

111TH CONGRESS  
1ST SESSION

# S. 1934

To amend the Internal Revenue Code of 1986 to prevent the avoidance of tax on income from assets held abroad, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 2009

Mr. BAUCUS (for himself, Mr. KERRY, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to prevent the avoidance of tax on income from assets held abroad, and for other purposes.

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

3 **SECTION 1. SHORT TITLE, ETC.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Foreign Account Tax Compliance Act of 2009”.

6 (b) **REFERENCE.**—Except as otherwise expressly pro-  
7 vided, whenever in this Act an amendment or repeal is  
8 expressed in terms of an amendment to, or repeal of, a  
9 section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the In-  
 2 ternal Revenue Code of 1986.

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

Sec. 1. Short title, etc.

#### TITLE I—INCREASED DISCLOSURE OF BENEFICIAL OWNERS

Sec. 101. Reporting on certain foreign accounts.

Sec. 102. Repeal of certain foreign exceptions to registered bond requirements.

#### TITLE II—UNDER REPORTING WITH RESPECT TO FOREIGN ASSETS

Sec. 201. Disclosure of information with respect to foreign financial assets.

Sec. 202. Penalties for underpayments attributable to undisclosed foreign financial assets.

Sec. 203. Modification of statute of limitations for significant omission of income in connection with foreign assets.

#### TITLE III—OTHER DISCLOSURE PROVISIONS

Sec. 301. Disclosure of assistance in acquiring or forming a foreign entity.

Sec. 302. Reporting of activities with respect to passive foreign investment companies.

Sec. 303. Secretary permitted to require financial institutions to file certain returns related to withholding on foreign transfers electronically.

#### TITLE IV—PROVISIONS RELATED TO FOREIGN TRUSTS

Sec. 401. Clarifications with respect to foreign trusts which are treated as having a United States beneficiary.

Sec. 402. Presumption that foreign trust has United States beneficiary.

Sec. 403. Uncompensated use of trust property treated as a distribution.

Sec. 404. Reporting requirement of United States owners of foreign trusts.

Sec. 405. Minimum penalty with respect to failure to report on certain foreign trusts.

#### TITLE V—DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS

Sec. 501. Dividend equivalent payments received by foreign persons treated as dividends.

1 **TITLE I—INCREASED DISCLO-**  
 2 **SURE OF BENEFICIAL OWN-**  
 3 **ERS**

4 **SEC. 101. REPORTING ON CERTAIN FOREIGN ACCOUNTS.**

5 (a) IN GENERAL.—The Internal Revenue Code of  
 6 1986 is amended by inserting after chapter 3 the following  
 7 new chapter:

8 **“CHAPTER 4—TAXES TO ENFORCE RE-**  
 9 **PORTING ON CERTAIN FOREIGN AC-**  
 10 **COUNTS**

“Sec. 1471. Withholdable payments to foreign financial institutions.

“Sec. 1472. Withholdable payments to other foreign entities.

“Sec. 1473. Definitions.

“Sec. 1474. Special rules.

11 **“SEC. 1471. WITHHOLDABLE PAYMENTS TO FOREIGN FI-**  
 12 **NANCIAL INSTITUTIONS.**

13 “(a) IN GENERAL.—In the case of any withholdable  
 14 payment to a foreign financial institution which does not  
 15 meet the requirements of subsection (b), the withholding  
 16 agent with respect to such payment shall deduct and with-  
 17 hold from such payment a tax equal to 30 percent of the  
 18 amount of such payment.

19 “(b) REPORTING REQUIREMENTS, ETC.—

20 “(1) IN GENERAL.—The requirements of this  
 21 subsection are met with respect to any foreign finan-  
 22 cial institution if an agreement is in effect between

1 such institution and the Secretary under which such  
2 institution agrees—

3 “(A) to obtain such information from each  
4 holder of each account maintained by such in-  
5 stitution as is necessary to determine which (if  
6 any) of such accounts are United States ac-  
7 counts,

8 “(B) to comply with such verification and  
9 due diligence procedures as the Secretary may  
10 require with respect to the identification of  
11 United States accounts,

12 “(C) in the case of any United States ac-  
13 count maintained by such institution, to report  
14 on an annual basis (at such time and in such  
15 manner as the Secretary may provide) the in-  
16 formation described in subsection (c) with re-  
17 spect to such account,

18 “(D) to comply with requests by the Sec-  
19 retary for additional information with respect to  
20 any United States account maintained by such  
21 institution, and

22 “(E) in any case in which any foreign law  
23 would (but for a waiver described in clause (i))  
24 prevent the reporting of any information re-  
25 ferred to in this subsection or subsection (c)

1 with respect to any United States account  
2 maintained by such institution—

3 “(i) to attempt to obtain a valid and  
4 effective waiver of such law from each  
5 holder of such account, and

6 “(ii) if a waiver described in clause (i)  
7 is not obtained from each such holder, to  
8 close such account.

9 “(2) TERMINATION OF AGREEMENT.—Any  
10 agreement entered into under this subsection may be  
11 terminated by the Secretary upon a determination  
12 by the Secretary that the foreign financial institu-  
13 tion is out of compliance with such agreement.

14 “(c) INFORMATION REQUIRED TO BE REPORTED ON  
15 UNITED STATES ACCOUNTS.—

16 “(1) IN GENERAL.—The agreement described in  
17 subsection (b) shall require the foreign financial in-  
18 stitution to report the following with respect to each  
19 United States account maintained by such institu-  
20 tion:

21 “(A) The name, address, and TIN of each  
22 account holder which is a specified United  
23 States person and, in the case of any account  
24 holder which is a United States owned foreign

1           entity, the name, address, and TIN of each sub-  
2           stantial United States owner of such entity.

3           “(B) The account number.

4           “(C) The account balance or value (deter-  
5           mined at such time and in such manner as the  
6           Secretary may provide).

7           “(D) The gross receipts and gross with-  
8           drawals or payments from the account (deter-  
9           mined for such period and in such manner as  
10          the Secretary may provide).

11          “(2) ELECTION TO BE SUBJECT TO SAME RE-  
12          PORTING AS UNITED STATES FINANCIAL INSTITU-  
13          TIONS.—In the case of a foreign financial institution  
14          which elects the application of this paragraph—

15                 “(A) subparagraphs (C) and (D) of para-  
16                 graph (1) shall not apply, and

17                 “(B) the agreement described in subsection  
18                 (b) shall require such foreign financial institu-  
19                 tion to report such information with respect to  
20                 each United States account maintained by such  
21                 institution as such institution would be required  
22                 to report under sections 6041, 6042, 6045, and  
23                 6049 if—

24                         “(i) such institution were a United  
25                         States person, and

1           “(ii) each holder of such account  
2           which is a specified United States person  
3           or United States owned foreign entity were  
4           a natural person and citizen of the United  
5           States.

