

111TH CONGRESS
1ST SESSION

S. 506

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

MARCH 2, 2009

Mr. LEVIN (for himself, Mr. WHITEHOUSE, Mrs. McCASKILL, and Mr. NELSON of Florida) 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.

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 “Stop Tax Haven Abuse Act”.

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

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

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

Sec. 1. Short title; etc.

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

- Sec. 101. Establishing presumptions for entities and transactions involving off-
 shore secrecy jurisdictions.
- Sec. 102. Authorizing special measures against foreign jurisdictions, financial
 institutions, and others that impede United States tax enforce-
 ment.
- Sec. 103. Treatment of foreign corporations managed and controlled in the
 United States as domestic corporations.
- Sec. 104. Allowing more time for investigations involving offshore secrecy juris-
 dictions.
- Sec. 105. Reporting United States beneficial owners of foreign owned financial
 accounts.
- Sec. 106. Preventing misuse of foreign trusts for tax evasion.
- Sec. 107. Limitation on legal opinion protection from penalties with respect to
 transactions involving offshore secrecy jurisdictions.
- Sec. 108. Closing the offshore dividend tax loophole.
- Sec. 109. Reporting of activities with respect to passive foreign investment com-
 panies.

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 jurisdic-
 tions.
- 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. Tax planning inventions not patentable.
- 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.

1 **TITLE I—DETECTING THE USE**
 2 **OF TAX HAVENS FOR TAX**
 3 **EVASION**

4 **SEC. 101. ESTABLISHING PRESUMPTIONS FOR ENTITIES**
 5 **AND TRANSACTIONS INVOLVING OFFSHORE**
 6 **SECRECY JURISDICTIONS.**

7 (a) PRESUMPTIONS FOR INTERNAL REVENUE CODE
 8 OF 1986.—

9 (1) IN GENERAL.—Chapter 76 is amended by
 10 inserting after section 7491 the following new sub-
 11 chapter:

12 **“Subchapter F—Presumptions for Certain**
 13 **Legal Proceedings**

“Sec. 7492. Presumptions pertaining to entities and transactions involving off-
 shore secrecy jurisdictions.

14 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**
 15 **TRANSACTIONS INVOLVING OFFSHORE SE-**
 16 **CRECY JURISDICTIONS.**

17 “(a) CONTROL.—For purposes of any United States
 18 civil judicial or administrative proceeding to determine or
 19 collect tax, there shall be a rebuttable presumption that
 20 a United States person (other than an entity with shares
 21 regularly traded on an established securities market) who

1 directly or indirectly formed, transferred assets to, was a
2 beneficiary of, had a beneficial interest in, or received
3 money or property or the use thereof from an entity, in-
4 cluding a trust, corporation, limited liability company,
5 partnership, or foundation (other than an entity with
6 shares regularly traded on an established securities mar-
7 ket), formed, domiciled, or operating in an offshore se-
8 crecy jurisdiction, exercised control over such entity. The
9 presumption of control created by this subsection shall not
10 be applied to prevent the Secretary from determining or
11 arguing the absence of control.

12 “(b) TRANSFERS OF INCOME.—For purposes of any
13 United States civil judicial or administrative proceeding
14 to determine or collect tax, there shall be a rebuttable pre-
15 sumption that any amount or thing of value received by
16 a United States person (other than an entity with shares
17 regularly traded on an established securities market) di-
18 rectly or indirectly from an account or entity (other than
19 an entity with shares regularly traded on an established
20 securities market) in an offshore secrecy jurisdiction, con-
21 stitutes income of such person taxable in the year of re-
22 ceipt, and any amount or thing of value paid or trans-
23 ferred by or on behalf of a United States person (other
24 than an entity with shares regularly traded on an estab-
25 lished securities market) directly or indirectly to an ac-

1 count or entity (other than an entity with shares regularly
2 traded on an established securities market) in any such
3 jurisdiction represents previously unreported income of
4 such person taxable in the year of the transfer.

5 “(c) REBUTTING THE PRESUMPTIONS.—The pre-
6 sumptions established in this section may be rebutted only
7 by clear and convincing evidence, including detailed docu-
8 mentary, testimonial, and transactional evidence, estab-
9 lishing that—

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

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

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

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

 “SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

4 (b) DEFINITION OF OFFSHORE SECRECY JURISDIC-
5 TION.—Section 7701(a) is amended by adding at the end
6 the following new paragraph:

7 “(50) OFFSHORE SECRECY JURISDICTION.—

8 “(A) IN GENERAL.—The term ‘offshore se-
9 crecy jurisdiction’ means any foreign jurisdic-
10 tion which is listed by the Secretary as an off-
11 shore secrecy jurisdiction for purposes of this
12 title.

13 “(B) DETERMINATION OF JURISDICTIONS
14 ON LIST.—A jurisdiction shall be listed under
15 paragraph (A) if the Secretary determines that
16 such jurisdiction has corporate, business, bank,
17 or tax secrecy rules and practices which, in the
18 judgment of the Secretary, unreasonably re-
19 strict the ability of the United States to obtain
20 information relevant to the enforcement of this
21 title, unless the Secretary also determines that
22 such country has effective information exchange
23 practices.

24 “(C) SECRECY OR CONFIDENTIALITY
25 RULES AND PRACTICES.—For purposes of sub-

1 paragraph (B), corporate, business, bank, or
2 tax secrecy or confidentiality rules and practices
3 include both formal laws and regulations and
4 informal government or business practices hav-
5 ing the effect of inhibiting access of law en-
6 forcement and tax administration authorities to
7 beneficial ownership and other financial infor-
8 mation.

9 “(D) INEFFECTIVE INFORMATION EX-
10 CHANGE PRACTICES.—For purposes of subpara-
11 graph (B), a jurisdiction shall be deemed to
12 have ineffective information exchange practices
13 unless the Secretary determines, on an annual
14 basis, that—

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

24 “(ii) during the 12-month period pre-
25 ceding the annual determination, the ex-

1 change of information between the United
2 States and such jurisdiction was in prac-
3 tice adequate to prevent evasion or avoid-
4 ance of United States income tax by
5 United States persons and to enable the
6 United States effectively to enforce this
7 title, and

8 “(iii) during the 12-month period pre-
9 ceding the annual determination, such ju-
10 risdiction was not identified by an inter-
11 governmental group or organization of
12 which the United States is a member as
13 uncooperative with international tax en-
14 forcement or information exchange and the
15 United States concurs in such identifica-
16 tion.

17 “(E) INITIAL LIST OF OFFSHORE SECRECY
18 JURISDICTIONS.—For purposes of this para-
19 graph, each of the following foreign jurisdic-
20 tions, which have been previously and publicly
21 identified by the Internal Revenue Service as
22 secrecy jurisdictions in Federal court pro-
23 ceedings, shall be deemed listed by the Sec-
24 retary as an offshore secrecy jurisdiction unless

- 1 delisted by the Secretary under subparagraph
2 (F)(ii):
- 3 “(i) Anguilla.
 - 4 “(ii) Antigua and Barbuda.
 - 5 “(iii) Aruba.
 - 6 “(iv) Bahamas.
 - 7 “(v) Barbados.
 - 8 “(vi) Belize.
 - 9 “(vii) Bermuda.
 - 10 “(viii) British Virgin Islands.
 - 11 “(ix) Cayman Islands.
 - 12 “(x) Cook Islands.
 - 13 “(xi) Costa Rica.
 - 14 “(xii) Cyprus.
 - 15 “(xiii) Dominica.
 - 16 “(xiv) Gibraltar.
 - 17 “(xv) Grenada.
 - 18 “(xvi) Guernsey/Sark/Alderney.
 - 19 “(xvii) Hong Kong.
 - 20 “(xviii) Isle of Man.
 - 21 “(xix) Jersey.
 - 22 “(xx) Latvia.
 - 23 “(xxi) Liechtenstein.
 - 24 “(xxii) Luxembourg.
 - 25 “(xxiii) Malta.

- 1 “(xxiv) Nauru.
 2 “(xxv) Netherlands Antilles.
 3 “(xxvi) Panama.
 4 “(xxvii) Samoa.
 5 “(xxviii) St. Kitts and Nevis.
 6 “(xxix) St. Lucia.
 7 “(xxx) St. Vincent and the Grena-
 8 dines.
 9 “(xxxi) Singapore.
 10 “(xxxii) Switzerland.
 11 “(xxxiii) Turks and Caicos.
 12 “(xxxiv) Vanuatu.

13 “(F) MODIFICATIONS TO LIST.—The Sec-
 14 retary—

15 “(i) shall add to the list under para-
 16 graph (A) jurisdictions which meet the re-
 17 quirements of paragraph (B), and

18 “(ii) may remove from such list only
 19 those jurisdictions which do not meet the
 20 requirements of paragraph (B).”.

21 (c) PRESUMPTIONS FOR SECURITIES LAW PUR-
 22 POSES.—Section 21 of the Securities Exchange Act of
 23 1934 (15 U.S.C. 78u) is amended by adding at the end
 24 the following the following new subsection:

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

3 “(1) CONTROL.—For purposes of any civil judi-
4 cial or administrative proceeding under this title,
5 there shall be a rebuttable presumption that a
6 United States person (other than an entity with
7 shares regularly traded on an established securities
8 market) who directly or indirectly formed, trans-
9 ferred assets to, was a beneficiary of, had a bene-
10 ficial interest in, or received money or property or
11 the use thereof from an entity, including a trust,
12 corporation, limited liability company, partnership,
13 or foundation (other than an entity with shares reg-
14 ularly traded on an established securities market),
15 formed, domiciled, or operating in an offshore se-
16 crecy jurisdiction (as defined in section 7701(a)(50)
17 of the Internal Revenue Code of 1986), exercised
18 control over such entity. The presumption of control
19 created by this paragraph shall not be applied to
20 prevent the Commission from determining or argu-
21 ing the absence of control.

