To restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes.

IN THE SENATE OF THE UNITED STATES
FEBRUARY 17, 2007

Mr. LEVIN (for himself, Mr. COLEMAN, and Mr. OBAMA) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL
To restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes.

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

SECTION 1. SHORT TITLE; ETC.

(a) Short Title.—This Act may be cited as the “Stop Tax Haven Abuse Act”.

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

(c) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—DETERRING THE USE OF TAX HAVENS FOR TAX EVASION

Sec. 101. Establishing presumptions for entities and transactions involving offshore secrecy jurisdictions.
Sec. 102. Authorizing special measures against foreign jurisdictions, financial institutions, and others that impede United States tax enforcement.
Sec. 103. Allowing more time for investigations involving offshore secrecy jurisdictions.
Sec. 104. Reporting United States beneficial owners of foreign owned financial accounts.
Sec. 105. Preventing misuse of foreign trusts for tax evasion.
Sec. 106. Limitation on legal opinion protection from penalties with respect to transactions involving offshore secrecy jurisdictions.

TITLE II—OTHER MEASURES TO COMBAT TAX HAVEN AND TAX SHELTER ABUSES

Sec. 201. Penalty for failing to disclose offshore holdings.
Sec. 202. Deadline for anti-money laundering rule for hedge funds and private equity funds.
Sec. 203. Anti-money laundering requirements for formation agents.
Sec. 204. Strengthening summons in cases involving offshore secrecy jurisdictions.
Sec. 205. Improving enforcement of foreign financial account reporting.

TITLE III—COMBATING TAX SHELTER PROMOTERS

Sec. 301. Penalty for promoting abusive tax shelters.
Sec. 302. Penalty for aiding and abetting the understatement of tax liability.
Sec. 303. Prohibition on tax shelter patents.
Sec. 304. Prohibited fee arrangement.
Sec. 305. Preventing tax shelter activities by financial institutions.
Sec. 306. Information sharing for enforcement purposes.
Sec. 307. Disclosure of information to Congress.
Sec. 308. Tax opinion standards for tax practitioners.
Sec. 309. Denial of deduction for certain fines, penalties, and other amounts.

TITLE IV—REQUIRING ECONOMIC SUBSTANCE

Sec. 401. Clarification of economic substance doctrine.
Sec. 402. Penalty for understatements attributable to transactions lacking economic substance, etc.
Sec. 403. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.
TITLE I—DETERRING THE USE OF TAX HAVENS FOR TAX EVASION

SEC. 101. ESTABLISHING PRESUMPTIONS FOR ENTITIES AND TRANSACTIONS INVOLVING OFFSHORE SECRECY JURISDICTIONS.

(a) Presumptions for Internal Revenue Code of 1986.—

(1) In general.—Chapter 76 is amended by inserting after section 7491 the following new subchapter:

“Subchapter F—Presumptions for Certain Legal Proceedings

“Sec. 7492. Presumptions pertaining to entities and transactions involving offshore secrecy jurisdictions.

“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND TRANSACTIONS INVOLVING OFFSHORE SECRECY JURISDICTIONS.

“(a) Control.—For purposes of any United States civil judicial or administrative proceeding to determine or collect tax, there shall be a rebuttable presumption that a United States person (other than an entity with shares regularly traded on an established securities market) who directly or indirectly formed, transferred assets to, was a beneficiary of, or received money or property or the use thereof from an entity, including a trust, corporation, lim-
1. A limited liability company, partnership, or foundation (other
2. than an entity with shares regularly traded on an estab-
3. lished securities market), formed, domiciled, or operating
4. in an offshore secrecy jurisdiction, exercised control over
5. such entity. The presumption of control created by this
6. subsection shall not be applied to prevent the Secretary
7. from determining or arguing the absence of control.

“(b) Transfers of Income.—For purposes of any
9. United States civil judicial or administrative proceeding
10. to determine or collect tax, there shall be a rebuttable pre-
11. sumption that any amount or thing of value received by
12. a United States person (other than an entity with shares
13. regularly traded on an established securities market) di-
14. rectly or indirectly from an account or entity in an off-
15. shore secrecy jurisdiction, constitutes income of such per-
16. son taxable in the year of receipt, and any amount or thing
17. of value paid or transferred by or on behalf of a United
18. States person (other than an entity with shares regularly
19. traded on an established securities market) directly or in-
20. directly to an account or entity in any such jurisdiction
21. represents previously unreported income of such person
22. taxable in the year of the transfer.

“(c) Rebutting the Presumptions.—The pre-
24. sumptions established in this section may be rebutted only
25. by clear and convincing evidence, including detailed docu-
mentary, testimonial, and transactional evidence, estab-
lishing that—

“(1) in subsection (a), such taxpayer exercised
no control, directly or indirectly, over such entity at
the time in question, and

“(2) in subsection (b), such amounts or things
of value did not represent income related to such
United States person.

Any court having jurisdiction of a civil proceeding in which
control of such an offshore entity or the income character
of such receipts or amounts transferred is an issue shall
prohibit the introduction by the taxpayer of any foreign
based document that is not authenticated in open court
by a person with knowledge of such document, or any
other evidence supplied by a person outside the jurisdic-
tion of a United States court, unless such person appears
before the court.”.

(2) The table of subchapters for chapter 76 is
amended by inserting after the item relating to sub-
chapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

(b) DEFinition OF OFFShore SECREcy JURISdIcTion.—Section 7701(a) is amended by adding at the end
the following new paragraph:

“(50) OFFShORE SECREcy JURISdIcTion.—
“(A) IN GENERAL.—The term ‘offshore secrecy jurisdiction’ means any foreign jurisdiction which is listed by the Secretary as an offshore secrecy jurisdiction for purposes of this title.

“(B) DETERMINATION OF JURISDICTIONS ON LIST.—A jurisdiction shall be listed under paragraph (A) if the Secretary determines that such jurisdiction has corporate, business, bank, or tax secrecy rules and practices which, in the judgment of the Secretary, unreasonably restrict the ability of the United States to obtain information relevant to the enforcement of this title, unless the Secretary also determines that such country has effective information exchange practices.

“(C) SECRECY OR CONFIDENTIALITY RULES AND PRACTICES.—For purposes of subparagraph (B), corporate, business, bank, or tax secrecy or confidentiality rules and practices include both formal laws and regulations and informal government or business practices having the effect of inhibiting access of law enforcement and tax administration authorities to

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beneficial ownership and other financial information.

