

113TH CONGRESS  
1ST SESSION

# S. 268

To reduce the deficit and protect important programs by ending tax loopholes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2013

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

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## A BILL

To reduce the deficit and protect important programs by  
ending tax loopholes.

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 “Cut Unjustified Tax Loopholes Act” or “CUT Loopholes  
6 Act”.

7 (b) **AMENDMENT OF 1986 CODE.**—Except as other-  
8 wise expressly provided, whenever in this Act an amend-  
9 ment or repeal is expressed in terms of an amendment  
10 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—ENDING OFFSHORE TAX ABUSES

##### Subtitle A—Deterring the Use of Tax Havens for Tax Evasion

- Sec. 101. Authorizing special measures against foreign jurisdictions, financial institutions, and others that significantly impede United States tax enforcement.
- Sec. 102. Strengthening the Foreign Account Tax Compliance Act (FATCA).
- Sec. 103. Treatment of foreign corporations managed and controlled in the United States as domestic corporations.
- Sec. 104. Reporting United States beneficial owners of foreign owned financial accounts.
- Sec. 105. Swap payments made from the United States to persons offshore.

##### Subtitle B—Other Measures To Combat Tax Haven and Tax Shelter Abuses

- Sec. 111. Country-by-country reporting.
- Sec. 112. Penalty for failing to disclose offshore holdings.
- Sec. 113. Deadline for anti-money laundering rule for investment advisers.
- Sec. 114. Anti-money laundering requirements for formation agents.
- Sec. 115. Strengthening John Doe summons proceedings.
- Sec. 116. Improving enforcement of foreign financial account reporting.

##### Subtitle C—Ending Offshore Tax Avoidance

- Sec. 121. Allocation of expenses and taxes on basis of repatriation of foreign income.
- Sec. 122. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.
- Sec. 123. Limitations on income shifting through intangible property transfers.
- Sec. 124. Limitation on earnings stripping by expatriated entities.
- Sec. 125. Repeal of check-the-box rules for certain foreign entities and CFC look-thru rules.
- Sec. 126. Prohibition on offshore loan abuse.

#### TITLE II—STRENGTHENING TAX ENFORCEMENT

##### Subtitle A—Combating Tax Shelter Promotion

- Sec. 201. Penalty for promoting abusive tax shelters.
- Sec. 202. Penalty for aiding and abetting the understatement of tax liability.
- Sec. 203. Prohibited fee arrangement.
- Sec. 204. Preventing tax shelter activities by financial institutions.
- Sec. 205. Information sharing for enforcement purposes.
- Sec. 206. Disclosure of information to Congress.
- Sec. 207. Tax opinion standards for tax practitioners.

Subtitle B—Simplify Tax Lien Procedure

- Sec. 211. Short title.  
 Sec. 212. Findings and purpose.  
 Sec. 213. National tax lien filing system.

TITLE III—ENDING EXCESSIVE CORPORATE TAX DEDUCTIONS  
 FOR STOCK OPTIONS

- Sec. 301. Consistent treatment of stock options by corporations.  
 Sec. 302. Application of executive pay deduction limit.

TITLE IV—CLOSING THE DERIVATIVES BLENDED RATE  
 LOOPHOLE

- Sec. 401. Short title.  
 Sec. 402. Modifications to treatment of section 1256 contracts.  
 Sec. 403. Modifications to treatment of dealers in securities and commodities.

TITLE V—ENDING THE TAR SANDS OIL SPILL LOOPHOLE

- Sec. 501. Short title.  
 Sec. 502. Requirements for contribution to the Oil Spill Liability Trust Fund.  
 Sec. 503. Extension of Oil Spill Liability Trust Fund financing rate.  
 Sec. 504. Technical amendment.

TITLE VI—ENDING THE CARRIED INTEREST LOOPHOLE

- Sec. 601. Short title; etc.  
 Sec. 602. Partnership interests transferred in connection with performance of services.  
 Sec. 603. Special rules for partners providing investment management services to partnerships.

1       **TITLE I—ENDING OFFSHORE**  
 2                   **TAX ABUSES**  
 3       **Subtitle A—Deterring the Use of**  
 4                   **Tax Havens for Tax Evasion**

5       **SEC. 101. AUTHORIZING SPECIAL MEASURES AGAINST FOR-**  
 6                   **EIGN JURISDICTIONS, FINANCIAL INSTITU-**  
 7                   **TIONS, AND OTHERS THAT SIGNIFICANTLY**  
 8                   **IMPEDE UNITED STATES TAX ENFORCEMENT.**

9       Section 5318A of title 31, United States Code, is  
 10 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 significantly impede United**  
7 **States tax enforcement”;**

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 SIGNIFICANTLY IMPEDE  
12 UNITED STATES TAX ENFORCEMENT.—”;

13 (3) in subsection (c)—

14 (A) by striking the subsection heading and  
15 inserting the following:

16 “(c) CONSULTATIONS AND INFORMATION TO BE  
17 CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,  
18 TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-  
19 MARY MONEY LAUNDERING CONCERN OR TO BE SIGNIFI-  
20 CANTLY IMPEDING UNITED STATES TAX ENFORCE-  
21 MENT.—”; and

22 (B) by inserting at the end of paragraph  
23 (2) thereof the following new subparagraph:

24 “(C) OTHER CONSIDERATIONS.—The fact  
25 that a jurisdiction or financial institution is co-

1 operating with the United States on imple-  
2 menting the requirements specified in chapter 4  
3 of the Internal Revenue Code of 1986 may be  
4 favorably considered in evaluating whether such  
5 jurisdiction or financial institution is signifi-  
6 cantly impeding United States tax enforce-  
7 ment.”;

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

11 (5) in subsection (a)(4)—

12 (A) in subparagraph (A)—

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

15 and

16 (ii) by striking “and” at the end;

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

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

21 “(B) in matters involving United States  
22 tax enforcement, shall consult with the Commis-  
23 sioner of the Internal Revenue, the Secretary of  
24 State, the Attorney General of the United  
25 States, and in the sole discretion of the Sec-

1           retary, such other agencies and interested par-  
2           ties as the Secretary may find to be appro-  
3           priate; and”;

4           (6) in each of paragraphs (1)(A), (2), (3), and  
5           (4) of subsection (b), by inserting “or to be signifi-  
6           cantly impeding United States tax enforcement”  
7           after “primary money laundering concern” each  
8           place that term appears;

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

11          “(5) PROHIBITIONS OR CONDITIONS ON OPEN-  
12          ING OR MAINTAINING CERTAIN CORRESPONDENT OR  
13          PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING  
14          CERTAIN PAYMENT CARDS.—If the Secretary finds a  
15          jurisdiction outside of the United States, 1 or more  
16          financial institutions operating outside of the United  
17          States, or 1 or more classes of transactions within  
18          or involving a jurisdiction outside of the United  
19          States to be of primary money laundering concern or  
20          to be significantly impeding United States tax en-  
21          forcement, the Secretary, in consultation with the  
22          Secretary of State, the Attorney General of the  
23          United States, and the Chairman of the Board of  
24          Governors of the Federal Reserve System, may pro-  
25          hibit, or impose conditions upon—

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

4           “(B) the authorization, approval, or use in  
5           the United States of a credit card, charge card,  
6           debit card, or similar credit or debit financial  
7           instrument by any domestic financial institu-  
8           tion, financial agency, or credit card company  
9           or association, for or on behalf of a foreign  
10          banking institution, if such correspondent ac-  
11          count, payable-through account, credit card,  
12          charge card, debit card, or similar credit or  
13          debit financial instrument, involves any such ju-  
14          risdiction or institution, or if any such trans-  
15          action may be conducted through such cor-  
16          respondent account, payable-through account,  
17          credit card, charge card, debit card, or similar  
18          credit or debit financial instrument.”; and

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

22          (9) in subsection (c)(2)(A)—

23                  (A) in clause (ii), by striking “bank secrecy  
24                  or special regulatory advantages” and inserting

1 “bank, tax, corporate, trust, or financial secrecy  
2 or regulatory advantages”;

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

7 (C) in clause (v), by striking “banking or  
8 secrecy” and inserting “banking, tax, or se-  
9 crecy”; and

10 (D) in clause (vi), by inserting “, tax trea-  
11 ty, or tax information exchange agreement”  
12 after “treaty”;

13 (10) in subsection (c)(2)(B)—

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

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

18 (11) in subsection (d), by inserting “involving  
19 money laundering, and shall notify, in writing, the  
20 Committee on Finance of the Senate and the Com-  
21 mittee on Ways and Means of the House of Rep-  
22 resentatives of any such action involving United  
23 States tax enforcement” after “such action”.



1 **SEC. 102. STRENGTHENING THE FOREIGN ACCOUNT TAX**  
2 **COMPLIANCE ACT (FATCA).**

3 (a) **REPORTING ACTIVITIES WITH RESPECT TO PAS-**  
4 **SIVE FOREIGN INVESTMENT COMPANIES.**—Section  
5 1298(f) is amended by inserting “, or who directly or indi-  
6 rectly forms, transfers assets to, is a beneficiary of, has  
7 a beneficial interest in, or receives money or property or  
8 the use thereof from,” after “shareholder of”.

9 (b) **WITHHOLDABLE PAYMENTS TO FOREIGN FINAN-**  
10 **CIAL INSTITUTIONS.**—Section 1471(d) is amended—

11 (1) by inserting “or transaction” after “any de-  
12 pository” in paragraph (2)(A), and

13 (2) by striking “or any interest” and all that  
14 follows in paragraph (5)(C) and inserting “deriva-  
15 tives, or any interest (including a futures or forward  
16 contract, swap, or option) in such securities, part-  
17 nership interests, commodities, or derivatives.”.

18 (c) **WITHHOLDABLE PAYMENTS TO OTHER FOREIGN**  
19 **FINANCIAL INSTITUTIONS.**—Section 1472 is amended—

20 (1) by inserting “as a result of any customer  
21 identification, anti-money laundering, anti-corrup-  
22 tion, or similar obligation to identify account hold-  
23 ers,” after “reason to know,” in subsection (b)(2),  
24 and

1           (2) by inserting “as posing a low risk of tax  
2 evasion” after “this subsection” in subsection  
3 (c)(1)(G).

4           (d) DEFINITIONS.—Clauses (i) and (ii) of section  
5 1473(2)(A) are each amended by inserting “or as a bene-  
6 ficial owner” after “indirectly”.

7           (e) SPECIAL RULES.—Section 1474(c) is amended—

8           (1) by inserting “, except that information pro-  
9 vided under sections 1471(c) or 1472(b) may be dis-  
10 closed to any Federal law enforcement agency, upon  
11 request or upon the initiation of the Secretary, to in-  
12 vestigate or address a possible violation of United  
13 States law” after “shall apply” in paragraph (1),  
14 and

15           (2) by inserting “, or has had an agreement  
16 terminated under such section,” after “section  
17 1471(b)” in paragraph (2).

18           (f) INFORMATION WITH RESPECT TO FOREIGN FI-  
19 NANCIAL ASSETS.—Section 6038D(a) is amended by in-  
20 serting “ownership or beneficial ownership” after “holds  
21 any”.

22           (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES  
23 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-  
24 TIONS.—

25           (1) PRESUMPTIONS FOR TAX PURPOSES.—

1 (A) IN GENERAL.—Chapter 76 is amended  
2 by inserting after section 7491 the following  
3 new subchapter:

4 **“Subchapter F—Presumptions for Certain**  
5 **Legal Proceedings**

“Sec. 7492. Presumptions pertaining to entities and transactions involving non-FATCA institutions.

6 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**  
7 **TRANSACTIONS INVOLVING NON-FATCA IN-**  
8 **STITUTIONS.**

9 “(a) CONTROL.—For purposes of any United States  
10 civil judicial or administrative proceeding to determine or  
11 collect tax, there shall be a rebuttable presumption that  
12 a United States person (other than an entity with shares  
13 regularly traded on an established securities market) who,  
14 directly or indirectly, formed, transferred assets to, was  
15 a beneficiary of, had a beneficial interest in, or received  
16 money or property or the use thereof from an entity, in-  
17 cluding a trust, corporation, limited liability company,  
18 partnership, or foundation (other than an entity with  
19 shares regularly traded on an established securities mar-  
20 ket), that holds an account, or in any other manner has  
21 assets, in a non-FATCA institution, exercised control over  
22 such entity. The presumption of control created by this  
23 subsection shall not be applied to prevent the Secretary  
24 from determining or arguing the absence of control.

1       “(b) TRANSFERS OF INCOME.—For purposes of any  
2 United States civil judicial or administrative proceeding  
3 to determine or collect tax, there shall be a rebuttable pre-  
4 sumption that any amount or thing of value received by  
5 a United States person (other than an entity with shares  
6 regularly traded on an established securities market) di-  
7 rectly or indirectly from an account or from an entity  
8 (other than an entity with shares regularly traded on an  
9 established securities market) that holds an account, or  
10 in any other manner has assets, in a non-FATCA institu-  
11 tion, constitutes income of such person taxable in the year  
12 of receipt; and any amount or thing of value paid or trans-  
13 ferred by or on behalf of a United States person (other  
14 than an entity with shares regularly traded on an estab-  
15 lished securities market) directly or indirectly to an ac-  
16 count, or entity (other than an entity with shares regularly  
17 traded on an established securities market) that holds an  
18 account, or in any other manner has assets, in a non-  
19 FATCA institution, represents previously unreported in-  
20 come of such person taxable in the year of the transfer.

21       “(c) REBUTTING THE PRESUMPTIONS.—The pre-  
22 sumptions established in this section may be rebutted only  
23 by clear and convincing evidence, including detailed docu-  
24 mentary, testimonial, and transactional evidence, estab-  
25 lishing that—

1           “(1) in subsection (a), such taxpayer exercised  
2           no control, directly or indirectly, over account or en-  
3           tity at the time in question, and

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

7 Any court having jurisdiction of a civil proceeding in which  
8 control of such an offshore account or offshore entity or  
9 the income character of such receipts or amounts trans-  
10 ferred is an issue shall prohibit the introduction by the  
11 taxpayer of any foreign based document that is not au-  
12 thenticated in open court by a person with knowledge of  
13 such document, or any other evidence supplied by a person  
14 outside the jurisdiction of a United States court, unless  
15 such person appears before the court.”.

16           (B) The table of subchapters for chapter  
17           76 is amended by inserting after the item relat-  
18           ing to subchapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

19           (2) DEFINITION OF NON-FATCA INSTITUTION.—  
20           Section 7701(a) is amended by adding at the end  
21           the following new paragraph:

22           “(51) NON-FATCA INSTITUTION.—The term  
23           ‘non-FATCA institution’ means any financial insti-  
24           tution that does not meet the reporting requirements  
25           of section 1471(b).”.

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

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

7           “(1) CONTROL.—For purposes of any civil judi-  
8           cial or administrative proceeding under this title,  
9           there shall be a rebuttable presumption that a  
10          United States person (other than an entity with  
11          shares regularly traded on an established securities  
12          market) who, directly or indirectly, formed, trans-  
13          ferred assets to, was a beneficiary of, had a bene-  
14          ficial interest in, or received money or property or  
15          the use thereof from an entity, including a trust,  
16          corporation, limited liability company, partnership,  
17          or foundation (other than an entity with shares reg-  
18          ularly traded on an established securities market),  
19          that holds an account, or in any other manner has  
20          assets, in a non-FATCA institution (as defined in  
21          section 7701(a)(51) of the Internal Revenue Code of  
22          1986), exercised control over such entity. The pre-  
23          sumption of control created by this paragraph shall  
24          not be applied to prevent the Commission from de-  
25          termining or arguing the absence of control.

1           “(2) BENEFICIAL OWNERSHIP.—For purposes  
2 of any civil judicial or administrative proceeding  
3 under this title, there shall be a rebuttable presump-  
4 tion that securities that are nominally owned by an  
5 entity, including a trust, corporation, limited liability  
6 company, partnership, or foundation (other than an  
7 entity with shares regularly traded on an established  
8 securities market), and that are held in a non-  
9 FATCA institution (as so defined), are beneficially  
10 owned by any United States person (other than an  
11 entity with shares regularly traded on an established  
12 securities market) who directly or indirectly exer-  
13 cised control over such entity. The presumption of  
14 beneficial ownership created by this paragraph shall  
15 not be applied to prevent the Commission from de-  
16 termining or arguing the absence of beneficial own-  
17 ership.”.