22 “(2) BENEFICIAL OWNERSHIP.—For purposes
23 of any civil judicial or administrative proceeding
24 under this title, there shall be a rebuttable presump-
25 tion that securities that are nominally owned by an

1 entity, including a trust, corporation, limited liability
2 company, partnership, or foundation (other than an
3 entity with shares regularly traded on an established
4 securities market), formed, domiciled, or operating
5 in an offshore secrecy jurisdiction (as so defined),
6 are beneficially owned by any United States person
7 (other than an entity with shares regularly traded on
8 an established securities market) who directly or in-
9 directly exercised control over such entity. The pre-
10 sumption of beneficial ownership created by this
11 paragraph shall not be applied to prevent the Com-
12 mission from determining or arguing the absence of
13 beneficial ownership.”.

14 (d) PRESUMPTION FOR REPORTING PURPOSES RE-
15 LATING TO FOREIGN FINANCIAL ACCOUNTS.—Section
16 5314 of title 31, United States Code, is amended by add-
17 ing at the end the following:

18 “(d) REBUTTABLE PRESUMPTION.—For purposes of
19 this section, there shall be a rebuttable presumption that
20 any account with a financial institution formed, domiciled,
21 or operating in an offshore secrecy jurisdiction (as defined
22 in section 7701(a)(50) of the Internal Revenue Code of
23 1986) contains funds in an amount that is at least suffi-
24 cient to require a report prescribed by regulations under
25 this section.”.

1 (e) REGULATORY AUTHORITY AND EFFECTIVE
2 DATE.—

3 (1) REGULATORY AUTHORITY.—Not later than
4 180 days after the date of the enactment of this Act,
5 the Secretary of the Treasury and the Chairman of
6 the Securities and Exchange Commission shall each
7 adopt regulations or other guidance necessary to im-
8 plement the amendments made by this section. The
9 Secretary and the Chairman may by regulation or
10 guidance provide that the presumption of control
11 shall not extend to particular classes of transactions,
12 such as corporate reorganizations or transactions
13 below a specified dollar threshold, if either deter-
14 mines that applying such amendments to such trans-
15 actions is not necessary to carry out the purposes of
16 such amendments.

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

20 **SEC. 102. AUTHORIZING SPECIAL MEASURES AGAINST FOR-**
21 **EIGN JURISDICTIONS, FINANCIAL INSTITU-**
22 **TIONS, AND OTHERS THAT IMPEDE UNITED**
23 **STATES TAX ENFORCEMENT.**

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

1 (1) by striking the section heading and insert-
2 ing the following:

3 **“§ 5318A. Special measures for jurisdictions, financial**
4 **institutions, or international transactions**
5 **that are of primary money laundering**
6 **concern or impede United States tax en-**
7 **forcement”;**

8 (2) in subsection (a), by striking the subsection
9 heading and inserting the following:

10 “(a) SPECIAL MEASURES TO COUNTER MONEY
11 LAUNDERING AND EFFORTS TO IMPEDE UNITED STATES
12 TAX ENFORCEMENT.—”;

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

15 “(c) CONSULTATIONS AND INFORMATION TO BE
16 CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,
17 TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-
18 MARY MONEY LAUNDERING CONCERN OR TO BE IMPED-
19 ING UNITED STATES TAX ENFORCEMENT.—”;

20 (4) in subsection (a)(1), by inserting “or is im-
21 peding United States tax enforcement” after “pri-
22 mary money laundering concern”;

23 (5) in subsection (a)(4)—

24 (A) in subparagraph (A)—

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

4 (ii) by striking “and” at the end;

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

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

9 “(B) in matters involving United States
10 tax enforcement, shall consult with the Commis-
11 sioner of the Internal Revenue Service, the Sec-
12 retary of State, the Attorney General of the
13 United States, and in the sole discretion of the
14 Secretary, such other agencies and interested
15 parties as the Secretary may find to be appro-
16 priate; and”;

17 (6) in each of paragraphs (1)(A), (2), (3), and
18 (4) of subsection (b), by inserting “or to be imped-
19 ing United States tax enforcement” after “primary
20 money laundering concern” each place that term ap-
21 pears;

22 (7) in subsection (b), by striking paragraph (5)
23 and inserting the following:

24 “(5) PROHIBITIONS OR CONDITIONS ON OPEN-
25 ING OR MAINTAINING CERTAIN CORRESPONDENT OR

1 PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING
2 CERTAIN PAYMENT CARDS.—If the Secretary finds a
3 jurisdiction outside of the United States, 1 or more
4 financial institutions operating outside of the United
5 States, or 1 or more classes of transactions within
6 or involving a jurisdiction outside of the United
7 States to be of primary money laundering concern or
8 to be impeding United States tax enforcement, the
9 Secretary, in consultation with the Secretary of
10 State, the Attorney General of the United States,
11 and the Chairman of the Board of Governors of the
12 Federal Reserve System, may prohibit, or impose
13 conditions upon—

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

17 “(B) the authorization, approval, or use in
18 the United States of a credit card, charge card,
19 debit card, or similar credit or debit financial
20 instrument by any domestic financial institu-
21 tion, financial agency, or credit card company
22 or association, for or on behalf of a foreign
23 banking institution, if such correspondent ac-
24 count, payable-through account, credit card,
25 charge card, debit card, or similar credit or

1 debit financial instrument, involves any such ju-
2 risdiction or institution, or if any such trans-
3 action may be conducted through such cor-
4 respondent account, payable-through account,
5 credit card, charge card, debit card, or similar
6 credit or debit financial instrument.”; and

7 (8) in subsection (c)(1), by inserting “or is im-
8 peding United States tax enforcement” after “pri-
9 mary money laundering concern”;

10 (9) in subsection (c)(2)(A)—

11 (A) in clause (ii), by striking “bank secrecy
12 or special regulatory advantages” and inserting
13 “bank, tax, corporate, trust, or financial secrecy
14 or regulatory advantages”;

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

19 (C) in clause (v), by striking “banking or
20 secrecy” and inserting “banking, tax, or se-
21 crecy”; and

22 (D) in clause (vi), by inserting “, tax trea-
23 ty, or tax information exchange agreement”
24 after “treaty”;

25 (10) in subsection (c)(2)(B)—

1 (A) in clause (i), by inserting “or tax eva-
2 sion” after “money laundering”; and

3 (B) in clause (iii), by inserting “, tax eva-
4 sion,” after “money laundering”; and

5 (11) in subsection (d), by inserting “involving
6 money laundering, and shall notify, in writing, the
7 Committee on Finance of the Senate and the Com-
8 mittee on Ways and Means of the House of Rep-
9 resentatives of any such action involving United
10 States tax enforcement” after “such action”.

11 **SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MAN-**
12 **AGED AND CONTROLLED IN THE UNITED**
13 **STATES AS DOMESTIC CORPORATIONS.**

14 (a) IN GENERAL.—Section 7701 (relating to defini-
15 tions) is amended by redesignating subsection (o) as sub-
16 section (p) and by inserting after subsection (n) the fol-
17 lowing new subsection:

18 “(o) CERTAIN CORPORATIONS MANAGED AND CON-
19 TROLLED IN THE UNITED STATES TREATED AS DOMES-
20 TIC FOR INCOME TAX.—

21 “(1) IN GENERAL.—Notwithstanding subsection
22 (a)(4), in the case of a corporation described in
23 paragraph (2) if—

1 “(A) the corporation would not otherwise
2 be treated as a domestic corporation for pur-
3 poses of this title, but

4 “(B) the management and control of the
5 corporation occurs, directly or indirectly, pri-
6 marily within the United States,

7 then, solely for purposes of chapter 1 (and any other
8 provision of this title relating to chapter 1), the cor-
9 poration shall be treated as a domestic corporation.

10 “(2) CORPORATION DESCRIBED.—

11 “(A) IN GENERAL.—A corporation is de-
12 scribed in this paragraph if—

13 “(i) the stock of such corporation is
14 regularly traded on an established securi-
15 ties market, or

16 “(ii) the aggregate gross assets of
17 such corporation (or any predecessor there-
18 of), including assets under management
19 for investors, whether held directly or indi-
20 rectly, at any time during the taxable year
21 or any preceding taxable year is
22 \$50,000,000 or more.

23 “(B) GENERAL EXCEPTION.—A corpora-
24 tion shall not be treated as described in this
25 paragraph if—

1 “(i) such corporation was treated as a
2 corporation described in this paragraph in
3 a preceding taxable year,

4 “(ii) such corporation—

5 “(I) is not regularly traded on an
6 established securities market, and

7 “(II) has, and is reasonably ex-
8 pected to continue to have, aggregate
9 gross assets (including assets under
10 management for investors, whether
11 held directly or indirectly) of less than
12 \$50,000,000, and

13 “(iii) the Secretary grants a waiver to
14 such corporation under this subparagraph.

15 “(C) EXCEPTION FROM GROSS ASSETS
16 TEST.—Subparagraph (A)(ii) shall not apply to
17 a corporation which is a controlled foreign cor-
18 poration (as defined in section 957) and which
19 is a member of an affiliated group (as defined
20 section 1504, but determined without regard to
21 section 1504(b)(3)) the common parent of
22 which—

23 “(i) is a domestic corporation (deter-
24 mined without regard to this subsection),
25 and

1 “(ii) has substantial assets (other
2 than cash and cash equivalents and other
3 than stock of foreign subsidiaries) held for
4 use in the active conduct of a trade or
5 business in the United States.

6 “(3) MANAGEMENT AND CONTROL.—

7 “(A) IN GENERAL.—The Secretary shall
8 prescribe regulations for purposes of deter-
9 mining cases in which the management and
10 control of a corporation is to be treated as oc-
11 curring primarily within the United States.

