

107TH CONGRESS
2D SESSION

S. 2339

To amend the Internal Revenue Code of 1986 to curb tax abuses by disallowing tax benefits claimed to arise from transactions without substantial economic substance, to curb tax abuses involving identified tax havens, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2002

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

A BILL

To amend the Internal Revenue Code of 1986 to curb tax abuses by disallowing tax benefits claimed to arise from transactions without substantial economic substance, to curb tax abuses involving identified tax havens, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tax Haven and Abu-
5 sive Tax Shelter Reform Act of 2002”.

1 **TITLE I—CLARIFICATION OF**
 2 **ECONOMIC SUBSTANCE DOC-**
 3 **TRINE**

4 **SEC. 101. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
 5 **TRINE.**

6 (a) IN GENERAL.—Section 7701 of the Internal Rev-
 7 enue Code of 1986 is amended by redesignating subsection
 8 (n) as subsection (o) and by inserting after subsection (m)
 9 the following new subsection:

10 “(n) CLARIFICATION OF ECONOMIC SUBSTANCE
 11 DOCTRINE; ETC.—

12 “(1) GENERAL RULES.—

13 “(A) IN GENERAL.—In applying the eco-
 14 nomic substance doctrine, the determination of
 15 whether a transaction has economic substance
 16 shall be made as provided in this paragraph.

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

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

21 “(I) the transaction changes in a
 22 meaningful way (apart from Federal
 23 income tax effects) the taxpayer’s eco-
 24 nomic position, and

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

6 “(ii) SPECIAL RULE WHERE TAX-
7 PAYER RELIES ON PROFIT POTENTIAL.—A
8 transaction shall not be treated as having
9 economic substance by reason of having a
10 potential for profit unless—

11 “(I) the present value of the rea-
12 sonably expected pre-tax profit from
13 the transaction is substantial in rela-
14 tion to the present value of the ex-
15 pected net tax benefits that would be
16 allowed if the transaction were re-
17 spected, and

18 “(II) the reasonably expected
19 pre-tax profit from the transaction ex-
20 ceeds a risk-free rate of return.

21 “(C) TREATMENT OF FEES AND FOREIGN
22 TAXES.—Fees and other transaction expenses
23 and foreign taxes shall be taken into account as
24 expenses in determining pre-tax profit under
25 subparagraph (B)(ii).

1 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
2 TAX-INDIFFERENT PARTIES.—

3 “(A) SPECIAL RULES FOR FINANCING
4 TRANSACTIONS.—The form of a transaction
5 which is in substance the borrowing of money
6 or the acquisition of financial capital directly or
7 indirectly from a tax-indifferent party shall not
8 be respected if the present value of the deduc-
9 tions to be claimed with respect to the trans-
10 action are substantially in excess of the present
11 value of the anticipated economic returns of the
12 person lending the money or providing the fi-
13 nancial capital. A public offering shall be treat-
14 ed as a borrowing, or an acquisition of financial
15 capital, from a tax-indifferent party if it is rea-
16 sonably expected that at least 50 percent of the
17 offering will be placed with tax-indifferent par-
18 ties.

19 “(B) ARTIFICIAL INCOME SHIFTING AND
20 BASIS ADJUSTMENTS.—The form of a trans-
21 action with a tax-indifferent party shall not be
22 respected if—

23 “(i) it results in an allocation of in-
24 come or gain to the tax-indifferent party in

1 excess of such party's economic income or
 2 gain, or

3 “(ii) it results in a basis adjustment
 4 or shifting of basis on account of over-
 5 stating the income or gain of the tax-indif-
 6 ferent party.

7 “(3) DEFINITIONS AND SPECIAL RULES.—For
 8 purposes of this subsection—

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

16 “(B) TAX-INDIFFERENT PARTY.—The
 17 term ‘tax-indifferent party’ means any person
 18 or entity not subject to tax imposed by subtitle
 19 A. A person shall be treated as a tax-indifferent
 20 party with respect to a transaction if the items
 21 taken into account with respect to the trans-
 22 action have no substantial impact on such per-
 23 son's liability under subtitle A.

24 “(C) EXCEPTION FOR PERSONAL TRANS-
 25 ACTIONS OF INDIVIDUALS.—In the case of an

individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(D) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law referred to in section 6662(i)(2), and the requirements of this subsection shall be construed as being in addition to any such other rule of law.”.