18           (4) PRESUMPTION FOR REPORTING PURPOSES  
19 RELATING TO FOREIGN FINANCIAL ACCOUNTS.—Sec-  
20 tion 5314 of title 31, United States Code, is amend-  
21 ed by adding at the end the following new sub-  
22 section:

23           “(d) REBUTTABLE PRESUMPTION.—For purposes of  
24 this section, there shall be a rebuttable presumption that  
25 any account with a non-FATCA institution (as defined in

1 section 7701(a)(51) of the Internal Revenue Code of  
2 1986) contains funds in an amount that is at least suffi-  
3 cient to require a report prescribed by regulations under  
4 this section.”.

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

19          (h) EFFECTIVE DATE.—The amendments made by  
20          this section shall take effect on the date which is 180 days  
21          after the date of enactment of this Act, whether or not  
22          regulations are issued under subsection (g)(5).



1 **SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MAN-**  
2 **AGED AND CONTROLLED IN THE UNITED**  
3 **STATES AS DOMESTIC CORPORATIONS.**

4 (a) IN GENERAL.—Section 7701 is amended by re-  
5 designating subsection (p) as subsection (q) and by insert-  
6 ing after subsection (o) the following new subsection:

7 “(p) CERTAIN CORPORATIONS MANAGED AND CON-  
8 TROLLED IN THE UNITED STATES TREATED AS DOMES-  
9 TIC FOR INCOME TAX.—

10 “(1) IN GENERAL.—Notwithstanding subsection  
11 (a)(4), in the case of a corporation described in  
12 paragraph (2) if—

13 “(A) the corporation would not otherwise  
14 be treated as a domestic corporation for pur-  
15 poses of this title, but

16 “(B) the management and control of the  
17 corporation occurs, directly or indirectly, pri-  
18 marily within the United States,

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

22 “(2) CORPORATION DESCRIBED.—

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

1           “(i) the stock of such corporation is  
2 regularly traded on an established securi-  
3 ties market, or

4           “(ii) the aggregate gross assets of  
5 such corporation (or any predecessor there-  
6 of), including assets under management  
7 for investors, whether held directly or indi-  
8 rectly, at any time during the taxable year  
9 or any preceding taxable year is  
10 \$50,000,000 or more.

11           “(B) GENERAL EXCEPTION.—A corpora-  
12 tion shall not be treated as described in this  
13 paragraph if—

14           “(i) such corporation was treated as a  
15 corporation described in this paragraph in  
16 a preceding taxable year,

17           “(ii) such corporation—

18           “(I) is not regularly traded on an  
19 established securities market, and

20           “(II) has, and is reasonably ex-  
21 pected to continue to have, aggregate  
22 gross assets (including assets under  
23 management for investors, whether  
24 held directly or indirectly) of less than  
25 \$50,000,000, and

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

3           “(C) EXCEPTION FROM GROSS ASSETS  
4           TEST.—Subparagraph (A)(ii) shall not apply to  
5           a corporation which is a controlled foreign cor-  
6           poration (as defined in section 957) and which  
7           is a member of an affiliated group (as defined  
8           section 1504, but determined without regard to  
9           section 1504(b)(3)) the common parent of  
10          which—

11           “(i) is a domestic corporation (deter-  
12          mined without regard to this subsection),  
13          and

14           “(ii) has substantial assets (other  
15          than cash and cash equivalents and other  
16          than stock of foreign subsidiaries) held for  
17          use in the active conduct of a trade or  
18          business in the United States.

19          “(3) MANAGEMENT AND CONTROL.—

20           “(A) IN GENERAL.—The Secretary shall  
21          prescribe regulations for purposes of deter-  
22          mining cases in which the management and  
23          control of a corporation is to be treated as oc-  
24          curring primarily within the United States.

1           “(B) EXECUTIVE OFFICERS AND SENIOR  
2 MANAGEMENT.—Such regulations shall provide  
3 that—

4           “(i) the management and control of a  
5 corporation shall be treated as occurring  
6 primarily within the United States if sub-  
7 stantially all of the executive officers and  
8 senior management of the corporation who  
9 exercise day-to-day responsibility for mak-  
10 ing decisions involving strategic, financial,  
11 and operational policies of the corporation  
12 are located primarily within the United  
13 States, and

14           “(ii) individuals who are not executive  
15 officers and senior management of the cor-  
16 poration (including individuals who are of-  
17 ficers or employees of other corporations in  
18 the same chain of corporations as the cor-  
19 poration) shall be treated as executive offi-  
20 cers and senior management if such indi-  
21 viduals exercise the day-to-day responsibil-  
22 ities of the corporation described in clause  
23 (i).

24           “(C) CORPORATIONS PRIMARILY HOLDING  
25 INVESTMENT ASSETS.—Such regulations shall

1 also provide that the management and control  
2 of a corporation shall be treated as occurring  
3 primarily within the United States if—

4 “(i) the assets of such corporation (di-  
5 rectly or indirectly) consist primarily of as-  
6 sets being managed on behalf of investors,  
7 and

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

10 (b) **EFFECTIVE DATE.**—The amendments made by  
11 this section shall apply to taxable years beginning on or  
12 after the date which is 2 years after the date of the enact-  
13 ment of this Act, whether or not regulations are issued  
14 under section 7701(p)(3) of the Internal Revenue Code  
15 of 1986, as added by this section.

16 **SEC. 104. REPORTING UNITED STATES BENEFICIAL OWN-**  
17 **ERS OF FOREIGN OWNED FINANCIAL AC-**  
18 **COUNTS.**

19 (a) **IN GENERAL.**—Subpart B of part III of sub-  
20 chapter A of chapter 61 is amended by inserting after sec-  
21 tion 6045B the following new sections:

1 **“SEC. 6045C. RETURNS REGARDING UNITED STATES BENE-**  
2 **FICIAL OWNERS OF FINANCIAL ACCOUNTS**  
3 **LOCATED IN THE UNITED STATES AND HELD**  
4 **IN THE NAME OF A FOREIGN ENTITY.**

5 “(a) REQUIREMENT OF RETURN.—If—

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

14 “(2) such withholding agent determines for pur-  
15 poses of titles 14, 18, or 31 of the United States  
16 Code that a United States person has any beneficial  
17 interest in the foreign entity or in the account in  
18 such entity’s name (hereafter in this section referred  
19 to as ‘United States beneficial owner’),

20 then the withholding agent shall make a return according  
21 to the forms or regulations prescribed by the Secretary.

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

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

4           “(2) the known facts pertaining to the relation-  
5           ship of such United States beneficial owner to the  
6           foreign entity and the account,

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

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

12           “(c) STATEMENTS TO BE FURNISHED TO BENE-  
13           FICIAL OWNERS WITH RESPECT TO WHOM INFORMATION  
14           IS REQUIRED TO BE REPORTED.—A withholding agent  
15           required to make a return under subsection (a) shall fur-  
16           nish to each United States beneficial owner whose name  
17           is required to be set forth in such return a statement  
18           showing—

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

22           “(2) the information required to be shown on  
23           such return with respect to such United States bene-  
24           ficial owner.

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

9 **“SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS RE-**  
10 **GARDING ESTABLISHMENT OF ACCOUNTS IN**  
11 **NON-FATCA INSTITUTIONS.**

12 “(a) REQUIREMENT OF RETURN.—Any financial in-  
13 stitution directly or indirectly opening a bank, brokerage,  
14 or other financial account for or on behalf of an offshore  
15 entity, including a trust, corporation, limited liability com-  
16 pany, partnership, or foundation (other than an entity  
17 with shares regularly traded on an established securities  
18 market), in a non-FATCA institution (as defined in sec-  
19 tion 7701(a)(51)) at the direction of, on behalf of, or for  
20 the benefit of a United States person shall make a return  
21 according to the forms or regulations prescribed by the  
22 Secretary.

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



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

3           “(2) the name and address of the financial in-  
4           stitution at which a financial account is opened, the  
5           type of account, the account number, the name  
6           under which the account was opened, and the  
7           amount of the initial deposit,

8           “(3) if the account is held in the name of an  
9           entity, the name and address of such entity, the type  
10          of entity, and the name and address of any company  
11          formation agent or other professional employed to  
12          form or acquire the entity, and

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

15          “(c) STATEMENTS TO BE FURNISHED TO UNITED  
16          STATES PERSONS WITH RESPECT TO WHOM INFORMA-  
17          TION IS REQUIRED TO BE REPORTED.—A financial insti-  
18          tution required to make a return under subsection (a)  
19          shall furnish to each United States person whose name  
20          is required to be set forth in such return a statement  
21          showing—

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

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

4           The written statement required under the preceding sen-  
5           tence shall be furnished to such United States person on  
6           or before January 31 of the year following the calendar  
7           year for which the return under subsection (a) was re-  
8           quired to be made.

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

15          (b) PENALTIES.—

16                 (1) RETURNS.—Section 6724(d)(1)(B) is  
17                 amended by striking “or” at the end of clause  
18                 (xxiv), by striking “and” at the end of clause (xxv),  
19                 and by adding after clause (xxv) the following new  
20                 clauses:

21                         “(xxvi) section 6045C(a) (relating to  
22                         returns regarding United States beneficial  
23                         owners of financial accounts located in the  
24                         United States and held in the name of a  
25                         foreign entity), or

1 “(xxvii) section 6045D(a) (relating to  
 2 returns by financial institutions regarding  
 3 establishment of accounts at non-FATCA  
 4 institutions), and”.

5 (2) PAYEE STATEMENTS.—Section 6724(d)(2)  
 6 is amended by striking “or” at the end of subpara-  
 7 graph (GG), by striking the period at the end of  
 8 subparagraph (HH), and by inserting after subpara-  
 9 graph (HH) the following new subparagraphs:

10 “(II) section 6045C(e) (relating to returns  
 11 regarding United States beneficial owners of fi-  
 12 nancial accounts located in the United States  
 13 and held in the name of a foreign entity),

14 “(JJ) section 6045D(c) (relating to re-  
 15 turns by financial institutions regarding estab-  
 16 lishment of accounts at non-FATCA institu-  
 17 tions).”.

18 (c) CLERICAL AMENDMENT.—The table of sections  
 19 for subpart B of part III of subchapter A of chapter 61  
 20 is amended by inserting after the item relating to section  
 21 6045B the following new items:

“Sec. 6045C. Returns regarding United States beneficial owners of financial  
 accounts located in the United States and held in the name of  
 a foreign entity.

“Sec. 6045D. Returns by financial institutions regarding establishment of ac-  
 counts at non-FATCA institutions.”.

22 (d) ADDITIONAL PENALTIES.—

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

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

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

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

20               (2) EFFECTIVE DATE.—Section 6045C of the  
21               Internal Revenue Code of 1986 (as added by this  
22               section) and the amendment made by subsection  
23               (d)(1) shall take effect with respect to amounts paid  
24               into foreign owned accounts located in the United  
25               States after December 31 of the year of the date of

1 the enactment of this Act. Section 6045D of such  
2 Code (as so added) and the amendment made by  
3 subsection (d)(2) shall take effect with respect to ac-  
4 counts opened after December 31 of the year of the  
5 date of the enactment of this Act.

6 **SEC. 105. SWAP PAYMENTS MADE FROM THE UNITED**  
7 **STATES TO PERSONS OFFSHORE.**

8 (a) **TAX ON SWAP PAYMENTS RECEIVED BY FOR-**  
9 **EIGN PERSONS.**—Section 871(a)(1) is amended—

10 (1) by inserting “swap payments (as identified  
11 in section 1256(b)(2)(B)),” after “annuities,” in  
12 subparagraph (A), and

13 (2) by adding at the end the following new sen-  
14 tence: “In the case of swap payments, the source of  
15 a swap payment is determined by reference to the lo-  
16 cation of the payor.”.

17 (b) **TAX ON SWAP PAYMENTS RECEIVED BY FOR-**  
18 **EIGN CORPORATIONS.**—Section 881(a) is amended—

19 (1) by inserting “swap payments (as identified  
20 in section 1256(b)(2)(B)),” after “annuities,” in  
21 paragraph (1), and

22 (2) by adding at the end the following new sen-  
23 tence: “In the case of swap payments, the source of  
24 a swap payment is determined by reference to the lo-  
25 cation of the payor.”.

1 **Subtitle B—Other Measures To**  
2 **Combat Tax Haven and Tax**  
3 **Shelter Abuses**

4 **SEC. 111. COUNTRY-BY-COUNTRY REPORTING.**

5 (a) COUNTRY-BY-COUNTRY REPORTING.—Section 13  
6 of the Securities Exchange Act of 1934 (15 U.S.C. 78m)  
7 is amended by adding at the end the following new sub-  
8 section:

9 “(s) DISCLOSURE OF FINANCIAL PERFORMANCE ON  
10 A COUNTRY-BY-COUNTRY BASIS.—

11 “(1) DEFINITIONS.—In this subsection—

12 “(A) the term ‘issuer group’ means the  
13 issuer, each subsidiary of the issuer, and each  
14 entity under the control of the issuer; and

15 “(B) the term ‘country of operation’ means  
16 each country in which a member of the issuer  
17 group is incorporated, organized, maintains em-  
18 ployees, or conducts significant business activi-  
19 ties.

20 “(2) RULES REQUIRED.—The Commission shall  
21 issue rules that require each issuer to include in an  
22 annual report filed by the issuer with the Commis-  
23 sion information on a country-by-country basis dur-  
24 ing the covered period, consisting of—

1           “(A) a list of each country of operation  
2           and the name of each entity of the issuer group  
3           domiciled in each country of operation;

4           “(B) the number of employees physically  
5           working in each country of operation;

6           “(C) the total pre-tax gross revenues of  
7           each member of the issuer group in each coun-  
8           try of operation;

9           “(D) the total amount of payments made  
10          to governments by each member of the issuer  
11          group in each country of operation, without ex-  
12          ception, including, and set forth according to—

13               “(i) total Federal, regional, local, and  
14               other tax assessed against each member of  
15               the issuer group with respect to each coun-  
16               try of operation during the covered period;  
17               and

18               “(ii) after any tax deductions, tax  
19               credits, tax forgiveness, or other tax bene-  
20               fits or waivers, the total amount of tax  
21               paid from the treasury of each member of  
22               the issuer group to the government of each  
23               country of operation during the covered pe-  
24               riod; and

1           “(E) such other financial information as  
2           the Commission may determine is necessary or  
3           appropriate in the public interest or for the pro-  
4           tection of investors.”.

5           (b) RULEMAKING.—

6           (1) DEADLINES.—The Securities and Exchange  
7           Commission (in this section referred to as the “Com-  
8           mission”) shall—

9                   (A) not later than 270 days after the date  
10                  of enactment of this Act, issue a proposed rule  
11                  to carry out this section and the amendment  
12                  made by this section; and

13                   (B) not later than 1 year after the date of  
14                  enactment of this Act, issue a final rule to  
15                  carry out this section and the amendment made  
16                  by this section.

17           (2) DATA FORMAT.—The information required  
18           to be provided by this section shall be provided by  
19           the issuer in a format prescribed by the Commission,  
20           and shall be made available to the public online, in  
21           such format as the Commission shall prescribe.

22           (3) EFFECTIVE DATE.—Subsection (s) of sec-  
23           tion 13 of the Securities Exchange Act of 1934, as  
24           added by this section, shall become effective 1 year



1 after the date on which the Commission issues a  
2 final rule under this section.

3 **SEC. 112. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**  
4 **HOLDINGS.**

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

9 “(iv) FOURTH TIER.—Notwith-  
10 standing clauses (i), (ii), and (iii), for each  
11 violation, the amount of the penalty shall  
12 not exceed \$1,000,000 for any natural per-  
13 son or \$10,000,000 for any other person,  
14 if—

15 “(I) such person directly or indi-  
16 rectly controlled any foreign entity, in-  
17 cluding any trust, corporation, limited  
18 liability company, partnership, or  
19 foundation through which an issuer  
20 purchased, sold, or held equity or debt  
21 instruments;

22 “(II) such person knowingly or  
23 recklessly failed to disclose any such  
24 holding, purchase, or sale by the  
25 issuer; and

1                   “(III) the holding, purchase, or  
2                   sale would have been otherwise sub-  
3                   ject to disclosure by the issuer or such  
4                   person under this title.”.

