe, and

9 “(B) such trust furnishes such information
10 as the Secretary may prescribe to each United
11 States person (i) who is treated as the owner of
12 any portion of such trust or (ii) who receives
13 (directly or indirectly) any distribution from the
14 trust.

15 “(2) TRUSTS NOT HAVING UNITED STATES
16 AGENT.—

17 “(A) IN GENERAL.—If the rules of this
18 subsection apply to any foreign trust, the deter-
19 mination of amounts required to be taken into
20 account with respect to such trust by a United
21 States person under the rules of subpart E of
22 part I of subchapter J of chapter 1 shall be de-
23 termined by the Secretary in the Secretary’s
24 sole discretion from the Secretary’s own knowl-

1 edge or from such information as the Secretary
2 may obtain through testimony or otherwise.

3 “(B) UNITED STATES AGENT REQUIRED.—
4 The rules of this subsection shall apply to any
5 foreign trust to which paragraph (1) applies un-
6 less such trust agrees (in such manner, subject
7 to such conditions, and at such time as the Sec-
8 retary shall prescribe) to authorize a United
9 States person to act as such trust’s limited
10 agent solely for purposes of applying sections
11 7602, 7603, and 7604 with respect to—

12 “(i) any request by the Secretary to
13 examine records or produce testimony re-
14 lated to the proper treatment of amounts
15 required to be taken into account under
16 the rules referred to in subparagraph (A),
17 or

18 “(ii) any summons by the Secretary
19 for such records or testimony.

20 The appearance of persons or production of
21 records by reason of a United States person
22 being such an agent shall not subject such per-
23 sons or records to legal process for any purpose
24 other than determining the correct treatment
25 under this title of the amounts required to be

1 taken into account under the rules referred to
2 in subparagraph (A). A foreign trust which ap-
3 points an agent described in this subparagraph
4 shall not be considered to have an office or a
5 permanent establishment in the United States,
6 or to be engaged in a trade or business in the
7 United States, solely because of the activities of
8 such agent pursuant to this subsection.

9 “(C) OTHER RULES TO APPLY.—Rules
10 similar to the rules of paragraphs (2) and (4)
11 of section 6038A(e) shall apply for purposes of
12 this paragraph.

13 “(c) REPORTING BY UNITED STATES BENEFICIARIES
14 OF FOREIGN TRUSTS.—

15 “(1) IN GENERAL.—If any United States per-
16 son receives (directly or indirectly) during any tax-
17 able year of such person any distribution from a for-
18 eign trust, such person shall make a return with re-
19 spect to such trust for such year which includes—

20 “(A) the name of such trust,

21 “(B) the aggregate amount of the distribu-
22 tions so received from such trust during such
23 taxable year, and

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

1 “(2) INCLUSION IN INCOME IF RECORDS NOT
2 PROVIDED.—If adequate records are not provided to
3 the Secretary to determine the proper treatment of
4 any distribution from a foreign trust, such distribu-
5 tion shall be treated as an accumulation distribution
6 includible in the gross income of the distributee
7 under chapter 1. To the extent provided in regula-
8 tions, the preceding sentence shall not apply if the
9 foreign trust elects to be subject to rules similar to
10 the rules of subsection (b)(2)(B).

11 “(d) SPECIAL RULES.—

12 “(1) DETERMINATION OF WHETHER UNITED
13 STATES PERSON RECEIVES DISTRIBUTION.—For
14 purposes of this section, in determining whether a
15 United States person receives a distribution from a
16 foreign trust, the fact that a portion of such trust
17 is treated as owned by another person under the
18 rules of subpart E of part I of subchapter J of chap-
19 ter 1 shall be disregarded.

20 “(2) DOMESTIC TRUSTS WITH FOREIGN ACTIVI-
21 TIES.—To the extent provided in regulations, a trust
22 which is a United States person shall be treated as
23 a foreign trust for purposes of this section and sec-
24 tion 6677 if such trust has substantial activities, or

1 holds substantial property, outside the United
2 States.

3 “(3) TIME AND MANNER OF FILING INFORMA-
4 TION.—Any notice or return required under this sec-
5 tion shall be made at such time and in such manner
6 as the Secretary shall prescribe.

