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107TH CONGRESS
2^D SESSION

S. 2498

[Report No. 107-189]

To amend the Internal Revenue Code of 1986 to require adequate disclosure of transactions which have a potential for tax avoidance or evasion, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2002

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

JUNE 28, 2002

Reported by Mr. BAUCUS, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To amend the Internal Revenue Code of 1986 to require adequate disclosure of transactions which have a potential for tax avoidance or evasion, 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,*

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**
 2 **TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the
 4 “Tax Shelter Transparency Act”.

5 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
 6 wise expressly provided, whenever in this Act an amend-
 7 ment or repeal is expressed in terms of an amendment
 8 to, or repeal of, a section or other provision, the reference
 9 shall be considered to be made to a section or other provi-
 10 sion of the Internal Revenue Code of 1986.

11 (c) **TABLE OF CONTENTS.**—

Sec. 1. Short title; amendment of 1986 code; table of contents.

TITLE I—TAXPAYER-RELATED PROVISIONS

Sec. 101. Penalty for failing to disclose reportable transaction.

Sec. 102. Increase in accuracy-related penalties for listed transactions and
 other reportable transactions having a tax avoidance purpose.

Sec. 103. Modifications of substantial understatement penalty for nonreportable
 transactions.

Sec. 104. Tax shelter exception to confidentiality privileges relating to taxpayer
 communications.

TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS

Subtitle A—Provisions Relating To Reportable Transactions

Sec. 201. Disclosure of reportable transactions.

Sec. 202. Modifications to penalty for failure to register tax shelters.

Sec. 203. Modification of penalty for failure to maintain lists of investors.

Sec. 204. Modification of actions to enjoin specified conduct related to tax shel-
 ters and reportable transactions.

Subtitle B—Other Provisions

Sec. 211. Understatement of taxpayer’s liability by income tax return preparer.

Sec. 212. Report on effectiveness of penalty on failure to report interests in for-
 eign financial accounts.

Sec. 213. Frivolous tax submissions.

Sec. 214. Regulation of individuals practicing before the Department of Treas-
 ury.

Sec. 215. Penalty on promoters of tax shelters.

TITLE I—TAXPAYER-RELATED PROVISIONS

SEC. 101. PENALTY FOR FAILING TO DISCLOSE REPORT- ABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT- ABLE TRANSACTION INFORMATION WITH RE- TURN OR STATEMENT.

“(a) IMPOSITION OF PENALTY.—Any person who fails to include with any return or statement any information required to be included under subchapter A of chapter 61 with respect to a reportable transaction shall pay a penalty in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be \$50,000.

“(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be \$100,000.

“(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

1 “(A) IN GENERAL.—In the case of a fail-
2 ure under subsection (a) by—

3 “(i) a large entity, or

4 “(ii) a high net worth individual,
5 the penalty under paragraph (1) or (2) shall be
6 twice the amount determined without regard to
7 this paragraph.

8 “(B) LARGE ENTITY.—For purposes of
9 subparagraph (A), the term ‘large entity’
10 means, with respect to any taxable year, a per-
11 son (other than a natural person) with gross re-
12 ceipts for the taxable year or the preceding tax-
13 able year in excess of \$10,000,000. Rules simi-
14 lar to the rules of paragraph (2) and subpara-
15 graphs (B), (C), and (D) of paragraph (3) of
16 section 448(e) shall apply for purposes of this
17 subparagraph.

18 “(C) HIGH NET WORTH INDIVIDUAL.—The
19 term ‘high net worth individual’ means a nat-
20 ural person whose net worth exceeds
21 \$2,000,000.

22 “(e) DEFINITIONS.—For purposes of this section—

23 “(1) REPORTABLE TRANSACTION.—The term
24 ‘reportable transaction’ means any transaction with
25 respect to which information is required under sub-

chapter A of chapter 61 to be included with a taxpayer's return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

~~“(2) LISTED TRANSACTION.—~~Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction—

~~“(A) which is the same as, or similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011, or~~

~~“(B) which is expected to produce a tax result which is the same as, or similar to, the tax result in a transaction which is so specified.~~

~~“(d) PENALTY REPORTED TO SEC.—~~In the case of a person—

~~“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports; and~~

~~“(2) which—~~

1 “(A) is required to pay a penalty with re-
 2 spect to a listed transaction under this section;
 3 or

4 “(B) is required to pay a penalty under
 5 section 6662(a)(2) with respect to any report-
 6 able transaction at a rate prescribed under sec-
 7 tion 6662(i)(3);

8 the requirement to pay such penalty shall be disclosed in
 9 such reports filed by such person for such periods as the
 10 Secretary shall specify. Failure to make a disclosure in
 11 accordance with the preceding sentence shall be treated
 12 as a failure to which the penalty under subsection (b)(2)
 13 applies.

14 “(e) COORDINATION WITH OTHER PENALTIES.—The
 15 penalty imposed by this section is in addition to any pen-
 16 alty imposed under section 6662.”

17 (b) CONFORMING AMENDMENT.—The table of sec-
 18 tions for part I of subchapter B of chapter 68 is amended
 19 by inserting after the item relating to section 6707 the
 20 following:

“Sec. 6707A. Penalty for failure to include reportable transaction
 information with return or statement.”