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

8                   “(D)   FOURTH   TIER.—Notwithstanding  
9                   subparagraphs (A), (B), and (C), for each viola-  
10                  tion, the amount of the penalty shall not exceed  
11                  \$1,000,000 for any natural person or  
12                  \$10,000,000 for any other person, if—

13                       “(i) such person directly or indirectly  
14                       controlled any foreign entity, including any  
15                       trust, corporation, limited liability com-  
16                       pany, partnership, or foundation through  
17                       which an issuer purchased, sold, or held  
18                       equity or debt instruments;

19                       “(ii) such person knowingly or reck-  
20                       lessly failed to disclose any such holding,  
21                       purchase, or sale by the issuer; and

22                       “(iii) the holding, purchase, or sale  
23                       would have been otherwise subject to dis-  
24                       closure by the issuer or such person under  
25                       this title.”.

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

5                   “(D) FOURTH TIER.—Notwithstanding  
6 subparagraphs (A), (B), and (C), for each viola-  
7 tion, the amount of the penalty shall not exceed  
8 \$1,000,000 for any natural person or  
9 \$10,000,000 for any other person, if—

10                   “(i) such person directly or indirectly  
11 controlled any foreign entity, including any  
12 trust, corporation, limited liability com-  
13 pany, partnership, or foundation through  
14 which an issuer purchased, sold, or held  
15 equity or debt instruments;

16                   “(ii) such person knowingly or reck-  
17 lessly failed to disclose any such holding,  
18 purchase, or sale by the issuer; and

19                   “(iii) the holding, purchase, or sale  
20 would have been otherwise subject to dis-  
21 closure by the issuer or such person under  
22 this title.”.

1 **SEC. 113. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**  
2 **FOR INVESTMENT ADVISERS.**

3 (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR  
4 INVESTMENT ADVISERS.—Section 5312(a)(2) of title 31,  
5 United States Code, is amended—

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

8 (2) by redesigning subparagraph (Z) as sub-  
9 paragraph (BB); and

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

12 “(Z) an investment adviser;”.

13 (b) RULES REQUIRED.—The Secretary of the Treas-  
14 ury shall—

15 (1) in consultation with the Chairman of the  
16 Securities and Exchange Commission and the Chair-  
17 man of the Commodity Futures Trading Commis-  
18 sion, not later than 270 days after the date of enact-  
19 ment of this Act, publish a proposed rule in the Fed-  
20 eral Register to carry out the amendments made by  
21 this section; and

22 (2) not later than 180 days after the date of  
23 enactment of this Act, publish a final rule in the  
24 Federal Register on the matter described in para-  
25 graph (1).

1 (c) CONTENTS.—The final rule published under this  
 2 section shall require, at a minimum, each investment ad-  
 3 viser (as defined in section 202(a)(11) of the Investment  
 4 Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11))) reg-  
 5 istered with the Securities and Exchange Commission pur-  
 6 suant to section 203 of that Act (15 U.S.C. 80b–3)—

7 (1) to submit suspicious activity reports and es-  
 8 tablish an anti-money laundering program under  
 9 subsections (g) and (h), respectively, of section 5318  
 10 of title 31, United States Code; and

11 (2) to comply with—

12 (A) the customer identification program  
 13 requirements under section 5318(l) of title 31,  
 14 United States Code; and

15 (B) the due diligence requirements under  
 16 section 5318(i) of title 31, United States Code.

17 **SEC. 114. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**  
 18 **FORMATION AGENTS.**

19 (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR  
 20 FORMATION AGENTS.—Section 5312(a)(2) of title 31,  
 21 United States Code, as amended by section 113 of this  
 22 Act, is amended by inserting after subparagraph (Z) the  
 23 following:

24 “(AA) any person engaged in the business  
 25 of forming new corporations, limited liability

1 companies, partnerships, trusts, or other legal  
2 entities; or”.

3 (b) DEADLINE FOR ANTI-MONEY LAUNDERING  
4 RULE FOR FORMATION AGENTS.—

5 (1) PROPOSED RULE.—The Secretary of the  
6 Treasury, in consultation with the Attorney General  
7 of the United States, the Secretary of Homeland Se-  
8 curity, and the Commissioner of Internal Revenue,  
9 shall—

10 (A) not later than 120 days after the date  
11 of enactment of this Act, publish a proposed  
12 rule in the Federal Register requiring persons  
13 described in section 5312(a)(2)(AA) of title 31,  
14 United States Code, as added by this section, to  
15 establish anti-money laundering programs  
16 under section 5318(h) of that title; and

17 (B) not later than 270 days after the date  
18 of enactment of this Act, publish a final rule in  
19 the Federal Register on the matter described in  
20 subparagraph (A).

21 (2) EXCLUSIONS.—The rule promulgated under  
22 this subsection shall exclude from the category of  
23 persons engaged in the business of forming new cor-  
24 porations or other entities—

25 (A) any government agency; and

1 (B) any attorney or law firm that uses a  
2 paid formation agent operating within the  
3 United States to form such corporations or  
4 other entities.

5 **SEC. 115. STRENGTHENING JOHN DOE SUMMONS PRO-**  
6 **CEEDINGS.**

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

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

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

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

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

23 “(C) the information sought to be obtained  
24 from the examination of the records or testi-  
25 mony (and the identity of the person or persons

1 with respect to whose liability the summons is  
2 issued) is not readily available from other  
3 sources.

4 “(2) EXCEPTION.—Paragraph (1) shall not  
5 apply to any summons which specifies that it is lim-  
6 ited to information regarding a United States cor-  
7 respondent account (as defined in section  
8 5318A(e)(1)(B) of title 31, United States Code) or  
9 a United States payable-through account (as defined  
10 in section 5318A(e)(1)(C) of such title) of a finan-  
11 cial institution that is held at a non-FATCA institu-  
12 tion (as defined in section 7701(a)(51)).

13 “(3) PRESUMPTION IN CASES INVOLVING NON-  
14 FATCA INSTITUTIONS.—For purposes of this section,  
15 in any case in which the particular person or ascer-  
16 tainable group or class of persons have financial ac-  
17 counts in or transactions related to a non-FATCA  
18 institution (as defined in section 7701(a)(51)), there  
19 shall be a presumption that there is a reasonable  
20 basis for believing that such person or group or class  
21 of persons may fail or may have failed to comply  
22 with provisions of internal revenue law.

23 “(4) PROJECT JOHN DOE SUMMONSES.—

24 “(A) IN GENERAL.—Notwithstanding the  
25 requirements of paragraph (1), the Secretary



1           may issue a summons described in paragraph  
2           (1) if the summons—

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

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

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

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

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

19                   “(ii) any summons issued with respect  
20                   to such project will meet the requirements  
21                   of paragraph (1).

22                 “(C) EXTENSION.—Upon application of  
23                 the Secretary, the court may extend the time  
24                 for issuing such summonses under subpara-  
25                 graph (A)(i) for additional 3-year periods, but

1           only if the court continues to exercise oversight  
2           of such project under subparagraph (D).

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

14          (b) JURISDICTION OF COURT.—

15           (1) IN GENERAL.—Paragraph (1) of section  
16          7609(h) is amended by inserting after the first sen-  
17          tence the following new sentence: “Any United  
18          States district court in which a member of the group  
19          or class to which a summons may be issued resides  
20          or is found shall have jurisdiction to hear and deter-  
21          mine the approval of a project under subsection  
22          (f)(2)(B).”.

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

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

4 **SEC. 116. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**  
5 **CIAL ACCOUNT REPORTING.**

6 (a) CLARIFYING THE CONNECTION OF FOREIGN FI-  
7 NANCIAL ACCOUNT REPORTING TO TAX ADMINISTRA-  
8 TION.—Paragraph (4) of section 6103(b) is amended by  
9 adding at the end the following new sentence:

10 “For purposes of subparagraph (A)(i), section 5314  
11 of title 31, United States Code, and sections 5321  
12 and 5322 of such title (as such sections pertain to  
13 such section 5314), shall be considered related stat-  
14 utes.”.

15 (b) SIMPLIFYING THE CALCULATION OF FOREIGN  
16 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section  
17 5321(a)(5)(D)(ii) of title 31, United States Code, is  
18 amended by striking “the balance in the account at the  
19 time of the violation” and inserting “the highest balance  
20 in the account during the reporting period to which the  
21 violation relates”.

22 (c) CLARIFYING THE USE OF SUSPICIOUS ACTIVITY  
23 REPORTS UNDER THE BANK SECRECY ACT FOR CIVIL  
24 TAX LAW ENFORCEMENT.—Section 5319 of title 31,  
25 United States Code, is amended by inserting “the civil and

1 criminal enforcement divisions of the Internal Revenue  
2 Service,” after “including”.

3 **Subtitle C—Ending Offshore Tax**  
4 **Avoidance**

5 **SEC. 121. ALLOCATION OF EXPENSES AND TAXES ON BASIS**  
6 **OF REPATRIATION OF FOREIGN INCOME.**

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

10 **“Subpart H—Special Rules for Allocation of Foreign-**  
11 **Related Deductions and Foreign Tax Credits**

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

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

“Sec. 977. Application of subpart.

12 **“SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOR-**  
13 **EIGN INCOME MAY NOT OFFSET UNITED**  
14 **STATES SOURCE INCOME.**

15 “(a) CURRENT YEAR DEDUCTIONS.—For purposes  
16 of this chapter, foreign-related deductions for any taxable  
17 year—

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

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

1 Foreign-related deductions shall be allocated to currently  
2 taxed foreign income in the same proportion which cur-  
3 rently taxed foreign income bears to the sum of currently  
4 taxed foreign income and deferred foreign income.

5 “(b) DEDUCTIONS RELATED TO REPATRIATED DE-  
6 FERRED FOREIGN INCOME.—

7 “(1) IN GENERAL.—If there is repatriated for-  
8 eign income for a taxable year, the portion of the  
9 previously deferred deductions allocated to the repa-  
10 triated foreign income shall be taken into account  
11 for the taxable year as a deduction allocated to in-  
12 come from sources outside the United States. Any  
13 such amount shall not be included in foreign-related  
14 deductions for purposes of applying subsection (a) to  
15 such taxable year.

16 “(2) PORTION OF PREVIOUSLY DEFERRED DE-  
17 Ductions.—For purposes of paragraph (1), the por-  
18 tion of the previously deferred deductions allocated  
19 to repatriated foreign income is—

20 “(A) the amount which bears the same  
21 proportion to such deductions, as

22 “(B) the repatriated income bears to the  
23 previously deferred foreign income.

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

1           “(1) FOREIGN-RELATED DEDUCTIONS.—The  
2 term ‘foreign-related deductions’ means the total  
3 amount of deductions and expenses which would be  
4 allocated or apportioned to gross income from  
5 sources without the United States for the taxable  
6 year if both the currently-taxed foreign income and  
7 deferred foreign income were taken into account.

8           “(2) CURRENTLY-TAXED FOREIGN INCOME.—  
9 The term ‘currently-taxed foreign income’ means the  
10 amount of gross income from sources without the  
11 United States for the taxable year (determined with-  
12 out regard to repatriated foreign income for such  
13 year).

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

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

19                           “(i) all controlled foreign corporations  
20 were treated as one controlled foreign cor-  
21 poration, and

22                           “(ii) all earnings and profits of all  
23 controlled foreign corporations were sub-  
24 part F income (as defined in section 952),  
25 over

1 “(B) the sum of—

2 “(i) all dividends received during the  
3 taxable year from controlled foreign cor-  
4 porations, plus

5 “(ii) amounts includible in gross in-  
6 come under section 951(a).

7 “(4) PREVIOUSLY DEFERRED FOREIGN IN-  
8 COME.—The term ‘previously deferred foreign in-  
9 come’ means the aggregate amount of deferred for-  
10 eign income for all prior taxable years to which this  
11 part applies, determined as of the beginning of the  
12 taxable year, reduced by the repatriated foreign in-  
13 come for all such prior taxable years.

14 “(5) REPATRIATED FOREIGN INCOME.—The  
15 term ‘repatriated foreign income’ means the amount  
16 included in gross income on account of distributions  
17 out of previously deferred foreign income.

18 “(6) PREVIOUSLY DEFERRED DEDUCTIONS.—  
19 The term ‘previously deferred deductions’ means the  
20 aggregate amount of foreign-related deductions not  
21 taken into account under subsection (a) for all prior  
22 taxable years (determined as of the beginning of the  
23 taxable year), reduced by any amounts taken into  
24 account under subsection (b) for such prior taxable  
25 years.

1           “(7) TREATMENT OF CERTAIN FOREIGN  
2 TAXES.—

3           “(A) PAID BY CONTROLLED FOREIGN COR-  
4 PORATION.—Section 78 shall not apply for pur-  
5 poses of determining currently-taxed foreign in-  
6 come and deferred foreign income.

7           “(B) PAID BY TAXPAYER.—For purposes  
8 of determining currently-taxed foreign income,  
9 gross income from sources without the United  
10 States shall be reduced by the aggregate  
11 amount of taxes described in the applicable  
12 paragraph of section 901(b) which are paid by  
13 the taxpayer (without regard to sections 902  
14 and 960) during the taxable year.

15           “(8) COORDINATION WITH SECTION 976.—In  
16 determining currently-taxed foreign income and de-  
17 ferred foreign income, the amount of deemed foreign  
18 tax credits shall be determined with regard to sec-  
19 tion 976.

20 **“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON**  
21 **OVERALL BASIS.**

22           “(a) CURRENT YEAR ALLOWANCE.—For purposes of  
23 this chapter, the amount taken into account as foreign in-  
24 come taxes for any taxable year shall be an amount which



1 bears the same ratio to the total foreign income taxes for  
2 that taxable year as—

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

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

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

12           “(b) ALLOWANCE RELATED TO REPATRIATED DE-  
13 FERRED FOREIGN INCOME.—

14           “(1) IN GENERAL.—If there is repatriated for-  
15 eign income for any taxable year, the portion of the  
16 previously deferred foreign income taxes paid or ac-  
17 crued during such taxable year shall be taken into  
18 account for the taxable year as foreign taxes paid or  
19 accrued. Any such taxes so taken into account shall  
20 not be included in foreign income taxes for purposes  
21 of applying subsection (a) to such taxable year.

22           “(2) PORTION OF PREVIOUSLY DEFERRED FOR-  
23 EIGN INCOME TAXES.—For purposes of paragraph  
24 (1), the portion of the previously deferred foreign in-

1       come taxes allocated to repatriated deferred foreign  
2       income is—

3               “(A) the amount which bears the same  
4               proportion to such taxes, as

5               “(B) the repatriated deferred income bears  
6               to the previously deferred foreign income.

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

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

17              “(2) TOTAL FOREIGN INCOME TAXES.—The  
18       term ‘total foreign income taxes’ means the sum of  
19       foreign income taxes paid or accrued during the tax-  
20       able year (determined without regard to section  
21       904(c)) plus the increase in foreign income taxes  
22       that would be paid or accrued during the taxable  
23       year under sections 902 and 960 if—

1           “(A) all controlled foreign corporations  
2           were treated as one controlled foreign corpora-  
3           tion, and

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

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

11          “(4) CURRENTLY-TAXED FOREIGN INCOME AND  
12          DEFERRED FOREIGN INCOME.—The terms ‘cur-  
13          rently-taxed foreign income’ and ‘deferred foreign in-  
14          come’ have the meanings given such terms by sec-  
15          tion 975(e).

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

17          “‘This subpart—

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

19               “(2) shall be applied separately with respect to  
20          the categories of income specified in section  
21          904(d)(1).”.

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

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

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

4 **SEC. 122. EXCESS INCOME FROM TRANSFERS OF INTANGI-**  
5 **BLES TO LOW-TAXED AFFILIATES TREATED**  
6 **AS SUBPART F INCOME.**

7 (a) IN GENERAL.—Subsection (a) of section 954 is  
8 amended by inserting after paragraph (3) the following  
9 new paragraph:

10 “(4) the foreign base company excess intangible  
11 income for the taxable year (determined under sub-  
12 section (f) and reduced as provided in subsection  
13 (b)(5)), and”.