7 “(4) MODIFICATION OF RETURN REQUIRE-
8 MENTS.—The Secretary is authorized to suspend or
9 modify any requirement of this section if the Sec-
10 retary determines that the United States has no sig-
11 nificant tax interest in obtaining the required infor-
12 mation.”

13 (b) INCREASED PENALTIES.—Section 6677 of such
14 Code (relating to failure to file information returns with
15 respect to certain foreign trusts) is amended to read as
16 follows:

17 **“SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT**
18 **TO CERTAIN FOREIGN TRUSTS.**

19 “(a) CIVIL PENALTY.—In addition to any criminal
20 penalty provided by law, if any notice or return required
21 to be filed by section 6048—

22 “(1) is not filed on or before the time provided
23 in such section, or

1 “(2) does not include all the information re-
2 quired pursuant to such section or includes incorrect
3 information,

4 the person required to file such notice or return shall pay
5 a penalty equal to 35 percent of the gross reportable
6 amount. If any failure described in the preceding sentence
7 continues for more than 90 days after the day on which
8 the Secretary mails notice of such failure to the person
9 required to pay such penalty, such person shall pay a pen-
10 alty (in addition to the amount determined under the pre-
11 ceding sentence) of \$10,000 for each 30-day period (or
12 fraction thereof) during which such failure continues after
13 the expiration of such 90-day period.

14 “(b) SPECIAL RULES FOR RETURNS UNDER SEC-
15 TION 6048(b).—In the case of a return required under
16 section 6048(b)—

17 “(1) the United States person referred to in
18 such section shall be liable for the penalty imposed
19 by subsection (a), and

20 “(2) subsection (a) shall be applied by sub-
21 stituting ‘5 percent’ for ‘35 percent’.

22 “(c) GROSS REPORTABLE AMOUNT.—For purposes
23 of subsection (a), the term ‘gross reportable amount’
24 means—

1 “(1) the gross value of the property involved in
2 the event (determined as of the date of the event)
3 in the case of a failure relating to section 6048(a),

4 “(2) the gross value of the portion of the trust’s
5 assets at the close of the year treated as owned by
6 the United States person in the case of a failure re-
7 lating to section 6048(b)(1), and

8 “(3) the gross amount of the distributions in
9 the case of a failure relating to section 6048(c).

10 “(d) REASONABLE CAUSE EXCEPTION.—No penalty
11 shall be imposed by this section on any failure which is
12 shown to be due to reasonable cause and not due to willful
13 neglect. The fact that a foreign jurisdiction would impose
14 a civil or criminal penalty on the taxpayer (or any other
15 person) for disclosing the required information is not rea-
16 sonable cause.

17 “(e) DEFICIENCY PROCEDURES NOT TO APPLY.—
18 Subchapter B of chapter 63 (relating to deficiency proce-
19 dures for income, estate, gift, and certain excise taxes)
20 shall not apply in respect of the assessment or collection
21 of any penalty imposed by subsection (a).”

22 (c) CONFORMING AMENDMENTS.—

23 (1) Paragraph (2) of section 6724(d) of such
24 Code is amended by striking “or” at the end of sub-
25 paragraph (S), by striking the period at the end of

1 subparagraph (T) and inserting “, or”, and by in-
2 sserting after subparagraph (T) the following new
3 subparagraph:

4 “(U) section 6048(b)(1)(B) (relating to
5 foreign trust reporting requirements).”

6 (2) The table of sections for subpart B of part
7 III of subchapter A of chapter 61 of such Code is
8 amended by striking the item relating to section
9 6048 and inserting the following new item:

“Sec. 6048. Information with respect to certain foreign trusts.”

10 (3) The table of sections for part I of sub-
11 chapter B of chapter 68 of such Code is amended
12 by striking the item relating to section 6677 and in-
13 sserting the following new item:

“Sec. 6677. Failure to file information with respect to certain for-
eign trusts.”

14 (d) EFFECTIVE DATES.—

15 (1) REPORTABLE EVENTS.—To the extent re-
16 lated to subsection (a) of section 6048 of the Inter-
17 nal Revenue Code of 1986, as amended by this sec-
18 tion, the amendments made by this section shall
19 apply to reportable events (as defined in such section
20 6048) occurring after the date of the enactment of
21 this Act.