6           An election under this paragraph shall be made  
7           at such time, in such manner, and subject to  
8           such conditions as the Secretary may provide.

9           “(3) INFORMATION SUPPLIED BY ACCOUNT  
10          HOLDERS.—The foreign financial institution may  
11          rely on a certification from an account holder as to  
12          whether an account is a United States account and  
13          for the information required under paragraph (1)(A)  
14          with respect to such account holder if neither the fi-  
15          nancial institution nor any entity which is a member  
16          of the same expanded affiliated group as such finan-  
17          cial institution knows, or has reason to know, that  
18          any information provided in such certification is in-  
19          correct.

20          “(4) SEPARATE REQUIREMENTS FOR QUALI-  
21          FIED INTERMEDIARIES.—In the case of a foreign fi-  
22          nancial institution which is treated as a qualified  
23          intermediary by the Secretary for purposes of sec-  
24          tion 1441 and the regulations issued thereunder, the  
25          requirements of this section shall be in addition to

1 any reporting or other requirements imposed by the  
2 Secretary for purposes of such treatment.

3 “(d) DEFINITIONS.—For purposes of this section—

4 “(1) UNITED STATES ACCOUNT.—

5 “(A) IN GENERAL.—The term ‘United  
6 States account’ means any financial account  
7 which is held by one or more specified United  
8 States persons or United States owned foreign  
9 entities.

10 “(B) EXCEPTION FOR CERTAIN ACCOUNTS  
11 HELD BY INDIVIDUALS.—Unless the foreign fi-  
12 nancial institution elects to not have this sub-  
13 paragraph apply, such term shall not include  
14 any depository account maintained by such fi-  
15 nancial institution if—

16 “(i) each holder of such account is a  
17 natural person, and

18 “(ii) with respect to each holder of  
19 such account, the aggregate value of all de-  
20 pository accounts held (in whole or in part)  
21 by such holder and maintained by the  
22 same financial institution which maintains  
23 such account does not exceed \$10,000  
24 (\$50,000 if all such accounts were in exist-



1           ence on the date of the enactment of this  
2           section).

3           For purposes of clause (ii), all financial institu-  
4           tions which are members of the same expanded  
5           affiliated group shall be treated as a single fi-  
6           nancial institution.

7           “(2) FINANCIAL ACCOUNT.—The term ‘finan-  
8           cial account’ means, with respect to any financial in-  
9           stitution—

10                   “(A) any depository account maintained by  
11                   such financial institution,

12                   “(B) any custodial account maintained by  
13                   such financial institution, and

14                   “(C) except as otherwise provided by the  
15                   Secretary, any equity or debt interest in such  
16                   financial institution (other than interests which  
17                   are regularly traded on an established securities  
18                   market).

19           Any equity or debt interest which constitutes a fi-  
20           nancial account under subparagraph (C) with re-  
21           spect to any financial institution shall be treated for  
22           purposes of this section as maintained by such fi-  
23           nancial institution.

24           “(3) UNITED STATES OWNED FOREIGN ENTI-  
25           TY.—The term ‘United States owned foreign entity’

1 means any foreign entity which has one or more sub-  
2 stantial United States owners.

3 “(4) FOREIGN FINANCIAL INSTITUTION.—The  
4 term ‘foreign financial institution’ means any finan-  
5 cial institution which is a foreign entity.

6 “(5) FINANCIAL INSTITUTION.—Except as oth-  
7 erwise provided by the Secretary, the term ‘financial  
8 institution’ means any entity that—

9 “(A) accepts deposits in the ordinary  
10 course of a banking or similar business,

11 “(B) is engaged in the business of holding  
12 financial assets for the account of others, or

13 “(C) is engaged (or holding itself out as  
14 being engaged) primarily in the business of in-  
15 vesting, reinvesting, or trading in securities (as  
16 defined in section 475(c)(2) without regard to  
17 the last sentence thereof), partnership interests,  
18 commodities (as defined in section 475(e)(2)),  
19 or any interest (including a futures or forward  
20 contract or option) in such securities, partner-  
21 ship interests, or commodities.

22 “(e) AFFILIATED GROUPS.—

23 “(1) IN GENERAL.—The requirements of sub-  
24 sections (b), (c)(1), and (c)(3) shall apply—

1           “(A) with respect to United States ac-  
2           counts maintained by the foreign financial insti-  
3           tution, and

4           “(B) except as otherwise provided by the  
5           Secretary, with respect to United States ac-  
6           counts maintained by each other foreign finan-  
7           cial institution (other than any foreign financial  
8           institution which meets the requirements of  
9           subsection (b)) which is a member of the same  
10          expanded affiliated group as such foreign finan-  
11          cial institution.

12          “(2) EXPANDED AFFILIATED GROUP.—For pur-  
13          poses of this section, the term ‘expanded affiliated  
14          group’ means an affiliated group as defined in sec-  
15          tion 1504(a), determined—

16                 “(A) by substituting ‘more than 50 per-  
17                 cent’ for ‘at least 80 percent’ each place it ap-  
18                 pears, and

19                 “(B) without regard to paragraphs (2) and  
20                 (3) of section 1504(b).

21          A partnership or any other entity (other than a cor-  
22          poration) shall be treated as a member of an ex-  
23          panded affiliated group if such entity is controlled  
24          (within the meaning of section 954(d)(3)) by mem-

1       bers of such group (including any entity treated as  
2       a member of such group by reason of this sentence).

3       “(f) EXCEPTION FOR CERTAIN PAYMENTS.—Sub-  
4       section (a) shall not apply to any payment if the beneficial  
5       owner of such payment is—

6               “(1) any foreign government, any political sub-  
7       division of a foreign government, or any wholly  
8       owned agency or instrumentality of any one or more  
9       of the foregoing,

10              “(2) any international organization or any  
11       wholly owned agency or instrumentality thereof,

12              “(3) any foreign central bank of issue, or

13              “(4) any other class of persons identified by the  
14       Secretary for purposes of this subsection as posing  
15       a low risk of tax evasion.

16       **“SEC. 1472. WITHHOLDABLE PAYMENTS TO OTHER FOR-**  
17                               **EIGN ENTITIES.**

18       “(a) IN GENERAL.—In the case of any withholdable  
19       payment to a non-financial foreign entity, if—

20              “(1) the beneficial owner of such payment is  
21       such entity or any other non-financial foreign entity,  
22       and

23              “(2) the requirements of subsection (b) are not  
24       met with respect to such beneficial owner,

1 then the withholding agent with respect to such payment  
2 shall deduct and withhold from such payment a tax equal  
3 to 30 percent of the amount of such payment.