12 “(B) EXECUTIVE OFFICERS AND SENIOR
13 MANAGEMENT.—Such regulations shall provide
14 that—

15 “(i) the management and control of a
16 corporation shall be treated as occurring
17 primarily within the United States if sub-
18 stantially all of the executive officers and
19 senior management of the corporation who
20 exercise day-to-day responsibility for mak-
21 ing decisions involving strategic, financial,
22 and operational policies of the corporation
23 are located primarily within the United
24 States, and

1 “(ii) individuals who are not executive
2 officers and senior management of the cor-
3 poration (including individuals who are of-
4 ficers or employees of other corporations in
5 the same chain of corporations as the cor-
6 poration) shall be treated as executive offi-
7 cers and senior management if such indi-
8 viduals exercise the day-to day responsibil-
9 ities of the corporation described in clause
10 (i).

11 “(C) CORPORATIONS PRIMARILY HOLDING
12 INVESTMENT ASSETS.—Such regulations shall
13 also provide that the management and control
14 of a corporation shall be treated as occurring
15 primarily within the United States if—

16 “(i) the assets of such corporation (di-
17 rectly or indirectly) consist primarily of as-
18 sets being managed on behalf of investors,
19 and

20 “(ii) decisions about how to invest the
21 assets are made in the United States.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning on or
24 after the date which is 2 years after the date of the enact-
25 ment of this Act.

1 **SEC. 104. ALLOWING MORE TIME FOR INVESTIGATIONS IN-**
2 **VOLVING OFFSHORE SECRECY JURISDIC-**
3 **TIONS.**

4 (a) **IN GENERAL.**—Section 6501(c) is amended by
5 adding at the end the following new paragraph:

6 “(11) **RETURNS INVOLVING OFFSHORE SE-**
7 **CRECY JURISDICTIONS.**—In the case of a return for
8 a year in which the taxpayer directly or indirectly
9 formed, owned, transferred assets to, was a bene-
10 ficiary of, had a beneficial interest in, or received
11 money or property or the use thereof from a finan-
12 cial account or an entity (other than an entity with
13 shares regularly traded on an established securities
14 market), including a trust, corporation, limited li-
15 ability company, partnership, or foundation formed,
16 located, domiciled or operating in an offshore secrecy
17 jurisdiction, the tax may be assessed, or a pro-
18 ceeding in court for the collection of such tax may
19 be begun without assessment, at any time within 6
20 years after the return was filed.”.

21 (b) **EFFECTIVE DATE.**—The amendment made by
22 this section shall apply to—

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

25 (2) returns filed on or before such date if the
26 period specified in section 6501 of the Internal Rev-

1 such entity's name (hereafter in this section referred
2 to as 'United States beneficial owner'),
3 then the withholding agent shall make a return according
4 to the forms or regulations prescribed by the Secretary.

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

8 “(1) the name, address, and, if known, the tax-
9 payer identification number of the United States
10 beneficial owner,

11 “(2) the known facts pertaining to the relation-
12 ship of such United States beneficial owner to the
13 foreign entity and the account,

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

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

19 “(c) STATEMENTS TO BE FURNISHED TO BENE-
20 FICIAL OWNERS WITH RESPECT TO WHOM INFORMATION
21 IS REQUIRED TO BE REPORTED.—A withholding agent
22 required to make a return under subsection (a) shall fur-
23 nish to each United States beneficial owner whose name
24 is required to be set forth in such return a statement
25 showing—

1 regularly traded on an established securities mar-
2 ket),
3 in an offshore secrecy jurisdiction at the direction of, on
4 behalf of, or for the benefit of a United States person shall
5 make a return according to the forms or regulations pre-
6 scribed by the Secretary.

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

10 “(1) the name, address, and taxpayer identifica-
11 tion number of such United States person,

12 “(2) the name and address of the financial in-
13 stitution at which a financial account is opened, the
14 type of account, the account number, the name
15 under which the account was opened, and the
16 amount of the initial deposit,

17 “(3) the name and address of an entity formed
18 or acquired, the type of entity, and the name and
19 address of any company formation agent or other
20 professional employed to form or acquire the entity,
21 and

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

24 “(c) STATEMENTS TO BE FURNISHED TO UNITED
25 STATES PERSONS WITH RESPECT TO WHOM INFORMA-

1 TION IS REQUIRED TO BE REPORTED.—A financial insti-
2 tution required to make a return under subsection (a)
3 shall furnish to each United States person whose name
4 is required to be set forth in such return a statement
5 showing—

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

9 “(2) the information required to be shown on
10 such return with respect to such United States per-
11 son.

12 The written statement required under the preceding sen-
13 tence shall be furnished to such United States person on
14 or before January 31 of the year following the calendar
15 year for which the return under subsection (a) was re-
16 quired to be made.

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

23 (b) PENALTIES.—

24 (1) RETURNS.—Section 6724(d)(1)(B) is
25 amended by redesignating clauses (v) through (xxiii)

1 as clauses (vii) through (xxv), respectively, and by
2 inserting after clause (iv) the following new clauses:

3 “(v) section 6045C(a) (relating to re-
4 turns regarding United States beneficial
5 owners of foreign owned financial ac-
6 counts),

7 “(vi) section 6045D(a) (relating to re-
8 turns by financial institutions regarding
9 establishment of accounts and creation of
10 entities in offshore secrecy jurisdictions),”.

11 (2) PAYEE STATEMENTS.—Section 6724(d)(2)
12 is amended by redesignating subparagraphs (K)
13 through (FF) as subparagraphs (M) through (HH),
14 respectively, and by inserting after subparagraph (J)
15 the following new subparagraphs:

16 “(K) section 6045C(e) (relating to returns
17 regarding United States beneficial owners of
18 foreign owned financial accounts),

19 “(L) section 6045D(e) (relating to returns
20 by financial institutions regarding establish-
21 ment of accounts and creation of entities in off-
22 shore secrecy jurisdictions),”.

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

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

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

1 (d) ADDITIONAL PENALTIES.—

2 (1) ADDITIONAL PENALTIES ON BANKS.—Sec-
3 tion 5239(b)(1) of the Revised Statutes (12 U.S.C.
4 93(b)(1)) is amended by inserting “or any of the
5 provisions of section 6045D of the Internal Revenue
6 Code of 1986,” after “any regulation issued pursu-
7 ant to,”.

8 (2) ADDITIONAL PENALTIES ON SECURITIES
9 FIRMS.—Section 21(d)(3)(A) of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78u(d)(3)(A)) is
11 amended by inserting “any of the provisions of sec-
12 tion 6045D of the Internal Revenue Code of 1986,”
13 after “the rules or regulations thereunder,”.

14 (e) REGULATORY AUTHORITY AND EFFECTIVE
15 DATE.—

16 (1) REGULATORY AUTHORITY.—Not later than
17 180 days after the date of the enactment of this Act,
18 the Secretary of the Treasury shall adopt regula-
19 tions, forms, or other guidance necessary to imple-
20 ment this section.

21 (2) EFFECTIVE DATE.—Section 6045C of the
22 Internal Revenue Code of 1986 (as added by this
23 section) and the amendment made by subsection

1 (d)(1) shall take effect with respect to amounts paid
2 into foreign owned accounts after December 31 of
3 the year of the date of the enactment of this Act.
4 Section 6045D of such Code (as so added) and the
5 amendment made by subsection (d)(2) shall take ef-
6 fect with respect to accounts opened or entities
7 formed or acquired after December 31 of the year
8 of the date of the enactment of this Act.

9 **SEC. 106. PREVENTING MISUSE OF FOREIGN TRUSTS FOR**
10 **TAX EVASION.**

11 (a) **ATTRIBUTION OF TRUST PROTECTOR POWERS**
12 **TO GRANTORS.**—Section 672 is amended by redesignating
13 subsection (f) as subsection (g) and by inserting after sub-
14 section (e) the following new subsection:

15 “(f) **GRANTOR TREATED AS HOLDING ANY POWER**
16 **OR INTEREST OF TRUST PROTECTOR OR ENFORCER.**—
17 For purposes of this subpart, a grantor shall be treated
18 as holding any power or interest held by any trust pro-
19 tector or trust enforcer or similar person appointed to ad-
20 vise, influence, oversee, or veto the actions of the trustee.”.

21 (b) **TREATMENT OF UNITED STATES RECIPIENTS OF**
22 **FOREIGN TRUST ASSETS AS TRUST BENEFICIARIES.**—
23 Section 679 is amended by redesignating subsections (c)
24 and (d) as subsections (d) and (e), respectively, and by
25 inserting after subsection (b) the following new subsection:

1 “(c) CERTAIN UNITED STATES PERSONS TREATED
2 AS BENEFICIARIES.—Any United States person receiving
3 from a foreign trust cash or other property, or receiving
4 the use thereof, shall be treated as a beneficiary of such
5 trust regardless of whether such person is a named bene-
6 ficiary, except to the extent that such person paid fair
7 market value for the benefit received.”.

8 (c) TREATMENT OF FOREIGN TRUST TRANSFERS OF
9 REAL ESTATE, ARTWORK, OR JEWELRY CONSISTENTLY
10 WITH TRANSFERS OF SECURITIES.—Section 643(i)(1) is
11 amended by striking “or marketable securities” and in-
12 serting “or other property, including real estate, market-
13 able securities, artwork, jewelry, and other personal prop-
14 erty,”.

15 (d) TREATMENT OF TRUSTS WITH FUTURE OR CON-
16 TINGENT UNITED STATES BENEFICIARIES.—Section
17 679(a)(1) is amended—

18 (1) by inserting “or for any subsequent year”
19 after “such year”, and

20 (2) by inserting “(including a contingent bene-
21 ficiary)” after “beneficiary”.