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

TITLE II—PENALTIES

SEC. 201. INCREASE IN PENALTY ON UNDERPAYMENTS RESULTING FROM FAILURE TO SATISFY CERTAIN COMMON LAW RULES.

(a) IN GENERAL.—Section 6662 of the Internal Revenue Code of 1986 (relating to imposition of accuracy-related penalty) is amended by adding at the end the following new subsection:

“(i) INCREASE IN PENALTY IN CASE OF FAILURE TO SATISFY CERTAIN COMMON LAW RULES.—

“(1) IN GENERAL.—To the extent that an underpayment is attributable to a disallowance described in paragraph (2)—

“(A) subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’, and

“(B) subsection (d)(2)(B) and section 6664(c) shall not apply.

“(2) DISALLOWANCES DESCRIBED.—A disallowance is described in this subsection if such disallowance is on account of—

“(A) a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or

1 the transaction was not respected under section
 2 7701(n)(2),

3 “(B) a lack of business purpose for such
 4 transaction or because the form of the trans-
 5 action does not reflect its substance, or

6 “(C) a failure to meet the requirements of
 7 any other similar rule of law.

8 “(3) INCREASE IN PENALTY NOT TO APPLY IF
 9 COMPLIANCE WITH DISCLOSURE REQUIREMENTS.—
 10 Paragraph (1)(A) shall not apply if the taxpayer dis-
 11 closes to the Secretary (as such time and in such
 12 manner as the Secretary shall prescribe) such infor-
 13 mation as the Secretary shall prescribe with respect
 14 to such transaction.”.

15 (b) MODIFICATIONS TO PENALTY ON SUBSTANTIAL
 16 UNDERSTATEMENT OF INCOME TAX.—

17 (1) MODIFICATION OF THRESHOLD.—Subpara-
 18 graph (A) of section 6662(d)(1) of the Internal Rev-
 19 enue Code of 1986 is amended to read as follows:

20 “(A) IN GENERAL.—For purposes of this
 21 section, there is a substantial understatement of
 22 income tax for any taxable year if the amount
 23 of the understatement for the taxable year ex-
 24 ceeds the lesser of—

25 “(i) \$500,000, or

1 “(ii) the greater of 10 percent of the
2 tax required to be shown on the return for
3 the taxable year or \$5,000.”.

4 (2) MODIFICATION OF PENALTY ON TAX SHEL-
5 TERS, ETC.—Clauses (i) and (ii) of section
6 6662(d)(2)(C) of such Code are amended to read as
7 follows:

8 “(i) IN GENERAL.—Subparagraph (B)
9 shall not apply to any item attributable to
10 a tax shelter.”.

11 “(ii) DETERMINATION OF UNDER-
12 STATEMENTS WITH RESPECT TO TAX
13 SHELTERS, ETC.—In any case in which
14 there are one or more items attributable to
15 a tax shelter, the amount of the under-
16 statement under subparagraph (A) shall in
17 no event be less than the amount of under-
18 statement which would be determined for
19 the taxable year if all items shown on the
20 return which are not attributable to any
21 tax shelter were treated as being correct. A
22 similar rule shall apply in cases to which
23 subsection (i) applies, whether or not the
24 items are attributable to a tax shelter.”.

1 (c) TREATMENT OF AMENDED RETURNS.—Sub-
 2 section (a) of section 6664 of the Internal Revenue Code
 3 of 1986 is amended by adding at the end the following
 4 new sentence: “For purposes of this subsection, an amend-
 5 ed return shall be disregarded if such return is filed on
 6 or after the date the taxpayer is first contacted by the
 7 Secretary regarding the examination of the return.”.

8 **SEC. 202. PENALTY ON PROMOTERS OF TAX AVOIDANCE**
 9 **STRATEGIES WHICH HAVE NO ECONOMIC**
 10 **SUBSTANCE, ETC.**

11 (a) PENALTY.—

12 (1) IN GENERAL.—Section 6700 of the Internal
 13 Revenue Code of 1986 (relating to promoting abu-
 14 sive tax shelters, etc.) is amended by redesignating
 15 subsection (c) as subsection (d) and by inserting
 16 after subsection (b) the following new subsection:

17 “(c) PENALTY ON SUBSTANTIAL PROMOTERS FOR
 18 PROMOTING TAX AVOIDANCE STRATEGIES WHICH HAVE
 19 NO ECONOMIC SUBSTANCE, ETC.—

20 “(1) IMPOSITION OF PENALTY.—Any substan-
 21 tial promoter of a tax avoidance strategy shall pay
 22 a penalty in the amount determined under para-
 23 graph (2) with respect to such strategy if such strat-
 24 egy (or any similar strategy promoted by such pro-

1 moter) fails to meet the requirements of any rule of
2 law referred to in section 6662(i)(2).