4 “(b) REQUIREMENTS FOR WAIVER OF WITH-  
5 HOLDING.—The requirements of this subsection are met  
6 with respect to the beneficial owner of a payment if—

7 “(1) such beneficial owner or the payee provides  
8 the withholding agent with either—

9 “(A) a certification that such beneficial  
10 owner does not have any substantial United  
11 States owners, or

12 “(B) the name, address, and TIN of each  
13 substantial United States owner of such bene-  
14 ficial owner,

15 “(2) the withholding agent does not know, or  
16 have reason to know, that any information provided  
17 under paragraph (1) is incorrect, and

18 “(3) the withholding agent reports the informa-  
19 tion provided under paragraph (1)(B) to the Sec-  
20 retary in such manner as the Secretary may provide.

21 “(c) EXCEPTIONS.—Subsection (a) shall not apply  
22 to—

23 “(1) except as otherwise provided by the Sec-  
24 retary, any payment beneficially owned by—

1           “(A) any corporation the stock of which is  
2 regularly traded on an established securities  
3 market,

4           “(B) any corporation which is a member of  
5 the same expanded affiliated group (as defined  
6 in section 1471(e)(2) without regard to the last  
7 sentence thereof) as a corporation described in  
8 subparagraph (A),

9           “(C) any foreign government, any political  
10 subdivision of a foreign government, or any  
11 wholly owned agency or instrumentality of any  
12 one or more of the foregoing,

13           “(D) any international organization or any  
14 wholly owned agency or instrumentality thereof,

15           “(E) any foreign central bank of issue, or

16           “(F) any other class of persons identified  
17 by the Secretary for purposes of this subsection,  
18 and

19           “(2) any class of payments identified by the  
20 Secretary for purposes of this subsection as posing  
21 a low risk of tax evasion.

22           “(d) NON-FINANCIAL FOREIGN ENTITY.—For pur-  
23 poses of this section, the term ‘non-financial foreign enti-  
24 ty’ means any foreign entity which is not a financial insti-  
25 tution (as defined in section 1471(d)(5)).

1 **“SEC. 1473. DEFINITIONS.**

2 “For purposes of this subchapter—

3 “(1) WITHHOLDABLE PAYMENT.—The term  
4 ‘withholdable payment’ means—

5 “(A) any payment of interest (including  
6 any original issue discount), dividends, rents,  
7 salaries, wages, premiums, annuities, compensa-  
8 tions, remunerations, emoluments, and other  
9 fixed or determinable annual or periodical  
10 gains, profits, and income, if such payment is  
11 from sources within the United States, and

12 “(B) any gross proceeds from the sale of  
13 any property of a type which can produce inter-  
14 est or dividends from sources within the United  
15 States.

16 “(2) SUBSTANTIAL UNITED STATES OWNER.—

17 “(A) IN GENERAL.—The term ‘substantial  
18 United States owner’ means—

19 “(i) with respect to any corporation,  
20 any specified United States person which  
21 owns, directly or indirectly, more than 10  
22 percent of the stock of such corporation  
23 (by vote or value),

24 “(ii) with respect to any partnership,  
25 any specified United States person which  
26 owns, directly or indirectly, more than 10

1 percent of the profits interests or capital  
2 interests in such partnership, and

3 “(iii) in the case of a trust, any speci-  
4 fied United States person treated as an  
5 owner of any portion of such trust under  
6 subpart E of part I of subchapter J of  
7 chapter 1.

8 “(B) SPECIAL RULE FOR INVESTMENT VE-  
9 HICLES.—In the case of any financial institu-  
10 tion described in section 1471(d)(5)(C), clauses  
11 (i) and (ii) of subparagraph (A) shall be applied  
12 by substituting ‘0 percent’ for ‘10 percent’.

13 “(3) SPECIFIED UNITED STATES PERSON.—Ex-  
14 cept as otherwise provided by the Secretary, the  
15 term ‘specified United States person’ means any  
16 United States person other than—

17 “(A) any corporation the stock of which is  
18 regularly traded on an established securities  
19 market,

20 “(B) any corporation which is a member of  
21 the same expanded affiliated group (as defined  
22 in section 1471(e)(2) without regard to the last  
23 sentence thereof) as a corporation described in  
24 subparagraph (A),



1           “(C) any organization exempt from tax-  
2           ation under section 501(a) or an individual re-  
3           tirement plan,

4           “(D) the United States or any wholly  
5           owned agency or instrumentality thereof,

6           “(E) any State, the District of Columbia,  
7           any possession of the United States, any polit-  
8           ical subdivision of any of the foregoing, or any  
9           wholly owned agency or instrumentality of any  
10          one or more of the foregoing,

11          “(F) any bank (as defined in section 581),

12          “(G) any real estate investment trust (as  
13          defined in section 856),

14          “(H) any regulated investment company  
15          (as defined in section 851),

16          “(I) any common trust fund (as defined in  
17          section 584(a)), and

18          “(J) any trust which—

19                  “(i) is exempt from tax under section  
20                  664(e), or

21                  “(ii) is described in section  
22                  4947(a)(1).

23          “(4) WITHHOLDING AGENT.—The term ‘with-  
24          holding agent’ means all persons, in whatever capac-

1       ity acting, having the control, receipt, custody, dis-  
2       posal, or payment of any withholdable payment.

3               “(5) FOREIGN ENTITY.—The term ‘foreign en-  
4       tity’ means any entity which is not a United States  
5       person.

6       **“SEC. 1474. SPECIAL RULES.**

7               “(a) LIABILITY FOR WITHHELD TAX.—Every person  
8       required to deduct and withhold any tax under this chap-  
9       ter is hereby made liable for such tax and is hereby indem-  
10      nified against the claims and demands of any person for  
11      the amount of any payments made in accordance with the  
12      provisions of this chapter.

13              “(b) CREDITS AND REFUNDS.—

14               “(1) IN GENERAL.—Except as provided in para-  
15      graph (2), the determination of whether any tax de-  
16      ducted and withheld under this chapter results in an  
17      overpayment shall be made as if such tax had been  
18      deducted and withheld under subchapter A of chap-  
19      ter 3.

20               “(2) SPECIAL RULE WHERE FOREIGN FINAN-  
21      CIAL INSTITUTION IS BENEFICIAL OWNER OF PAY-  
22      MENT.—

23               “(A) IN GENERAL.—In the case of any tax  
24      deducted and withheld under section 1471(a)  
25      from a specified financial institution payment—

1           “(i) if the foreign financial institution  
2           referred to in subparagraph (B) with re-  
3           spect to such payment is entitled to a re-  
4           duced rate of tax with respect to such pay-  
5           ment by reason of any treaty obligation of  
6           the United States—

7                       “(I) the amount of any credit or  
8                       refund with respect to such tax shall  
9                       not exceed the amount of credit or re-  
10                      fund attributable to such reduction in  
11                      rate, and

12                     “(II) no interest shall be allowed  
13                     or paid with respect to such credit or  
14                     refund, and

15                     “(ii) if such foreign financial institu-  
16                     tion is not so entitled, no credit or refund  
17                     shall be allowed or paid with respect to  
18                     such tax.