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

17 “(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE  
18 INCOME.—For purposes of subsection (a)(4) and this sub-  
19 section:

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

22 “(A) IN GENERAL.—The term ‘foreign  
23 base company excess intangible income’ means,

1 with respect to any covered intangible, the ex-  
2 cess of—

3 “(i) the sum of—

4 “(I) gross income from the sale,  
5 lease, license, or other disposition of  
6 property in which such covered intan-  
7 gible is used directly or indirectly, and

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

14 “(ii) 150 percent of the costs properly  
15 allocated and apportioned to the gross in-  
16 come taken into account under clause (i)  
17 other than expenses for interest and taxes  
18 and any expenses which are not directly al-  
19 locable to such gross income.

20 “(B) SAME COUNTRY INCOME NOT TAKEN  
21 INTO ACCOUNT.—If—

22 “(i) the sale, lease, license, or other  
23 disposition of the property referred to in  
24 subparagraph (A)(i)(I) is for use, con-  
25 sumption, or disposition in the country

1 under the laws of which the controlled for-  
2 eign corporation is created or organized, or

3 “(ii) the services referred to in sub-  
4 paragraph (A)(i)(II) are performed in such  
5 country,

6 the gross income from such sale, lease, license,  
7 or other disposition, or provision of services,  
8 shall not be taken into account under subpara-  
9 graph (A)(i).

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

12 “(A) IN GENERAL.—Foreign base company  
13 excess intangible income shall not include the  
14 applicable percentage of any item of income re-  
15 ceived by a controlled foreign corporation if the  
16 taxpayer establishes to the satisfaction of the  
17 Secretary that such income was subject to an  
18 effective rate of income tax imposed by a for-  
19 eign country in excess of 5 percent.

20 “(B) APPLICABLE PERCENTAGE.—For  
21 purposes of subparagraph (A), the term ‘appli-  
22 cable percentage’ means the ratio (expressed as  
23 a percentage), not greater than 100 percent,  
24 of—

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

5           “(ii) 10 percentage points.

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

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

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

20          “(3) COVERED INTANGIBLE.—The term ‘cov-  
21          ered intangible’ means, with respect to any con-  
22          trolled foreign corporation, any intangible property  
23          (as defined in section 936(h)(3)(B))—

24          “(A) which is sold, leased, licensed, or oth-  
25          erwise transferred (directly or indirectly) to

1 such controlled foreign corporation from a re-  
2 lated person, or

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

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

11 (c) SEPARATE BASKET FOR FOREIGN TAX CRED-  
12 IT.—Subsection (d) of section 904 is amended by redesignig-  
13 nating paragraph (7) as paragraph (8) and by inserting  
14 after paragraph (6) the following new paragraph:

15 “(6) SEPARATE APPLICATION TO FOREIGN  
16 BASE COMPANY EXCESS INTANGIBLE INCOME.—

17 “(A) IN GENERAL.—Subsections (a), (b),  
18 and (c) of this section and sections 902, 907,  
19 and 960 shall be applied separately with respect  
20 to each item of income which is taken into ac-  
21 count under section 954(a)(4) as foreign base  
22 company excess intangible income.

23 “(B) REGULATIONS.—The Secretary may  
24 issue such regulations or other guidance as is  
25 necessary or appropriate to carry out the pur-



1           poses of this subsection, including regulations  
2           or other guidance which provides that related  
3           items of income may be aggregated for pur-  
4           poses of this paragraph.”.

5           (d) CONFORMING AMENDMENTS.—

6           (1) Paragraph (4) of section 954(b) is amended  
7           by inserting “foreign base company excess intangible  
8           income described in subsection (a)(4) or” before  
9           “foreign base company oil-related income” in the  
10          last sentence thereof.

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

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

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

1 **SEC. 123. LIMITATIONS ON INCOME SHIFTING THROUGH IN-**  
 2 **TANGIBLE PROPERTY TRANSFERS.**

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

8 (b) CLARIFICATION OF ALLOWABLE VALUATION  
 9 METHODS.—

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

13 “(D) REGULATORY AUTHORITY.—For pur-  
 14 poses of the last sentence of subparagraph (A),  
 15 the Secretary may require—

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

18 “(ii) the valuation of such a transfer  
 19 on the basis of the realistic alternatives to  
 20 such a transfer,

21 in any case in which the Secretary determines  
 22 that such basis is the most reliable means of  
 23 valuation of such transfers.”.

24 (2) ALLOCATION AMONG TAXPAYERS.—Section  
 25 482 is amended by adding at the end the following:  
 26 “For purposes of the preceding sentence, the Sec-

1       retary may require the valuation of transfers of in-  
2       tangible property on an aggregate basis or the valu-  
3       ation of such a transfer on the basis of the realistic  
4       alternatives to such a transfer, in any case in which  
5       the Secretary determines that such basis is the most  
6       reliable means of valuation of such transfers.”.

7       (c) EFFECTIVE DATE.—

8             (1) IN GENERAL.—The amendments made by  
9       this section shall apply to transfers in taxable years  
10      beginning after the date of the enactment of this  
11      Act.

12            (2) NO INFERENCE.—Nothing in the amend-  
13      ment made by subsection (a) shall be construed to  
14      create any inference with respect to the application  
15      of section 936(h)(3) of the Internal Revenue Code of  
16      1986, or the authority of the Secretary of the Treas-  
17      ury to provide regulations for such application, on or  
18      before the date of the enactment of such amend-  
19      ment.

20   **SEC. 124. LIMITATION ON EARNINGS STRIPPING BY EXPA-**  
21                           **TRIATED ENTITIES.**

22            (a) IN GENERAL.—Subsection (j) of section 163 is  
23      amended—

24             (1) by redesignating paragraph (9) as para-  
25      graph (10), and

1           (2) by inserting after paragraph (8) the fol-  
2           lowing new paragraph:

3           “(9) SPECIAL RULES FOR EXPATRIATED ENTI-  
4           TIES.—

5           “(A) IN GENERAL.—In the case of a cor-  
6           poration to which this subsection applies which  
7           is an expatriated entity, this subsection shall  
8           apply to such corporation with the following  
9           modifications:

10           “(i) Paragraph (2)(A) shall be applied  
11           without regard to clause (ii) thereof.

12           “(ii) Paragraph (1)(B) shall be ap-  
13           plied—

14           “(I) without regard to the par-  
15           enthetical, and

16           “(II) by substituting ‘in the 1st  
17           succeeding taxable year and in the  
18           2nd through 10th succeeding taxable  
19           years to the extent not previously  
20           taken into account under this sub-  
21           paragraph’ for ‘in the succeeding tax-  
22           able year’.

23           “(iii) Paragraph (2)(B) shall be ap-  
24           plied—

1 “(I) without regard to clauses (ii)  
2 and (iii), and

3 “(II) by substituting ‘25 percent  
4 of the adjusted taxable income of the  
5 corporation for such taxable year’ for  
6 the matter of clause (i)(II) thereof.

7 “(B) EXPATRIATED ENTITY.—For pur-  
8 poses of this paragraph—

9 “(i) IN GENERAL.—With respect to a  
10 corporation and a taxable year, the term  
11 ‘expatriated entity’ has the meaning given  
12 such term by section 7874(a)(2), deter-  
13 mined as if such section and the regula-  
14 tions under such section as in effect on the  
15 first day of such taxable year applied to all  
16 taxable years of the corporation beginning  
17 after July 10, 1989.

18 “(ii) EXCEPTION FOR SURROGATES  
19 TREATED AS A DOMESTIC CORPORATION.—  
20 The term ‘expatriated entity’ does not in-  
21 clude a surrogate foreign corporation  
22 which is treated as a domestic corporation  
23 by reason of section 7874(b).”.

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

4 **SEC. 125. REPEAL OF CHECK-THE-BOX RULES FOR CERTAIN**  
5 **FOREIGN ENTITIES AND CFC LOOK-THRU**  
6 **RULES.**

7 (a) CHECK-THE-BOX RULES.—Paragraph (3) of sec-  
8 tion 7701(a) is amended—

9 (1) by striking “and”, and

10 (2) by inserting after “insurance companies”  
11 the following: “, and any foreign business entity  
12 that—

13 “(A) has a single owner that does not have  
14 limited liability, or

15 “(B) has one or more members all of  
16 which have limited liability”.

17 (b) LOOK-THRU RULE.—Subparagraph (C) of sec-  
18 tion 954(c)(6) is amended to read as follows:

19 “(C) TERMINATION.—Subparagraph (A)  
20 shall not apply to dividends, interest, rents, and  
21 royalties received or accrued after the date of  
22 the enactment of the CUT Loopholes Act.”.

1 **SEC. 126. PROHIBITION ON OFFSHORE LOAN ABUSE.**

2 (a) IN GENERAL.—Subpart F of part III of sub-  
3 chapter N of chapter 1 is amended by adding at the end  
4 the following new section:

5 **“SEC. 966. INCOME INCLUSION FOR LOANS TO UNITED**  
6 **STATES SHAREHOLDERS FROM CONTROLLED**  
7 **FOREIGN CORPORATIONS.**

8 “(a) IN GENERAL.—In the case of a United States  
9 shareholder, there shall be included in income for the tax-  
10 able year an amount equal to the disqualified CFC loan  
11 amount.

12 “(b) DISQUALIFIED CFC LOAN AMOUNT.—

13 “(1) IN GENERAL.—For purposes of this sec-  
14 tion, the disqualified CFC loan amount for any tax-  
15 able year is an amount equal to the lesser of—

16 “(A) the aggregate amount of obligations  
17 of the United States shareholder which origi-  
18 nated in such taxable year and are held (di-  
19 rectly or indirectly) by controlled foreign cor-  
20 porations, or

21 “(B) the foreign group earnings amount.

22 “(2) EXCEPTION.—In determining the amount  
23 of obligations under subparagraph (A), there shall  
24 be excluded any obligation described in section  
25 956(c)(2)(C).

1           “(3) CARRYFORWARD OF CERTAIN AMOUNTS.—  
2           If, for any taxable year, the amount under subpara-  
3           graph (A) exceeds the amount under subparagraph  
4           (B), such excess shall be taken into account as an  
5           obligation to which subparagraph (A) applies for the  
6           succeeding taxable year.

7           “(4) FOREIGN GROUP EARNINGS AMOUNT.—  
8           For purposes of this section, the term ‘foreign group  
9           earnings amount’ means the aggregate earnings and  
10          profits of all controlled foreign corporations in the  
11          worldwide affiliated group (as defined in section  
12          864(f)(1)(C)) of the United States shareholder, de-  
13          termined—

14                 “(A) as of the last day of the taxable year  
15                 of the United States shareholder, and

16                 “(B) without regard to any distributions  
17                 made during such taxable year.

18          “(c) DENIAL OF INTEREST DEDUCTION.—No deduc-  
19          tion shall be allowed for interest paid or accrued with re-  
20          spect to obligations taken into account under subsection  
21          (b).

22          “(d) TREATMENT OF INCOME SOURCE.—Any  
23          amount included in income under subsection (a) shall be  
24          treated as income from sources within the United States.”.



1 (b) COORDINATION WITH SECTION 956.—Paragraph  
 2 (2) of section 956(c) is amended by striking “and” at the  
 3 end of subparagraph (K), by striking the period at the  
 4 end of subparagraph (L)(ii) and inserting “; and”, and  
 5 by inserting after subparagraph (L) the following new sub-  
 6 paragraph:

7 “(M) any obligation which is taken into ac-  
 8 count in determining the disqualified CFC loan  
 9 amount under section 966.”.

10 (c) CLERICAL AMENDMENT.—The table of sections  
 11 for subpart F of part III of subchapter N of chapter 1  
 12 is amended by adding at the end the following new item:

“Sec. 966. Income inclusion for loans to certain United States shareholders  
 from controlled foreign corporations.”.

13 (d) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to obligations originated after the  
 15 date of the enactment of this Act.

16 **TITLE II—STRENGTHENING TAX**  
 17 **ENFORCEMENT**  
 18 **Subtitle A—Combating Tax Shelter**  
 19 **Promotion**

20 **SEC. 201. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**  
 21 **TERS.**

22 (a) PENALTY FOR PROMOTING ABUSIVE TAX SHEL-  
 23 TERS.—Section 6700 is amended—

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

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

7           (3) by inserting after subsection (a) the fol-  
8 lowing new subsections:

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

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

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

23           “(3) LIABILITY FOR PENALTY.—If more than 1  
24 person is liable under subsection (a) with respect to  
25 such activity, all such persons shall be jointly and

1 severally liable for the penalty under such sub-  
2 section.

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

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

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

15 **SEC. 202. PENALTY FOR AIDING AND ABETTING THE UN-**  
16 **DERSTATEMENT OF TAX LIABILITY.**

17 (a) IN GENERAL.—Section 6701(a) is amended—

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

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

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

4           (b) AMOUNT OF PENALTY.—Subsection (b) of section  
5           6701 is amended to read as follows:

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

8           “(1) AMOUNT OF PENALTY.—The amount of  
9           the penalty imposed by subsection (a) shall not ex-  
10          ceed 150 percent of the gross income derived (or to  
11          be derived) from such aid, assistance, procurement,  
12          or advice provided by the person or persons subject  
13          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 aid, as-  
17          sistance, procurement, or advice described in sub-  
18          section (a), each instance in which income was de-  
19          rived by the person or persons subject to such pen-  
20          alty, and each person who made such an understatement  
21          of the liability for tax.

22          “(3) LIABILITY FOR PENALTY.—If more than 1  
23          person is liable under subsection (a) with respect to  
24          providing such aid, assistance, procurement, or ad-

1 vice, all such persons shall be jointly and severally  
2 liable for the penalty under such subsection.”.

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

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

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

16 **SEC. 203. PROHIBITED FEE ARRANGEMENT.**

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

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

21 (2) by striking “subsection (a).” in paragraphs  
22 (2) and (3) of subsection (g) (as redesignated by  
23 paragraph (1)) and inserting “subsection (a) or  
24 (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. 204. 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 2014 on their progress in preventing  
6 violations of sections 6700 and 6701 of the Internal Rev-  
7 enue Code of 1986, by depository institutions, brokers,  
8 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. 205. INFORMATION SHARING FOR ENFORCEMENT**  
2 **PURPOSES.**

3 (a) **PROMOTION OF PROHIBITED TAX SHELTERS OR**  
4 **TAX AVOIDANCE SCHEMES.**—Section 6103(h) is amended  
5 by adding at the end the following new paragraph:

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

10 “(A) **WRITTEN REQUEST.**—Upon receipt  
11 by the Secretary of a written request which  
12 meets the requirements of subparagraph (B)  
13 from the head of the United States Securities  
14 and Exchange Commission, an appropriate  
15 Federal banking agency as defined under sec-  
16 tion 1813(q) of title 12, United States Code, or  
17 the Public Company Accounting Oversight  
18 Board, a return or return information shall be  
19 disclosed to such requestor’s officers and em-  
20 ployees who are personally and directly engaged  
21 in an investigation, examination, or proceeding  
22 by such requestor to evaluate, determine, penal-  
23 ize, or deter conduct by a financial institution,  
24 issuer, or public accounting firm, or associated  
25 person, in connection with a potential or actual  
26 violation of section 6700 (promotion of abusive

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

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

17 “(i) the nature of the investigation,  
18 examination, or proceeding,

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

22 “(iii) the name or names of the finan-  
23 cial institution, issuer, or public accounting  
24 firm to which such return information re-  
25 lates,

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

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

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

16          (b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGA-  
17          TIONS.—Section 6103(i) is amended by adding at the end  
18          the following new paragraph:

19                 “(9) DISCLOSURE OF RETURNS AND RETURN  
20                 INFORMATION FOR USE IN FINANCIAL AND AC-  
21                 COUNTING FRAUD INVESTIGATIONS.—

22                 “(A) WRITTEN REQUEST.—Upon receipt  
23                 by the Secretary of a written request which  
24                 meets the requirements of subparagraph (B)  
25                 from the head of the United States Securities

1 and Exchange Commission or the Public Com-  
2 pany Accounting Oversight Board, a return or  
3 return information shall be disclosed to such re-  
4 questor's officers and employees who are per-  
5 sonally and directly engaged in an investigation,  
6 examination, or proceeding by such requester to  
7 evaluate the accuracy of a financial statement  
8 or report, or to determine whether to require a  
9 restatement, penalize, or deter conduct by an  
10 issuer, investment company, or public account-  
11 ing firm, or associated person, in connection  
12 with a potential or actual violation of auditing  
13 standards or prohibitions against false or mis-  
14 leading statements or omissions in financial  
15 statements or reports. Such disclosure shall be  
16 solely for use by such officers and employees in  
17 such investigation, examination, or proceeding.