22 (2) GRANTOR TRUST REPORTING.—To the ex-
23 tent related to subsection (b) of such section 6048,

1 the amendments made by this section shall apply to
2 taxable years of United States persons beginning
3 after the date of the enactment of this Act.

4 (3) REPORTING BY UNITED STATES BENE-
5 FICIARIES.—To the extent related to subsection (c)
6 of such section 6048, the amendments made by this
7 section shall apply to distributions received after the
8 date of the enactment of this Act.

9 **SEC. 3. MODIFICATIONS OF RULES RELATING TO FOREIGN**
10 **TRUSTS HAVING ONE OR MORE UNITED**
11 **STATES BENEFICIARIES.**

12 (a) TREATMENT OF TRUST OBLIGATIONS, ETC.—

13 (1) Paragraph (2) of section 679(a) of the In-
14 ternal Revenue Code of 1986 is amended by striking
15 subparagraph (B) and inserting the following:

16 “(B) TRANSFERS AT FAIR MARKET
17 VALUE.—To any transfer of property to a trust
18 in exchange for consideration of at least the fair
19 market value of the transferred property. For
20 purposes of the preceding sentence, consider-
21 ation other than cash shall be taken into ac-
22 count at its fair market value.”

23 (2) Subsection (a) of section 679 of such Code
24 (relating to foreign trusts having one or more

1 United States beneficiaries) is amended by adding at
2 the end the following new paragraph:

3 “(3) CERTAIN OBLIGATIONS NOT TAKEN INTO
4 ACCOUNT UNDER FAIR MARKET VALUE EXCEP-
5 TION.—

6 “(A) IN GENERAL.—In determining wheth-
7 er paragraph (2)(B) applies to any transfer by
8 a person described in clause (ii) or (iii) of sub-
9 paragraph (C), there shall not be taken into ac-
10 count—

11 “(i) any obligation of a person de-
12 scribed in subparagraph (C), and

13 “(ii) to the extent provided in regula-
14 tions, any obligation which is guaranteed
15 by a person described in subparagraph (C).

16 “(B) TREATMENT OF PRINCIPAL PAY-
17 MENTS ON OBLIGATION.—Principal payments
18 by the trust on any obligation referred to in
19 subparagraph (A) shall be taken into account
20 on and after the date of the payment in deter-
21 mining the portion of the trust attributable to
22 the property transferred.

23 “(C) PERSONS DESCRIBED.—The persons
24 described in this subparagraph are—

25 “(i) the trust,

1 “(ii) any grantor or beneficiary of the
2 trust, and

3 “(iii) any person who is related (with-
4 in the meaning of section 643(i)(3)) to any
5 grantor or beneficiary of the trust.”

6 (b) EXEMPTION OF TRANSFERS TO CHARITABLE
7 TRUSTS.—Subsection (a) of section 679 of such Code is
8 amended by striking “section 404(a)(4) or 404A” and in-
9 serting “section 6048(a)(3)(B)(ii)”.

10 (c) OTHER MODIFICATIONS.—Subsection (a) of sec-
11 tion 679 of such Code is amended by adding at the end
12 the following new paragraphs:

13 “(4) SPECIAL RULES APPLICABLE TO FOREIGN
14 GRANTOR WHO LATER BECOMES A UNITED STATES
15 PERSON.—

16 “(A) IN GENERAL.—If a nonresident alien
17 individual has a residency starting date within
18 5 years after directly or indirectly transferring
19 property to a foreign trust, this section and sec-
20 tion 6048 shall be applied as if such individual
21 transferred to such trust on the residency start-
22 ing date an amount equal to the portion of such
23 trust attributable to the property transferred by
24 such individual to such trust in such transfer.

1 “(B) TREATMENT OF UNDISTRIBUTED IN-
2 COME.—For purposes of this section, undistrib-
3 uted net income for periods before such individ-
4 ual’s residency starting date shall be taken into
5 account in determining the portion of the trust
6 which is attributable to property transferred by
7 such individual to such trust but shall not oth-
8 erwise be taken into account.