19                     “(B) SPECIFIED FINANCIAL INSTITUTION  
20                     PAYMENT.—The term ‘specified financial insti-  
21                     tution payment’ means any withholdable pay-  
22                     ment if the foreign financial institution payee  
23                     referred to in section 1471(a) with respect to  
24                     such payment is the beneficial owner of such  
25                     payment.

1 “(c) CONFIDENTIALITY OF INFORMATION.—

2 “(1) IN GENERAL.—For purposes of this chap-  
3 ter, rules similar to the rules of section 3406(f) shall  
4 apply.

5 “(2) DISCLOSURE OF LIST OF QUALIFIED FOR-  
6 EIGN FINANCIAL INSTITUTIONS PERMITTED.—The  
7 identity of a foreign financial institution which  
8 meets the requirements of section 1471(b) shall not  
9 be treated as return information for purposes of sec-  
10 tion 6103.

11 “(d) REGULATIONS.—The Secretary shall prescribe  
12 such regulations or other guidance as may be necessary  
13 or appropriate to carry out the purposes of this chapter.”.

14 (b) COORDINATION WITH OTHER WITHHOLDING  
15 PROVISIONS.—

16 (1) WITHHOLDING OF TAX ON NONRESIDENT  
17 ALIENS AND FOREIGN CORPORATIONS.—Subsection  
18 (c) of section 1441 is amended by adding at the end  
19 the following new paragraph:

20 “(13) WITHHOLDABLE PAYMENTS TAXED  
21 UNDER CHAPTER 4.—No tax shall be required to be  
22 deducted and withheld under subsection (a) from  
23 any amount with respect to which tax is required to  
24 be deducted and withheld under chapter 4.”.

1           (2) WITHHOLDING OF TAX ON DISPOSITIONS OF  
 2           UNITED STATES REAL PROPERTY INTERESTS.—Sub-  
 3           section (b) of section 1445 is amended by adding at  
 4           the end the following new paragraph:

5           “(10) WITHHOLDABLE PAYMENTS TAXED  
 6           UNDER CHAPTER 4.—No tax shall be required to be  
 7           deducted and withheld under subsection (a) from  
 8           any amount with respect to which tax is required to  
 9           be deducted and withheld under chapter 4.”.

10          (c) CLERICAL AMENDMENT.—The table of chapters  
 11 of such Code is amended by adding at the end the fol-  
 12 lowing new item:

“CHAPTER 4. TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN  
 ACCOUNTS.”.

13          (d) EFFECTIVE DATE.—

14           (1) IN GENERAL.—Except as provided in para-  
 15           graph (2), the amendments made by this section  
 16           shall apply to payments made after December 31,  
 17           2010.

18           (2) GRANDFATHERED TREATMENT OF CERTAIN  
 19           OUTSTANDING OBLIGATIONS.—The amendments  
 20           made by this section shall not apply to any obliga-  
 21           tion outstanding on the date of first committee ac-  
 22           tion, if such obligation—

23                   (A) is in bearer form, or

1 (B) includes (on the date of the issuance  
 2 of such obligation) a provision under which the  
 3 issuer would (but for this paragraph) be obli-  
 4 gated to make additional payments under such  
 5 obligation by reason of the amendments made  
 6 by this section.

7 **SEC. 102. REPEAL OF CERTAIN FOREIGN EXCEPTIONS TO**  
 8 **REGISTERED BOND REQUIREMENTS.**

9 (a) REPEAL OF EXCEPTION TO DENIAL OF DEDUC-  
 10 TION FOR INTEREST ON NON-REGISTERED BONDS.—

11 (1) IN GENERAL.—Paragraph (2) of section  
 12 163(f) is amended by striking subparagraph (B) and  
 13 by redesignating subparagraph (C) as subparagraph  
 14 (B).

15 (2) CONFORMING AMENDMENTS.—

16 (A) Subparagraph (A) of section 163(f)(2)  
 17 is amended by inserting “or” at the end of  
 18 clause (ii), by striking “, or” at the end of  
 19 clause (iii) and inserting a period, and by strik-  
 20 ing clause (iv).

21 (B) Subparagraph (B) of section  
 22 163(f)(2), as redesignated by paragraph (1), is  
 23 amended—

1 (i) by striking “, and subparagraph  
2 (B),” in the matter preceding clause (i),  
3 and

4 (ii) by amending clause (i) to read as  
5 follows:

6 “(i) such obligation is of a type which  
7 the Secretary has determined by regula-  
8 tions to be used frequently in avoiding  
9 Federal taxes, and”.

10 (C) Sections 165(j)(2)(A) and 1287(b)(1)  
11 are each amended by striking “except that  
12 clause (iv) of subparagraph (A), and subpara-  
13 graph (B), of such section shall not apply”.

14 (b) REPEAL OF TREATMENT AS PORTFOLIO DEBT.—

15 (1) IN GENERAL.—Paragraph (2) of section  
16 871(h) is amended to read as follows:

17 “(2) PORTFOLIO INTEREST.—For purposes of  
18 this subsection, the term ‘portfolio interest’ means  
19 any interest (including original issue discount)  
20 which—

21 “(A) would be subject to tax under sub-  
22 section (a) but for this subsection, and

23 “(B) is paid on an obligation—

24 “(i) which is in registered form, and

1                   “(ii) with respect to which the United  
 2                   States person who would otherwise be re-  
 3                   quired to deduct and withhold tax from  
 4                   such interest under section 1441(a) re-  
 5                   ceives a statement (which meets the re-  
 6                   quirements of paragraph (5)) that the ben-  
 7                   eficial owner of the obligation is not a  
 8                   United States person.”.

9                   (2) CONFORMING AMENDMENT.—Section  
 10                  871(h)(3)(A) is amended by striking “subparagraph  
 11                  (A) or (B) of”.

12                  (c) REPEAL OF EXCEPTION TO REQUIREMENT THAT  
 13                  TREASURY OBLIGATIONS BE IN REGISTERED FORM.—

14                  (1) IN GENERAL.—Subsection (g) of section  
 15                  3121 of title 31, United States Code, is amended by  
 16                  striking paragraph (2) and by redesignating para-  
 17                  graphs (3) and (4) as paragraphs (2) and (3), re-  
 18                  spectively.