“(D) INEFFECTIVE INFORMATION EXCHANGE PRACTICES.—For purposes of subparagraph (B), a jurisdiction shall be deemed to have ineffective information exchange practices unless the Secretary determines, on an annual basis, that—

“(i) such jurisdiction has in effect a treaty or other information exchange agreement with the United States that provides for the prompt, obligatory, and automatic exchange of such information as is foreseeably relevant for carrying out the provisions of the treaty or agreement or the administration or enforcement of this title,

“(ii) during the 12-month period preceding the annual determination, the exchange of information between the United States and such jurisdiction was in practice adequate to prevent evasion or avoidance of United States income tax by United States persons and to enable the
United States effectively to enforce this title, and

“(iii) during the 12-month period preceding the annual determination, such jurisdiction was not identified by an intergovernmental group or organization of which the United States is a member as uncooperative with international tax enforcement or information exchange and the United States concurs in such identification.

“(E) INITIAL LIST OF OFFSHORE SECRECY JURISDICTIONS.—For purposes of this paragraph, each of the following foreign jurisdictions, which have been previously and publicly identified by the Internal Revenue Service as secrecy jurisdictions in Federal court proceedings, shall be deemed listed by the Secretary as an offshore secrecy jurisdiction unless delisted by the Secretary under subparagraph (F)(ii):

“(i) Anguilla.

“(ii) Antigua and Barbuda.

“(iii) Aruba.

“(iv) Bahamas.
“(v) Barbados.
“(vi) Belize.
“(vii) Bermuda.
“(viii) British Virgin Islands.
“(ix) Cayman Islands.
“(x) Cook Islands.
“(xi) Costa Rica.
“(xii) Cyprus.
“(xiii) Dominica.
“(xiv) Gibraltar.
“(xv) Grenada.
“(xvi) Guernsey/Sark/Alderney.
“(xvii) Hong Kong.
“(xviii) Isle of Man.
“(xix) Jersey.
“(xx) Latvia.
“(xxi) Liechtenstein.
“(xxii) Luxembourg.
“(xxiii) Malta.
“(xxiv) Nauru.
“(xxv) Netherlands Antilles.
“(xxvi) Panama.
“(xxvii) Samoa.
“(xxviii) St. Kitts and Nevis.
“(xxix) St. Lucia.
“(xxx) St. Vincent and the Grenadines.

“(xxxi) Singapore.

“(xxxii) Switzerland.

“(xxxiii) Turks and Caicos.

“(xxxiv) Vanuatu.

“(F) MODIFICATIONS TO LIST.—The Secretary—

“(i) shall add to the list under paragraph (A) jurisdictions which meet the requirements of paragraph (B), and

“(ii) may remove from such list only those jurisdictions which meet none of the requirements of paragraph (B).”.

(c) PRESUMPTIONS FOR SECURITIES LAW PURPOSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

“(j) PRESUMPTIONS PERTAINING TO CONTROL AND BENEFICIAL OWNERSHIP.—

“(1) CONTROL.—For purposes of any civil judicial or administrative proceeding under this title, there shall be a rebuttable presumption that a United States person (other than an entity with shares regularly traded on an established securities
market) who directly or indirectly formed, transferred assets to, was a beneficiary of, or received money or property or the use thereof from an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), formed, domiciled, or operating in an offshore secrecy jurisdiction (as defined in section 7701(a)(50) of the Internal Revenue Code of 1986), exercised control over such entity. The presumption of control created by this paragraph shall not be applied to prevent the Commission from determining or arguing the absence of control.

“(2) BENEFICIAL OWNERSHIP.—For purposes of any civil judicial or administrative proceeding under this title, there shall be a rebuttable presumption that securities that are nominally owned by an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), formed, domiciled, or operating in an offshore secrecy jurisdiction (as so defined), are beneficially owned by any United States person (other than an entity with shares regularly traded on an established securities market) who directly or in-
directly exercised control over such entity. The presumption of beneficial ownership created by this paragraph shall not be applied to prevent the Commission from determining or arguing the absence of beneficial ownership.”.

(d) Presumption for Reporting Purposes Relating to Foreign Financial Accounts.—Section 5314 of title 31, United States Code, is amended by adding at the end the following:

“(d) Rebuttable Presumption.—For purposes of this section, there shall be a rebuttable presumption that any account with a financial institution formed, domiciled, or operating in an offshore secrecy jurisdiction (as defined in section 7701(a)(50) of the Internal Revenue Code of 1986) contains funds in an amount that is at least sufficient to require a report prescribed by regulations under this section.”.

(e) Regulatory Authority and Effective Date.—

(1) Regulatory Authority.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury and the Chairman of the Securities and Exchange Commission shall each adopt regulations or other guidance necessary to implement the amendments made by this section. The
Secretary and the Chairman may by regulation or guidance provide that the presumption of control shall not extend to particular classes of transactions, such as corporate reorganizations, if either determines that applying such amendments to such transactions is not necessary to carry out the purposes of such amendments.

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

SEC. 102. AUTHORIZING SPECIAL MEASURES AGAINST FOREIGN JURISDICTIONS, FINANCIAL INSTITUTIONS, AND OTHERS THAT IMPEDE UNITED STATES TAX ENFORCEMENT.

Section 5318A of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

“§ 5318A. Special measures for jurisdictions, financial institutions, or international transactions that are of primary money laundering concern or impede United States tax enforcement”;

(2) in subsection (a), by striking the subsection heading and inserting the following:
“(a) Special Measures To Counter Money Laundering and Efforts To Impede United States Tax Enforcement.—”;

(3) in subsection (c), by striking the subsection heading and inserting the following:

“(c) Consultations and Information To Be Considered in Finding Jurisdictions, Institutions, Types of Accounts, or Transactions To Be of Primary Money Laundering Concern or To Be Impeding United States Tax Enforcement.—”;

(4) in subsection (a)(1), by inserting “or is impeding United States tax enforcement” after “primary money laundering concern”;  

(5) in subsection (a)(4)—

(A) in subparagraph (A)—

(i) by inserting “in matters involving money laundering,” before “shall consult”; and

(ii) by striking “and” at the end;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

“(B) in matters involving United States tax enforcement, shall consult with the Commis-
sioner of the Internal Revenue Service, the Sec-

retary of State, the Attorney General of the

United States, and in the sole discretion of the

Secretary, such other agencies and interested

parties as the Secretary may find to be appro-

priate; and”;