1 **SEC. 107. LIMITATION ON LEGAL OPINION PROTECTION**
2 **FROM PENALTIES WITH RESPECT TO TRANS-**
3 **ACTIONS INVOLVING OFFSHORE SECRECY**
4 **JURISDICTIONS.**

5 (a) IN GENERAL.—Section 6664 is amended by add-
6 ing at the end the following new subsection:

7 “(e) CERTAIN OPINIONS MAY NOT BE RELIED
8 UPON.—For purposes of this part, an opinion of a tax
9 advisor may not be relied upon to establish that there was
10 reasonable cause for any portion of an underpayment, or
11 that the taxpayer acted in good faith with respect to such
12 portion, if such portion is attributable to a transaction any
13 part of which involves an entity or financial account in
14 an offshore secrecy jurisdiction.”.

15 (b) REGULATORY AUTHORITY.—The Secretary of the
16 Treasury may by regulation or guidance provide that sub-
17 section (e) of section 6664 of the Internal Revenue Code
18 of 1986, as added by subsection (a), does not apply to
19 legal opinions that express a confidence level that substan-
20 tially exceeds the “more likely than not” confidence level;
21 or that such subsection does not apply to classes of trans-
22 actions, such as corporate reorganizations, where the Sec-
23 retary determines that applying such subsection to such
24 transactions is not necessary to carry out the purposes of
25 such subsection.

1 **SEC. 108. CLOSING THE OFFSHORE DIVIDEND TAX LOOP-**
2 **HOLE.**

3 (a) **IN GENERAL.**—Section 871 is amended by redess-
4 ignating subsection (l) as subsection (m) and by inserting
5 after subsection (k) the following new subsection:

6 “(l) **TREATMENT OF DIVIDEND EQUIVALENTS AND**
7 **SUBSTITUTE DIVIDEND PAYMENTS.**—

8 “(1) **IN GENERAL.**—For purposes of this sec-
9 tion and section 881—

10 “(A) the term ‘dividend’ shall include divi-
11 dend equivalents and substitute dividends,

12 “(B) a dividend equivalent with respect to
13 the stock of one or more domestic corporations
14 shall be treated as sourced within the United
15 States, and

16 “(C) a substitute dividend payment shall
17 be sourced in the same manner as a dividend
18 distribution with respect to the transferred se-
19 curity to which the substitute dividend relates.

20 “(2) **DIVIDEND EQUIVALENT.**—For purposes of
21 this subsection—

22 “(A) **IN GENERAL.**—The term ‘dividend
23 equivalent’ includes any payment that is made
24 pursuant to a notional principal contract and is
25 contingent upon, or is referenced to, the pay-
26 ment of a dividend on stock or the payment of

1 a dividend on property that is substantially
2 similar or related to stock (determined in a
3 manner similar to the manner under section
4 246(c)(4)(C)).

5 “(B) NOTIONAL PRINCIPAL CONTRACT.—
6 For purposes of subparagraph (A), the term
7 ‘notional principal contract’ means a financial
8 instrument that provides for the payment of
9 amounts by 1 party to another at specified in-
10 tervals calculated by reference to a specified
11 index upon a notional principal amount in ex-
12 change for specified consideration or a promise
13 to pay similar amounts.

14 “(3) SUBSTITUTE DIVIDEND.—For purposes of
15 this subsection—

16 “(A) IN GENERAL.—The term ‘substitute
17 dividend’ means a payment, made to the trans-
18 feror of a security in a securities lending trans-
19 action or a sale-repurchase transaction, of an
20 amount equivalent to a dividend distribution
21 which the owner of the transferred security is
22 entitled to receive during the term of the trans-
23 action.

24 “(B) SECURITIES LENDING TRANS-
25 ACTION.—For purposes of subparagraph (A),

1 the term ‘securities lending transaction’ means
2 a transfer of 1 or more securities that is de-
3 scribed in section 1058(a) or a substantially
4 similar transaction.

5 “(C) SALE-REPURCHASE TRANSACTION.—
6 For purposes of subparagraph (A), the term
7 ‘sale-repurchase transaction’ means an agree-
8 ment under which a person transfers a security
9 in exchange for cash and simultaneously agrees
10 to receive substantially identical securities from
11 the transferee in the future in exchange for
12 cash.

13 “(4) COORDINATION WITH TAX TREATIES.—
14 The meaning of the term ‘dividend’ in any income
15 tax convention shall be construed to include dividend
16 equivalents and substitute dividends in accordance
17 with this section.

18 “(5) PREVENTION OF OVER-WITHHOLDING.—In
19 the case of any dividend equivalent or substitute div-
20 idend that is subject to withholding under this sec-
21 tion or section 881, the Secretary may by regulation
22 reduce such withholding, but only to the extent that
23 the taxpayer can establish that the dividend for
24 which the payment to be withheld upon is a dividend
25 equivalent or a substitute dividend that was pre-

1 viously withheld upon under this section or under
2 section 881.”.

3 (b) REGULATIONS.—

4 (1) PROPOSED RULE.—Not later than 90 days
5 after the date of the enactment of this Act, the Sec-
6 retary of the Treasury (or the Secretary’s designee)
7 shall issue proposed regulations relating to section
8 871(l) of the Internal Revenue Code of 1986 (as
9 added by this section).

10 (2) FINAL RULE.—Not later than 150 days
11 after the date of the enactment of this Act, the Sec-
12 retary of the Treasury (or the Secretary’s designee)
13 shall issue final regulations relating to such section.

14 (3) MATTERS INCLUDED.—The regulations
15 issued pursuant to this subsection shall require the
16 imposition of withholding—

17 (A) in cases where dividend equivalent pay-
18 ments under notional principal contracts are
19 netted with other payments under the same in-
20 strument,

21 (B) in cases where fees and other pay-
22 ments are netted to disguise the characteriza-
23 tion of a payment as a substitute dividend, and

24 (C) in cases where option or forward con-
25 tracts (or similar arrangements) achieve the

1 same or substantially similar economic results
2 as the notional principal contracts covered
3 under section 871(l) of such Code.

4 (c) QUALIFIED INTERMEDIARIES.—The Secretary of
5 the Treasury (or the Secretary’s designee) shall ensure
6 that any qualified intermediary withholding agreement
7 that the United States enters into or renews after the date
8 of the enactment of this Act with a foreign financial insti-
9 tution or foreign branch of a United States financial insti-
10 tution conforms with the amendments made by this sec-
11 tion to ensure appropriate withholding related to dividend
12 equivalents and substitute dividends.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to payments made on or after the
15 date that is 90 days after the date of the enactment of
16 this Act.

17 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
18 tion or the amendments made by this section shall be con-
19 strued to limit the authority of the Commissioner of the
20 Internal Revenue Service to collect taxes, interest, and
21 penalties on dividend equivalent or substitute dividend
22 payments (as defined in section 871(l) of the Internal Rev-
23 enue Code of 1986) made prior to the date of the enact-
24 ment of this Act in connection with swap agreements,

1 stock loan transactions, or other financial transactions in-
2 volving nonresident aliens or foreign corporations.

3 **SEC. 109. REPORTING OF ACTIVITIES WITH RESPECT TO**
4 **PASSIVE FOREIGN INVESTMENT COMPANIES.**

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

8 “(f) REPORTING REQUIREMENT.—Each person who
9 is a shareholder of, or who directly or indirectly forms,
10 transfers assets to, is a beneficiary of, has a beneficial in-
11 terest in, or receives money or property or the use thereof
12 from, a passive foreign investment company shall file a
13 report containing such information as the Secretary may
14 require.”.

15 (b) CONFORMING AMENDMENT.—Subsection (e) of
16 section 1291 is amended by striking “, (d), and (f)” and
17 inserting “and (d)”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section take effect on the date of the enactment of
20 this Act.

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

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

6 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
7 21(d)(3)(B) of the Securities Exchange Act of 1934 (15
8 U.S.C. 78u(d)(3)(B)) is amended by adding at the end
9 the following:

10 “(iv) FOURTH TIER.—Notwithstanding
11 clauses (i), (ii), and (iii), the amount of the
12 penalty for each such violation shall not exceed
13 \$1,000,000 for any person if the violation de-
14 scribed in subparagraph (A) involved a knowing
15 failure to disclose any holding or transaction in-
16 volving equity or debt instruments of an issuer
17 and known by such person to involve a foreign
18 entity, including any trust, corporation, limited
19 liability company, partnership, or foundation
20 that is directly or indirectly controlled by such
21 person, and which would have been otherwise
22 subject to disclosure by such person under this
23 title.”.

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

4 “(D) FOURTH TIER.—Notwithstanding
5 subparagraphs (A), (B), and (C), the amount of
6 penalty for each such violation shall not exceed
7 \$1,000,000 for any person, if the violation de-
8 scribed in paragraph (1) involved a knowing
9 failure to disclose any holding or transaction in-
10 volving equity or debt instruments of an issuer
11 and known by such person to involve a foreign
12 entity, including any trust, corporation, limited
13 liability company, partnership, or foundation,
14 directly or indirectly controlled by such person,
15 and which would have been otherwise subject to
16 disclosure by such person under this title.”.

17 (c) INVESTMENT COMPANY ACT OF 1940.—Section
18 9(d)(2) of the Investment Company Act of 1940 (15
19 U.S.C. 80a-9(d)(2)) is amended by adding at the end the
20 following:

21 “(D) FOURTH TIER.—Notwithstanding
22 subparagraphs (A), (B), and (C), the amount of
23 penalty for each such violation shall not exceed
24 \$1,000,000 for any person, if the violation de-
25 scribed in paragraph (1) involved a knowing

1 failure to disclose any holding or transaction in-
2 volving equity or debt instruments of an issuer
3 and known by such person to involve a foreign
4 entity, including any trust, corporation, limited
5 liability company, partnership, or foundation,
6 directly or indirectly controlled by such person,
7 and which would have been otherwise subject to
8 disclosure by such person under this title.”.