19                  (2) CONFORMING AMENDMENTS.—Paragraph  
 20                  (1) of section 3121(g) of such title is amended—

21                         (A) by adding “or” at the end of subpara-  
 22                         graph (A),

23                         (B) by striking “; or” at the end of sub-  
 24                         paragraph (B) and inserting a period, and

25                         (C) by striking subparagraph (C).



1 (d) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to obligations issued after the date  
 3 which is 180 days after the date of the enactment of this  
 4 Act.

5 **TITLE II—UNDER REPORTING**  
 6 **WITH RESPECT TO FOREIGN**  
 7 **ASSETS**

8 **SEC. 201. DISCLOSURE OF INFORMATION WITH RESPECT**  
 9 **TO FOREIGN FINANCIAL ASSETS.**

10 (a) IN GENERAL.—Subpart A of part III of sub-  
 11 chapter A of chapter 61 is amended by inserting after sec-  
 12 tion 6038C the following new section:

13 **“SEC. 6038D. INFORMATION WITH RESPECT TO FOREIGN FI-**  
 14 **NANCIAL ASSETS.**

15 “(a) IN GENERAL.—Any individual who, during any  
 16 taxable year, holds any interest in a specified foreign fi-  
 17 nancial asset shall attach to such person’s return of tax  
 18 imposed by subtitle A for such taxable year the informa-  
 19 tion described in subsection (c) with respect to each such  
 20 asset if the aggregate value of all such assets exceeds  
 21 \$50,000 (or such higher dollar amount as the Secretary  
 22 may prescribe).

23 “(b) SPECIFIED FOREIGN FINANCIAL ASSETS.—For  
 24 purposes of this section, the term ‘specified foreign finan-  
 25 cial asset’ means—

1           “(1) any financial account (as defined in section  
2           1471(d)(2)) maintained by a foreign financial insti-  
3           tution (as defined in section 1471(d)(4)), and

4           “(2) any of the following assets which are not  
5           held in an account maintained by a financial institu-  
6           tion (as defined in section 1471(d)(5))—

7                   “(A) any stock or security issued by a per-  
8                   son other than a United States person,

9                   “(B) any financial instrument or contract  
10                  held for investment that has an issuer or  
11                  counterparty which is other than a United  
12                  States person, and

13                  “(C) any interest in a foreign entity (as  
14                  defined in section 1473).

15           “(c) REQUIRED INFORMATION.—The information de-  
16           scribed in this subsection with respect to any asset is:

17                   “(1) In the case of any account, the name and  
18                   address of the financial institution in which such ac-  
19                   count is maintained and the number of such ac-  
20                   count.

21                   “(2) In the case of any stock or security, the  
22                   name and address of the issuer and such informa-  
23                   tion as is necessary to identify the class or issue of  
24                   which such stock or security is a part.

1           “(3) In the case of any other instrument, con-  
2           tract, or interest—

3                   “(A) such information as is necessary to  
4           identify such instrument, contract, or interest,  
5           and

6                   “(B) the names and addresses of all  
7           issuers and counterparties with respect to such  
8           instrument, contract, or interest.

9           “(4) The maximum value of the asset during  
10          the taxable year.

11          “(d) PENALTY FOR FAILURE TO DISCLOSE.—

12                   “(1) IN GENERAL.—If any individual fails to  
13          furnish the information described in subsection (c)  
14          with respect to any taxable year at the time and in  
15          the manner described in subsection (a), such person  
16          shall pay a penalty of \$10,000.

17                   “(2) INCREASE IN PENALTY WHERE FAILURE  
18          CONTINUES AFTER NOTIFICATION.—If any failure  
19          described in paragraph (1) continues for more than  
20          90 days after the day on which the Secretary mails  
21          notice of such failure to the individual, such indi-  
22          vidual shall pay a penalty (in addition to the pen-  
23          alties under paragraph (1)) of \$10,000 for each 30-  
24          day period (or fraction thereof) during which such  
25          failure continues after the expiration of such 90-day

1 period. The penalty imposed under this paragraph  
2 with respect to any failure shall not exceed \$50,000.

3 “(e) PRESUMPTION THAT VALUE OF SPECIFIED  
4 FOREIGN FINANCIAL ASSETS EXCEEDS DOLLAR  
5 THRESHOLD.—If—

6 “(1) the Secretary determines that an indi-  
7 vidual has an interest in one or more specified for-  
8 eign financial assets, and

9 “(2) such individual does not provide sufficient  
10 information to demonstrate the aggregate value of  
11 such assets,

12 then the aggregate value of such assets shall be treated  
13 as being in excess of \$50,000 (or such higher dollar  
14 amount as the Secretary prescribes for purposes of sub-  
15 section (a)) for purposes of assessing the penalties im-  
16 posed under this section.

17 “(f) APPLICATION TO CERTAIN ENTITIES.—To the  
18 extent provided by the Secretary in regulations or other  
19 guidance, the provisions of this section shall apply to any  
20 domestic entity which is formed or availed of for purposes  
21 of holding, directly or indirectly, specified foreign financial  
22 assets, in the same manner as if such entity were an indi-  
23 vidual.

24 “(g) REASONABLE CAUSE EXCEPTION.—No penalty  
25 shall be imposed by this section on any failure which is

1 shown to be due to reasonable cause and not due to willful  
2 neglect. The fact that a foreign jurisdiction would impose  
3 a civil or criminal penalty on the taxpayer (or any other  
4 person) for disclosing the required information is not rea-  
5 sonable cause.

6       “(h) REGULATIONS.—The Secretary shall prescribe  
7 such regulations or other guidance as may be necessary  
8 or appropriate to carry out the purposes of this section,  
9 including regulations or other guidance which provide ap-  
10 propriate exceptions from the application of this section  
11 in the case of—

12               “(1) classes of assets identified by the Sec-  
13 retary, including any assets with respect to which  
14 the Secretary determines that disclosure under this  
15 section would be duplicative of other disclosures, and

16               “(2) nonresident aliens.”.

17       (b) CLERICAL AMENDMENT.—The table of sections  
18 for subpart A of part III of subchapter A of chapter 61  
19 is amended by inserting after the item relating to section  
20 6038C the following new item:

“Sec. 6038D. Information with respect to foreign financial assets.”.

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

1 **SEC. 202. PENALTIES FOR UNDERPAYMENTS ATTRIB-**  
2 **UTABLE TO UNDISCLOSED FOREIGN FINAN-**  
3 **CIAL ASSETS.**

4 (a) IN GENERAL.—Section 6662 is amended—

5 (1) in subsection (b), by inserting after para-  
6 graph (5) the following new paragraph:

7 “(6) Any undisclosed foreign financial asset un-  
8 derstatement.”, and

9 (2) by adding at the end the following new sub-  
10 section:

11 “(i) UNDISCLOSED FOREIGN FINANCIAL ASSET UN-  
12 DERSTATEMENT.—

13 “(1) IN GENERAL.—For purposes of this sec-  
14 tion, the term ‘undisclosed foreign financial asset  
15 understatement’ means, for any taxable year, the  
16 portion of the understatement for such taxable year  
17 which is attributable to any transaction involving an  
18 undisclosed foreign financial asset.