(6) in each of paragraphs (1)(A), (2), (3), and

(4) of subsection (b), by inserting “or to be imped-

ing United States tax enforcement” after “primary

money laundering concern” each place that term ap-

pears;

(7) in subsection (b), by striking paragraph (5)

and inserting the following:

“(5) Prohibitions or conditions on open-

ing or maintaining certain correspondent or

payable-through accounts or authorizing

certain credit cards.—If the Secretary finds a

jurisdiction outside of the United States, 1 or more

financial institutions operating outside of the United

States, or 1 or more classes of transactions within

or involving a jurisdiction outside of the United

States to be of primary money laundering concern or
to be impeding United States tax enforcement, the

Secretary, in consultation with the Secretary of

State, the Attorney General of the United States,
and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon—

“(A) the opening or maintaining in the United States of a correspondent account or payable-through account; or

“(B) the authorization, approval, or use in the United States of a credit card, charge card, debit card, or similar credit or debit financial instrument by any domestic financial institution, financial agency, or credit card company or association, for or on behalf of a foreign banking institution, if such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument, involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument.”; and

(8) in subsection (c)(1), by inserting “or is impeding United States tax enforcement” after “primary money laundering concern”;  

(9) in subsection (c)(2)(A)—
(A) in clause (ii), by striking “bank secrecy or special regulatory advantages” and inserting “bank, tax, corporate, trust, or financial secrecy or regulatory advantages”;

(B) in clause (iii), by striking “supervisory and counter-money” and inserting “supervisory, international tax enforcement, and counter-money”; 

(C) in clause (v), by striking “banking or secrecy” and inserting “banking, tax, or secrecy”; and 

(D) in clause (vi), by inserting “, tax treaty, or tax information exchange agreement” after “treaty”;

(10) in subsection (c)(2)(B)—

(A) in clause (i), by inserting “or tax evasion” after “money laundering”; and

(B) in clause (iii), by inserting “, tax evasion,” after “money laundering”; and

(11) in subsection (d), by inserting “involving money laundering, and shall notify, in writing, the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of any such action involving United States tax enforcement” after “such action”.

SEC. 103. ALLOWING MORE TIME FOR INVESTIGATIONS INVOLVING OFFSHORE SECRECY JURISDICTIONS.

(a) In General.—Section 6501(c) is amended by adding at the end the following new paragraph:

“(11) RETURNS INVOLVING OFFSHORE SECRECY JURISDICTIONS.—In the case of a return for a year in which the taxpayer directly or indirectly formed, owned, transferred assets to, was a beneficiary of, or received money or property or the use thereof from a financial account or an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market) formed, located, domiciled or operating in an offshore secrecy jurisdiction, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.”.

(b) Effective Date.—The amendment made by this section shall apply to—

(1) returns filed after the date of the enactment of this Act, and

(2) returns filed on or before such date if the period specified in section 6501 of the Internal Rev-
enue Code of 1986 (determined without regard to the amendments made by subsection (a)) for assessment of such taxes has not expired as of such date.

SEC. 104. REPORTING UNITED STATES BENEFICIAL OWNERS OF FOREIGN OWNED FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6045 the following new sections:

"SEC. 6045A. RETURNS REGARDING UNITED STATES BENEFICIAL OWNERS OF FOREIGN OWNED FINANCIAL ACCOUNTS.

"(a) REQUIREMENT OF RETURN.—If—

"(1) any withholding agent under sections 1441 and 1442 has the control, receipt, custody, disposal, or payment of any amount constituting gross income from sources within the United States of any foreign entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), and

"(2) such withholding agent determines for purposes of titles 14, 18, or 31 of the United States Code that a United States person has any beneficial interest in the foreign entity or in the account in
such entity’s name (hereafter in this section referred to as ‘United States beneficial owner’), then the withholding agent shall make a return according to the forms or regulations prescribed by the Secretary.

“(b) REQUIRED INFORMATION.—For purposes of subsection (a) the information required to be included on the return shall include—

“(1) the name, address, and, if known, the taxpayer identification number of the United States beneficial owner,

“(2) the known facts pertaining to the relationship of such United States beneficial owner to the foreign entity and the account,

“(3) the gross amount of income from sources within the United States (including gross proceeds from brokerage transactions), and

“(4) such other information as the Secretary may by forms or regulations provide.

“(c) STATEMENTS TO BE FURNISHED TO BENEFICIAL OWNERS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE REPORTED.—A withholding agent required to make a return under subsection (a) shall furnish to each United States beneficial owner whose name is required to be set forth in such return a statement showing—
“(1) the name, address, and telephone number of the information contact of the person required to make such return, and

“(2) the information required to be shown on such return with respect to such United States beneficial owner.

The written statement required under the preceding sentence shall be furnished to the United States beneficial owner on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. In the event the person filing such return does not have a current address for the United States beneficial owner, such written statement may be mailed to the address of the foreign entity.

“(d) Cross Reference.—

“For provisions relating to penalties for failure to file returns and reports, see sections 6721, 7203, and 7206(1).

“Sec. 6045B. Returns by Financial Institutions Regarding Establishment of Accounts and Creation of Entities in Offshore Secrecy Jurisdictions.

“(a) Requirement of Return.—Any financial institution directly or indirectly—

“(1) opening a bank, brokerage, or other financial account, or
“(2) forming or acquiring an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), in an offshore secrecy jurisdiction at the direction of, on behalf of, or for the benefit of a United States person shall make a return according to the forms or regulations prescribed by the Secretary.

“(b) REQUIRED INFORMATION.—For purposes of subsection (a) the information required to be included on the return shall include—

“(1) the name, address, and taxpayer identification number of such United States person,

“(2) the name and address of the financial institution at which a financial account is opened, the type of account, the account number, the name under which the account was opened, and the amount of the initial deposit,

“(3) the name and address of an entity formed or acquired, the type of entity, and the name and address of any company formation agent or other professional employed to form or acquire the entity, and
“(4) such other information as the Secretary may by forms or regulations provide.

“(c) STATEMENTS TO BE FURNISHED TO UNITED STATES PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE REPORTED.—A financial institution required to make a return under subsection (a) shall furnish to each United States person whose name is required to be set forth in such return a statement showing—

“(1) the name, address, and telephone number of the information contact of the person required to make such return, and

“(2) the information required to be shown on such return with respect to such United States person.