9 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
10 203(i)(2) of the Investment Advisers Act of 1940 (15
11 U.S.C. 80b–3(i)(2)) is amended by adding at the end the
12 following:

13 “(D) FOURTH TIER.—Notwithstanding
14 subparagraphs (A), (B), and (C), the amount of
15 penalty for each such violation shall not exceed
16 \$1,000,000 for any person, if the violation de-
17 scribed in paragraph (1) involved a knowing
18 failure to disclose any holding or transaction in-
19 volving equity or debt instruments of an issuer
20 and known by such person to involve a foreign
21 entity, including any trust, corporation, limited
22 liability company, partnership, or foundation,
23 directly or indirectly controlled by such person,
24 and which would have been otherwise subject to
25 disclosure by such person under this title.”.

1 **SEC. 202. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**
2 **FOR HEDGE FUNDS AND PRIVATE EQUITY**
3 **FUNDS.**

4 (a) IN GENERAL.—

5 (1) PROPOSED RULE.—Not later than 90 days
6 after the date of the enactment of this Act, the Sec-
7 retary of the Treasury, in consultation with the
8 Chairman of the Securities and Exchange Commis-
9 sion and the Chairman of the Commodity Futures
10 Trading Commission, shall publish a proposed rule
11 in the Federal Register requiring unregistered in-
12 vestment companies, including hedge funds or pri-
13 vate equity funds, to establish anti-money laundering
14 programs and submit suspicious activity reports
15 under subsections (g) and (h) of section 5318 of title
16 31, United States Code.

17 (2) FINAL RULE.—Not later than 180 days
18 after the date of the enactment of this Act, the Sec-
19 retary of the Treasury shall publish a final rule in
20 the Federal Register on the matter described in
21 paragraph (1).

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

24 (1) shall require, at a minimum, that to safe-
25 guard against terrorist financing and money laun-

1 dering, all unregistered investment companies
2 shall—

3 (A) use risk-based due diligence policies,
4 procedures, and controls that are reasonably de-
5 signed to ascertain the identity of any foreign
6 person (including the nominal and beneficial
7 owner or beneficiary of a foreign corporation,
8 partnership, trust, or other foreign entity) plan-
9 ning to supply or supplying funds to be invested
10 with the advice or assistance of that unregis-
11 tered investment company; and

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

14 (2) may incorporate aspects of the proposed
15 rule for unregistered investment companies pub-
16 lished in the Federal Register on September 26,
17 2002 (67 Fed. Reg. 60617) (relating to anti-money
18 laundering programs).

19 (c) DEFINITIONS.—In this section—

20 (1) the terms “investment company” and
21 “issuer” have the same meanings as in section 2 of
22 the Investment Company Act of 1940 (15 U.S.C.
23 80a-2); and

24 (2) the term “unregistered investment com-
25 pany” means an issuer that would be an investment

1 company, but for the exclusion under paragraph (1)
2 or (7) of section 3(c) of the Investment Company
3 Act of 1940 (15 U.S.C. 80a-3(c)).

4 **SEC. 203. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**
5 **FORMATION AGENTS.**

6 (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR
7 FORMATION AGENTS.—Section 5312(a)(2) of title 31,
8 United States Code, is amended, by—

9 (1) in subparagraph (Y), by striking “or” at
10 the end;

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

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

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

18 (b) DEADLINE FOR ANTI-MONEY LAUNDERING
19 RULE FOR FORMATION AGENTS.—Not later than 90 days
20 after the date of the enactment of this Act, after con-
21 sulting with the Attorney General of the United States,
22 the Commissioner of the Internal Revenue Service, and
23 Chairman of the Securities and Exchange Commission,
24 the Secretary of the Treasury shall publish a proposed rule
25 in the Federal Register requiring persons described in sec-

1 tion 5312(a)(2)(Z) of title 31, United States Code, as
2 added by this section, to establish anti-money laundering
3 programs under subsection (h) of section 5318 of that
4 title. The Secretary shall publish such rule in final form
5 in the Federal Register not later than 180 days after the
6 date of the enactment of this Act.

7 **SEC. 204. STRENGTHENING SUMMONS IN CASES INVOLVING**
8 **OFFSHORE SECRECY JURISDICTIONS.**

9 (a) IN GENERAL.—Subsection (f) of section 7609 is
10 amended to read as follows:

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

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

18 “(A) the summons relates to the investiga-
19 tion of a particular person or ascertainable
20 group or class of persons,

21 “(B) there is a reasonable basis for believ-
22 ing that such person or group or class of per-
23 sons may fail or may have failed to comply with
24 any provision of any internal revenue law, and

1 “(C) the information sought to be obtained
2 from the examination of the records or testi-
3 mony (and the identity of the person or persons
4 with respect to whose liability the summons is
5 issued) is not readily available from other
6 sources.

7 “(2) EXCEPTION.—Paragraph (1) shall not
8 apply to any summons which specifies that it is lim-
9 ited to information regarding a United States cor-
10 respondent account (as defined in section
11 5318A(e)(1)(B) of title 31, United States Code) or
12 a United States payable-through account (as defined
13 in section 5318A(e)(1)(C) of such title) of a finan-
14 cial institution in an offshore secrecy jurisdiction.

15 “(3) PRESUMPTION IN CASES INVOLVING OFF-
16 SHORE SECRECY JURISDICTIONS.—For purposes of
17 this section, in any case in which the particular per-
18 son or ascertainable group or class of persons have
19 financial accounts in or transactions related to off-
20 shore secrecy jurisdictions, there shall be a presump-
21 tion that there is a reasonable basis for believing
22 that such person or group or class of persons may
23 fail or may have failed to comply with provisions of
24 internal revenue law.

25 “(4) PROJECT JOHN DOE SUMMONSES.—

1 “(A) IN GENERAL.—Notwithstanding the
2 requirements of paragraph (1), the Secretary
3 may issue a summons described in paragraph
4 (1) if the summons—

5 “(i) relates to a project which is ap-
6 proved under subparagraph (B),

7 “(ii) is issued to a person who is a
8 member of the group or class established
9 under subparagraph (B)(i), and

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

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

17 “(i) any summons issues with respect
18 to the project will be issued to a member
19 of an ascertainable group or class of per-
20 sons, and

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

1 “(C) EXTENSION.—Upon application of
2 the Secretary, the court may extend the time
3 for issuing such summonses under subpara-
4 graph (A)(i) for additional 3-year periods, but
5 only if the court continues to exercise oversight
6 of such project under subparagraph (D).

7 “(D) ONGOING COURT OVERSIGHT.—Dur-
8 ing any period in which the Secretary is author-
9 ized to issue summonses in relation to a project
10 approved under subparagraph (B) (including
11 during any extension under subparagraph (C)),
12 the Secretary shall report annually to the court
13 on the use of such authority, provide copies of
14 all summonses with such report, and comply
15 with the court’s direction with respect to the
16 issuance of any John Doe summons under such
17 project.”.

18 (b) JURISDICTION OF COURT.—

19 (1) IN GENERAL.—Paragraph (1) of section
20 7609(h) is amended by inserting after the first sen-
21 tence the following new sentence: “Any United
22 States district court in which a member of the group
23 or class to which a summons may be issued resides
24 or is found shall have jurisdiction to hear and deter-

1 mine the approval of a project under subsection
2 (f)(4)(B).”.

3 (2) CONFORMING AMENDMENT.—The first sen-
4 tence of section 7609(h)(1) is amended by striking
5 “(f)” and inserting “(f)(1)”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to summonses issued after the date
8 of the enactment of this Act.

9 (d) GAO REPORT.—Not later than the date which
10 is 5 years after the date of the enactment of this Act,
11 the Comptroller General of the United States shall issue
12 a report on the implementation of section 7609(f)(4) of
13 the Internal Revenue Code of 1986, as added by this sec-
14 tion.

15 **SEC. 205. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**
16 **CIAL ACCOUNT REPORTING.**

17 (a) CLARIFYING THE CONNECTION OF FOREIGN FI-
18 NANCIAL ACCOUNT REPORTING TO TAX ADMINISTRA-
19 TION.—Paragraph (4) of section 6103(b) (relating to tax
20 administration) is amended by adding at the end the fol-
21 lowing new sentence:

22 “For purposes of clause (i), section 5314 of title 31,
23 United States Code, and sections 5321 and 5322 of
24 such title (as such sections pertain to such section

1 5314), shall be considered to be an internal revenue
2 law.”.

3 (b) SIMPLIFYING THE CALCULATION OF FOREIGN
4 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section
5 5321(a)(5)(D)(ii) of title 31, United States Code, is
6 amended by striking “the balance in the account at the
7 time of the violation” and inserting “the highest balance
8 in the account during the reporting period to which the
9 violation relates”.

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

16 **TITLE III—COMBATING TAX**
17 **SHELTER PROMOTERS**

18 **SEC. 301. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**
19 **TERS.**

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

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

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

5 (3) by inserting after subsection (a) the fol-
6 lowing new subsections:

7 “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-
8 ALTY; LIABILITY FOR PENALTY.—

9 “(1) AMOUNT OF PENALTY.—The amount of
10 the penalty imposed by subsection (a) shall not ex-
11 ceed 150 percent of the gross income derived (or to
12 be derived) from such activity by the person or per-
13 sons subject to such penalty.

14 “(2) CALCULATION OF PENALTY.—The penalty
15 amount determined under paragraph (1) shall be
16 calculated with respect to each instance of an activ-
17 ity described in subsection (a), each instance in
18 which income was derived by the person or persons
19 subject to such penalty, and each person who par-
20 ticipated in such an activity.