19 “(2) UNDISCLOSED FOREIGN FINANCIAL  
20 ASSET.—For purposes of this subsection, the term  
21 ‘undisclosed foreign financial asset’ means, with re-  
22 spect to any taxable year, any asset with respect to  
23 which information was required to be provided under  
24 section 6038, 6038B, 6038D, 6046A, or 6048 for  
25 such taxable year but was not provided by the tax-

1 payer as required under the provisions of those sec-  
 2 tions.

3 “(3) INCREASE IN PENALTY FOR UNDISCLOSED  
 4 FOREIGN FINANCIAL ASSET UNDERSTATEMENTS.—  
 5 In the case of any portion of an underpayment  
 6 which is attributable to any undisclosed foreign fi-  
 7 nancial asset understatement, subsection (a) shall be  
 8 applied with respect to such portion by substituting  
 9 ‘40 percent’ for ‘20 percent’.”

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

13 **SEC. 203. MODIFICATION OF STATUTE OF LIMITATIONS**  
 14 **FOR SIGNIFICANT OMISSION OF INCOME IN**  
 15 **CONNECTION WITH FOREIGN ASSETS.**

16 (a) EXTENSION OF STATUTE OF LIMITATIONS.—

17 (1) IN GENERAL.—Paragraph (1) of section  
 18 6501(e) is amended by redesignating subparagraphs  
 19 (A) and (B) as subparagraphs (B) and (C), respec-  
 20 tively, and by inserting before subparagraph (B) (as  
 21 so redesignated) the following new subparagraph:

22 “(A) GENERAL RULE.—If the taxpayer  
 23 omits from gross income an amount properly  
 24 includible therein and—

1           “(i) such amount is in excess of 25  
2           percent of the amount of gross income  
3           stated in the return, or

4           “(ii) such amount—

5                   “(I) is attributable to one or  
6                   more assets with respect to which in-  
7                   formation is required to be reported  
8                   under section 6038D (or would be so  
9                   required if such section were applied  
10                  without regard to the dollar threshold  
11                  specified in subsection (a) thereof and  
12                  without regard to any exceptions pro-  
13                  vided pursuant to subsection (h)(1)  
14                  thereof), and

15                   “(II) is in excess of \$5,000,  
16           the tax may be assessed, or a proceeding in  
17           court for collection of such tax may be begun  
18           without assessment, at any time within 6 years  
19           after the return was filed.”.

20           (2) CONFORMING AMENDMENTS.—

21                   (A) Subparagraph (B) of section  
22                   6501(e)(1), as redesignated by paragraph (1),  
23                   is amended by striking all that precedes clause  
24                   (i) and inserting the following:



1           “(B) DETERMINATION OF GROSS IN-  
2 COME.—For purposes of subparagraph (A)—”.

3           (B) Paragraph (2) of section 6229(c) is  
4 amended by striking “which is in excess of 25  
5 percent of the amount of gross income stated in  
6 its return” and inserting “and such amount is  
7 described in clause (i) or (ii) of section  
8 6501(e)(1)(A)”.

9           (b) ADDITIONAL REPORTS SUBJECT TO EXTENDED  
10 PERIOD.—Paragraph (8) of section 6501(c) is amended—

11           (1) by inserting “pursuant to an election under  
12 section 1295(b) or” before “under section 6038”,

13           (2) by inserting “1298(f),” before “6038”, and

14           (3) by inserting “6038D,” after “6038B,”.

15           (c) CLARIFICATIONS RELATED TO FAILURE TO DIS-  
16 CLOSE FOREIGN TRANSFERS.—Paragraph (8) of section  
17 6501(c) is amended by striking “event” and inserting “tax  
18 return, event,”.

19           (d) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to—

21           (1) returns filed after the date of the enactment  
22 of this Act; and

23           (2) returns filed on or before such date if the  
24 period specified in section 6501 of the Internal Rev-  
25 enue Code of 1986 (determined without regard to

1 such amendments) for assessment of such taxes has  
2 not expired as of such date.

3 **TITLE III—OTHER DISCLOSURE**  
4 **PROVISIONS**

5 **SEC. 301. DISCLOSURE OF ASSISTANCE IN ACQUIRING OR**  
6 **FORMING A FOREIGN ENTITY.**

7 (a) IN GENERAL.—Subchapter B of chapter 61 is  
8 amended by redesignating section 6116 as section 6117  
9 and by inserting after 6115 the following new section:

10 **“SEC. 6116. DISCLOSURE OF ASSISTANCE IN ACQUIRING OR**  
11 **FORMING A FOREIGN ENTITY.**

12 “(a) IN GENERAL.—Each material advisor with re-  
13 spect to any foreign entity transaction shall make a return  
14 (in such form as the Secretary may prescribe) setting  
15 forth—

16 “(1) the identity of the foreign entity referred  
17 to in subsection (d),

18 “(2) the identity of the citizen or resident of  
19 the United States referred to in subsection (d), and

20 “(3) such other information as the Secretary  
21 may prescribe.

22 Such return shall be filed not later than the date specified  
23 by the Secretary.

24 “(b) PENALTY FOR NONDISCLOSURE.—Any person  
25 who is required to file a return under subsection (a) with

1 respect to any foreign entity transaction and fails to file  
2 such return on or before the date prescribed therefor (or  
3 files false or incomplete information with respect to such  
4 transaction) shall pay a penalty equal to the greater of—

5           “(1) \$10,000, or

6           “(2) 50 percent of the gross income derived by  
7 such person with respect to aid, assistance or advice  
8 which is provided with respect to such transaction  
9 before the date the return is filed under subsection  
10 (a).

11       “(c) MATERIAL ADVISOR.—For purposes of this sec-  
12 tion, the term ‘material advisor’ means any person—

13           “(1) who provides any material aid, assistance,  
14 or advice with respect to carrying out one or more  
15 foreign entity transactions, and

16           “(2) who directly or indirectly derives gross in-  
17 come in excess of \$100,000 for providing such aid,  
18 assistance or advice during the calendar year.

19       “(d) FOREIGN ENTITY TRANSACTION.—For pur-  
20 poses of this section, the term ‘foreign entity transaction’  
21 means the direct or indirect acquisition of any interest in  
22 a foreign entity (including any interest acquired in connec-  
23 tion with the formation of such entity) if any citizen or  
24 resident of the United States is required to file a report

1 under section 6038, 6038B, 6046, 6046A, or 6048 in con-  
2 nection with such acquisition.