The written statement required under the preceding sentence shall be furnished to such United States person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

“(d) EXEMPTION.—The Secretary may by regulations exempt any class of United States persons or any class of accounts or entities from the requirements of this section if the Secretary determines that applying this sec-
tion to such persons, accounts, or entities is not necessary to carry out the purposes of this section.

“(e) CROSS REFERENCE.—

“For provisions relating to penalties for failure to file returns and reports required under this section, see sections 6721, 7203, and 7206(1).”.

(b) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by inserting after the item relating to section 6045 the following new items:

“Sec. 6045A. Returns regarding United States beneficial owners of foreign owned financial accounts.

“Sec. 6045B. Returns by financial institutions regarding establishment of accounts and creation of entities in offshore secrecy jurisdictions.”.

(e) ADDITIONAL PENALTIES.—

(1) ADDITIONAL PENALTIES ON BANKS.—Section 5239(b)(1) of the Revised Statutes (12 U.S.C. 93(b)(1)) is amended by inserting “or any of the provisions of section 6045B of the Internal Revenue Code of 1986,” after “any regulation issued pursuant to,”.


(d) REGULATORY AUTHORITY AND EFFECTIVE DATE.—
(1) REGULATORY AUTHORITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall adopt regulations, forms, or other guidance necessary to implement this section.

(2) EFFECTIVE DATE.—Section 6045A of the Internal Revenue Code of 1986 (as added by this section) and the amendment made by subsection (c)(1) shall take effect with respect to amounts paid into foreign owned accounts after December 31 of the year of the date of the enactment of this Act. Section 6045B of such Code (as so added) and the amendment made by subsection (c)(2) shall take effect with respect to accounts opened or entities formed or acquired after December 31 of the year of the date of the enactment of this Act.

SEC. 105. PREVENTING MISUSE OF FOREIGN TRUSTS FOR TAX EVASION.

(a) ATTRIBUTION OF TRUST PROTECTOR POWERS TO GRANTORS.—Section 672 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) GRANTOR TREATED AS HOLDING ANY POWER OR INTEREST OF TRUST PROTECTOR OR ENFORCER.—For purposes of this subpart, a grantor shall be treated
as holding any power or interest held by any trust protector or trust enforcer or similar person appointed to advise, influence, oversee, or veto the actions of the trustee.”.

(b) Treatment of United States Recipients of Foreign Trust Assets as Trust Beneficiaries.—Section 679 is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

“(c) Certain United States Persons Treated as Beneficiaries.—Any United States person receiving from a foreign trust cash or other property, or receiving the use thereof, shall be treated as a beneficiary of such trust regardless of whether such person is a named beneficiary, except to the extent that such person paid fair market value for the benefit received.”.

(e) Treatment of Foreign Trust Transfers of Real Estate, Artwork, or Jewelry Consistently with Transfers of Securities.—Section 643(i)(1) is amended by striking “or marketable securities” and inserting “or other property, including real estate, marketable securities, artwork, jewelry, and other personal property,”.

(d) Treatment of Trusts With Future or Contingent United States Beneficiaries.—Section 679(a)(1) is amended—
(1) by inserting “or for any subsequent year” after “such year”, and
(2) by inserting “(including a contingent beneficiary)” after “beneficiary”.

SEC. 106. LIMITATION ON LEGAL OPINION PROTECTION FROM PENALTIES WITH RESPECT TO TRANSACTIONS INVOLVING OFFSHORE SECRECY JURISDICTIONS.

(a) In General.—Section 6664 is amended by adding at the end the following new subsection:
“(e) Certain Opinions May Not Be Relied Upon.—For purposes of this part, an opinion of a tax advisor may not be relied upon to establish that there was reasonable cause for any portion of an underpayment, or that the taxpayer acted in good faith with respect to such portion, if such portion is attributable to a transaction any part of which involves an entity or financial account in an offshore secrecy jurisdiction.”.

(b) Regulatory Authority.—The Secretary of the Treasury may by regulation or guidance provide that subsection (e) of section 6664 of the Internal Revenue Code of 1986, as added by subsection (a), does not apply to legal opinions that express a confidence level that substantially exceeds the “more likely than not” confidence level; or that such subsection does not apply to classes of trans-
actions, such as corporate reorganizations, where the Secretary determines that applying such subsection to such transactions is not necessary to carry out the purposes of such subsection.

**TITLE II—OTHER MEASURES TO COMBAT TAX HAVEN AND TAX SHELTER ABUSES**

**SEC. 201. PENALTY FOR FAILING TO DISCLOSE OFFSHORE HOLDINGS.**

(a) **Securities Exchange Act of 1934.—**Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended by adding at the end the following:

“(iv) **FOURTH TIER.**—Notwithstanding clauses (i), (ii), and (iii), the amount of the penalty for each such violation shall not exceed $1,000,000 for any person if the violation described in subparagraph (A) involved a knowing failure to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity, including any trust, corporation, limited liability company, partnership, or foundation that is directly or indirectly controlled by such person, and which would have been otherwise
subject to disclosure by such person under this title.”.

(b) Securities Act of 1933.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended by adding at the end the following:

“(D) Fourth Tier.—Notwithstanding subparagraphs (A), (B), and (C), the amount of penalty for each such violation shall not exceed $1,000,000 for any person, if the violation described in paragraph (1) involved a knowing failure to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity, including any trust, corporation, limited liability company, partnership, or foundation, directly or indirectly controlled by such person, and which would have been otherwise subject to disclosure by such person under this title.”.

(c) Investment Company Act of 1940.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended by adding at the end the following:

“(D) Fourth Tier.—Notwithstanding subparagraphs (A), (B), and (C), the amount of penalty for each such violation shall not exceed
$1,000,000 for any person, if the violation described in paragraph (1) involved a knowing failure to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity, including any trust, corporation, limited liability company, partnership, or foundation, directly or indirectly controlled by such person, and which would have been otherwise subject to disclosure by such person under this title.’’.

(d) Investment Advisers Act of 1940.—Section 203(i)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended by adding at the end the following:

“(D) Fourth Tier.—Notwithstanding subparagraphs (A), (B), and (C), the amount of penalty for each such violation shall not exceed $1,000,000 for any person, if the violation described in paragraph (1) involved a knowing failure to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity, including any trust, corporation, limited liability company, partnership, or foundation, directly or indirectly controlled by such person,
and which would have been otherwise subject to
disclosure by such person under this title.”.