9 “(C) RESIDENCY STARTING DATE.—For
10 purposes of this paragraph, an individual’s resi-
11 dency starting date is the residency starting
12 date determined under section 7701(b)(2)(A).

13 “(5) OUTBOUND TRUST MIGRATIONS.—If—

14 “(A) an individual who is a citizen or resi-
15 dent of the United States transferred property
16 to a trust which was not a foreign trust, and

17 “(B) such trust becomes a foreign trust
18 while such individual is alive,

19 then this section and section 6048 shall be applied
20 as if such individual transferred to such trust on the
21 date such trust becomes a foreign trust an amount
22 equal to the portion of such trust attributable to the
23 property previously transferred by such individual to
24 such trust. A rule similar to the rule of paragraph
25 (4)(B) shall apply for purposes of this paragraph.”

1 (d) MODIFICATIONS RELATING TO WHETHER TRUST
2 HAS UNITED STATES BENEFICIARIES.—Subsection (c) of
3 section 679 of such Code is amended by adding at the
4 end the following new paragraphs:

5 “(3) CERTAIN UNITED STATES BENEFICIARIES
6 DISREGARDED.—A beneficiary shall not be treated
7 as a United States person in applying this section
8 with respect to any transfer of property to foreign
9 trust if such beneficiary first became a United
10 States person more than 5 years after the date of
11 such transfer.

12 “(4) TREATMENT OF FORMER UNITED STATES
13 PERSONS.—To the extent provided by the Secretary,
14 for purposes of this subsection, the term ‘United
15 States person’ includes any person who was a
16 United States person at any time during the exist-
17 ence of the trust.”

18 (e) TECHNICAL AMENDMENT.—Subparagraph (A) of
19 section 679(c)(2) is amended to read as follows:

20 “(A) in the case of a foreign corporation,
21 such corporation is a controlled foreign corpora-
22 tion (as defined in section 957(a)),”.

23 (f) REGULATIONS.—Section 679 is amended by add-
24 ing at the end the following new subsection:

1 “(d) REGULATIONS.—The Secretary shall prescribe
2 such regulations as may be necessary or appropriate to
3 carry out the purposes of this section.”

4 (g) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to transfers of property after Feb-
6 ruary 6, 1995.

7 **SEC. 4. FOREIGN PERSONS NOT TO BE TREATED AS OWN-**
8 **ERS UNDER GRANTOR TRUST RULES.**

9 (a) GENERAL RULE.—

10 (1) Subsection (f) of section 672 of the Internal
11 Revenue Code of 1986 (relating to special rule where
12 grantor is foreign person) is amended to read as
13 follows:

14 “(f) SUBPART NOT TO RESULT IN FOREIGN OWNER-
15 SHIP.—

16 “(1) IN GENERAL.—Notwithstanding any other
17 provision of this subpart, this subpart shall apply
18 only to the extent such application results in an
19 amount being currently taken into account (directly
20 or through 1 or more entities) under this chapter in
21 computing the income of a citizen or resident of the
22 United States or a domestic corporation.

23 “(2) EXCEPTIONS.—

24 “(A) CERTAIN REVOCABLE AND IRREV-
25 OCABLE TRUSTS.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), paragraph (1) shall not
3 apply to any trust if—

4 “(I) the power to revest abso-
5 lutely in the grantor title to the trust
6 property is exercisable solely by the
7 grantor without the approval or con-
8 sent of any other person or with the
9 consent of a related or subordinate
10 party who is subservient to the grant-
11 or, or

12 “(II) the only amounts distribut-
13 able from such trust (whether income
14 or corpus) during the lifetime of the
15 grantor are amounts distributable to
16 the grantor or the spouse of the
17 grantor.

18 “(ii) EXCEPTION.—Clause (i) shall
19 not apply to any trust which has a bene-
20 ficiary who is a United States person to
21 the extent such beneficiary has made
22 transfers of property by gift (directly or in-
23 directly) to a foreign person who is the
24 grantor of such trust. For purposes of the
25 preceding sentence, any gift shall not be

1 taken into account to the extent such gift
2 is excluded from taxable gifts under sec-
3 tion 2503(b).