3 “(e) REASONABLE CAUSE EXCEPTION.—No penalty  
4 shall be imposed by this section on any failure which is  
5 shown to be due to reasonable cause and not due to willful  
6 neglect.

7 “(f) REGULATIONS.—The Secretary may prescribe  
8 regulations or other guidance which provide—

9 “(1) that only 1 person shall be required to  
10 meet the requirements of subsection (a) in cases in  
11 which 2 or more persons would otherwise be re-  
12 quired to meet such requirements,

13 “(2) exemptions from the requirements of this  
14 section, and

15 “(3) such rules as may be necessary or appro-  
16 priate to carry out the purposes of this section.”.

17 (b) CLERICAL AMENDMENT.—The table of sections  
18 for subchapter B of chapter 61 is amended by redesign-  
19 ating the item relating to section 6116 as an item relat-  
20 ing to section 6117 and by inserting after the item relating  
21 to section 6115 the following new item:

“Sec. 6116. Disclosure of assistance in acquiring or forming a foreign entity.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to aid, assistance, and advice pro-  
24 vided after the date of the enactment of this Act.

1 **SEC. 302. REPORTING OF ACTIVITIES WITH RESPECT TO**  
 2 **PASSIVE FOREIGN INVESTMENT COMPANIES.**

3 (a) IN GENERAL.—Section 1298 is amended by re-  
 4 designating subsection (f) as subsection (g) and by insert-  
 5 ing after subsection (e) the following new subsection:

6 “(f) REPORTING REQUIREMENT.—Each person who  
 7 is a shareholder of a passive foreign investment company  
 8 shall file an annual report containing such information as  
 9 the Secretary may require.”.

10 (b) CONFORMING AMENDMENT.—Subsection (e) of  
 11 section 1291 is amended by striking “, (d), and (f)” and  
 12 inserting “and (d)”.

13 (c) EFFECTIVE DATE.—The amendments made by  
 14 this section take effect on the date of the enactment of  
 15 this Act.

16 **SEC. 303. SECRETARY PERMITTED TO REQUIRE FINANCIAL**  
 17 **INSTITUTIONS TO FILE CERTAIN RETURNS**  
 18 **RELATED TO WITHHOLDING ON FOREIGN**  
 19 **TRANSFERS ELECTRONICALLY.**

20 (a) IN GENERAL.—Subsection (e) of section 6011 is  
 21 amended by adding at the end the following new para-  
 22 graph:

23 “(3) SPECIAL RULE FOR RETURNS FILED BY  
 24 FINANCIAL INSTITUTIONS WITH RESPECT TO WITH-  
 25 HOLDING ON FOREIGN TRANSFERS.—Paragraph  
 26 (2)(A) shall not apply to any return filed by a finan-

1 cial institution (as defined in section 1471(d)(5))  
 2 with respect to tax for which such institution is  
 3 made liable under section 1461 or 1474(a).”.

4 (b) EFFECTIVE DATE.—The amendment made by  
 5 this section shall apply to returns the due date for which  
 6 (determined without regard to extensions) is after the date  
 7 of the enactment of this Act.

8 **TITLE IV—PROVISIONS RELATED**  
 9 **TO FOREIGN TRUSTS**

10 **SEC. 401. CLARIFICATIONS WITH RESPECT TO FOREIGN**  
 11 **TRUSTS WHICH ARE TREATED AS HAVING A**  
 12 **UNITED STATES BENEFICIARY.**

13 (a) IN GENERAL.—Paragraph (1) of section 679(c)  
 14 is amended by adding at the end the following:

15 “For purposes of subparagraph (A), an amount  
 16 shall be treated as accumulated for the benefit of a  
 17 United States person even if the United States per-  
 18 son’s interest in the trust is contingent on a future  
 19 event.”.

20 (b) CLARIFICATION REGARDING DISCRETION TO  
 21 IDENTIFY BENEFICIARIES.—Subsection (c) of section 679  
 22 is amended by adding at the end the following new para-  
 23 graph:

24 “(4) SPECIAL RULE IN CASE OF DISCRETION TO  
 25 IDENTIFY BENEFICIARIES.—For purposes of para-

1 graph (1)(A), if any person has the discretion (by  
2 authority given in the trust agreement, by power of  
3 appointment, or otherwise) of making a distribution  
4 from the trust to, or for the benefit of, any person,  
5 such trust shall be treated as having a beneficiary  
6 who is a United States person unless—

7 “(A) the terms of the trust specifically  
8 identify the class of persons to whom such dis-  
9 tributions may be made, and

10 “(B) none of those persons are United  
11 States persons during the taxable year.”.

12 (c) CLARIFICATION THAT CERTAIN AGREEMENTS

13 AND UNDERSTANDINGS ARE TERMS OF THE TRUST.—

14 Subsection (c) of section 679, as amended by subsection

15 (b), is amended by adding at the end the following new

16 paragraph:

17 “(5) CERTAIN AGREEMENTS AND UNDER-  
18 STANDINGS TREATED AS TERMS OF THE TRUST.—

19 For purposes of paragraph (1)(A), if any United

20 States person who directly or indirectly transfers

21 property to the trust is directly or indirectly involved

22 in any agreement or understanding (whether writ-

23 ten, oral, or otherwise) that may result in the in-

24 come or corpus of the trust being paid or accumu-

25 lated to or for the benefit of a United States person,

1 such agreement or understanding shall be treated as  
2 a term of the trust.”.

3 **SEC. 402. PRESUMPTION THAT FOREIGN TRUST HAS**  
4 **UNITED STATES BENEFICIARY.**

5 (a) IN GENERAL.—Section 679 is amended by redес-  
6 ignating subsection (d) as subsection (e) and inserting  
7 after subsection (c) the following new subsection:

8 “(d) PRESUMPTION THAT FOREIGN TRUST HAS  
9 UNITED STATES BENEFICIARY.—If a United States per-  
10 son directly or indirectly transfers property to a foreign  
11 trust (other than a trust described in section  
12 6048(a)(3)(B)(ii)), such trust shall be presumed to have  
13 a United States beneficiary for purposes of applying this  
14 section to such transfer unless such person—

15 “(1) submits such information to the Secretary  
16 as the Secretary may require with respect to such  
17 transfer, and

18 “(2) demonstrates to the satisfaction of the  
19 Secretary that such trust satisfies the requirements  
20 of subparagraphs (A) and (B) of subsection (c)(1).”.