SEC. 202. DEADLINE FOR ANTI-MONEY LAUNDERING RULE
FOR HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

(a) IN GENERAL.—Not later than 180 days after the
date of the enactment of this Act, the Secretary of the
Treasury, in consultation with the Chairman of the Secu-
rities and Exchange Commission and the Chairman of the
Commodity Futures Trading Commission, shall publish a
final rule in the Federal Register requiring unregistered
investment companies, including hedge funds or private
equity funds, to establish anti-money laundering programs
and submit suspicious activity reports under subsections
(g) and (h) of section 5318 of title 31, United States Code.

(b) CONTENTS.—The final rule published under this
section—

(1) shall require, at a minimum, that to safe-
guard against terrorist financing and money laun-
dering, all unregistered investment companies
shall—

(A) use due diligence to identify and evalu-
ate any foreign person (including the nominal
and beneficial owner or beneficiary of a foreign
corporation, partnership, trust, or other foreign
entity) planning to supply or supplying funds to
be invested with the advice or assistance of that
unregistered investment company; and

(B) be subject to section 5318(k)(2) of
title 31, United States Code; and

(2) may incorporate aspects of the proposed
rule for unregistered investment companies pub-
ished in the Federal Register on September 26,
2002 (67 Fed. Reg. 60617) (relating to anti-money
laundering programs).

(c) DEFINITIONS.—In this section—

(1) the terms “investment company” and
“issuer” have the same meanings as in section 2 of
the Investment Company Act of 1940 (15 U.S.C.
80a–2); and

(2) the term “unregistered investment com-
pany” means an issuer that would be an investment
company, but for the exclusion under paragraph (1)
or (7) of section 3(c) of the Investment Company
Act of 1940 (15 U.S.C. 80a–3(e)).

SEC. 203. ANTI-MONEY LAUNDERING REQUIREMENTS FOR
FORMATION AGENTS.

(a) Anti-Money Laundering Obligations for
Formation Agents.—Section 5312(a)(2) of title 31,
United States Code, is amended, by—
(1) in subparagraph (Y), by striking “or” at the end;

(2) by redesignating subparagraph (Z) as sub-
paragraph (AA); and

(3) by inserting after subparagraph (Y) the fol-
lowing:

“(Z) persons involved in forming new cor-
porations, limited liability companies, partner-
ships, trusts, or other legal entities; or”.

(b) DEADLINE FOR ANTI-MONEY LAUNDERING
RULE FOR FORMATION AGENTS.—Not later than 90 days
after the date of the enactment of this Act, after con-
sulting with the Attorney General of the United States,
the Commissioner of the Internal Revenue Service, and
Chairman of the Securities and Exchange Commission,
the Secretary of the Treasury shall publish a proposed rule
in the Federal Register requiring persons described in sec-
section 5312(a)(2)(Z) of title 31, United States Code, as
added by this section, to establish anti-money laundering
programs under subsection (h) of section 5318 of that
title. The Secretary shall publish such rule in final form
in the Federal Register not later than 180 days after the
date of the enactment of this Act.
SEC. 204. STRENGTHENING SUMMONS IN CASES INVOLVING OFFSHORE SECRECY JURISDICTIONS.

(a) In General.—Subsection (f) of section 7609 is amended to read as follows:

“(f) ADDITIONAL REQUIREMENT IN THE CASE OF A JOHN DOE SUMMONS.—

“(1) GENERAL RULE.—Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

“(A) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

“(B) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

“(C) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

“(2) EXCEPTION.—Paragraph (1) shall not apply to any summons which specifies that it is lim-
ited to information regarding a United States correspond- 
respondent account (as defined in section 
5318A(e)(1)(B) of title 31, United States Code) or 
a United States payable-through account (as defined 
in section 5318A(e)(1)(C) of such title) of a finan-
cial institution in an offshore secrecy jurisdiction.

“(3) Presumption in cases involving off-
shore secrecy jurisdictions.—For purposes of 
this section, in any case in which the particular per-
son or ascertainable group or class of persons have 
financial accounts in or transactions related to off-
shore secrecy jurisdictions, there shall be a presump-
tion that there is a reasonable basis for believing 
that such person or group or class of persons may 
fail or may have failed to comply with provisions of 
internal revenue law.

“(4) Project John Doe Summonses.—

“(A) In general.—Notwithstanding the 
requirements of paragraph (1), the Secretary 
may issue a summons described in paragraph 
(1) if the summons—

“(i) relates to a project which is ap-
proved under subparagraph (B),
“(ii) is issued to a person who is a member of the group or class established under subparagraph (B)(i), and

“(iii) is issued within 3 years of the date on which such project was approved under subparagraph (B).

“(B) APPROVAL OF PROJECTS.—A project may only be approved under this subparagraph after a court proceeding in which the Secretary establishes that—

“(i) any summons issues with respect to the project will be issued to a member of an ascertainable group or class of persons, and

“(ii) any summons issued with respect to such project will meet the requirements of subparagraphs (A), (B), and (C) of paragraph (1).

“(C) EXTENSION.—Upon application of the Secretary, the court may extend the time for issuing such summonses under subparagraph (A)(i) for additional 3-year periods, but only if the court continues to exercise oversight of such project under subparagraph (D).
“(D) ONGOING COURT OVERSIGHT.—During any period in which the Secretary is authorized to issue summonses in relation to a project approved under subparagraph (B) (including during any extension under subparagraph (C)), the Secretary shall report annually to the court on the use of such authority, provide copies of all summonses with such report, and comply with the court’s direction with respect to the issuance of any John Doe summons under such project.”.

(b) JURISDICTION OF COURT.—

(1) IN GENERAL.—Paragraph (1) of section 7609(h) is amended by inserting after the first sentence the following new sentence: “Any United States district court in which a member of the group or class to which a summons may be issued resides or is found shall have jurisdiction to hear and determine the approval of a project under subsection (f)(4)(B).”.

(2) CONFORMING AMENDMENT.—The first sentence of section 7609(h)(1) is amended by striking “(f)” and inserting “(f)(1)”.
(c) **Effective Date.**—The amendments made by this section shall apply to summonses issued after the date of the enactment of this Act.