4 “(B) COMPENSATORY TRUSTS.—Except as
5 provided in regulations, paragraph (1) shall not
6 apply to any portion of a trust distributions
7 from which are taxable as compensation for
8 services rendered.

9 “(3) SPECIAL RULES.—Except as otherwise
10 provided in regulations prescribed by the Sec-
11 retary—

12 “(A) a controlled foreign corporation (as
13 defined in section 957) shall be treated as a do-
14 mestic corporation for purposes of paragraph
15 (1), and

16 “(B) paragraph (1) shall not apply for
17 purposes of applying part III of subchapter G
18 (relating to foreign personal holding companies)
19 and part VI of subchapter P (relating to treat-
20 ment of certain passive foreign investment com-
21 panies).

22 “(4) RECHARACTERIZATION OF PURPORTED
23 GIFTS.—In the case of any transfer directly or indi-
24 rectly from a partnership or foreign corporation
25 which the transferee treats as a gift or bequest, the

1 Secretary may recharacterize such transfer in such
2 circumstances as the Secretary determines to be ap-
3 propriate to prevent the avoidance of the purposes of
4 this subsection.

5 “(5) REGULATIONS.—The Secretary shall pre-
6 scribe such regulations as may be necessary or ap-
7 propriate to carry out the purposes of this sub-
8 section, including regulations providing that para-
9 graph (1) shall not apply in appropriate cases.”

10 (2) The last sentence of subsection (c) of sec-
11 tion 672 of such Code is amended by inserting “sub-
12 section (f) and” before “sections 674”.

13 (b) CREDIT FOR CERTAIN TAXES.—Paragraph (2) of
14 section 665(d) of such Code is amended by adding at the
15 end the following new sentence: “Under rules or regula-
16 tions prescribed by the Secretary, in the case of any for-
17 eign trust of which the settlor or another person would
18 be treated as owner of any portion of the trust under sub-
19 part E but for section 672(f), the term ‘taxes imposed on
20 the trust’ includes the allocable amount of any income,
21 war profits, and excess profits taxes imposed by any for-
22 eign country or possession of the United States on the
23 settlor or such other person in respect of trust gross in-
24 come.”

1 (c) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
2 THROUGH NOMINEES.—

3 (1) Section 643 of such Code is amended by
4 adding at the end the following new subsection:

5 “(h) DISTRIBUTIONS BY CERTAIN FOREIGN TRUSTS
6 THROUGH NOMINEES.—For purposes of this part, any
7 amount paid to a United States person which is derived
8 directly or indirectly from a foreign trust of which the
9 payor is not the grantor shall be deemed in the year of
10 payment to have been directly paid by the foreign trust
11 to such United States person.”

12 (2) Section 665 of such Code is amended by
13 striking subsection (c).

14 (d) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided by para-
16 graph (2), the amendments made by this section
17 shall take effect on the date of the enactment of this
18 Act.

19 (2) EXCEPTION FOR CERTAIN TRUSTS.—The
20 amendments made by this section shall not apply to
21 any trust—

22 (A) which is treated as owned by the
23 grantor or another person under section 676 or
24 677 (other than subsection (a)(3) thereof) of
25 the Internal Revenue Code of 1986, and

1 (B) which is in existence on September 19,
2 1995.

3 The preceding sentence shall not apply to the por-
4 tion of any such trust attributable to any transfer to
5 such trust after September 19, 1995.

6 (e) TRANSITIONAL RULE.—If—

7 (1) by reason of the amendments made by this
8 section, any person other than a United States per-
9 son ceases to be treated as the owner of a portion
10 of a domestic trust, and

11 (2) before January 1, 1997, such trust becomes
12 a foreign trust, or the assets of such trust are trans-
13 ferred to a foreign trust,

14 no tax shall be imposed by section 1491 of the Internal
15 Revenue Code of 1986 by reason of such trust becoming
16 a foreign trust or the assets of such trust being trans-
17 ferred to a foreign trust.