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

21 “(i) the nature of the investigation,  
22 examination, or proceeding,

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

1           “(iii) the name or names of the issuer,  
2           investment company, or public accounting  
3           firm to which such return information re-  
4           lates,

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

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

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

15 **SEC. 206. DISCLOSURE OF INFORMATION TO CONGRESS.**

16          (a) DISCLOSURE BY TAX RETURN PREPARER.—

17                  (1) IN GENERAL.—Subparagraph (B) of section  
18          7216(b)(1) is amended to read as follows:

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

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

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

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

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

7                   “(II) any State agency, body, or  
8                   commission charged under the laws of  
9                   the State or a political subdivision of  
10                  the State with the licensing, registra-  
11                  tion, or regulation of tax return pre-  
12                  parers.”.

13           (2) EFFECTIVE DATE.—The amendment made  
14           by this subsection shall apply to disclosures made  
15           after the date of the enactment of this Act pursuant  
16           to any document in effect on or after such date.

17           (b) DISCLOSURE BY SECRETARY.—Paragraph (2) of  
18           section 6104(a) is amended to read as follows:

19                   “(2) INSPECTION BY CONGRESS.—

20                   “(A) IN GENERAL.—Upon receipt of a  
21                   written request from a committee or sub-  
22                   committee of Congress, copies of documents re-  
23                   lated to a determination by the Secretary to  
24                   grant, deny, revoke, or restore an organization’s  
25                   exemption from taxation under section 501

1 shall be provided to such committee or sub-  
2 committee, including any application, notice of  
3 status, or supporting information provided by  
4 such organization to the Internal Revenue Serv-  
5 ice; any letter, analysis, or other document pro-  
6 duced by or for the Internal Revenue Service  
7 evaluating, determining, explaining, or relating  
8 to the tax exempt status of such organization  
9 (other than returns, unless such returns are  
10 available to the public under this section or sec-  
11 tion 6103 or 6110); and any communication be-  
12 tween the Internal Revenue Service and any  
13 other party relating to the tax exempt status of  
14 such organization.

15 “(B) ADDITIONAL INFORMATION.—Section  
16 6103(f) shall apply with respect to—

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

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

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

9 **SEC. 207. TAX OPINION STANDARDS FOR TAX PRACTI-**  
10 **TIONERS.**

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

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

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

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





1 the Internet, and e-government programs, is ineffi-  
2 cient, burdensome, and expensive.

3 (2) Current technology permits the creation of  
4 a centralized Federal tax lien filing system which  
5 can provide for enhanced public notice of and access  
6 to accurate tax lien information in a manner that is  
7 more efficient, more timely, and less burdensome  
8 than the existing tax lien filing system; which would  
9 expedite the release of liens; and which would be less  
10 expensive for both taxpayers and users.

11 (b) PURPOSE.—The purpose of this subtitle is to sim-  
12 plify and modernize the process for filing notices of Fed-  
13 eral tax liens, to improve public access to tax lien informa-  
14 tion, and to save taxpayer dollars by establishing a nation-  
15 wide, Internet accessible, and fully searchable filing sys-  
16 tem for Federal tax liens which would replace the current  
17 system of local tax lien filings.

18 **SEC. 213. NATIONAL TAX LIEN FILING SYSTEM.**

19 (a) FILING OF NOTICE OF LIEN.—Subsection (f) of  
20 section 6323 is amended to read as follows:

21 “(f) FILING OF NOTICE; FORM.—

22 “(1) FILING OF NOTICE.—The notice referred  
23 to in subsection (a) shall be filed in the Federal tax  
24 lien registry operated under subsection (k). The fil-  
25 ing of a notice of lien, or a certificate of release, dis-

1 charge, subordination, or nonattachment of lien, or  
2 a notice of withdrawal of a notice of lien, in the Fed-  
3 eral tax lien registry shall be effective for purposes  
4 of determining lien priority regardless of the nature  
5 or location of the property interest to which the lien  
6 attaches.

7 “(2) FORM.—The form and content of the no-  
8 tice referred to in subsection (a) shall be prescribed  
9 by the Secretary. Such notice shall be valid notwith-  
10 standing any other provision of law regarding the  
11 form or content of a notice of lien.

12 “(3) OTHER NATIONAL FILING SYSTEMS.—  
13 Once the Federal tax lien registry is operational  
14 under subsection (k), the filing of a notice of lien  
15 shall be governed by this title and shall not be sub-  
16 ject to any other Federal law establishing a place or  
17 places for the filing of liens or encumbrances under  
18 a national filing system.”.

19 (b) REFILING OF NOTICE.—Paragraph (2) of section  
20 6323(g) is amended to read as follows:

21 “(2) REFILING.—A notice of lien may be refiled  
22 in the Federal tax lien registry operated under sub-  
23 section (k).”.

24 (c) RELEASE OF TAX LIENS OR DISCHARGE OF  
25 PROPERTY.—

1           (1) IN GENERAL.—Section 6325(a) is amended  
2           by inserting “, and shall cause the certificate of re-  
3           lease to be filed in the Federal tax lien registry oper-  
4           ated under section 6323(k),” after “internal revenue  
5           tax”.

6           (2) RELEASE OF TAX LIENS EXPEDITED FROM  
7           30 TO 20 DAYS.—Section 6325(a) is amended by  
8           striking “not later than 30 days” and inserting “not  
9           later than 20 days”.

10          (3) DISCHARGE OF PROPERTY FROM LIEN.—  
11          Section 6325(b) is amended—

12                (A) by inserting “, and shall cause the cer-  
13                tificate of discharge to be filed in the Federal  
14                tax lien registry operated under section  
15                6323(k),” after “under this chapter” in para-  
16                graph (1),

17                (B) by inserting “, and shall cause the cer-  
18                tificate of discharge to be filed in such Federal  
19                tax lien registry,” after “property subject to the  
20                lien” in paragraph (2),

21                (C) by inserting “, and shall cause the cer-  
22                tificate of discharge to be filed in such Federal  
23                tax lien registry,” after “property subject to the  
24                lien” in paragraph (3), and

1 (D) by inserting “, and shall cause the cer-  
2 tificate of discharge of property to be filed in  
3 such Federal tax lien registry,” after “certifi-  
4 cate of discharge of such property” in para-  
5 graph (4).

6 (4) DISCHARGE OF PROPERTY FROM ESTATE  
7 OR GIFT TAX LIEN.—Section 6325(e) is amended by  
8 inserting “, and shall cause the certificate of dis-  
9 charge to be filed in the Federal tax lien registry op-  
10 erated under section 6323(k),” after “imposed by  
11 section 6324”.

12 (5) SUBORDINATION OF LIEN.—Section  
13 6325(d) is amended by inserting “, and shall cause  
14 the certificate of subordination to be filed in the  
15 Federal tax lien registry operated under section  
16 6323(k),” after “subject to such lien”.

17 (6) NONATTACHMENT OF LIEN.—Section  
18 6325(e) is amended by inserting “, and shall cause  
19 the certificate of nonattachment to be filed in the  
20 Federal tax lien registry operated under section  
21 6323(k),” after “property of such person”.

22 (7) EFFECT OF CERTIFICATE.—Paragraphs (1)  
23 and (2)(B) of section 6325(f) are each amended by  
24 striking “in the same office as the notice of lien to  
25 which it relates is filed (if such notice of lien has

1       been filed)” and inserting “in the Federal tax lien  
2       registry operated under section 6323(k)”.

3               (8) RELEASE FOLLOWING ADMINISTRATIVE AP-  
4       PEAL.—Section 6326(b) is amended—

5               (A) by striking “and shall include” and in-  
6       sert “, shall include”, and

7               (B) by inserting “, and shall cause the cer-  
8       tificate of release to be filed in the Federal tax  
9       lien registry operated under section 6323(k),”  
10      after “erroneous”.

11              (9) WITHDRAWAL OF NOTICE.—Section  
12      6323(j)(1) is amended by striking “at the same of-  
13      fice as the withdrawn notice” and inserting “in the  
14      Federal tax lien registry operated under section  
15      6323(k)”.

16              (10) CONFORMING AMENDMENTS.—Section  
17      6325 is amended by striking subsection (g) and by  
18      redesignating subsection (h) as subsection (g).

19              (d) FEDERAL TAX LIEN REGISTRY.—Section 6323  
20      is amended by adding at the end the following new sub-  
21      section:

22              “(k) FEDERAL TAX LIEN REGISTRY.—

23              “(1) IN GENERAL.—The Federal tax lien reg-  
24      istry operated under this subsection shall be estab-  
25      lished and maintained by the Secretary and shall be

1 accessible to and searchable by the public through  
2 the Internet at no cost to access or search. The reg-  
3 istry shall identify the taxpayer to whom the Federal  
4 tax lien applies and reflect the date and time the no-  
5 tice of lien was filed, and shall be made searchable  
6 by, at a minimum, taxpayer name, the State of the  
7 taxpayer’s address as shown on the notice of lien,  
8 the type of tax, and the tax period. The registry  
9 shall also provide for the filing of certificates of re-  
10 lease, discharge, subordination, and nonattachment  
11 of Federal tax liens, as authorized in sections 6325  
12 and 6326, and may provide for publishing such  
13 other documents or information with respect to Fed-  
14 eral tax liens as the Secretary may by regulation  
15 provide under paragraph (2)(C).

16 “(2) ADMINISTRATIVE ACTION.—

17 “(A) IN GENERAL.—The Secretary shall  
18 issue regulations or other guidance providing  
19 for the maintenance, reliability, accessibility,  
20 and use of the Federal tax lien registry estab-  
21 lished under paragraph (1). Such regulations or  
22 guidance shall address, among other matters,  
23 issues related to periods during which the reg-  
24 istry may be unavailable for use due to routine  
25 maintenance or other activities.

1           “(B) FEES.—The Secretary may charge a  
2 taxpayer’s account with a reasonable filing fee  
3 for each notice of lien and each related certifi-  
4 cate, notice, or other filing recorded in the Fed-  
5 eral tax lien registry with respect to such tax-  
6 payer, in an amount determined by the Sec-  
7 retary to be sufficient to defray the costs of op-  
8 erating the registry. The Secretary may also  
9 charge a reasonable fee to any person who re-  
10 quests and receives under section 6323(d)(1)  
11 information or a certified copy of a filing in the  
12 Federal tax lien registry to defray the costs of  
13 providing such information or copies.

14           “(C) FILING OF OTHER ITEMS ON REG-  
15 ISTRY.—The Secretary may, by regulation, pro-  
16 vide for the filing of items on the registry other  
17 than Federal tax liens, including criminal fine  
18 judgments under section 3613 of title 18,  
19 United States Code, and civil judgments under  
20 section 3201 of such title, if the Secretary de-  
21 termines that it would be useful and appro-  
22 priate to do so.”.

23           (e) CERTIFIED COPIES OF INFORMATION FROM REG-  
24 ISTRY.—Section 6323, as amended by subsection (d), is



1 amended by adding at the end the following new sub-  
2 section:

3 “(1) CERTIFIED COPIES OF INFORMATION FROM  
4 FEDERAL REGISTRY.—The Secretary shall make available  
5 in a certificate that can be admitted into evidence in the  
6 courts of the United States without extrinsic evidence of  
7 its authenticity the following information to any person  
8 that submits a request in a form specified by the Sec-  
9 retary:

10 “(1) Whether there is on file in the Federal tax  
11 lien registry operated under subsection (k) at a date  
12 and time specified by the Secretary, but not a date  
13 earlier than 3 days before the creation of the certifi-  
14 cate, any notice of a lien that—

15 “(A) designates a particular taxpayer,

16 “(B) has not been fully satisfied, become  
17 legally unenforceable, or been released or with-  
18 drawn, and

19 “(C) if the request so states, has been fully  
20 satisfied, become legally unenforceable, or been  
21 released or withdrawn, and a record of which is  
22 maintained on the registry at the time of filing  
23 of the request,

24 “(2) the date and time of filing of and the in-  
25 formation provided in each notice of lien, and

1           “(3) if the request so states, the date and time  
2 of filing of and the information provided in each cer-  
3 tificate of release, discharge, subordination, or non-  
4 attachment and each notice of withdrawal recorded  
5 in the registry with respect to each notice of lien.”.

6           (f) EFFECTIVE DATE; IMPLEMENTATION OF REG-  
7 ISTRY.—

8           (1) EFFECTIVE DATE.—The amendments made  
9 by this section shall take effect on the date deter-  
10 mined by the Secretary of the Treasury under para-  
11 graph (2)(E) and, except as provided in paragraph  
12 (2)(F), shall apply to notices of liens filed after such  
13 date.

14           (2) IMPLEMENTATION OF FEDERAL TAX LIEN  
15 REGISTRY.—

16           (A) PILOT PROJECT.—Prior to the imple-  
17 mentation of the Federal tax lien registry under  
18 section 6323(k)(1) of the Internal Revenue  
19 Code of 1986 (as added by this section), the  
20 Secretary of the Treasury, or the Secretary’s  
21 delegate, shall conduct and shall complete by  
22 not later than 2 years after the date of the en-  
23 actment of this Act 1 or more pilot projects to  
24 test the accessibility, reliability, and effective-

1           ness of the electronic systems designed to oper-  
2           ate the registry.

3           (B) GAO REVIEW.—Within 3 months after  
4           the completion of such a pilot project, the Gov-  
5           ernment Accountability Office shall provide a  
6           written evaluation of the project results and  
7           provide such evaluation to the Secretary of the  
8           Treasury, the Commissioner of Internal Rev-  
9           enue, and appropriate committees in Congress.  
10          The Secretary and Commissioner shall cooper-  
11          ate with, and provide information requested by,  
12          the Government Accountability Office to enable  
13          the evaluation to be completed by the date spec-  
14          ified.

15          (C) NATIONWIDE TEST.—Upon the com-  
16          pletion of 1 or more such pilot projects and  
17          after making a determination that the elec-  
18          tronic systems designed to operate the Federal  
19          tax lien registry are sufficiently accessible, reli-  
20          able, and effective, the Secretary of the Treas-  
21          ury, or the Secretary’s delegate, shall conduct a  
22          nationwide test of the Federal tax lien registry  
23          to evaluate its capabilities and functionality.

24          (D) DATA PROTECTION.—Prior to the im-  
25          plementation of such registry, the Secretary of

1 the Treasury, or the Secretary's delegate, shall  
2 take appropriate steps to—

3 (i) secure and prevent tampering with  
4 the data recorded in the registry,

5 (ii) review the information currently  
6 provided in public lien filings and deter-  
7 mine whether any such information should  
8 be excluded or protected from public view-  
9 ing in such registry, and

10 (iii) develop a system, after consulta-  
11 tion with the States, industry, and other  
12 interested parties, and after consideration  
13 of search criteria developed for other public  
14 filing systems including Article 9 of the  
15 Uniform Commercial Code, that will enable  
16 users of the registry, when examining tax  
17 lien information for a taxpayer with a com-  
18 mon name, to identify through reasonable  
19 efforts the specific person to whom such  
20 tax lien relates.

21 (E) DECLARATION OF REGISTRY EFFEC-  
22 TIVE DATE.—Upon the successful completion of  
23 a nationwide test of the Federal tax lien reg-  
24 istry system, the Secretary of the Treasury  
25 shall determine and announce publicly a date

1 upon which the registry shall take effect and  
2 become operational.

3 (F) ORDERLY TRANSITION.—In order to  
4 permit an orderly transition to the Federal tax  
5 lien registry, the Secretary of the Treasury may  
6 by regulation prescribe for the continued filing  
7 of notices of Federal tax liens in the offices of  
8 the States, counties, and other governmental  
9 subdivisions after the determination of an effec-  
10 tive date under subparagraph (E) under the  
11 provisions of section 6323(f) as in effect before  
12 such effective date, for an appropriate period  
13 not to exceed 2 years after such effective date.