(d) **GAO Report.**—Not later than the date which is 5 years after the date of the enactment of this Act, the Comptroller General of the United States shall issue a report on the implementation of section 7609(f)(4) of the Internal Revenue Code of 1986, as added by this section.

**SEC. 205. IMPROVING ENFORCEMENT OF FOREIGN FINANCIAL ACCOUNT REPORTING.**

(a) **Clarifying the Connection of Foreign Financial Account Reporting to Tax Administration.**—Paragraph (4) of section 6103(b) (relating to tax administration) is amended by adding at the end the following new sentence:

“For purposes of clause (i), section 5314 of title 31, United States Code, and sections 5321 and 5322 of such title (as such sections pertain to such section 5314), shall be considered to be an internal revenue law.”.

(b) **Simplifying the Calculation of Foreign Financial Account Reporting Penalties.**—Section 5321(a)(5)(D)(ii) of title 31, United States Code, is amended by striking “the balance in the account at the
time of the violation” and inserting “the highest balance
in the account during the reporting period to which the
violation relates”.

c) CLARIFYING THE USE OF SUSPICIOUS ACTIVITY
REPORTS UNDER THE BANK SECRECY ACT FOR CIVIL
TAX LAW ENFORCEMENT.—Section 5319 of title 31,
United States Code, is amended by inserting “the civil and
criminal enforcement divisions of the Internal Revenue
Service,” after “including”.

TITLE III—COMBATING TAX
SHELTER PROMOTERS

SEC. 301. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-
TERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHEL-
TERS.—Section 6700 (relating to promoting abusive tax
shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as
subsections (d) and (e), respectively,

(2) by striking “a penalty” and all that follows
through the period in the first sentence of subsection
(a) and inserting “a penalty determined under sub-
section (b)”, and

(3) by inserting after subsection (a) the fol-
lowing new subsections:
“(b) Amount of Penalty; Calculation of Penalty; Liability for Penalty.—

“(1) Amount of Penalty.—The amount of the penalty imposed by subsection (a) shall not exceed 150 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

“(2) Calculation of Penalty.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

“(3) Liability for Penalty.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

“(c) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes
of this title and shall not be deductible by the person who
is subject to such penalty or who makes such payment.”.

(b) CONFORMING AMENDMENT.—Section 6700(a) is
amended by striking the last sentence.

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

SEC. 302. PENALTY FOR AIDING AND ABETTING THE UN-
DERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to impo-
sition of penalty) is amended—

(1) by inserting “the tax liability or” after “re-
spect to,” in paragraph (1),

(2) by inserting “aid, assistance, procurement,
or advice with respect to such” before “portion”
both places it appears in paragraphs (2) and (3),
and

(3) by inserting “instance of aid, assistance,
procurement, or advice or each such” before “docu-
ment” in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section
6701 (relating to penalties for aiding and abetting under-
statement of tax liability) is amended to read as follows:

“(b) AMOUNT OF PENALTY; CALCULATION OF PEN-
ALTY; LIABILITY FOR PENALTY.—
“(1) Amount of Penalty.—The amount of the penalty imposed by subsection (a) shall not exceed 150 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

“(2) Calculation of Penalty.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

“(3) Liability for Penalty.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.”.

(c) Penalty Not Deductible.—Section 6701 is amended by adding at the end the following new subsection:

“(g) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such
penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.”.

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

SEC. 303. PROHIBITION ON TAX SHELTER PATENTS.

(a) IN GENERAL.—Section 102 of title 35, United States Code, is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following:

“(g) the invention is designed to minimize, avoid, defer, or otherwise affect the liability for Federal, State, local, or foreign tax, or”.

(b) EFFECTIVE DATE AND APPLICATION.—The amendment made by this section shall take effect on the date of the enactment of this Act and apply to any application for a patent that has not been granted by that date.

SEC. 304. PROHIBITED FEE ARRANGEMENT.

(a) IN GENERAL.—Section 6701, as amended by this Act, is amended—
(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively,

(2) by striking “subsection (a).” in paragraphs (2) and (3) of subsection (g) (as redesignated by paragraph (1)) and inserting “subsection (a) or (f).”, and

(3) by inserting after subsection (e) the following new subsection:

“(f) Prohibited Fee Arrangement.—

“(1) In General.—Any person who makes an agreement for, charges, or collects a fee which is for services provided in connection with the internal revenue laws, and the amount of which is calculated according to, or is dependent upon, a projected or actual amount of—

“(A) tax savings or benefits, or

“(B) losses which can be used to offset other taxable income,

shall pay a penalty with respect to each such fee activity in the amount determined under subsection (b).

“(2) Rules.—The Secretary may issue rules to carry out the purposes of this subsection and may provide exceptions for fee arrangements that are in the public interest.”.
(b) Effective Date.—The amendments made by this section shall apply to fee agreements, charges, and collections made after the date of the enactment of this Act.

SEC. 305. PREVENTING TAX SHELTER ACTIVITIES BY FINANCIAL INSTITUTIONS.

(a) Examinations.—

  (1) Development of examination techniques.—Each of the Federal banking agencies and the Commission shall, in consultation with the Internal Revenue Service, develop examination techniques to detect potential violations of section 6700 or 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

  (2) Implementation.—Each of the Federal banking agencies and the Commission shall implement the examination techniques developed under paragraph (1) with respect to each of the depository institutions, brokers, dealers, or investment advisers subject to their enforcement authority. Such examination shall, to the extent possible, be combined with any examination by such agency otherwise required or authorized by Federal law.
(b) Report to Internal Revenue Service.—In any case in which an examination conducted under this section with respect to a financial institution or other entity reveals a potential violation, such agency shall promptly notify the Internal Revenue Service of such potential violation for investigation and enforcement by the Internal Revenue Service, in accordance with applicable provisions of law.

(c) Report to Congress.—The Federal banking agencies and the Commission shall submit a joint written report to Congress in 2009 and 2012 on their progress in preventing violations of sections 6700 and 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

(d) Definitions.—For purposes of this section—

(1) the terms “broker”, “dealer”, and “investment adviser” have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term “Commission” means the Securities and Exchange Commission;

(3) the term “depository institution” has the same meaning as in section 3(e) of the Federal Deposit Insurance Act (12 U.S.C. 1813(e));
(4) the term “Federal banking agencies” has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)); and

(5) the term “Secretary” means the Secretary of the Treasury.