18 **SEC. 5. INFORMATION REPORTING REGARDING FOREIGN**
19 **GIFTS.**

20 (a) IN GENERAL.—Subpart A of part III of sub-
21 chapter A of chapter 61 of the Internal Revenue Code of
22 1986 is amended by inserting after section 6039E the fol-
23 lowing new section:

1 **“SEC. 6039F. NOTICE OF GIFTS RECEIVED FROM FOREIGN**
2 **PERSONS.**

3 “(a) IN GENERAL.—If the value of the aggregate for-
4 eign gifts received by a United States person (other than
5 an organization described in section 501(c) and exempt
6 from tax under section 501(a)) during any taxable year
7 exceeds \$10,000, such United States person shall furnish
8 (at such time and in such manner as the Secretary shall
9 prescribe) such information as the Secretary may pre-
10 scribe regarding each foreign gift received during such
11 year.

12 “(b) FOREIGN GIFT.—For purposes of this section,
13 the term ‘foreign gift’ means any amount received from
14 a person other than a United States person which the re-
15 cipient treats as a gift or bequest. Such term shall not
16 include any qualified transfer (within the meaning of sec-
17 tion 2503(e)(2)).

18 “(c) PENALTY FOR FAILURE TO FILE INFORMA-
19 TION.—

20 “(1) IN GENERAL.—If a United States person
21 fails to furnish the information required by sub-
22 section (a) with respect to any foreign gift within
23 the time prescribed therefor (including extensions)—

24 “(A) the tax consequences of the receipt of
25 such gift shall be determined by the Secretary
26 in the Secretary’s sole discretion from the Sec-

1 retary’s own knowledge or from such informa-
2 tion as the Secretary may obtain through testi-
3 mony or otherwise, and

4 “(B) such United States person shall pay
5 (upon notice and demand by the Secretary and
6 in the same manner as tax) an amount equal to
7 5 percent of the amount of such foreign gift for
8 each month for which the failure continues (not
9 to exceed 25 percent of such amount in the ag-
10 gregate).

11 “(2) REASONABLE CAUSE EXCEPTION.— Para-
12 graph (1) shall not apply to any failure to report a
13 foreign gift if the United States person shows that
14 the failure is due to reasonable cause and not due
15 to willful neglect.

16 “(d) REGULATIONS.—The Secretary shall prescribe
17 such regulations as may be necessary or appropriate to
18 carry out the purposes of this section.”

19 (b) CLERICAL AMENDMENT.—The table of sections
20 for such subpart is amended by inserting after the item
21 relating to section 6039E the following new item:

 “Sec. 6039F. Notice of large gifts received from foreign persons.”

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to amounts received after the date
24 of the enactment of this Act in taxable years ending after
25 such date.

1 **SEC. 6. MODIFICATION OF RULES RELATING TO FOREIGN**
2 **TRUSTS WHICH ARE NOT GRANTOR TRUSTS.**

3 (a) MODIFICATION OF INTEREST CHARGE ON ACCU-
4 MULATION DISTRIBUTIONS.—Subsection (a) of section
5 668 of the Internal Revenue Code of 1986 (relating to
6 interest charge on accumulation distributions from foreign
7 trusts) is amended to read as follows:

8 “(a) GENERAL RULE.—For purposes of the tax de-
9 termined under section 667(a)—

10 “(1) INTEREST DETERMINED USING
11 UNDERPAYMENT RATES.—The interest charge deter-
12 mined under this section with respect to any dis-
13 tribution is the amount of interest which would be
14 determined on the partial tax computed under sec-
15 tion 667(b) for the period described in paragraph
16 (2) using the rates and the method under section
17 6621 applicable to underpayments of tax.

18 “(2) PERIOD.—For purposes of paragraph (1),
19 the period described in this paragraph is the period
20 which begins on the date which is the applicable
21 number of years before the date of the distribution
22 and which ends on the date of the distribution.

23 “(3) APPLICABLE NUMBER OF YEARS.—For
24 purposes of paragraph (2)—

1 “(A) IN GENERAL.—The applicable num-
2 ber of years with respect to a distribution is the
3 number determined by dividing—

4 “(i) the sum of the products described
5 in subparagraph (B) with respect to each
6 undistributed income year, by

7 “(ii) the aggregate undistributed net
8 income.