14 **TITLE III—ENDING EXCESSIVE**  
15 **CORPORATE TAX DEDUC-**  
16 **TIONS FOR STOCK OPTIONS**

17 **SEC. 301. CONSISTENT TREATMENT OF STOCK OPTIONS BY**  
18 **CORPORATIONS.**

19 (a) CONSISTENT TREATMENT FOR WAGE DEDUC-  
20 TION.—

21 (1) IN GENERAL.—Section 83(h) is amended—

22 (A) by striking “In the case of” and in-  
23 serting:

24 “(1) IN GENERAL.—In the case of”, and

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

3 “(2) STOCK OPTIONS.—In the case of property  
4 transferred to a person in connection with a stock  
5 option, any deduction related to such stock option  
6 shall be allowed only under section 162(q) and para-  
7 graph (1) shall not apply.”.

8 (2) TREATMENT OF COMPENSATION PAID WITH  
9 STOCK OPTIONS.—Section 162 is amended by redesi-  
10 gnating subsection (q) as subsection (r) and by in-  
11 sserting after subsection (p) the following new sub-  
12 section:

13 “(q) TREATMENT OF COMPENSATION PAID WITH  
14 STOCK OPTIONS.—

15 “(1) IN GENERAL.—In the case of compensa-  
16 tion for personal services that is paid with stock op-  
17 tions, the deduction under subsection (a)(1) shall  
18 not exceed the amount the taxpayer has treated as  
19 compensation cost with respect to such stock options  
20 for the purpose of ascertaining income, profit, or  
21 loss in a report or statement to shareholders, part-  
22 ners, or other proprietors (or to beneficiaries), and  
23 shall be taken into account in the same period that  
24 such compensation cost is recognized for such pur-  
25 pose.

1           “(2) SPECIAL RULES FOR CONTROLLED  
2           GROUPS.—The Secretary may prescribe rules for the  
3           application of paragraph (1) in cases where the  
4           stock option is granted by—

5                   “(A) a parent or subsidiary corporation  
6                   (within the meaning of section 424) of the tax-  
7                   payer, or

8                   “(B) another corporation.”.

9           (b) CONSISTENT TREATMENT FOR RESEARCH TAX  
10          CREDIT.—Section 41(b)(2)(D) is amended by inserting at  
11          the end the following new clause:

12                   “(iv) SPECIAL RULE FOR STOCK OP-  
13                   TIONS.—The amount which may be treated  
14                   as wages for any taxable year in connec-  
15                   tion with the issuance of a stock option  
16                   shall not exceed the amount allowed for  
17                   such taxable year as a compensation de-  
18                   duction under section 162(q) with respect  
19                   to such stock option.”.

20          (c) APPLICATION OF AMENDMENTS.—The amend-  
21          ments made by this section shall apply to stock options  
22          exercised after the date of the enactment of this Act, ex-  
23          cept that—

24                   (1) such amendments shall not apply to stock  
25                   options that were granted before such date and that

1 vested in taxable periods beginning on or before  
2 June 15, 2005,

3 (2) for stock options that were granted before  
4 such date of enactment and vested during taxable  
5 periods beginning after June 15, 2005, and ending  
6 before such date of enactment, a deduction under  
7 section 162(q) of the Internal Revenue Code of 1986  
8 (as added by subsection (a)(2)) shall be allowed in  
9 the first taxable period of the taxpayer that ends  
10 after such date of enactment,

11 (3) for public entities reporting as small busi-  
12 ness issuers and for non-public entities required to  
13 file public reports of financial condition, paragraphs  
14 (1) and (2) shall be applied by substituting “Decem-  
15 ber 15, 2005” for “June 15, 2005”, and

16 (4) no deduction shall be allowed under section  
17 83(h) or section 162(q) of such Code with respect to  
18 any stock option the vesting date of which is  
19 changed to accelerate the time at which the option  
20 may be exercised in order to avoid the applicability  
21 of such amendments.

22 **SEC. 302. APPLICATION OF EXECUTIVE PAY DEDUCTION**  
23 **LIMIT.**

24 (a) IN GENERAL.—Subparagraph (D) of section  
25 162(m)(4) is amended to read as follows:



1           “(D) STOCK OPTION COMPENSATION.—  
 2           The term ‘applicable employee remuneration’  
 3           shall include any compensation deducted under  
 4           subsection (q), and such compensation shall not  
 5           qualify as performance-based compensation  
 6           under subparagraph (C).”.

7           (b) EFFECTIVE DATE.—The amendment made by  
 8           this section shall apply to stock options exercised or grant-  
 9           ed after the date of the enactment of this Act.

10   **TITLE IV—CLOSING THE DE-**  
 11       **RIVATIVES BLENDED RATE**  
 12       **LOOPHOLE**

13   **SEC. 401. SHORT TITLE.**

14           This title may be cited as the “Closing the Deriva-  
 15           tives Blended Rate Loophole Act”.

16   **SEC. 402. MODIFICATIONS TO TREATMENT OF SECTION 1256**  
 17       **CONTRACTS.**

18           (a) ELIMINATION OF BLENDED CAPITAL GAIN OR  
 19           LOSS TREATMENT IN FAVOR OF SHORT-TERM CAPITAL  
 20           GAIN OR LOSS.—

21           (1) IN GENERAL.—Paragraph (3) of section  
 22           1256(a) is amended to read as follows:

23           “(3) any gain or loss with respect to a section  
 24           1256 contract shall be treated as short-term capital  
 25           gain or loss, and”.

1           (2) CONFORMING AMENDMENTS.—Subsection  
2 (f) of section 1256 is amended by striking para-  
3 graphs (2), (3), and (4) and by redesignating para-  
4 graph (5) as paragraph (2).

5 (b) CONFORMING AMENDMENTS.—

6           (1) Clause (iv) of section 988(c)(1)(E) is  
7 amended to read as follows:

8                   “(iv) TREATMENT OF CERTAIN CUR-  
9 RENCY CONTRACTS.—Except as provided  
10 in regulations, in the case of a qualified  
11 fund, any bank forward contract, any for-  
12 eign currency futures contract traded on a  
13 foreign exchange, or to the extent provided  
14 in regulations any similar instrument,  
15 which is not otherwise a section 1256 con-  
16 tract shall be treated as a section 1256  
17 contract for purposes of section 1256.”.

18           (2) Subparagraph (A) of section 1212(c)(1) is  
19 amended by striking “preceding taxable year” and  
20 all that follows and inserting “preceding taxable  
21 year, the amount so allowed shall be treated as  
22 short-term capital loss from section 1256 con-  
23 tracts.”.

24           (3) Subparagraph (A) of section 1212(c)(6) is  
25 amended by striking “preceding taxable year” and

1 all that follows and inserting “preceding taxable  
2 year, the amount allowed as a carryback shall be  
3 treated as short-term gain for the loss year.”.

4 (4) Subparagraph (B) of section 1212(c)(6) is  
5 amended by striking “or long-term”.

6 (5) Subsection (f) of section 1256 is amended  
7 by striking paragraphs (3) and (4) and by redesignig-  
8 nating paragraph (5) as paragraph (3).

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—Except as provided in para-  
11 graph (2), the amendments made by this section  
12 shall apply to taxable years beginning after the date  
13 of the enactment of this Act.

14 (2) CONFORMING AMENDMENTS.—The amend-  
15 ments made by paragraphs (2), (3), and (4) of sub-  
16 section (b) shall apply to losses for taxable years be-  
17 ginning after the date of the enactment of this Act.

18 **SEC. 403. MODIFICATIONS TO TREATMENT OF DEALERS IN**  
19 **SECURITIES AND COMMODITIES.**

20 (a) MODIFICATION OF DEFINITION OF SECURITY.—  
21 Paragraph (2) of section 475(c) is amended by striking  
22 the second sentence.

23 (b) REQUIRED MARK TO MARKET FOR DEALERS IN  
24 COMMODITIES.—Subsection (e) of section 475 is amend-  
25 ed—

1           (1) by striking “In the case of a dealer in com-  
2           modities who elects the application of this sub-  
3           section, this section shall apply to commodities held  
4           by such dealer” in paragraph (1) and inserting  
5           “‘This section shall apply to commodities held by a  
6           dealer in commodities’”, and

7           (2) by striking paragraph (3).

8           (c) COMMODITIES DERIVATIVES DEALERS.—Clause  
9           (i) of section 1221(b)(1)(B) is amended by striking “a  
10          note, bond, or other evidence of indebtedness, or a section  
11          1256 contract (as defined in section 1256(b))” and insert-  
12          ing “or a note, bond, or other evidence of indebtedness”.

13          (d) TECHNICAL AMENDMENT.—Paragraph (1) of  
14          section 1402(i) is amended by striking “subsection  
15          (a)(3)(A)” and inserting “subsection (a)(3)”.

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

19                   **TITLE V—ENDING THE TAR**  
20                   **SANDS OIL SPILL LOOPHOLE**

21           **SEC. 501. SHORT TITLE.**

22           This title may be cited as the “Closing the Oil Spill  
23          Cleanup Loophole Act”.

1 **SEC. 502. REQUIREMENTS FOR CONTRIBUTION TO THE OIL**  
2 **SPILL LIABILITY TRUST FUND.**

3 (a) IN GENERAL.—Paragraph (1) of section 4612(a)  
4 is amended to read as follows:

5 “(1) CRUDE OIL.—The term ‘crude oil’ includes  
6 crude oil condensates, natural gasoline, shale oil, any  
7 bitumen or bituminous mixture, any oil derived from  
8 a bitumen or bituminous mixture, and any oil de-  
9 rived from kerogen-bearing sources.”.

10 (b) REGULATORY AUTHORITY TO ADDRESS OTHER  
11 TYPES OF CRUDE OIL AND PETROLEUM PRODUCTS.—

12 Subsection (a) of section 4612 is amended by adding at  
13 the end the following new paragraph:

14 “(10) REGULATORY AUTHORITY TO ADDRESS  
15 OTHER TYPES OF CRUDE OIL AND PETROLEUM  
16 PRODUCTS.—Under such regulations as the Sec-  
17 retary may prescribe, after consultation with the Ad-  
18 ministrator of the Environmental Protection Agency,  
19 the Secretary may include as crude oil or as a petro-  
20 leum product subject to tax under section 4611, any  
21 fuel feedstock or finished fuel product customarily  
22 transported by pipeline, vessel, railcar, or tanker  
23 truck if the Secretary determines that—

24 “(A) the classification of such fuel feed-  
25 stock or finished fuel product is consistent with

1 the definition of oil under the Oil Pollution Act  
2 of 1990, and

3 “(B) such fuel feedstock or finished fuel  
4 product is produced in sufficient commercial  
5 quantities as to pose a significant risk of haz-  
6 ard in the event of a discharge.”.

7 (c) REMOVING RESTRICTIONS RELATING TO OIL  
8 WELLS AND EXTRACTION METHODS.—Paragraph (2) of  
9 section 4612(a) is amended by striking “from a well lo-  
10 cated”.

11 (d) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to oil and petroleum products re-  
13 ceived or entered during calendar quarters beginning more  
14 than 60 days after the date of the enactment of this Act,  
15 regardless of whether the Secretary of the Treasury has  
16 promulgated regulations implementing such amendments.

17 **SEC. 503. EXTENSION OF OIL SPILL LIABILITY TRUST FUND**  
18 **FINANCING RATE.**

19 Section 4611 is amended by striking subsection (f).

20 **SEC. 504. TECHNICAL AMENDMENT.**

21 Subclause (I) of section 4612(e)(2)(B)(ii) is amended  
22 by striking “tranferred” and inserting “transferred”.

1 **TITLE VI—ENDING THE CARRIED**  
 2 **INTEREST LOOPHOLE**

3 **SEC. 601. SHORT TITLE; ETC.**

4 This title may be cited as the “Carried Interest Fair-  
 5 ness Act of 2012”.

6 **SEC. 602. PARTNERSHIP INTERESTS TRANSFERRED IN**  
 7 **CONNECTION WITH PERFORMANCE OF SERV-**  
 8 **ICES.**

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

14 “(4) PARTNERSHIP INTERESTS.—Except as  
 15 provided by the Secretary—

16 “(A) IN GENERAL.—In the case of any  
 17 transfer of an interest in a partnership in con-  
 18 nection with the provision of services to (or for  
 19 the benefit of) such partnership—

20 “(i) the fair market value of such in-  
 21 terest shall be treated for purposes of this  
 22 section as being equal to the amount of the  
 23 distribution which the partner would re-  
 24 ceive if the partnership sold (at the time of  
 25 the transfer) all of its assets at fair market

1 value and distributed the proceeds of such  
2 sale (reduced by the liabilities of the part-  
3 nership) to its partners in liquidation of  
4 the partnership, and

5 “(ii) the person receiving such interest  
6 shall be treated as having made the elec-  
7 tion under subsection (b)(1) unless such  
8 person makes an election under this para-  
9 graph to have such subsection not apply.

10 “(B) ELECTION.—The election under sub-  
11 paragraph (A)(ii) shall be made under rules  
12 similar to the rules of subsection (b)(2).”.

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

16 **SEC. 603. SPECIAL RULES FOR PARTNERS PROVIDING IN-**  
17 **VESTMENT MANAGEMENT SERVICES TO**  
18 **PARTNERSHIPS.**

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



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

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

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

9 “(A) an amount equal to the net capital  
10 gain with respect to such interest for any part-  
11 nership taxable year shall be treated as ordi-  
12 nary income, and

13 “(B) subject to the limitation of paragraph  
14 (2), an amount equal to the net capital loss  
15 with respect to such interest for any partner-  
16 ship taxable year shall be treated as an ordi-  
17 nary loss.

18 “(2) RECHARACTERIZATION OF LOSSES LIM-  
19 ITED TO RECHARACTERIZED GAINS.—The amount  
20 treated as ordinary loss under paragraph (1)(B) for  
21 any taxable year shall not exceed the excess (if any)  
22 of—

23 “(A) the aggregate amount treated as ordi-  
24 nary income under paragraph (1)(A) with re-  
25 spect to the investment services partnership in-

1           terest for all preceding partnership taxable  
2           years to which this section applies, over

3           “(B) the aggregate amount treated as or-  
4           dinary loss under paragraph (1)(B) with re-  
5           spect to such interest for all preceding partner-  
6           ship taxable years to which this section applies.

7           “(3) ALLOCATION TO ITEMS OF GAIN AND  
8           LOSS.—

9           “(A) NET CAPITAL GAIN.—The amount  
10           treated as ordinary income under paragraph  
11           (1)(A) shall be allocated ratably among the  
12           items of long-term capital gain taken into ac-  
13           count in determining such net capital gain.

14           “(B) NET CAPITAL LOSS.—The amount  
15           treated as ordinary loss under paragraph (1)(B)  
16           shall be allocated ratably among the items of  
17           long-term capital loss and short-term capital  
18           loss taken into account in determining such net  
19           capital loss.

20           “(4) TERMS RELATING TO CAPITAL GAINS AND  
21           LOSSES.—For purposes of this section—

22           “(A) IN GENERAL.—Net capital gain, long-  
23           term capital gain, and long-term capital loss,  
24           with respect to any investment services partner-  
25           ship interest for any taxable year, shall be de-

1           terminated under section 1222, except that such  
2           section shall be applied—

3                   “(i) without regard to the recharacter-  
4                   ization of any item as ordinary income or  
5                   ordinary loss under this section,

6                   “(ii) by only taking into account items  
7                   of gain and loss taken into account by the  
8                   holder of such interest under section 702  
9                   with respect to such interest for such tax-  
10                  able year, and

11                  “(iii) by treating property which is  
12                  taken into account in determining gains  
13                  and losses to which section 1231 applies as  
14                  capital assets held for more than 1 year.

15                  “(B) NET CAPITAL LOSS.—The term ‘net  
16                  capital loss’ means the excess of the losses from  
17                  sales or exchanges of capital assets over the  
18                  gains from such sales or exchanges. Rules simi-  
19                  lar to the rules of clauses (i) through (iii) of  
20                  subparagraph (A) shall apply for purposes of  
21                  the preceding sentence.

22                  “(5) SPECIAL RULES FOR DIVIDENDS.—

23                   “(A) INDIVIDUALS.—Any dividend allo-  
24                   cated to any investment services partnership in-

1           terest shall not be treated as qualified dividend  
2           income for purposes of section 1(h).

3           “(B) CORPORATIONS.—No deduction shall  
4           be allowed under section 243 or 245 with re-  
5           spect to any dividend allocated to any invest-  
6           ment services partnership interest.

7           “(6) SPECIAL RULE FOR QUALIFIED SMALL  
8           BUSINESS STOCK.—Section 1202 shall not apply to  
9           any gain from the sale or exchange of qualified small  
10          business stock (as defined in section 1202(c)) allo-  
11          cated with respect to any investment services part-  
12          nership interest.