3 “(2) AMOUNT OF PENALTY.—The penalty
4 under paragraph (1) with respect to a promoter of
5 a tax avoidance strategy is an amount equal to 100
6 percent of the gross income derived (or to be de-
7 rived) by such promoter from such strategy.

8 “(3) TAX AVOIDANCE STRATEGY.—For pur-
9 poses of this subsection, the term ‘tax avoidance
10 strategy’ means any entity, plan, arrangement, or
11 transaction a significant purpose of the structure of
12 which is the avoidance or evasion of Federal income
13 tax.

14 “(4) SUBSTANTIAL PROMOTER.—For purposes
15 of this subsection—

16 “(A) IN GENERAL.—The term ‘substantial
17 promoter’ means, with respect to any tax avoid-
18 ance strategy, any promoter if—

19 “(i) such promoter offers such strat-
20 egy to more than 1 potential participant,
21 and

22 “(ii) such promoter may receive fees
23 in excess of \$500,000 in the aggregate
24 with respect to such strategy.

1 “(B) AGGREGATION RULES.—For purposes
2 of this paragraph—

3 “(i) RELATED PERSONS.—A promoter
4 and all persons related to such promoter
5 shall be treated as 1 person who is a pro-
6 moter.

7 “(ii) SIMILAR STRATEGIES.—All simi-
8 lar tax avoidance strategies of a promoter
9 shall be treated as 1 tax avoidance strat-
10 egy.

11 “(C) PROMOTER.—The term ‘promoter’
12 means any person who participates in the pro-
13 motion, offering, or sale of the tax avoidance
14 strategy.

15 “(D) RELATED PERSON.—Persons are re-
16 lated if they bear a relationship to each other
17 which is described in section 267(b) or 707(b).

18 “(4) COORDINATION WITH SUBSECTION (a).—
19 No penalty shall be imposed by this subsection on
20 any promoter with respect to a tax avoidance strat-
21 egy if a penalty is imposed under subsection (a) on
22 such promoter with respect to such strategy.”.

23 (2) CONFORMING AMENDMENT.—Subsection (d)
24 of section 6700 of such Code is amended—

1 (A) by striking “PENALTY” and inserting
 2 “PENALTIES”, and

3 (B) by striking “penalty” the first place it
 4 appears in the text and inserting “penalties”.

5 (b) INCREASE IN PENALTY ON PROMOTING ABUSIVE
 6 TAX SHELTERS.—The first sentence of section 6700(a)
 7 of the Internal Revenue Code of 1986 is amended by strik-
 8 ing “a penalty equal to” and all that follows and inserting
 9 “a penalty equal to the greater of \$1,000 or 100 percent
 10 of the gross income derived (or to be derived) by such per-
 11 son from such activity.”.

12 **SEC. 203. MODIFICATIONS OF PENALTIES FOR AIDING AND**
 13 **ABETTING UNDERSTATEMENT OF TAX LI-**
 14 **ABILITY INVOLVING TAX SHELTERS.**

15 (a) IMPOSITION OF PENALTY.—Section 6701(a) of
 16 the Internal Revenue Code of 1986 (relating to imposition
 17 of penalty) is amended to read as follows:

18 “(a) IMPOSITION OF PENALTIES.—

19 “(1) IN GENERAL.—Any person—

20 “(A) who aids or assists in, procures, or
 21 advises with respect to, the preparation or pres-
 22 entation of any portion of a return, affidavit,
 23 claim, or other document,

24 “(B) who knows (or has reason to believe)
 25 that such portion will be used in connection

1 with any material matter arising under the in-
2 ternal revenue laws, and

3 “(C) who knows that such portion (if so
4 used) would result in an understatement of the
5 liability for tax of another person,

6 shall pay a penalty with respect to each such docu-
7 ment in the amount determined under subsection
8 (b).