9 The quotient determined under the preceding
10 sentence shall be rounded under procedures
11 prescribed by the Secretary.

12 “(B) PRODUCT DESCRIBED.—For pur-
13 poses of subparagraph (A), the product de-
14 scribed in this subparagraph with respect to
15 any undistributed income year is the product
16 of—

17 “(i) the undistributed net income for
18 such year, and

19 “(ii) the sum of the number of taxable
20 years between such year and the taxable
21 year of the distribution (counting in each
22 case the undistributed income year but not
23 counting the taxable year of the distribu-
24 tion).

1 “(4) **UNDISTRIBUTED INCOME YEAR.**—For pur-
2 poses of this subsection, the term ‘undistributed in-
3 come year’ means any prior taxable year of the trust
4 for which there is undistributed net income, other
5 than a taxable year during all of which the bene-
6 ficiary receiving the distribution was not a citizen or
7 resident of the United States.

8 “(5) **DETERMINATION OF UNDISTRIBUTED NET**
9 **INCOME.**—Notwithstanding section 666, for pur-
10 poses of this subsection, an accumulation distribu-
11 tion from the trust shall be treated as reducing pro-
12 portionately the undistributed net income for prior
13 taxable years.

14 “(6) **PERIODS BEFORE 1996.**—Interest for the
15 portion of the period described in paragraph (2)
16 which occurs before January 1, 1996, shall be deter-
17 mined—

18 “(A) by using an interest rate of 6 percent,

19 and

20 “(B) without compounding until January
21 1, 1996.”

22 (b) **ABUSIVE TRANSACTIONS.**—Section 643(a) of
23 such Code is amended by inserting after paragraph (6)
24 the following new paragraph:

1 “(7) ABUSIVE TRANSACTIONS.—The Secretary
2 shall prescribe such regulations as may be necessary
3 or appropriate to carry out the purposes of this part,
4 including regulations to prevent avoidance of such
5 purposes.”

6 (c) TREATMENT OF USE OF TRUST PROPERTY.—

7 (1) IN GENERAL.—Section 643 of such Code
8 (relating to definitions applicable to subparts A, B,
9 C, and D) is amended by adding at the end the fol-
10 lowing new subsection:

11 “(i) USE OF FOREIGN TRUST PROPERTY.—For pur-
12 poses of subparts B, C, and D—

13 “(1) GENERAL RULE.—If a foreign trust makes
14 a loan of cash or marketable securities directly or in-
15 directly to—

16 “(A) any grantor or beneficiary of such
17 trust who is a United States person, or

18 “(B) any United States person not de-
19 scribed in subparagraph (A) who is related to
20 such grantor or beneficiary,

21 the amount of such loan shall be treated as a dis-
22 tribution by such trust to such grantor or bene-
23 ficiary (as the case may be).

24 “(2) USE OF OTHER PROPERTY.—Except as
25 provided in regulations prescribed by the Secretary,

1 any direct or indirect use of trust property (other
2 than cash or marketable securities) by a person re-
3 ferred to in subparagraph (A) or (B) of paragraph
4 (1) shall be treated as a distribution to the grantor
5 or beneficiary (as the case may be) equal to the fair
6 market value of the use of such property. The Sec-
7 retary may prescribe regulations treating a loan
8 guarantee by the trust as a use of trust property
9 equal to the value of the guarantee.

10 “(3) DEFINITIONS AND SPECIAL RULES.—For
11 purposes of this subsection—

12 “(A) CASH.—The term ‘cash’ includes for-
13 eign currencies and cash equivalents.

14 “(B) RELATED PERSON.—

15 “(i) IN GENERAL.—A person is relat-
16 ed to another person if the relationship be-
17 tween such persons would result in a dis-
18 allowance of losses under section 267 or
19 707(b). In applying section 267 for pur-
20 poses of the preceding sentence, section
21 267(c)(4) shall be applied as if the family
22 of an individual includes the spouses of the
23 members of the family.

24 “(ii) ALLOCATION OF USE.—If any
25 person described in paragraph (1)(B) is re-

1 lated to more than one person, the grantor
2 or beneficiary to whom the treatment
3 under this subsection applies shall be de-
4 termined under regulations prescribed by
5 the Secretary.