13          “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

14           “(1) GAIN.—

15           “(A) IN GENERAL.—Any gain on the dis-  
16           position of an investment services partnership  
17           interest shall be—

18                   “(i) treated as ordinary income, and

19                   “(ii) recognized notwithstanding any  
20                   other provision of this subtitle.

21           “(B) GIFT AND TRANSFERS AT DEATH.—

22           In the case of a disposition of an investment  
23           services partnership interest by gift or by rea-  
24           son of death of the taxpayer—

25                   “(i) subparagraph (A) shall not apply,

1           “(ii) such interest shall be treated as  
2           an investment services partnership interest  
3           in the hands of the person acquiring such  
4           interest, and

5           “(iii) any amount that would have  
6           been treated as ordinary income under this  
7           subsection had the decedent sold such in-  
8           terest immediately before death shall be  
9           treated as an item of income in respect of  
10          a decedent under section 691.

11          “(2) LOSS.—Any loss on the disposition of an  
12          investment services partnership interest shall be  
13          treated as an ordinary loss to the extent of the ex-  
14          cess (if any) of—

15               “(A) the aggregate amount treated as ordi-  
16               nary income under subsection (a) with respect  
17               to such interest for all partnership taxable  
18               years to which this section applies, over

19               “(B) the aggregate amount treated as ordi-  
20               nary loss under subsection (a) with respect to  
21               such interest for all partnership taxable years  
22               to which this section applies.

23          “(3) ELECTION WITH RESPECT TO CERTAIN EX-  
24          CHANGES.—Paragraph (1)(A)(ii) shall not apply to  
25          the contribution of an investment services partner-

1 ship interest to a partnership in exchange for an in-  
2 terest in such partnership if—

3 “(A) the taxpayer makes an irrevocable  
4 election to treat the partnership interest re-  
5 ceived in the exchange as an investment serv-  
6 ices partnership interest, and

7 “(B) the taxpayer agrees to comply with  
8 such reporting and recordkeeping requirements  
9 as the Secretary may prescribe.

10 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-  
11 erty.—

12 “(A) IN GENERAL.—In the case of any dis-  
13 tribution of property by a partnership with re-  
14 spect to any investment services partnership in-  
15 terest held by a partner, the partner receiving  
16 such property shall recognize gain equal to the  
17 excess (if any) of—

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

21 “(ii) the adjusted basis of such prop-  
22 erty in the hands of such partner (deter-  
23 mined without regard to subparagraph  
24 (C)).

1           “(B) TREATMENT OF GAIN AS ORDINARY  
2 INCOME.—Any gain recognized by such partner  
3 under subparagraph (A) shall be treated as or-  
4 dinary income to the same extent and in the  
5 same manner as the increase in such partner’s  
6 distributive share of the taxable income of the  
7 partnership would be treated under subsection  
8 (a) if, immediately prior to the distribution, the  
9 partnership had sold the distributed property at  
10 fair market value and all of the gain from such  
11 disposition were allocated to such partner. For  
12 purposes of applying subsection (a)(2), any gain  
13 treated as ordinary income under this subpara-  
14 graph shall be treated as an amount treated as  
15 ordinary income under subsection (a)(1)(A).

16           “(C) ADJUSTMENT OF BASIS.—In the case  
17 a distribution to which subparagraph (A) ap-  
18 plies, the basis of the distributed property in  
19 the hands of the distributee partner shall be the  
20 fair market value of such property.

21           “(D) SPECIAL RULES WITH RESPECT TO  
22 MERGERS, DIVISIONS, AND TECHNICAL TERMI-  
23 NATIONS.—In the case of a taxpayer which sat-  
24 isfies requirements similar to the requirements  
25 of subparagraphs (A) and (B) of paragraph (3),

1 this paragraph and paragraph (1)(A)(ii) shall  
2 not apply to the distribution of a partnership  
3 interest if such distribution is in connection  
4 with a contribution (or deemed contribution) of  
5 any property of the partnership to which sec-  
6 tion 721 applies pursuant to a transaction de-  
7 scribed in paragraph (1)(B) or (2) of section  
8 708(b).

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

11 “(1) IN GENERAL.—The term ‘investment serv-  
12 ices partnership interest’ means any interest in an  
13 investment partnership acquired or held by any per-  
14 son in connection with the conduct of a trade or  
15 business described in paragraph (2) by such person  
16 (or any person related to such person). An interest  
17 in an investment partnership held by any person—

18 “(A) shall not be treated as an investment  
19 services partnership interest for any period be-  
20 fore the first date on which it is so held in con-  
21 nection with such a trade or business,

22 “(B) shall not cease to be an investment  
23 services partnership interest merely because  
24 such person holds such interest other than in  
25 connection with such a trade or business, and



1           “(C) shall be treated as an investment  
2 services partnership interest if acquired from a  
3 related person in whose hands such interest was  
4 an investment services partnership interest.

5           “(2) BUSINESSES TO WHICH THIS SECTION AP-  
6 PLIES.—A trade or business is described in this  
7 paragraph if such trade or business primarily in-  
8 volves the performance of any of the following serv-  
9 ices with respect to assets held (directly or indi-  
10 rectly) by the investment partnership referred to in  
11 paragraph (1):

12           “(A) Advising as to the advisability of in-  
13 vesting in, purchasing, or selling any specified  
14 asset.

15           “(B) Managing, acquiring, or disposing of  
16 any specified asset.

17           “(C) Arranging financing with respect to  
18 acquiring specified assets.

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

21           “(3) INVESTMENT PARTNERSHIP.—

22           “(A) IN GENERAL.—The term ‘investment  
23 partnership’ means any partnership if, at the  
24 end of any calendar quarter ending after the  
25 date of enactment of this section—

1 “(i) substantially all of the assets of  
2 the partnership are specified assets (deter-  
3 mined without regard to any section 197  
4 intangible within the meaning of section  
5 197(d)), and

6 “(ii) more than half of the capital of  
7 the partnership is attributable to qualified  
8 capital interests which (in the hands of the  
9 owners of such interests) constitute prop-  
10 erty not held in connection with a trade or  
11 business.

12 “(B) SPECIAL RULES FOR DETERMINING  
13 IF PROPERTY NOT HELD IN CONNECTION WITH  
14 TRADE OR BUSINESS.—Except as otherwise  
15 provided by the Secretary, for purposes of de-  
16 termining whether any interest in a partnership  
17 constitutes property not held in connection with  
18 a trade or business under subparagraph  
19 (A)(ii)—

20 “(i) any election under subsection (e)  
21 or (f) of section 475 shall be disregarded,  
22 and

23 “(ii) paragraph (5)(B) shall not apply.

24 “(C) ANTIABUSE RULES.—The Secretary  
25 may issue regulations or other guidance which

1 prevent the avoidance of the purposes of sub-  
2 paragraph (A), including regulations or other  
3 guidance which treat convertible and contingent  
4 debt (and other debt having the attributes of  
5 equity) as a capital interest in the partnership.

6 “(D) CONTROLLED GROUPS OF ENTI-  
7 TIES.—

8 “(i) IN GENERAL.—In the case of a  
9 controlled group of entities, if an interest  
10 in the partnership received in exchange for  
11 a contribution to the capital of the part-  
12 nership by any member of such controlled  
13 group would (in the hands of such mem-  
14 ber) constitute property held in connection  
15 with a trade or business, then any interest  
16 in such partnership held by any member of  
17 such group shall be treated for purposes of  
18 subparagraph (A) as constituting (in the  
19 hands of such member) property held in  
20 connection with a trade or business.

21 “(ii) CONTROLLED GROUP OF ENTI-  
22 TIES.—For purposes of clause (i), the term  
23 ‘controlled group of entities’ means a con-  
24 trolled group of corporations as defined in  
25 section 1563(a)(1), applied without regard

1 to subsections (a)(4) and (b)(2) of section  
2 1563. A partnership or any other entity  
3 (other than a corporation) shall be treated  
4 as a member of a controlled group of enti-  
5 ties if such entity is controlled (within the  
6 meaning of section 954(d)(3)) by members  
7 of such group (including any entity treated  
8 as a member of such group by reason of  
9 this sentence).

10 “(E) SPECIAL RULE FOR CORPORA-  
11 TIONS.—For purposes of this paragraph, in the  
12 case of a corporation, the determination of  
13 whether property is held in connection with a  
14 trade or business shall be determined as if the  
15 taxpayer were an individual.

16 “(4) SPECIFIED ASSET.—The term ‘specified  
17 asset’ means securities (as defined in section  
18 475(c)(2) without regard to the last sentence there-  
19 of), real estate held for rental or investment, inter-  
20 ests in partnerships, commodities (as defined in sec-  
21 tion 475(e)(2)), cash or cash equivalents, or options  
22 or derivative contracts with respect to any of the  
23 foregoing.

24 “(5) RELATED PERSONS.—

1           “(A) IN GENERAL.—A person shall be  
2           treated as related to another person if the rela-  
3           tionship between such persons is described in  
4           section 267(b) or 707(b).

5           “(B) CONTRIBUTION OF PARTNER SERV-  
6           ICES.—Any service described in paragraph (2)  
7           which is provided by a partner of a partnership  
8           shall be treated as also provided by such part-  
9           nership.

10          “(d) EXCEPTION FOR CERTAIN CAPITAL INTER-  
11          ESTS.—

12           “(1) IN GENERAL.—In the case of any portion  
13           of an investment services partnership interest which  
14           is a qualified capital interest, all items of gain and  
15           loss (and any dividends) which are allocated to such  
16           qualified capital interest shall not be taken into ac-  
17           count under subsection (a) if—

18           “(A) allocations of items are made by the  
19           partnership to such qualified capital interest in  
20           the same manner as such allocations are made  
21           to other qualified capital interests held by part-  
22           ners who do not provide any services described  
23           in subsection (c)(2) and who are not related to  
24           the partner holding the qualified capital inter-  
25           est, and

1           “(B) the allocations made to such other in-  
2           terests are significant compared to the alloca-  
3           tions made to such qualified capital interest.

4           “(2) AUTHORITY TO PROVIDE EXCEPTIONS TO  
5           ALLOCATION REQUIREMENTS.—To the extent pro-  
6           vided by the Secretary in regulations or other guid-  
7           ance—

8           “(A) ALLOCATIONS TO PORTION OF QUALI-  
9           FIED CAPITAL INTEREST.—Paragraph (1) may  
10          be applied separately with respect to a portion  
11          of a qualified capital interest.

12          “(B) NO OR INSIGNIFICANT ALLOCATIONS  
13          TO NONSERVICE PROVIDERS.—In any case in  
14          which the requirements of paragraph (1)(B) are  
15          not satisfied, items of gain and loss (and any  
16          dividends) shall not be taken into account under  
17          subsection (a) to the extent that such items are  
18          properly allocable under such regulations or  
19          other guidance to qualified capital interests.

20          “(C) ALLOCATIONS TO SERVICE PRO-  
21          VIDERS’ QUALIFIED CAPITAL INTERESTS WHICH  
22          ARE LESS THAN OTHER ALLOCATIONS.—Alloca-  
23          tions shall not be treated as failing to meet the  
24          requirement of paragraph (1)(A) merely be-  
25          cause the allocations to the qualified capital in-

1           terest represent a lower return than the alloca-  
2           tions made to the other qualified capital inter-  
3           ests referred to in such paragraph.

4           “(3) SPECIAL RULE FOR CHANGES IN SERVICES  
5           AND CAPITAL CONTRIBUTIONS.—In the case of an  
6           interest in a partnership which was not an invest-  
7           ment services partnership interest and which, by  
8           reason of a change in the services with respect to as-  
9           sets held (directly or indirectly) by the partnership  
10          or by reason of a change in the capital contributions  
11          to such partnership, becomes an investment services  
12          partnership interest, the qualified capital interest of  
13          the holder of such partnership interest immediately  
14          after such change shall not, for purposes of this sub-  
15          section, be less than the fair market value of such  
16          interest (determined immediately before such  
17          change).

18          “(4) SPECIAL RULE FOR TIERED PARTNER-  
19          SHIPS.—Except as otherwise provided by the Sec-  
20          retary, in the case of tiered partnerships, all items  
21          which are allocated in a manner which meets the re-  
22          quirements of paragraph (1) to qualified capital in-  
23          terests in a lower-tier partnership shall retain such  
24          character to the extent allocated on the basis of

1 qualified capital interests in any upper-tier partner-  
2 ship.

3 “(5) EXCEPTION FOR NO-SELF-CHARGED  
4 CARRY AND MANAGEMENT FEE PROVISIONS.—Ex-  
5 cept as otherwise provided by the Secretary, an in-  
6 terest shall not fail to be treated as satisfying the  
7 requirement of paragraph (1)(A) merely because the  
8 allocations made by the partnership to such interest  
9 do not reflect the cost of services described in sub-  
10 section (c)(2) which are provided (directly or indi-  
11 rectly) to the partnership by the holder of such in-  
12 terest (or a related person).

13 “(6) SPECIAL RULE FOR DISPOSITIONS.—In the  
14 case of any investment services partnership interest  
15 any portion of which is a qualified capital interest,  
16 subsection (b) shall not apply to so much of any  
17 gain or loss as bears the same proportion to the en-  
18 tire amount of such gain or loss as—

19 “(A) the distributive share of gain or loss  
20 that would have been allocated to the qualified  
21 capital interest (consistent with the require-  
22 ments of paragraph (1)) if the partnership had  
23 sold all of its assets at fair market value imme-  
24 diately before the disposition, bears to



1           “(B) the distributive share of gain or loss  
2           that would have been so allocated to the invest-  
3           ment services partnership interest of which such  
4           qualified capital interest is a part.

5           “(7) QUALIFIED CAPITAL INTEREST.—For pur-  
6           poses of this section—

7           “(A) IN GENERAL.—The term ‘qualified  
8           capital interest’ means so much of a partner’s  
9           interest in the capital of the partnership as is  
10          attributable to—

11           “(i) the fair market value of any  
12           money or other property contributed to the  
13           partnership in exchange for such interest  
14           (determined without regard to section  
15           752(a)),

16           “(ii) any amounts which have been in-  
17           cluded in gross income under section 83  
18           with respect to the transfer of such inter-  
19           est, and

20           “(iii) the excess (if any) of—

21           “(I) any items of income and  
22           gain taken into account under section  
23           702 with respect to such interest, over

24           “(II) any items of deduction and  
25           loss so taken into account.

1                   “(B) ADJUSTMENT TO QUALIFIED CAPITAL  
2 INTEREST.—

3                   “(i) DISTRIBUTIONS AND LOSSES.—

4                   The qualified capital interest shall be re-  
5                   duced by distributions from the partner-  
6                   ship with respect to such interest and by  
7                   the excess (if any) of the amount described  
8                   in subparagraph (A)(iii)(II) over the  
9                   amount described in subparagraph  
10                  (A)(iii)(I).

11                  “(ii) SPECIAL RULE FOR CONTRIBU-  
12                  TIONS OF PROPERTY.—In the case of any  
13                  contribution of property described in sub-  
14                  paragraph (A)(i) with respect to which the  
15                  fair market value of such property is not  
16                  equal to the adjusted basis of such prop-  
17                  erty immediately before such contribution,  
18                  proper adjustments shall be made to the  
19                  qualified capital interest to take into ac-  
20                  count such difference consistent with such  
21                  regulations or other guidance as the Sec-  
22                  retary may provide.

23                  “(C) TECHNICAL TERMINATIONS, ETC.,  
24                  DISREGARDED.—No increase or decrease in the  
25                  qualified capital interest of any partner shall re-

1           sult from a termination, merger, consolidation,  
2           or division described in section 708, or any  
3           similar transaction.

4           “(8) TREATMENT OF CERTAIN LOANS.—

5                   “(A) PROCEEDS OF PARTNERSHIP LOANS  
6           NOT TREATED AS QUALIFIED CAPITAL INTER-  
7           EST OF SERVICE PROVIDING PARTNERS.—For  
8           purposes of this subsection, an investment serv-  
9           ices partnership interest shall not be treated as  
10          a qualified capital interest to the extent that  
11          such interest is acquired in connection with the  
12          proceeds of any loan or other advance made or  
13          guaranteed, directly or indirectly, by any other  
14          partner or the partnership (or any person re-  
15          lated to any such other partner or the partner-  
16          ship). The preceding sentence shall not apply to  
17          the extent the loan or other advance is repaid  
18          before the date of the enactment of this section  
19          unless such repayment is made with the pro-  
20          ceeds of a loan or other advance described in  
21          the preceding sentence.