9 “(2) CERTAIN TAX SHELTERS.—If—

10 “(A) any person—

11 “(i) aids or assists in, procures, or ad-
12 vises with respect to the creation, organiza-
13 tion, sale, implementation, management, or
14 reporting of a tax shelter (as defined in
15 section 6662(d)(2)(C)(iii)) or of any entity,
16 plan, arrangement, or transaction that
17 fails to meet the requirements of any rule
18 of law referred to in section 6662(i)(2),
19 and

20 “(ii) opines, advises, represents, or
21 otherwise indicates (directly or indirectly)
22 that the taxpayer’s tax treatment of items
23 attributable to such tax shelter or such en-
24 tity, plan, arrangement, or transaction and
25 giving rise to an understatement of tax li-

1 ability would more likely than not prevail
 2 or not give rise to a penalty,
 3 “(B) such opinion, advice, representation,
 4 or indication is unreasonable,
 5 then such person shall pay a penalty in the amount
 6 determined under subsection (b). If a standard high-
 7 er than the more likely than not standard was used
 8 in any such opinion, advice, representation, or indi-
 9 cation, then subparagraph (A)(ii) shall be applied as
 10 if such standard were substituted for the more likely
 11 than not standard.”.

12 (b) AMOUNT OF PENALTY.—Section 6701(b) of the
 13 Internal Revenue Code of 1986 (relating to amount of
 14 penalty) is amended—

15 (1) by inserting “or (3)” after “paragraph (2)”
 16 in paragraph (1),

17 (2) by striking “subsection (a)” each place it
 18 appears and inserting “subsection (a)(1)”, and

19 (3) by redesignating paragraph (3) as para-
 20 graph (4) and by adding after paragraph (2) the fol-
 21 lowing new paragraph:

22 “(3) TAX SHELTERS.—In the case of—

23 “(A) a penalty imposed by subsection
 24 (a)(1) which involves a return, affidavit, claim,
 25 or other document relating to a tax shelter or

1 an entity, plan, arrangement, or transaction
 2 that fails to meet the requirements of any rule
 3 of law referred to in section 6662(i)(2), and

4 “(B) any penalty imposed by subsection
 5 (a)(2),

6 the amount of the penalty shall be equal to 100 per-
 7 cent of the gross proceeds derived (or to be derived)
 8 by the person in connection with the tax shelter or
 9 entity, plan, arrangement, or transaction.”.

10 (c) REFERRAL AND PUBLICATION.—If a penalty is
 11 imposed under section 6701(a)(2) of the Internal Revenue
 12 Code of 1986 (as added by subsection (a)) on any person,
 13 the Secretary of the Treasury shall—

14 (1) notify the Director of Practice of the Inter-
 15 nal Revenue Service and any appropriate State li-
 16 censing authority of the penalty and the cir-
 17 cumstances under which it was imposed, and

18 (2) publish the identity of the person and the
 19 fact the penalty was imposed on the person.

20 (d) CONFORMING AMENDMENTS.—

21 (1) Section 6701(d) of the Internal Revenue
 22 Code of 1986 is amended by striking “Subsection
 23 (a)” and inserting “Subsection (a)(1)”.

1 (2) Section 6701(e) of such Code is amended by
 2 striking “subsection (a)(1)” and inserting “sub-
 3 section (a)(1)(A)”.

4 (3) Section 6701(f) of such Code is amended by
 5 inserting “, tax shelter, or entity, plan, arrangement,
 6 or transaction” after “document” each place it ap-
 7 pears.

8 **SEC. 204. FAILURE TO MAINTAIN LISTS.**

9 Section 6708(a) of the Internal Revenue Code of
 10 1986 (relating to failure to maintain lists of investors in
 11 potentially abusive tax shelters) is amended by adding at
 12 the end the following: “In the case of a tax shelter (as
 13 defined in section 6662(d)(2)(C)(iii)) or entity, plan, ar-
 14 rangement, or transaction that fails to meet the require-
 15 ments of any rule of law referred to in section 6662(i)(2),
 16 the penalty shall be equal to 50 percent of the gross pro-
 17 ceeds derived (or to be derived) from each person with re-
 18 spect to which there was a failure and the limitation of
 19 the preceding sentence shall not apply.”.