SEC. 306. INFORMATION SHARING FOR ENFORCEMENT PURPOSES.

(a) Promotion of Prohibited Tax Shelters or Tax Avoidance Schemes.—Section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new paragraph:

“(7) Disclosure of Returns and Return Information Related to Promotion of Prohibited Tax Shelters or Tax Avoidance Schemes.—

“(A) Written Request.—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission, an appropriate Federal banking agency as defined under section 1813(q) of title 12, United States Code, or the Public Company Accounting Oversight Board, a return or return information shall be
disclosed to such requestor's officers and employ- 
ees who are personally and directly engaged 
in an investigation, examination, or proceeding 
by such requestor to evaluate, determine, penal-
ize, or deter conduct by a financial institution, 
issuer, or public accounting firm, or associated 
person, in connection with a potential or actual 
violation of section 6700 (promotion of abusive 
tax shelters), 6701 (aiding and abetting under-
statement of tax liability), or activities related 
to promoting or facilitating inappropriate tax 
avoidance or tax evasion. Such disclosure shall 
be solely for use by such officers and employees 
in such investigation, examination, or pro-
ceeding. In the discretion of the Secretary, such 
disclosure may take the form of the participa-
tion of Internal Revenue Service employees in a 
joint investigation, examination, or proceeding 
with the Securities Exchange Commission, Fed-
eral banking agency, or Public Company Ac-
counting Oversight Board.

“(B) REQUIREMENTS.—A request meets 
the requirements of this subparagraph if it sets 
forth—
“(i) the nature of the investigation, examination, or proceeding,

“(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted,

“(iii) the name or names of the financial institution, issuer, or public accounting firm to which such return information relates,

“(iv) the taxable period or periods to which such return information relates, and

“(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination or proceeding.

“(C) FINANCIAL INSTITUTION.—For the purposes of this paragraph, the term ‘financial institution’ means a depository institution, foreign bank, insured institution, industrial loan company, broker, dealer, investment company, investment advisor, or other entity subject to regulation or oversight by the United States Securities and Exchange Commission or an appropriate Federal banking agency.”
(b) **Financial and Accounting Fraud Investigations.**—Section 6103(i) (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by adding at the end the following new paragraph:

“(9) **Disclosure of returns and return information for use in financial and accounting fraud investigations.**—

“(A) **Written request.**—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board, a return or return information shall be disclosed to such requester’s officers and employees who are personally and directly engaged in an investigation, examination, or proceeding by such requester to evaluate the accuracy of a financial statement or report, or to determine whether to require a restatement, penalize, or deter conduct by an issuer, investment company, or public accounting firm, or associated person, in connection with a potential or actual violation of auditing standards or prohibitions against false or mis-
leading statements or omissions in financial statements or reports. Such disclosure shall be solely for use by such officers and employees in such investigation, examination, or proceeding.

 ``(B) REQUIREMENTS.—A request meets the requirements of this subparagraph if it sets forth—

  ``(i) the nature of the investigation, examination, or proceeding,

  ``(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted,

  ``(iii) the name or names of the issuer, investment company, or public accounting firm to which such return information relates,

  ``(iv) the taxable period or periods to which such return information relates, and

  ``(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination or proceeding.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures and to information
and document requests made after the date of the enact-
ment of this Act.

SEC. 307. DISCLOSURE OF INFORMATION TO CONGRESS.

(a) Disclosure by Tax Return Preparer.—

(1) In general.—Subparagraph (B) of section

7216(b)(1) (relating to disclosures) is amended to
read as follows:

“(B) pursuant to any 1 of the following
documents, if clearly identified:

“(i) The order of any Federal, State,
or local court of record.

“(ii) A subpoena issued by a Federal
or State grand jury.

“(iii) An administrative order, sum-
mons, or subpoena which is issued in the
performance of its duties by—

“(I) any Federal agency, includ-
ing Congress or any committee or
subcommittee thereof, or

“(II) any State agency, body, or
commission charged under the laws of
the State or a political subdivision of
the State with the licensing, registra-
tion, or regulation of tax return pre-
parers.”.
(2) Effective Date.—The amendment made by this subsection shall apply to disclosures made after the date of the enactment of this Act pursuant to any document in effect on or after such date.

(b) Disclosure by Secretary.—Paragraph (2) of section 6104(a) (relating to inspection of applications for tax exemption or notice of status) is amended to read as follows:

"(2) Inspection by Congress.—"

"(A) In general.—Upon receipt of a written request from a committee or subcommittee of Congress, copies of documents related to a determination by the Secretary to grant, deny, revoke, or restore an organization’s exemption from taxation under section 501 shall be provided to such committee or subcommittee, including any application, notice of status, or supporting information provided by such organization to the Internal Revenue Service; any letter, analysis, or other document produced by or for the Internal Revenue Service evaluating, determining, explaining, or relating to the tax exempt status of such organization (other than returns, unless such returns are available to the public under this section or sec-
tion 6103 or 6110); and any communication be-
tween the Internal Revenue Service and any
other party relating to the tax exempt status of
such organization.

“(B) ADDITIONAL INFORMATION.—Section
6103(f) shall apply with respect to—

“(i) the application for exemption of
any organization described in subsection
(c) or (d) of section 501 which is exempt
from taxation under section 501(a) for any
taxable year and any application referred
to in subparagraph (B) of subsection
(a)(1) of this section, and

“(ii) any other papers which are in
the possession of the Secretary and which
relate to such application,
as if such papers constituted returns.”.

(c) EFFECTIVE DATE.—The amendments made by
this section shall apply to disclosures and to information
and document requests made after the date of the enact-
ment of this Act.

SEC. 308. TAX OPINION STANDARDS FOR TAX PRACTI-
TIONERS.

Section 330(d) of title 31, United States Code, is
amended to read as follows:
“(d) The Secretary of the Treasury shall impose standards applicable to the rendering of written advice with respect to any listed transaction or any entity, plan, arrangement, or other transaction which has a potential for tax avoidance or evasion. Such standards shall address, but not be limited to, the following issues:

“(1) Independence of the practitioner issuing such written advice from persons promoting, marketing, or recommending the subject of the advice.

“(2) Collaboration among practitioners, or between a practitioner and other party, which could result in such collaborating parties having a joint financial interest in the subject of the advice.

“(3) Avoidance of conflicts of interest which would impair auditor independence.