22                   “(B) REDUCTION IN ALLOCATIONS TO  
23          QUALIFIED CAPITAL INTERESTS FOR LOANS  
24          FROM NONSERVICE-PROVIDING PARTNERS TO  
25          THE PARTNERSHIP.—For purposes of this sub-

1 section, any loan or other advance to the part-  
 2 nership made or guaranteed, directly or indi-  
 3 rectly, by a partner not providing services de-  
 4 scribed in subsection (c)(2) to the partnership  
 5 (or any person related to such partner) shall be  
 6 taken into account in determining the qualified  
 7 capital interests of the partners in the partner-  
 8 ship.

9 “(e) OTHER INCOME AND GAIN IN CONNECTION  
 10 WITH INVESTMENT MANAGEMENT SERVICES.—

11 “(1) IN GENERAL.—If—

12 “(A) a person performs (directly or indi-  
 13 rectly) investment management services for any  
 14 investment entity,

15 “(B) such person holds (directly or indi-  
 16 rectly) a disqualified interest with respect to  
 17 such entity, and

18 “(C) the value of such interest (or pay-  
 19 ments thereunder) is substantially related to  
 20 the amount of income or gain (whether or not  
 21 realized) from the assets with respect to which  
 22 the investment management services are per-  
 23 formed,

24 any income or gain with respect to such interest  
 25 shall be treated as ordinary income. Rules similar to

1 the rules of subsections (a)(5) and (d) shall apply  
2 for purposes of this subsection.

3 “(2) DEFINITIONS.—For purposes of this sub-  
4 section—

5 “(A) DISQUALIFIED INTEREST.—

6 “(i) IN GENERAL.—The term ‘dis-  
7 qualified interest’ means, with respect to  
8 any investment entity—

9 “(I) any interest in such entity  
10 other than indebtedness,

11 “(II) convertible or contingent  
12 debt of such entity,

13 “(III) any option or other right  
14 to acquire property described in sub-  
15 clause (I) or (II), and

16 “(IV) any derivative instrument  
17 entered into (directly or indirectly)  
18 with such entity or any investor in  
19 such entity.

20 “(ii) EXCEPTIONS.—Such term shall  
21 not include—

22 “(I) a partnership interest,

23 “(II) except as provided by the  
24 Secretary, any interest in a taxable  
25 corporation, and

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

3                   “(B) TAXABLE CORPORATION.—The term  
4                   ‘taxable corporation’ means—

5                   “(i) a domestic C corporation, or

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

8                   “(I) effectively connected with  
9                   the conduct of a trade or business in  
10                  the United States, or

11                  “(II) subject to a comprehensive  
12                  foreign income tax (as defined in sec-  
13                  tion 457A(d)(2)).

14                  “(C) INVESTMENT MANAGEMENT SERV-  
15                  ICES.—The term ‘investment management serv-  
16                  ices’ means a substantial quantity of any of the  
17                  services described in subsection (c)(2).

18                  “(D) INVESTMENT ENTITY.—The term ‘in-  
19                  vestment entity’ means any entity which, if it  
20                  were a partnership, would be an investment  
21                  partnership.

22                  “(f) REGULATIONS.—The Secretary shall prescribe  
23                  such regulations or other guidance as is necessary or ap-  
24                  propriate to carry out the purposes of this section, includ-  
25                  ing regulations or other guidance to—

1           “(1) provide modifications to the application of  
2 this section (including treating related persons as  
3 not related to one another) to the extent such modi-  
4 fication is consistent with the purposes of this sec-  
5 tion,

6           “(2) prevent the avoidance of the purposes of  
7 this section, and

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

10          “(g) CROSS-REFERENCE.—For 40 percent penalty  
11 on certain underpayments due to the avoidance of this sec-  
12 tion, see section 6662.”.

13          (b) APPLICATION OF SECTION 751 TO INDIRECT DIS-  
14 POSITIONS OF INVESTMENT SERVICES PARTNERSHIP IN-  
15 TERESTS.—

16           (1) IN GENERAL.—Subsection (a) of section  
17 751 is amended by striking “or” at the end of para-  
18 graph (1), by inserting “or” at the end of paragraph  
19 (2), and by inserting after paragraph (2) the fol-  
20 lowing new paragraph:

21           “(3) investment services partnership interests  
22 held by the partnership,”.

23           (2) CERTAIN DISTRIBUTIONS TREATED AS  
24 SALES OR EXCHANGES.—Subparagraph (A) of sec-  
25 tion 751(b)(1) is amended by striking “or” at the

1 end of clause (i), by inserting “or” at the end of  
2 clause (ii), and by inserting after clause (ii) the fol-  
3 lowing new clause:

4 “(iii) investment services partnership  
5 interests held by the partnership,”.

6 (3) APPLICATION OF SPECIAL RULES IN THE  
7 CASE OF TIERED PARTNERSHIPS.—Subsection (f) of  
8 section 751 is amended—

9 (A) by striking “or” at the end of para-  
10 graph (1), by inserting “or” at the end of para-  
11 graph (2), and by inserting after paragraph (2)  
12 the following new paragraph:

13 “(3) an investment services partnership interest  
14 held by the partnership,”, and

15 (B) by striking “partner.” and inserting  
16 “partner (other than a partnership in which it  
17 holds an investment services partnership inter-  
18 est).”.

19 (4) INVESTMENT SERVICES PARTNERSHIP IN-  
20 TERESTS; QUALIFIED CAPITAL INTERESTS.—Section  
21 751 is amended by adding at the end the following  
22 new subsection:

23 “(g) INVESTMENT SERVICES PARTNERSHIP INTER-  
24 ESTS.—For purposes of this section—



1           “(1) IN GENERAL.—The term ‘investment serv-  
2           ices partnership interest’ has the meaning given  
3           such term by section 710(c).

4           “(2) ADJUSTMENTS FOR QUALIFIED CAPITAL  
5           INTERESTS.—The amount to which subsection (a)  
6           applies by reason of paragraph (3) thereof shall not  
7           include so much of such amount as is attributable  
8           to any portion of the investment services partnership  
9           interest which is a qualified capital interest (deter-  
10          mined under rules similar to the rules of section  
11          710(d)).

12          “(3) EXCEPTION FOR PUBLICLY TRADED PART-  
13          NERSHIPS.—In the case of an exchange of an inter-  
14          est in a publicly traded partnership (as defined in  
15          section 7704) to which subsection (a) applies—

16                 “(A) this section shall be applied without  
17                 regard to subsections (a)(3), (b)(1)(A)(iii), and  
18                 (f)(3), and

19                 “(B) such partnership shall be treated as  
20                 owning its proportionate share of the property  
21                 of any other partnership in which it is a part-  
22                 ner.

23          “(4) RECOGNITION OF GAINS.—Any gain with  
24          respect to which subsection (a) applies by reason of

1 paragraph (3) thereof shall be recognized notwith-  
2 standing any other provision of this title.

3 “(5) COORDINATION WITH INVENTORY  
4 ITEMS.—An investment services partnership interest  
5 held by the partnership shall not be treated as an  
6 inventory item of the partnership.

7 “(6) PREVENTION OF DOUBLE COUNTING.—  
8 Under regulations or other guidance prescribed by  
9 the Secretary, subsection (a)(3) shall not apply with  
10 respect to any amount to which section 710 applies.

11 “(7) VALUATION METHODS.—The Secretary  
12 shall prescribe regulations or other guidance which  
13 provide the acceptable methods for valuing invest-  
14 ment services partnership interests for purposes of  
15 this section.”.

16 (c) TREATMENT FOR PURPOSES OF SECTION  
17 7704.—Subsection (d) of section 7704 is amended by add-  
18 ing at the end the following new paragraph:

19 “(6) INCOME FROM CERTAIN CARRIED INTER-  
20 ESTS NOT QUALIFIED.—

21 “(A) IN GENERAL.—Specified carried in-  
22 terest income shall not be treated as qualifying  
23 income.

24 “(B) SPECIFIED CARRIED INTEREST IN-  
25 COME.—For purposes of this paragraph—

1           “(i) IN GENERAL.—The term ‘speci-  
2           fied carried interest income’ means—

3                   “(I) any item of income or gain  
4                   allocated to an investment services  
5                   partnership interest (as defined in  
6                   section 710(c)) held by the partner-  
7                   ship,

8                   “(II) any gain on the disposition  
9                   of an investment services partnership  
10                  interest (as so defined) or a partner-  
11                  ship interest to which (in the hands of  
12                  the partnership) section 751 applies,  
13                  and

14                  “(III) any income or gain taken  
15                  into account by the partnership under  
16                  subsection (b)(4) or (e) of section  
17                  710.

18           “(ii) EXCEPTION FOR QUALIFIED CAP-  
19           ITAL INTERESTS.—A rule similar to the  
20           rule of section 710(d) shall apply for pur-  
21           poses of clause (i).

22           “(C) COORDINATION WITH OTHER PROVI-  
23           SIONS.—Subparagraph (A) shall not apply to  
24           any item described in paragraph (1)(E) (or so

1 much of paragraph (1)(F) as relates to para-  
2 graph (1)(E)).

3 “(D) SPECIAL RULES FOR CERTAIN PART-  
4 NERSHIPS.—

5 “(i) CERTAIN PARTNERSHIPS OWNED  
6 BY REAL ESTATE INVESTMENT TRUSTS.—

7 Subparagraph (A) shall not apply in the  
8 case of a partnership which meets each of  
9 the following requirements:

10 “(I) Such partnership is treated  
11 as publicly traded under this section  
12 solely by reason of interests in such  
13 partnership being convertible into in-  
14 terests in a real estate investment  
15 trust which is publicly traded.

16 “(II) Fifty percent or more of  
17 the capital and profits interests of  
18 such partnership are owned, directly  
19 or indirectly, at all times during the  
20 taxable year by such real estate in-  
21 vestment trust (determined with the  
22 application of section 267(e)).

23 “(III) Such partnership meets  
24 the requirements of paragraphs (2),  
25 (3), and (4) of section 856(e).

1                   “(ii) CERTAIN PARTNERSHIPS OWN-  
2                   ING OTHER PUBLICLY TRADED PARTNER-  
3                   SHIPS.—Subparagraph (A) shall not apply  
4                   in the case of a partnership which meets  
5                   each of the following requirements:

6                                 “(I) Substantially all of the as-  
7                                 sets of such partnership consist of in-  
8                                 terests in one or more publicly traded  
9                                 partnerships (determined without re-  
10                                gard to subsection (b)(2)).

11                               “(II) Substantially all of the in-  
12                               come of such partnership is ordinary  
13                               income or section 1231 gain (as de-  
14                               fined in section 1231(a)(3)).

15                               “(E) TRANSITIONAL RULE.—Subpara-  
16                               graph (A) shall not apply to any taxable year  
17                               of the partnership beginning before the date  
18                               which is 10 years after the date of the enact-  
19                               ment of this paragraph.”.

20                   (d) IMPOSITION OF PENALTY ON UNDERPAY-  
21                   MENTS.—

22                               (1) IN GENERAL.—Subsection (b) of section  
23                               6662 is amended by inserting after paragraph (7)  
24                               the following new paragraph:

1           “(8) The application of section 710(e) or the  
2 regulations or other guidance prescribed under sec-  
3 tion 710(f) to prevent the avoidance of the purposes  
4 of section 710.”.

5           (2) AMOUNT OF PENALTY.—

6           (A) IN GENERAL.—Section 6662 is amend-  
7 ed by adding at the end the following new sub-  
8 section:

9           “(k) INCREASE IN PENALTY IN CASE OF PROPERTY  
10 TRANSFERRED FOR INVESTMENT MANAGEMENT SERV-  
11 ICES.—In the case of any portion of an underpayment to  
12 which this section applies by reason of subsection (b)(8),  
13 subsection (a) shall be applied with respect to such portion  
14 by substituting ‘40 percent’ for ‘20 percent’.”.

15           (B) CONFORMING AMENDMENT.—Subpara-  
16 graph (B) of section 6662A(e)(2) is amended  
17 by striking “or (i)” and inserting “, (i), or (k)”.

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

21           (A) by redesignating paragraphs (3) and  
22 (4) as paragraphs (4) and (5), respectively;

23           (B) by striking “paragraph (3)” in para-  
24 graph (5)(A), as so redesignated, and inserting  
25 “paragraph (4)”; and

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

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

6 “(A) IN GENERAL.—Paragraph (1) shall  
 7 not apply to any portion of an underpayment to  
 8 which section 6662 applies by reason of sub-  
 9 section (b)(8) unless—

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

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

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

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

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

25 (1) INTERNAL REVENUE CODE.—

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

7           “(18) notwithstanding the preceding provisions  
8           of this subsection, in the case of any individual en-  
9           gaged in the trade or business of providing services  
10          described in section 710(c)(2) with respect to any  
11          entity, investment services partnership income or  
12          loss (as defined in subsection (m)) of such individual  
13          with respect to such entity shall be taken into ac-  
14          count in determining the net earnings from self-em-  
15          ployment of such individual.”.

16           (B) INVESTMENT SERVICES PARTNERSHIP  
17          INCOME OR LOSS.—Section 1402 is amended by  
18          adding at the end the following new subsection:

19          “(m) INVESTMENT SERVICES PARTNERSHIP INCOME  
20          OR LOSS.—For purposes of subsection (a)—

21           “(1) IN GENERAL.—The term ‘investment serv-  
22          ices partnership income or loss’ means, with respect  
23          to any investment services partnership interest (as  
24          defined in section 710(c)) or disqualified interest (as  
25          defined in section 710(e)), the net of—



1           “(A) the amounts treated as ordinary in-  
2           come or ordinary loss under subsections (b) and  
3           (e) of section 710 with respect to such interest,

4           “(B) all items of income, gain, loss, and  
5           deduction allocated to such interest, and

6           “(C) the amounts treated as realized from  
7           the sale or exchange of property other than a  
8           capital asset under section 751 with respect to  
9           such interest.

10           “(2) EXCEPTION FOR QUALIFIED CAPITAL IN-  
11           TERESTS.—A rule similar to the rule of section  
12           710(d) shall apply for purposes of applying para-  
13           graph (1)(B).”.

14           (2) SOCIAL SECURITY ACT.—Section 211(a) of  
15           the Social Security Act is amended by striking  
16           “and” at the end of paragraph (15), by striking the  
17           period at the end of paragraph (16) and inserting “;  
18           and”, and by inserting after paragraph (16) the fol-  
19           lowing new paragraph:

20           “(17) Notwithstanding the preceding provisions  
21           of this subsection, in the case of any individual en-  
22           gaged in the trade or business of providing services  
23           described in section 710(c)(2) of the Internal Rev-  
24           enue Code of 1986 with respect to any entity, invest-  
25           ment services partnership income or loss (as defined

1 in section 1402(m) of such Code) shall be taken into  
2 account in determining the net earnings from self-  
3 employment of such individual.”.

4 (f) CONFORMING AMENDMENTS.—

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

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

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

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

16 (g) EFFECTIVE DATE.—

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

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

1 taxable year which includes the date of the enact-  
2 ment of this Act, the amount of the net capital gain  
3 referred to in such section shall be treated as being  
4 the lesser of the net capital gain for the entire part-  
5 nership taxable year or the net capital gain deter-  
6 mined by only taking into account items attributable  
7 to the portion of the partnership taxable year which  
8 is after such date.

9 (3) DISPOSITIONS OF PARTNERSHIP INTER-  
10 ESTS.—

11 (A) IN GENERAL.—Section 710(b) of such  
12 Code (as added by this section) shall apply to  
13 dispositions and distributions after the date of  
14 the enactment of this Act.

15 (B) INDIRECT DISPOSITIONS.—The amend-  
16 ments made by subsection (b) shall apply to  
17 transactions after the date of the enactment of  
18 this Act.

19 (4) OTHER INCOME AND GAIN IN CONNECTION  
20 WITH INVESTMENT MANAGEMENT SERVICES.—Sec-  
21 tion 710(e) of such Code (as added by this section)  
22 shall take effect on the date of the enactment of this  
23 Act.

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