20 **SEC. 205. PENALTY FOR FAILING TO DISCLOSE REPORT-**
 21 **ABLE TRANSACTION.**

22 (a) IN GENERAL.—Part I of subchapter B of chapter
 23 68 of the Internal Revenue Code of 1986 (relating to as-
 24 sessable penalties) is amended by inserting after section
 25 6707 the following new section:

1 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE TAX**
 2 **SHELTER INFORMATION WITH RETURN.**

3 “(a) IMPOSITION OF PENALTY.—Any person who
 4 fails to include with its return of Federal income tax any
 5 information required to be included under section 6011
 6 with respect to a reportable transaction shall pay a penalty
 7 in the amount determined under subsection (b). No pen-
 8 alty shall be imposed on any such failure if it is shown
 9 that such failure is due to reasonable cause.

10 “(b) AMOUNT OF PENALTY.—

11 “(1) IN GENERAL.—The amount of the penalty
 12 under subsection (a) shall be equal to the greater
 13 of—

14 “(A) 5 percent of any increase in Federal
 15 tax which results from a difference between the
 16 taxpayer’s treatment (as shown on its return)
 17 of items attributable to the reportable trans-
 18 action to which the failure relates and the prop-
 19 er tax treatment of such items, or

20 “(B) \$100,000.

21 For purposes of subparagraph (A), the last sentence
 22 of section 6664(a) shall apply.

23 “(2) LISTED TRANSACTION.—If the failure
 24 under subsection (a) relates to a reportable trans-
 25 action which is the same as, or substantially similar
 26 to, a transaction specifically identified by the Sec-

11 “(d) COORDINATION WITH OTHER PENALTIES.—
12 The penalty imposed by this section is in addition to any
13 penalty imposed under section 6662.”.

“Sec. 6707A. Penalty for failure to include tax shelter information on return.”.

Section 6111(d)(1)(A) of the Internal Revenue Code of 1986 (relating to certain confidential arrangements treated as tax shelters) is amended by striking “for a direct or indirect participant which is a corporation”.

1 **SEC. 207. EFFECTIVE DATES.**

2 (a) IN GENERAL.—Except as provided in subsections
3 (b) and (c), the amendments made by this title shall apply
4 to transactions after the date of the enactment of this Act.

5 (b) SECTION 201.—The amendments made by sub-
6 sections (b) and (c) of section 201 shall apply to taxable
7 years ending after the date of the enactment of this Act.

8 (c) SECTION 202.—The amendments made by sub-
9 section (a) of section 202 shall apply to any tax avoidance
10 strategy (as defined in section 6700(c) of the Internal
11 Revenue Code of 1986, as amended by this title) interests
12 in which are offered to potential participants after the
13 date of the enactment of this Act.

14 (d) SECTION 206.—The amendment made by section
15 206 shall apply to any tax shelter interest which is offered
16 to potential participants after the date of the enactment
17 of this Act.

18 **TITLE III—DISCOURAGING USE**
19 **OF IDENTIFIED TAX HAVENS**

20 **SEC. 301. REPORTING OF PAYMENTS TO PERSONS IN IDEN-**
21 **TIFIED TAX HAVENS.**

22 (a) IN GENERAL.—Subpart A of part III of sub-
23 chapter A of chapter 61 of the Internal Revenue Code of
24 1986 is amended by inserting after section 6038C the fol-
25 lowing new section:

1 **“SEC. 6038D. PAYMENTS TO PERSONS IN IDENTIFIED TAX**
2 **HAVENS.**

3 “(a) IN GENERAL.—Each United States person who
4 transfers money or other property directly or indirectly to
5 any identified tax haven or to any person who is a resident
6 of any identified tax haven shall furnish to the Secretary,
7 at such time and in such manner as the Secretary shall
8 by regulations prescribe, such information with respect to
9 such transfer as the Secretary may require in such regula-
10 tions.

11 “(b) EXCEPTIONS.—Subsection (a) shall not apply to
12 a transfer by a United States person if—

13 “(1) the transferee certifies to such person that
14 information about such transfer shall be made avail-
15 able (in such manner and at such time as the Sec-
16 retary shall prescribe) to the Secretary on request,
17 or

18 “(2) the amount of money (and the fair market
19 value of property) transferred is less than \$10,000.
20 Related transfers shall be treated as 1 transfer for pur-
21 poses of paragraph (2).

22 “(c) IDENTIFIED TAX HAVEN.—For purposes of this
23 section—

24 “(1) IN GENERAL.—The term ‘identified tax
25 haven’ means any foreign jurisdiction which is on

1 the list maintained by the Secretary as being a
2 jurisdiction—

3 “(A) which imposes no or nominal taxation
4 either generally or on specified classes of in-
5 come, and

6 “(B) has strict confidentiality rules and
7 practices, or has ineffective information ex-
8 change practices, which effectively limit or re-
9 strict the ability of the United States to obtain
10 information relevant to the imposition of taxes
11 under this title.