21 “(3) LIABILITY FOR PENALTY.—If more than 1
22 person is liable under subsection (a) with respect to
23 such activity, all such persons shall be jointly and
24 severally liable for the penalty under such sub-
25 section.

1 “(c) PENALTY NOT DEDUCTIBLE.—The payment of
2 any penalty imposed under this section or the payment
3 of any amount to settle or avoid the imposition of such
4 penalty shall not be considered an ordinary and necessary
5 expense in carrying on a trade or business for purposes
6 of this title and shall not be deductible by the person who
7 is subject to such penalty or who makes such payment.”.

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

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

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

15 (a) IN GENERAL.—Section 6701(a) (relating to im-
16 position of penalty) is amended—

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

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

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

1 (b) AMOUNT OF PENALTY.—Subsection (b) of section
2 6701 (relating to penalties for aiding and abetting under-
3 statement of tax liability) is amended to read as follows:

4 “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-
5 ALTY; LIABILITY FOR PENALTY.—

6 “(1) AMOUNT OF PENALTY.—The amount of
7 the penalty imposed by subsection (a) shall not ex-
8 ceed 150 percent of the gross income derived (or to
9 be derived) from such aid, assistance, procurement,
10 or advice provided by the person or persons subject
11 to such penalty.

12 “(2) CALCULATION OF PENALTY.—The penalty
13 amount determined under paragraph (1) shall be
14 calculated with respect to each instance of aid, as-
15 sistance, procurement, or advice described in sub-
16 section (a), each instance in which income was de-
17 rived by the person or persons subject to such pen-
18 alty, and each person who made such an understatement
19 of the liability for tax.

20 “(3) LIABILITY FOR PENALTY.—If more than 1
21 person is liable under subsection (a) with respect to
22 providing such aid, assistance, procurement, or ad-
23 vice, all such persons shall be jointly and severally
24 liable for the penalty under such subsection.”.

1 (c) PENALTY NOT DEDUCTIBLE.—Section 6701 is
 2 amended by adding at the end the following new sub-
 3 section:

4 “(g) PENALTY NOT DEDUCTIBLE.—The payment of
 5 any penalty imposed under this section or the payment
 6 of any amount to settle or avoid the imposition of such
 7 penalty shall not be considered an ordinary and necessary
 8 expense in carrying on a trade or business for purposes
 9 of this title and shall not be deductible by the person who
 10 is subject to such penalty or who makes such payment.”.

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

14 **SEC. 303. TAX PLANNING INVENTIONS NOT PATENTABLE.**

15 (a) IN GENERAL.—Section 101 of title 35, United
 16 States Code, is amended—

17 (1) by striking “Whoever” and inserting “(A)
 18 PATENTABLE INVENTIONS.—Whoever”, and

19 (2) by adding at the end the following:

20 “(b) TAX PLANNING INVENTIONS.—

21 “(1) UNPATENTABLE SUBJECT MATTER.—A
 22 patent may not be obtained for a tax planning inven-
 23 tion.

24 “(2) DEFINITIONS.—For purposes of paragraph
 25 (1)—

1 “(A) the term ‘tax planning invention’
2 means a plan, strategy, technique, scheme,
3 process, or system that is designed to reduce,
4 minimize, determine, avoid, or defer, or has,
5 when implemented, the effect of reducing, mini-
6 mizing, determining, avoiding, or deferring, a
7 taxpayer’s tax liability or is designed to facili-
8 tate compliance with tax laws, but does not in-
9 clude tax preparation software and other tools
10 or systems used solely to prepare tax or infor-
11 mation returns,

12 “(B) the term ‘taxpayer’ means an indi-
13 vidual, entity, or other person (as defined in
14 section 7701 of the Internal Revenue Code of
15 1986),

16 “(C) the terms ‘tax’, ‘tax laws’, ‘tax liabil-
17 ity’, and ‘taxation’ refer to any Federal, State,
18 county, city, municipality, foreign, or other gov-
19 ernmental levy, assessment, or imposition,
20 whether measured by income, value, or other-
21 wise, and

22 “(D) the term ‘State’ means each of the
23 several States, the District of Columbia, and
24 any commonwealth, territory, or possession of
25 the United States.”.

1 (b) APPLICABILITY.—The amendments made by this
2 section—

3 (1) shall take effect on the date of the enact-
4 ment of this Act,

5 (2) shall apply to any application for patent or
6 application for a reissue patent that is—

7 (A) filed on or after the date of the enact-
8 ment of this Act, or

9 (B) filed before that date if a patent or re-
10 issue patent has not been issued pursuant to
11 the application as of that date, and

12 (3) shall not be construed as validating any pat-
13 ent issued before the date of the enactment of this
14 Act for an invention described in section 101(b) of
15 title 35, United States Code, as added by this sec-
16 tion.

17 **SEC. 304. PROHIBITED FEE ARRANGEMENT.**

18 (a) IN GENERAL.—Section 6701, as amended by this
19 Act, is amended—

20 (1) by redesignating subsections (f) and (g) as
21 subsections (g) and (h), respectively,

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

1 (3) by inserting after subsection (e) the fol-
2 lowing new subsection:

3 “(f) PROHIBITED FEE ARRANGEMENT.—

4 “(1) IN GENERAL.—Any person who makes an
5 agreement for, charges, or collects a fee which is for
6 services provided in connection with the internal rev-
7 enue laws, and the amount of which is calculated ac-
8 cording to, or is dependent upon, a projected or ac-
9 tual amount of—

10 “(A) tax savings or benefits, or

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

13 shall pay a penalty with respect to each such fee ac-
14 tivity in the amount determined under subsection
15 (b).

16 “(2) RULES.—The Secretary may issue rules to
17 carry out the purposes of this subsection and may
18 provide exceptions for fee arrangements that are in
19 the public interest.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to fee agreements, charges, and
22 collections made after the date of the enactment of this
23 Act.

1 **SEC. 305. PREVENTING TAX SHELTER ACTIVITIES BY FI-**
2 **NANCIAL INSTITUTIONS.**

3 (a) **EXAMINATIONS.**—

4 (1) **DEVELOPMENT OF EXAMINATION TECH-**
5 **NIQUES.**—Each of the Federal banking agencies and
6 the Commission shall, in consultation with the Inter-
7 nal Revenue Service, develop examination techniques
8 to detect potential violations of section 6700 or 6701
9 of the Internal Revenue Code of 1986, by depository
10 institutions, brokers, dealers, and investment advis-
11 ers, as appropriate.

12 (2) **IMPLEMENTATION.**—Each of the Federal
13 banking agencies and the Commission shall imple-
14 ment the examination techniques developed under
15 paragraph (1) with respect to each of the depository
16 institutions, brokers, dealers, or investment advisers
17 subject to their enforcement authority. Such exam-
18 ination shall, to the extent possible, be combined
19 with any examination by such agency otherwise re-
20 quired or authorized by Federal law.

21 (b) **REPORT TO INTERNAL REVENUE SERVICE.**—In
22 any case in which an examination conducted under this
23 section with respect to a financial institution or other enti-
24 ty reveals a potential violation, such agency shall promptly
25 notify the Internal Revenue Service of such potential viola-
26 tion for investigation and enforcement by the Internal

1 Revenue Service, in accordance with applicable provisions
2 of law.

3 (c) REPORT TO CONGRESS.—The Federal banking
4 agencies and the Commission shall submit a joint written
5 report to Congress in 2010 and 2013 on their progress
6 in preventing violations of sections 6700 and 6701 of the
7 Internal Revenue Code of 1986, by depository institutions,
8 brokers, dealers, and investment advisers, as appropriate.

9 (d) DEFINITIONS.—For purposes of this section—

10 (1) the terms “broker”, “dealer”, and “invest-
11 ment adviser” have the same meanings as in section
12 3 of the Securities Exchange Act of 1934 (15 U.S.C.
13 78c);

14 (2) the term “Commission” means the Securi-
15 ties and Exchange Commission;

16 (3) the term “depository institution” has the
17 same meaning as in section 3(c) of the Federal De-
18 posit Insurance Act (12 U.S.C. 1813(c));

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

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

1 **SEC. 306. INFORMATION SHARING FOR ENFORCEMENT**
2 **PURPOSES.**

3 (a) PROMOTION OF PROHIBITED TAX SHELTERS OR
4 TAX AVOIDANCE SCHEMES.—Section 6103(h) (relating to
5 disclosure to certain Federal officers and employees for
6 purposes of tax administration, etc.) is amended by adding
7 at the end the following new paragraph:

8 “(7) DISCLOSURE OF RETURNS AND RETURN
9 INFORMATION RELATED TO PROMOTION OF PROHIB-
10 ITED TAX SHELTERS OR TAX AVOIDANCE
11 SCHEMES.—

12 “(A) WRITTEN REQUEST.—Upon receipt
13 by the Secretary of a written request which
14 meets the requirements of subparagraph (B)
15 from the head of the United States Securities
16 and Exchange Commission, an appropriate
17 Federal banking agency as defined under sec-
18 tion 1813(q) of title 12, United States Code, or
19 the Public Company Accounting Oversight
20 Board, a return or return information shall be
21 disclosed to such requestor’s officers and em-
22 ployees who are personally and directly engaged
23 in an investigation, examination, or proceeding
24 by such requestor to evaluate, determine, penal-
25 ize, or deter conduct by a financial institution,
26 issuer, or public accounting firm, or associated

1 person, in connection with a potential or actual
2 violation of section 6700 (promotion of abusive
3 tax shelters), 6701 (aiding and abetting under-
4 statement of tax liability), or activities related
5 to promoting or facilitating inappropriate tax
6 avoidance or tax evasion. Such disclosure shall
7 be solely for use by such officers and employees
8 in such investigation, examination, or pro-
9 ceeding. In the discretion of the Secretary, such
10 disclosure may take the form of the participa-
11 tion of Internal Revenue Service employees in a
12 joint investigation, examination, or proceeding
13 with the Securities Exchange Commission, Fed-
14 eral banking agency, or Public Company Ac-
15 counting Oversight Board.