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



1 **SEC. 403. UNCOMPENSATED USE OF TRUST PROPERTY**  
2 **TREATED AS A DISTRIBUTION.**

3 (a) **IN GENERAL.**—Paragraph (1) of section 643(i)  
4 is amended—

5 (1) by striking “directly or indirectly to” and  
6 inserting “(or permits the use of any other trust  
7 property) directly or indirectly to or by”, and

8 (2) by inserting “(or the fair market value of  
9 the use of such property)” after “the amount of  
10 such loan”.

11 (b) **EXCEPTION FOR COMPENSATED USE.**—Para-  
12 graph (2) of section 643(i) is amended by adding at the  
13 end the following new subparagraph:

14 “(E) **EXCEPTION FOR COMPENSATED USE**  
15 **OF PROPERTY.**—In the case of the use of any  
16 trust property other than a loan of cash or  
17 marketable securities, paragraph (1) shall not  
18 apply to the extent that the trust is paid the  
19 fair market value of such use within a reason-  
20 able period of time of such use.”.

21 (c) **APPLICATION TO GRANTOR TRUSTS.**—Subsection  
22 (c) of section 679, as amended by section 401, is amended  
23 by adding at the end the following new paragraph:

24 “(6) **UNCOMPENSATED USE OF TRUST PROP-**  
25 **ERTY TREATED AS A PAYMENT.**—For purposes of  
26 this subsection, a loan of cash or marketable securi-

1 ties (or the use of any other trust property) directly  
2 or indirectly to or by any United States person  
3 (whether or not a beneficiary under the terms of the  
4 trust) shall be treated as paid or accumulated for  
5 the benefit of a United States person. The preceding  
6 sentence shall not apply to the extent that the  
7 United States person repays the loan at a market  
8 rate of interest (or pays the fair market value of the  
9 use of such property) within a reasonable period of  
10 time.”.

11 (d) CONFORMING AMENDMENTS.—Paragraph (3) of  
12 section 643(i) is amended—

13 (1) by inserting “(or use of property)” after “If  
14 any loan”,

15 (2) by inserting “or the return of such prop-  
16 erty” before “shall be disregarded”, and

17 (3) by striking “REGARDING LOAN PRINCIPAL”  
18 in the heading thereof.

19 (e) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to loans made, and uses of prop-  
21 erty, after the date of the enactment of this Act.

22 **SEC. 404. REPORTING REQUIREMENT OF UNITED STATES**  
23 **OWNERS OF FOREIGN TRUSTS.**

24 (a) IN GENERAL.—Paragraph (1) of section 6048(b)  
25 is amended by inserting “shall submit such information

1 as the Secretary may prescribe with respect to such trust  
2 for such year and” before “shall be responsible to ensure”.

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

6 **SEC. 405. MINIMUM PENALTY WITH RESPECT TO FAILURE**  
7 **TO REPORT ON CERTAIN FOREIGN TRUSTS.**

8 (a) IN GENERAL.—Subsection (a) of section 6677 is  
9 amended—

10 (1) by inserting “the greater of \$10,000 or” be-  
11 fore “35 percent”, and

12 (2) by striking the last sentence and inserting  
13 the following: “At such time as the gross reportable  
14 amount with respect to any failure can be deter-  
15 mined by the Secretary, any subsequent penalty im-  
16 posed under this subsection with respect to such fail-  
17 ure shall be reduced as necessary to assure that the  
18 aggregate amount of such penalties do not exceed  
19 the gross reportable amount (and to the extent that  
20 such aggregate amount already exceeds the gross re-  
21 reportable amount the Secretary shall refund such ex-  
22 cess to the taxpayer).”

23 (b) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to notices and returns required to  
25 be filed after December 31, 2009.

1 **TITLE V—DIVIDEND EQUIVA-**  
 2 **LENT PAYMENTS RECEIVED**  
 3 **BY FOREIGN PERSONS**  
 4 **TREATED AS DIVIDENDS**

5 **SEC. 501. DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY**  
 6 **FOREIGN PERSONS TREATED AS DIVIDENDS.**

7 (a) IN GENERAL.—Section 871 is amended by redess-  
 8 ignating subsection (l) as subsection (m) and by inserting  
 9 after subsection (k) the following new subsection:

10 “(l) TREATMENT OF DIVIDEND EQUIVALENT PAY-  
 11 MENTS.—

12 “(1) IN GENERAL.—For purposes of this sec-  
 13 tion, sections 881 and 4948(a), and chapters 3 and  
 14 4, a dividend equivalent shall be treated as a divi-  
 15 dend from sources within the United States.

16 “(2) DIVIDEND EQUIVALENT.—For purposes of  
 17 this subsection—

18 “(A) IN GENERAL.—The term ‘dividend  
 19 equivalent’ means—

20 “(i) any payment made pursuant to a  
 21 notional principal contract that (directly or  
 22 indirectly) is contingent upon, or deter-  
 23 mined by reference to, the payment of a  
 24 dividend from sources within the United  
 25 States, and

1           “(ii) any other payment determined  
2           by the Secretary to be substantially similar  
3           to a payment described in clause (i).

4           “(B) EXCEPTIONS.—Such term does not  
5           include any payment pursuant to any contract  
6           or other arrangement which the Secretary de-  
7           termines does not have the potential for tax  
8           avoidance. In making such determination, the  
9           Secretary may take into account the following  
10          factors with respect to such contract or ar-  
11          rangement:

12           “(i) The term (including provisions  
13           for early terminations and offsetting finan-  
14           cial contracts).

15           “(ii) The amount of each party’s in-  
16           vestment and the amounts of any collateral  
17           posted.

18           “(iii) Whether the price of the equity  
19           used to measure the parties’ entitlements  
20           or obligations is based on an objectively  
21           observable price.

22           “(iv) Whether either party sells (di-  
23           rectly or indirectly) to the other party the  
24           security giving rise to dividends from  
25           sources within the United States.

1           “(v) Whether there are terms that ad-  
2           dress the hedge position of either party or  
3           other conditions which would compel either  
4           party to hold or acquire the security giving  
5           rise to dividends from sources within the  
6           United States.

7           “(vi) Such other factors as the Sec-  
8           retary determines appropriate.

9           “(C) PAYMENTS DETERMINED ON GROSS  
10          BASIS.—The term ‘payment’ includes any gross  
11          amount which is used in computing any net  
12          amount which is transferred to or from the tax-  
13          payer.

14          “(D) COORDINATION WITH CHAPTERS 3  
15          AND 4.—For purposes of chapters 3 and 4,  
16          each person that is a party to any contract or  
17          other arrangement that provides for the pay-  
18          ment of a dividend equivalent shall be treated  
19          as having control of such payment.”.

20          (b) EFFECTIVE DATE.—The amendments made by  
21          this section shall apply to payments made on or after the  
22          date that is 90 days after the date of the enactment of  
23          this Act.

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