“(4) For written advice issued by a firm, standards for reviewing the advice and ensuring the consensus support of the firm for positions taken.

“(5) Reliance on reasonable factual representations by the taxpayer and other parties.

“(6) Appropriateness of the fees charged by the practitioner for the written advice.

“(7) Preventing practitioners and firms from aiding or abetting the understatement of tax liability by clients.
“(8) Banning the promotion of potentially abusive or illegal tax shelters.”.

SEC. 309. DENIAL OF DEDUCTION FOR CERTAIN FINES, PENALTIES, AND OTHER AMOUNTS.

(a) In General.—Subsection (f) of section 162 (relating to trade or business expenses) is amended to read as follows:

“(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

“(1) In general.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or entity described in paragraph (4) in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

“(2) Exception for amounts constituting restitution.—Paragraph (1) shall not apply to any amount which—

“(A) the taxpayer establishes constitutes restitution (including remediation of property) for damage or harm caused by or which may be caused by the violation of any law or the potential violation of any law, and
“(B) is identified as restitution in the court order or settlement agreement.

Identification pursuant to subparagraph (B) alone shall not satisfy the requirement under subparagraph (A). This paragraph shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

“(3) Exception for amounts paid or incurred as the result of certain court orders.—Paragraph (1) shall not apply to any amount paid or incurred by order of a court in a suit in which no government or entity described in paragraph (4) is a party.

“(4) Certain nongovernmental regulatory entities.—An entity is described in this paragraph if it is—

“(A) a nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)), or

“(B) to the extent provided in regulations, a nongovernmental entity which exercises self-regulatory powers (including imposing sanc-
tions) as part of performing an essential governmental function.

“(5) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

TITLE IV—REQUIRING ECONOMIC SUBSTANCE

SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In any case in which a court determines that the economic substance
 doctrine is relevant for purposes of this title to
a transaction (or series of transactions), such
transaction (or series of transactions) shall have
economic substance only if the requirements of
this paragraph are met.

“(B) DEFINITION OF ECONOMIC SUB-
STANCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction has
economic substance only if—

“(I) the transaction changes in a
meaningful way (apart from Federal
tax effects) the taxpayer’s economic
position, and

“(II) the taxpayer has a substan-
tial nontax purpose for entering into
such transaction and the transaction
is a reasonable means of accom-
plishing such purpose.

In applying subclause (II), a purpose of
achieving a financial accounting benefit
shall not be taken into account in deter-
mining whether a transaction has a sub-
stantial nontax purpose if the origin of
such financial accounting benefit is a re-
duction of income tax.
“(ii) Special rule where tax-payer relies on profit potential.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

“(C) Treatment of fees and foreign taxes.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

“(2) Special rules for transactions with tax-indifferent parties.—

“(A) Special rules for financing transactions.—The form of a transaction which is in substance the borrowing of money
or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) Artificial income shifting and basis adjustments.—The form of a transaction with a tax-indifferent party shall not be respected if—

“(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party’s economic income or gain, or

“(ii) it results in a basis adjustment or shifting of basis on account of over-stating the income or gain of the tax-indifferent party.
“(3) Definitions and special rules.—For purposes of this subsection—

“(A) Economic Substance Doctrine.—
The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) Tax-Indifferent Party.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person’s liability under subtitle A.

“(C) Exception for Personal Transactions of Individuals.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.
“(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

“(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

“(I) depreciation,

“(II) any tax credit, or

“(III) any other deduction as provided in guidance by the Secretary,

and

“(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this sub-
section. Such regulations may include exemptions from the application of this subsection.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 402. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

“(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affect-
ing the tax treatment of the item are adequately disclosed
in the return or a statement attached to the return.

“(c) Noneconomic Substance Transaction Understatement.—For purposes of this section—

“(1) In general.—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) Noneconomic Substance Transaction.—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(p)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(p)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) Rules Applicable to Compromise of Penalty.—
“(1) In general.—If the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(2) Applicable rules.—The rules of paragraphs (2) and (3) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) Coordination with other penalties.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) Cross references.—

“(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(c).

“(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).”.

(b) Coordination with other understatements and penalties.—

(1) The second sentence of section 6662(d)(2)(A) is amended by inserting “and without regard to items with respect to which a penalty is imposed by section 6662B” before the period at the end.
(2) Subsection (c) of section 6662A is amended—

(A) in paragraph (1), by inserting “and noneconomic substance transaction understatements” after “reportable transaction understatements” both places it appears,

(B) in paragraph (2)(A), by inserting “and a noneconomic substance transaction understatement” after “reportable transaction understatement”,

(C) in paragraph (2)(B), by inserting “6662B or” before “6663”,

(D) in paragraph (2)(C)(i), by inserting “or section 6662B” before the period at the end,

(E) in paragraph (2)(C)(ii), by inserting “and section 6662B” after “This section”,

(F) in paragraph (3), by inserting “or noneconomic substance transaction understatement” after “reportable transaction understatement”, and

(G) by adding at the end the following new paragraph:

“(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this sub-
section, the term ‘noneconomic substance trans-
action understatement’ has the meaning given such
term by section 6662B(c).’’.

(3) Subsection (e) of section 6707A is amend-
ed—

(A) by striking ‘‘or’’ at the end of subpar-
graph (B), and

(B) by striking subparagraph (C) and in-
serting the following new subparagraphs:

‘‘(C) is required to pay a penalty under
section 6662B with respect to any noneconomic
substance transaction, or

‘‘(D) is required to pay a penalty under
section 6662(h) with respect to any transaction
and would (but for section 6662A(e)(2)(C))
have been subject to penalty under section
6662A at a rate prescribed under section
6662A(e) or under section 6662B,’’.

(c) CLERICAL AMENDMENT.—The table of sections
for part II of subchapter A of chapter 68 is amended by
inserting after the item relating to section 6662A the fol-
lowing new item:

‘‘Sec. 6662B. Penalty for understatements attributable to transactions lacking
economic substance, etc.’’.
(d) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 403. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) In General.—Section 163(m) (relating to interest on unpaid taxes attributable to nondisclosed reportable transactions) is amended—

(1) by striking “attributable” and all that follows and inserting the following: “attributable to—

“(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

“(2) any noneconomic substance transaction understatement (as defined in section 6662B(c))”,

and

(2) by inserting “AND NONECONOMIC SUBSTANCE TRANSACTIONS” after “TRANSACTIONS”.

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