12 “(2) INEFFECTIVE INFORMATION EXCHANGE
13 PRACTICES.—For purposes of paragraph (1), a juris-
14 diction shall be treated as having ineffective infor-
15 mation exchange practices during any period during
16 which the Secretary determines that the exchange of
17 information between the United States and such ju-
18 risdiction is inadequate to prevent evasion or avoid-
19 ance of the United States income tax by United
20 States persons or to permit the effective enforcement
21 of the taxes imposed by this title.

22 “(d) PENALTY FOR FAILURE TO FILE INFORMA-
23 TION.—If a United States person fails to furnish the infor-
24 mation required by subsection (a) with respect to any
25 transfer within the time prescribed therefor (including ex-

1 tensions), such United States person shall pay (upon no-
 2 tice and demand by the Secretary and in the same manner
 3 as tax) an amount equal to 20 percent of the amount of
 4 such transfer.

5 “(e) SIMPLIFIED REPORTING.—The Secretary may
 6 by regulations provide for simplified reporting under this
 7 section for United States persons making large volumes
 8 of similar payments.

9 “(f) REGULATIONS.—The Secretary shall prescribe
 10 such regulations as may be appropriate to carry out this
 11 section.”

12 (b) CLERICAL AMENDMENT.—The table of sections
 13 for such subpart A is amended by inserting after the item
 14 relating to section 6038C the following new item:

“Sec. 6038D. Payments to persons in identified tax havens.”

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

18 (d) REPORTS.—The Secretary of the Treasury shall
 19 submit annual reports to the Congress on the application
 20 of section 6038D of the Internal Revenue Code of 1986
 21 (as added by this section).

22 **SEC. 302. REDUCTION OF CERTAIN TAX BENEFITS WITH RE-**
 23 **SPECT TO INCOME FROM IDENTIFIED TAX**
 24 **HAVENS.**

25 (a) LIMITATION ON DEFERRAL.—

1 (1) IN GENERAL.—Subsection (a) of section
 2 952 of the Internal Revenue Code of 1986 (defining
 3 subpart F income) is amended by striking “and” at
 4 the end of paragraph (4), by striking the period at
 5 the end of paragraph (5) and inserting “, and”, and
 6 by inserting after paragraph (5) the following new
 7 paragraph:

8 “(6) an amount equal to the applicable fraction
 9 (as defined in subsection (e)) of the income of such
 10 corporation other than income which—

11 “(A) is attributable to earnings and profits
 12 of the foreign corporation included in the gross
 13 income of a United States person under section
 14 951 (other than by reason of this paragraph or
 15 paragraph (3)(A)(i)), or

16 “(B) is described in subsection (b).”

17 (2) APPLICABLE FRACTION.—Section 952 of
 18 such Code is amended by adding at the end the fol-
 19 lowing new subsection:

20 “(e) TAX HAVEN INCOME WHICH IS SUBPART F IN-
 21 COME.—

22 “(1) IN GENERAL.—For purposes of subsection
 23 (a)(6), the term ‘applicable fraction’ means the
 24 fraction—

1 “(A) the numerator of which is the aggre-
 2 gate identified tax haven income for the taxable
 3 year, and

4 “(B) the denominator of which the aggre-
 5 gate income for the taxable year which is from
 6 sources outside the United States.

7 Rules similar to the regulations under section 999(c)
 8 shall apply for purposes of this paragraph.

9 “(2) IDENTIFIED TAX HAVEN INCOME.—For
 10 purposes of paragraph (1), the term ‘identified tax
 11 haven income’ means income for the taxable year
 12 which is attributable to a foreign jurisdiction for any
 13 period during which such jurisdiction is an identified
 14 tax haven (as defined in section 6038D(c)).”

15 (b) DENIAL OF FOREIGN TAX CREDIT.—Section 901
 16 of such Code (relating to taxes of foreign countries and
 17 of possessions of United States) is amended by redesign-
 18 ating subsection (l) as subsection (m) and by inserting
 19 after subsection (k) the following new subsection:

20 “(l) REDUCTION OF FOREIGN TAX CREDIT, ETC.,
 21 WITH RESPECT TO IDENTIFIED TAX HAVENS.—

22 “(1) IN GENERAL.—Notwithstanding any other
 23 provision of this part—

24 “(A) no credit shall be allowed under sub-
 25 section (a) for any income, war profits, or ex-

cess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any foreign jurisdiction if such taxes are with respect to income attributable to a period during which such jurisdiction is an identified tax haven (as defined in section 6038D(c)), and

“(B) subsections (a), (b), (c), and (d) of section 904 and sections 902 and 960 shall be applied separately with respect to all income of a taxpayer attributable to periods described in subparagraph (A) with respect to all such jurisdictions.