16 “(B) REQUIREMENTS.—A request meets
17 the requirements of this subparagraph if it sets
18 forth—

19 “(i) the nature of the investigation,
20 examination, or proceeding,

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

24 “(iii) the name or names of the finan-
25 cial institution, issuer, or public accounting

1 firm to which such return information re-
2 lates,

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

5 “(v) the specific reason or reasons
6 why such disclosure is, or may be, relevant
7 to such investigation, examination or pro-
8 ceeding.

9 “(C) FINANCIAL INSTITUTION.—For the
10 purposes of this paragraph, the term ‘financial
11 institution’ means a depository institution, for-
12 eign bank, insured institution, industrial loan
13 company, broker, dealer, investment company,
14 investment advisor, or other entity subject to
15 regulation or oversight by the United States Se-
16 curities and Exchange Commission or an appro-
17 priate Federal banking agency.”.

18 (b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGA-
19 TIONS.—Section 6103(i) (relating to disclosure to Federal
20 officers or employees for administration of Federal laws
21 not relating to tax administration) is amended by adding
22 at the end the following new paragraph:

23 “(9) DISCLOSURE OF RETURNS AND RETURN
24 INFORMATION FOR USE IN FINANCIAL AND AC-
25 COUNTING FRAUD INVESTIGATIONS.—

1 “(A) WRITTEN REQUEST.—Upon receipt
2 by the Secretary of a written request which
3 meets the requirements of subparagraph (B)
4 from the head of the United States Securities
5 and Exchange Commission or the Public Com-
6 pany Accounting Oversight Board, a return or
7 return information shall be disclosed to such re-
8 questor’s officers and employees who are per-
9 sonally and directly engaged in an investigation,
10 examination, or proceeding by such requester to
11 evaluate the accuracy of a financial statement
12 or report, or to determine whether to require a
13 restatement, penalize, or deter conduct by an
14 issuer, investment company, or public account-
15 ing firm, or associated person, in connection
16 with a potential or actual violation of auditing
17 standards or prohibitions against false or mis-
18 leading statements or omissions in financial
19 statements or reports. Such disclosure shall be
20 solely for use by such officers and employees in
21 such investigation, examination, or proceeding.

22 “(B) REQUIREMENTS.—A request meets
23 the requirements of this subparagraph if it sets
24 forth—

1 “(i) the nature of the investigation,
2 examination, or proceeding,

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

6 “(iii) the name or names of the issuer,
7 investment company, or public accounting
8 firm to which such return information re-
9 lates,

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

12 “(v) the specific reason or reasons
13 why such disclosure is, or may be, relevant
14 to such investigation, examination or pro-
15 ceeding.”.

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

20 **SEC. 307. DISCLOSURE OF INFORMATION TO CONGRESS.**

21 (a) DISCLOSURE BY TAX RETURN PREPARER.—

22 (1) IN GENERAL.—Subparagraph (B) of section
23 7216(b)(1) (relating to disclosures) is amended to
24 read as follows:

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

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

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

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

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

13 “(II) any State agency, body, or
14 commission charged under the laws of
15 the State or a political subdivision of
16 the State with the licensing, registra-
17 tion, or regulation of tax return pre-
18 parers.”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by this subsection shall apply to disclosures made
21 after the date of the enactment of this Act pursuant
22 to any document in effect on or after such date.

23 (b) DISCLOSURE BY SECRETARY.—Paragraph (2) of
24 section 6104(a) (relating to inspection of applications for

1 tax exemption or notice of status) is amended to read as
2 follows:

3 “(2) INSPECTION BY CONGRESS.—

4 “(A) IN GENERAL.—Upon receipt of a
5 written request from a committee or sub-
6 committee of Congress, copies of documents re-
7 lated to a determination by the Secretary to
8 grant, deny, revoke, or restore an organization’s
9 exemption from taxation under section 501
10 shall be provided to such committee or sub-
11 committee, including any application, notice of
12 status, or supporting information provided by
13 such organization to the Internal Revenue Serv-
14 ice; any letter, analysis, or other document pro-
15 duced by or for the Internal Revenue Service
16 evaluating, determining, explaining, or relating
17 to the tax exempt status of such organization
18 (other than returns, unless such returns are
19 available to the public under this section or sec-
20 tion 6103 or 6110); and any communication be-
21 tween the Internal Revenue Service and any
22 other party relating to the tax exempt status of
23 such organization.

24 “(B) ADDITIONAL INFORMATION.—Section
25 6103(f) shall apply with respect to—

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

8 “(ii) any other papers which are in
9 the possession of the Secretary and which
10 relate to such application,

11 as if such papers constituted returns.”.

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

16 **SEC. 308. TAX OPINION STANDARDS FOR TAX PRACTI-**
17 **TIONERS.**

18 Section 330(d) of title 31, United States Code, is
19 amended to read as follows:

20 “(d) The Secretary of the Treasury shall impose
21 standards applicable to the rendering of written advice
22 with respect to any listed transaction or any entity, plan,
23 arrangement, or other transaction which has a potential
24 for tax avoidance or evasion. Such standards shall ad-
25 dress, but not be limited to, the following issues:

1 “(1) Independence of the practitioner issuing
2 such written advice from persons promoting, mar-
3 keting, or recommending the subject of the advice.

4 “(2) Collaboration among practitioners, or be-
5 tween a practitioner and other party, which could re-
6 sult in such collaborating parties having a joint fi-
7 nancial interest in the subject of the advice.

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

10 “(4) For written advice issued by a firm, stand-
11 ards for reviewing the advice and ensuring the con-
12 sensus support of the firm for positions taken.

13 “(5) Reliance on reasonable factual representa-
14 tions by the taxpayer and other parties.

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

17 “(7) Preventing practitioners and firms from
18 aiding or abetting the understatement of tax liability
19 by clients.

20 “(8) Banning the promotion of potentially abu-
21 sive or illegal tax shelters.”.

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

3 (a) IN GENERAL.—Subsection (f) of section 162 (re-
4 lating to trade or business expenses) is amended to read
5 as follows:

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

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), no deduction otherwise allowable shall be
9 allowed under this chapter for any amount paid or
10 incurred (whether by suit, agreement, or otherwise)
11 to, or at the direction of, a government or entity de-
12 scribed in paragraph (4) in relation to the violation
13 of any law or the investigation or inquiry by such
14 government or entity into the potential violation of
15 any law.

16 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING
17 RESTITUTION.—Paragraph (1) shall not apply to
18 any amount which—

19 “(A) the taxpayer establishes constitutes
20 restitution (including remediation of property)
21 for damage or harm caused by or which may be
22 caused by the violation of any law or the poten-
23 tial violation of any law, and

24 “(B) is identified as restitution in the
25 court order or settlement agreement.

1 Identification pursuant to subparagraph (B) alone
2 shall not satisfy the requirement under subpara-
3 graph (A). This paragraph shall not apply to any
4 amount paid or incurred as reimbursement to the
5 government or entity for the costs of any investiga-
6 tion or litigation.

7 “(3) EXCEPTION FOR AMOUNTS PAID OR IN-
8 CURRED AS THE RESULT OF CERTAIN COURT OR-
9 DERS.—Paragraph (1) shall not apply to any
10 amount paid or incurred by order of a court in a
11 suit in which no government or entity described in
12 paragraph (4) is a party.

13 “(4) CERTAIN NONGOVERNMENTAL REGU-
14 LATORY ENTITIES.—An entity is described in this
15 paragraph if it is—

16 “(A) a nongovernmental entity which exer-
17 cises self-regulatory powers (including imposing
18 sanctions) in connection with a qualified board
19 or exchange (as defined in section 1256(g)(7)),
20 or

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

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

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to amounts paid or incurred on
6 or after the date of the enactment of this Act, except that
7 such amendment shall not apply to amounts paid or in-
8 curred under any binding order or agreement entered into
9 before such date. Such exception shall not apply to an
10 order or agreement requiring court approval unless the ap-
11 proval was obtained before such date.

12 **TITLE IV—REQUIRING** 13 **ECONOMIC SUBSTANCE**

14 **SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
15 **TRINE.**

16 (a) IN GENERAL.—Section 7701, as amended by sec-
17 tion 103, is amended by redesignating subsection (p) as
18 subsection (q) and by inserting after subsection (o) the
19 following new subsection:

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

22 “(1) GENERAL RULES.—

23 “(A) IN GENERAL.—In any case in which
24 a court determines that the economic substance
25 doctrine is relevant for purposes of this title to

1 a transaction (or series of transactions), such
2 transaction (or series of transactions) shall have
3 economic substance only if the requirements of
4 this paragraph are met.

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

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

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

13 “(II) subject to clause (iii), the
14 taxpayer has a substantial purpose
15 (other than a Federal tax purpose) for
16 entering into such transaction.

17 “(ii) SPECIAL RULE WHERE TAX-
18 PAYER RELIES ON PROFIT POTENTIAL.—A
19 transaction shall not be treated as having
20 economic substance solely by reason of
21 having a potential for profit unless the
22 present value of the reasonably expected
23 pre-Federal tax profit from the transaction
24 is substantial in relation to the present
25 value of the expected net Federal tax bene-

1 fits that would be allowed if the trans-
2 action were respected. In determining pre-
3 Federal tax profit, there shall be taken
4 into account fees and other transaction ex-
5 penses and to the extent provided by the
6 Secretary, foreign taxes.