6 “(C) EXCLUSION OF TAX-EXEMPTS.—The
7 term ‘United States person’ does not include
8 any entity exempt from tax under this chapter.

9 “(D) TRUST NOT TREATED AS SIMPLE
10 TRUST.—Any trust which is treated under this
11 subsection as making a distribution shall be
12 treated as not described in section 651.

13 “(4) SUBSEQUENT TRANSACTIONS REGARDING
14 LOAN PRINCIPAL.—If any loan is taken into account
15 under paragraph (1), any subsequent transaction be-
16 tween the trust and the original borrower regarding
17 the principal of the loan (by way of complete or par-
18 tial repayment, satisfaction, cancellation, discharge,
19 or otherwise) shall be disregarded for purposes of
20 this title.”

21 (2) TECHNICAL AMENDMENT.—Paragraph (8)
22 of section 7872(f) is amended by inserting
23 “, 643(i),” before “or 1274” each place it appears.

24 (d) EFFECTIVE DATES.—

1 (1) INTEREST CHARGE.—The amendment made
2 by subsection (a) shall apply to distributions after
3 the date of the enactment of this Act.

4 (2) ABUSIVE TRANSACTIONS.—The amendment
5 made by subsection (b) shall take effect on the date
6 of the enactment of this Act.

7 (3) USE OF TRUST PROPERTY.—The amend-
8 ment made by subsection (c) shall apply to—

9 (A) loans of cash or marketable securities
10 after September 19, 1995, and

11 (B) uses of other trust property after De-
12 cember 31, 1995.

13 **SEC. 7. RESIDENCE OF ESTATES AND TRUSTS, ETC.**

14 (a) TREATMENT AS UNITED STATES PERSON.—

15 (1) IN GENERAL.—Paragraph (30) of section
16 7701(a) of the Internal Revenue Code of 1986 is
17 amended by striking subparagraph (D) and by in-
18 serting after subparagraph (C) the following:

19 “(D) any estate or trust if—

20 “(i) a court within the United States
21 is able to exercise primary supervision over
22 the administration of the estate or trust,
23 and

24 “(ii) in the case of a trust, one or
25 more United States fiduciaries have the

1 authority to control all substantial deci-
2 sions of the trust.”

3 (2) CONFORMING AMENDMENT.—Paragraph
4 (31) of section 7701(a) of such Code is amended to
5 read as follows:

6 “(31) FOREIGN ESTATE OR TRUST.—The term
7 ‘foreign estate’ or ‘foreign trust’ means any estate or
8 trust other than an estate or trust described in sec-
9 tion 7701(a)(30)(D).”

10 (3) EFFECTIVE DATE.—The amendments made
11 by this subsection shall apply—

12 (A) to taxable years beginning after De-
13 cember 31, 1996, or

14 (B) at the election of the trustee of a
15 trust, to taxable years ending after the date of
16 the enactment of this Act.

17 Such an election, once made, shall be irrevocable.

18 (b) DOMESTIC TRUSTS WHICH BECOME FOREIGN
19 TRUSTS.—

20 (1) IN GENERAL.—Section 1491 of such Code
21 (relating to imposition of tax on transfers to avoid
22 income tax) is amended by adding at the end the fol-
23 lowing new flush sentence:

24 “If a trust which is not a foreign trust becomes a foreign
25 trust, such trust shall be treated for purposes of this sec-

1 tion as having transferred, immediately before becoming
 2 a foreign trust, all of its assets to a foreign trust.”

3 (2) PENALTY.—Section 1494 of the Internal
 4 Revenue Code of 1986 is amended by adding at the
 5 end the following new subsection:

6 “(c) PENALTY.—In the case of any failure to file a
 7 return required by the Secretary with respect to any trans-
 8 fer described in section 1491, the person required to file
 9 such return shall be liable for the penalties provided in
 10 section 6677 in the same manner as if such failure were
 11 a failure to file a return under section 6048(a).”

12 (3) EFFECTIVE DATE.—The amendments made
 13 by this subsection shall take effect on the date of the
 14 enactment of this Act.

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S 1261 IS—3