“(2) TAXES ALLOWED AS A DEDUCTION, ETC.—

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

“(3) REGULATIONS.—The Secretary shall pre-

scribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign jurisdiction to which this subsection applies if such income was, without regard to such entities, derived from such jurisdiction.”

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. 303. FAILURE TO REPORT INTERESTS IN FOREIGN FI-**
 5 **NANCIAL ACCOUNTS.**

6 (a) IN GENERAL.—Part I of subchapter B of chapter
 7 68 of the Internal Revenue Code of 1986 (relating to addi-
 8 tions to tax, additional amounts, and assessable penalties)
 9 is amended by adding at the end the following new section:
 10 **“SEC. 6717. FAILURE TO MEET REQUIREMENTS WITH RE-**
 11 **SPECT TO INTERESTS IN FOREIGN FINAN-**
 12 **CIAL ACCOUNTS.**

13 “(a) IMPOSITION OF PENALTY.—Any person who
 14 fails to keep any records, or fails to file any report, re-
 15 quired under section 5314 of title 31, United States Code,
 16 with respect to any foreign financial agency transaction
 17 shall pay a penalty of \$5,000 for each such failure.

18 “(b) REASONABLE CAUSE EXCEPTION.—No penalty
 19 shall be imposed under subsection (a) with respect to any
 20 failure if it is shown that such failure is due to reasonable
 21 cause.

22 “(c) PENALTY IN ADDITION TO OTHER PEN-
 23 ALTIES.—The penalty imposed under subsection (a) shall
 24 be in addition to any other penalty imposed by law, includ-

1 ing any penalty imposed under section 5320(a)(5) or 5321
2 of title 31, United States Code.

3 “(d) DEFICIENCY PROCEDURES NOT TO APPLY.—
4 Subchapter B of chapter 63 (relating to deficiency proce-
5 dures for income, estate, gift, any certain excise taxes)
6 shall not apply in respect of the assessment or collection
7 of any penalty imposed under subsection (a).”

8 (b) CONFORMING AMENDMENT.—The table of sec-
9 tions for part I of subchapter B of chapter 68 of such
10 Code is amended by adding at the end the following new
11 item:

“Sec. 6717. Failure to meet requirements with respect to interests in foreign
financial accounts.”

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

15 **SEC. 304. STUDY OF OFFSHORE TAX HAVENS.**

16 (a) IN GENERAL.—The Joint Committee on Taxation
17 shall conduct a study of the use of offshore tax havens
18 by United States taxpayers to evade and avoid Federal
19 income taxes. Such study shall include an examination
20 of—

21 (1) mechanisms used by United States tax-
22 payers to illegally hide income and assets from de-
23 tection,

1 (2) the extent to which foreign tax, banking,
2 and financial practices encourage noncompliance
3 with Federal income tax laws,

4 (3) the status and effectiveness of information
5 exchange agreements between the United States and
6 tax haven jurisdictions,

7 (4) the status and effectiveness of efforts by the
8 Organization for Economic Cooperation and Devel-
9 opment (OECD) to identify and eliminate harmful
10 tax practices in tax haven jurisdictions,

11 (5) the effectiveness of—

12 (A) efforts by Internal Revenue Service to
13 identify sources of illegal offshore activity, and

14 (B) Federal civil and criminal penalties de-
15 signed to deter offshore tax evasion, and

16 (6) the economic and revenue implications of
17 tax avoidance activity.

18 (b) REPORT.—The Joint Committee on Taxation
19 shall submit a report of the results of the study conducted
20 under subsection (a) to the Committee on Ways and
21 Means of the House of Representatives and the Committee
22 on Finance of the Senate not later than 12 months after
23 the date of the enactment of this Act. Such report shall
24 include any recommendations, including recommendations
25 for legislative changes, as the Joint Committee on Tax-

- 1 ation determines appropriate to curb the spread of off-
- 2 shore tax avoidance and evasion.