7 “(iii) SPECIAL RULES FOR DETER-
8 MINING WHETHER NON-FEDERAL TAX
9 PURPOSE.—For purposes of clause
10 (i)(II)—

11 “(I) a purpose of achieving a fi-
12 nancial accounting benefit shall not be
13 taken into account in determining
14 whether a transaction has a substan-
15 tial purpose (other than a Federal tax
16 purpose) if the origin of such financial
17 accounting benefit is a reduction of
18 Federal tax, and

19 “(II) the taxpayer shall not be
20 treated as having a substantial pur-
21 pose (other than a Federal tax pur-
22 pose) with respect to a transaction if
23 the only such purpose is the reduction
24 of non-Federal taxes and the trans-
25 action will result in a reduction of

1 Federal taxes substantially equal to,
2 or greater than, the reduction in non-
3 Federal taxes because of similarities
4 between the laws imposing the taxes.

5 “(2) DEFINITIONS AND SPECIAL RULES.—For
6 purposes of this subsection—

7 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
8 The term ‘economic substance doctrine’ means
9 the common law doctrine under which tax bene-
10 fits under subtitle A with respect to a trans-
11 action are not allowable if the transaction does
12 not have economic substance or lacks a business
13 purpose.

14 “(B) EXCEPTION FOR PERSONAL TRANS-
15 ACTIONS OF INDIVIDUALS.—In the case of an
16 individual, this subsection shall apply only to
17 transactions entered into in connection with a
18 trade or business or an activity engaged in for
19 the production of income.

20 “(3) OTHER PROVISIONS NOT AFFECTED.—Ex-
21 cept as specifically provided in this subsection, the
22 provisions of this subsection shall not be construed
23 as altering or supplanting any other rule of law or
24 provision of this title, and the requirements of this

1 subsection shall be construed as being in addition to
 2 any such other rule of law or provision of this title.

3 “(4) REGULATIONS.—The Secretary shall pre-
 4 scribe such regulations as may be necessary or ap-
 5 propriate to carry out the purposes of this sub-
 6 section. Such regulations may include exemptions
 7 from the application of this subsection.”.

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

11 **SEC. 402. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 12 **UTABLE TO TRANSACTIONS LACKING ECO-**
 13 **NOMIC SUBSTANCE, ETC.**

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

17 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
 18 **UTABLE TO TRANSACTIONS LACKING ECO-**
 19 **NOMIC SUBSTANCE, ETC.**

20 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
 21 noneconomic substance transaction understatement for
 22 any taxable year, there shall be added to the tax an
 23 amount equal to 30 percent of the amount of such under-
 24 statement.

1 “(b) REDUCTION OF PENALTY FOR DISCLOSED
2 TRANSACTIONS.—Subsection (a) shall be applied by sub-
3 stituting ‘20 percent’ for ‘30 percent’ with respect to the
4 portion of any noneconomic substance transaction under-
5 statement with respect to which the relevant facts affect-
6 ing the tax treatment of the item are adequately disclosed
7 in the return or a statement attached to the return.

8 “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-
9 DERSTATEMENT.—For purposes of this section—

10 “(1) IN GENERAL.—The term ‘noneconomic
11 substance transaction understatement’ means any
12 amount which would be an understatement under
13 section 6662A(b)(1) if section 6662A were applied
14 by taking into account items attributable to non-
15 economic substance transactions rather than items
16 to which section 6662A would apply without regard
17 to this paragraph.

18 “(2) NONECONOMIC SUBSTANCE TRANS-
19 ACTION.—The term ‘noneconomic substance trans-
20 action’ means any transaction if there is a lack of
21 economic substance (within the meaning of section
22 7701(p)(1)(B)) for the transaction giving rise to the
23 claimed benefit.

24 “(d) RULES APPLICABLE TO ASSERTION, COM-
25 PROMISE, AND COLLECTION OF PENALTY.—

1 “(1) IN GENERAL.—Only the Chief Counsel for
2 the Internal Revenue Service may assert a penalty
3 imposed under this section or may compromise all or
4 any portion of such penalty. The Chief Counsel may
5 delegate the authority under this paragraph only to
6 an individual holding the position of chief of a
7 branch within the Office of the Chief Counsel for the
8 Internal Revenue Service.

9 “(2) SPECIFIC REQUIREMENTS.—

10 “(A) ASSERTION OF PENALTY.—The Chief
11 Counsel for the Internal Revenue Service (or
12 the Chief Counsel’s delegate under paragraph
13 (1)) shall not assert a penalty imposed under
14 this section unless, before the assertion of the
15 penalty, the taxpayer is provided—

16 “(i) a notice of intent to assert the
17 penalty, and

18 “(ii) an opportunity to provide to the
19 Commissioner (or the Chief Counsel’s dele-
20 gate under paragraph (1)) a written re-
21 sponse to the proposed penalty within a
22 reasonable period of time after such notice.

23 “(B) COMPROMISE OF PENALTY.—A com-
24 promise shall not result in a reduction in the
25 penalty imposed by this section in an amount

1 greater than the amount which bears the same
2 ratio to the amount of the penalty determined
3 without regard to the compromise as—

4 “(i) the reduction under the com-
5 promise in the noneconomic substance
6 transaction understatement to which the
7 penalty relates, bears to

8 “(ii) the amount of the noneconomic
9 substance transaction understatement de-
10 termined without regard to the com-
11 promise.

12 “(3) RULES RELATING TO RELEVANCY RE-
13 QUIREMENT.—

14 “(A) DETERMINATION OF RELEVANCE BY
15 CHIEF COUNSEL.—The Chief Counsel for the
16 Internal Revenue Service (or the Chief Coun-
17 sel’s delegate under paragraph (1)) may assert,
18 compromise, or collect a penalty imposed by
19 this section with respect to a noneconomic sub-
20 stance transaction even if there has not been a
21 court determination that the economic sub-
22 stance doctrine was relevant for purposes of
23 this title to the transaction if the Chief Counsel
24 (or delegate) determines that either was so rel-
25 evant.

1 “(B) FINAL ORDER OF COURT.—If there is
2 a final order of a court that determines that the
3 economic substance doctrine was not relevant
4 for purposes of this title to a transaction (or se-
5 ries of transactions), any penalty imposed under
6 this section with respect to the transaction (or
7 series of transactions) shall be rescinded.

8 “(4) APPLICABLE RULES.—The rules of para-
9 graphs (2) and (3) of section 6707A(d) shall apply
10 to a compromise under paragraph (1).

11 “(e) COORDINATION WITH OTHER PENALTIES.—Ex-
12 cept as otherwise provided in this part, the penalty im-
13 posed by this section shall be in addition to any other pen-
14 alty imposed by this title.

15 “(f) CROSS REFERENCES.—

16 “(1) For coordination of penalty with under-
17 statements under section 6662 and other special
18 rules, see section 6662A(e).

19 “(2) For reporting of penalty imposed under
20 this section to the Securities and Exchange Commis-
21 sion, see section 6707A(e).”.

22 (b) COORDINATION WITH OTHER UNDERSTATE-
23 MENTS AND PENALTIES.—

24 (1) The second sentence of section
25 6662(d)(2)(A) is amended by inserting “and without

1 regard to items with respect to which a penalty is
2 imposed by section 6662B” before the period at the
3 end.

4 (2) Subsection (e) of section 6662A is amend-
5 ed—

6 (A) in paragraph (1), by inserting “and
7 noneconomic substance transaction understate-
8 ments” after “reportable transaction under-
9 statements” both places it appears,

10 (B) in paragraph (2)(A)—

11 (i) by inserting “6662B or” before
12 “6663” in the text, and

13 (ii) by striking “**PENALTY**” in the
14 heading and inserting “**AND ECONOMIC**
15 **SUBSTANCE PENALTIES**”,

16 (C) in paragraph (2)(B)—

17 (i) by inserting “and section 6662B”
18 after “This section”, and

19 (ii) by striking “**PENALTY**” in the
20 heading and inserting “**AND ECONOMIC**
21 **SUBSTANCE PENALTIES**”,

22 (D) in paragraph (3), by inserting “or
23 noneconomic substance transaction understate-
24 ment” after “reportable transaction understate-
25 ment”, and

1 (E) by adding at the end the following new
2 paragraph:

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

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

10 (A) by striking “or” at the end of subpara-
11 graph (B), and

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

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

17 “(D) is required to pay a penalty under
18 section 6662(h) with respect to any transaction
19 and would (but for section 6662A(e)(2)(B))
20 have been subject to penalty under section
21 6662A at a rate prescribed under section
22 6662A(c) or to penalty under section 6662B.”.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 for part II of subchapter A of chapter 68 is amended by

1 inserting after the item relating to section 6662A the fol-
 2 lowing new item:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking
 economic substance, etc.”.

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

6 **SEC. 403. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
 7 **DERPAYMENTS ATTRIBUTABLE TO NON-**
 8 **ECONOMIC SUBSTANCE TRANSACTIONS.**

9 (a) **IN GENERAL.**—Section 163(m) (relating to inter-
 10 est on unpaid taxes attributable to nondisclosed reportable
 11 transactions) is amended—

12 (1) by striking “attributable” and all that fol-
 13 lows and inserting the following: “attributable to—

14 “(1) the portion of any reportable transaction
 15 understatement (as defined in section 6662A(b))
 16 with respect to which the requirement of section
 17 6664(d)(2)(A) is not met, or

18 “(2) any noneconomic substance transaction
 19 understatement (as defined in section 6662B(c)).”,
 20 and

21 (2) by inserting “**AND NONECONOMIC SUB-**
 22 **STANCE TRANSACTIONS**” in the heading thereof
 23 after “**TRANSACTIONS**”.

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

○