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

1 **SEC. 102. INCREASE IN ACCURACY-RELATED PENALTIES**
 2 **FOR LISTED TRANSACTIONS AND OTHER RE-**
 3 **PORTABLE TRANSACTIONS HAVING A TAX**
 4 **AVOIDANCE PURPOSE.**

5 (a) INCREASE IN PENALTY.—Subsection (a) of sec-
 6 tion 6662 (relating to imposition of penalty) is amended
 7 to read as follows:

8 “(a) IMPOSITION OF PENALTY.—

9 “(1) IN GENERAL.—If this section applies to
 10 any portion of an underpayment of tax required to
 11 be shown on a return, there shall be added to the
 12 tax an amount equal to 20 percent of the portion of
 13 the underpayment to which this section applies.

14 “(2) UNDERSTATEMENT OF INCOME TAX AT-
 15 TRIBUTABLE TO LISTED TRANSACTIONS OR OTHER
 16 REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT
 17 TAX AVOIDANCE PURPOSE.—If a taxpayer has a re-
 18 reportable transaction income tax understatement (as
 19 defined in subsection (i)) for any taxable year, there
 20 shall be added to the tax an amount equal to 20 per-
 21 cent of the amount of the understatement. Except as
 22 provided in subsection (i)(4)(B), such understate-
 23 ment shall not be taken into account for purposes of
 24 paragraph (1).”

25 (b) REPORTABLE TRANSACTION INCOME TAX UN-
 26 DERSTATEMENT.—Section 6662 (relating to imposition of

1 accuracy-related penalty) is amended by adding at the end
 2 the following new subsection:

3 “(i) UNDERSTATEMENT OF INCOME TAX ATTRIB-
 4 UTABLE TO LISTED TRANSACTIONS AND OTHER REPORT-
 5 ABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOID-
 6 ANCE PURPOSE.—

7 “(1) REPORTABLE TRANSACTION INCOME TAX
 8 UNDERSTATEMENT.—For purposes of subsection
 9 (a)(2), the term ‘reportable transaction income tax
 10 understatement’ means the sum of—

11 “(A) the product of—

12 “(i) the amount of the increase (if
 13 any) in taxable income which results from
 14 a difference between the taxpayer’s treat-
 15 ment of items to which this subsection ap-
 16 plies (as shown on the taxpayer’s return of
 17 tax) and the proper tax treatment of such
 18 items; and

19 “(ii) the highest rate of tax imposed
 20 by section 1 (section 11 in the case of a
 21 taxpayer which is a corporation); and

22 “(B) the amount of the decrease (if any)
 23 in the credits allowed against the tax imposed
 24 by subtitle A which results from a difference
 25 between the taxpayer’s treatment of items to

1 which this subsection applies (as shown on the
2 taxpayer's return of tax) and the proper tax
3 treatment of such items.

4 For purposes of subparagraph (A), any reduction of
5 the excess of deductions allowed for the taxable year
6 over gross income for such year, and any reduction
7 in the amount of capital losses which would (without
8 regard to section 1211) be allowed for such year,
9 shall be treated as an increase in taxable income.

10 ~~“(2) ITEMS TO WHICH SUBSECTION APPLIES.—~~

11 This subsection shall apply to any item which is at-
12 tributable to—

13 ~~“(A) any listed transaction, or~~

14 ~~“(B) any reportable transaction (other~~
15 ~~than a listed transaction) if a significant pur-~~
16 ~~pose of such transaction is the avoidance or~~
17 ~~evasion of Federal income tax.~~

18 ~~“(3) HIGHER PENALTY FOR NONDISCLOSED~~

19 ~~LISTED AND OTHER AVOIDANCE TRANSACTIONS.—In~~

20 the case of any portion of a reportable transaction
21 income tax understatement attributable to a trans-
22 action to which section 6664(c)(1) does not apply by
23 reason of section 6664(c)(2)(A), the rate of tax
24 under subsection (a)(2) shall be increased by 5 per-
25 cent (10 percent in the case of a listed transaction).

1 “(4) DEFINITIONS AND SPECIAL RULES.—For
2 purposes of this subsection—

3 “(A) REPORTABLE AND LISTED TRANS-
4 ACTIONS.—The terms ‘reportable transaction’
5 and ‘listed transaction’ have the respective
6 meanings given to such terms by section
7 6707A(c).

8 “(B) COORDINATION WITH DETERMINA-
9 TIONS OF WHETHER OTHER UNDERSTATE-
10 MENTS ARE SUBSTANTIAL.—Reportable trans-
11 action income tax understatements shall be
12 taken into account under subsection (d)(1) in
13 determining whether any understatement
14 (which is not a reportable transaction income
15 tax understatement) is a substantial under-
16 statement.

17 “(C) SPECIAL RULE FOR AMENDED RE-
18 TURNS.—Except as provided in regulations, in
19 no event shall any tax treatment included with
20 an amendment or supplement to a return of tax
21 be taken into account in determining the
22 amount of any reportable transaction income
23 tax understatement if the amendment or sup-
24 plement is filed after the earlier of the date the
25 taxpayer is first contacted by the Secretary re-

1 garding the examination of the return or such
2 other date as is specified by the Secretary.”

3 ~~(c) REASONABLE CAUSE EXCEPTION.~~—Subsection
4 ~~(c)~~ of section 6664 (relating to reasonable cause excep-
5 tion) is amended by redesignating paragraphs (2) and (3)
6 as paragraphs (4) and (5), respectively, and by inserting
7 after paragraph (1) the following new paragraphs:

8 ~~“(2) SPECIAL RULES FOR UNDERSTATEMENTS~~
9 ~~ATTRIBUTABLE TO LISTED AND CERTAIN OTHER~~
10 ~~TAX AVOIDANCE TRANSACTIONS.~~—Paragraph (1)
11 shall not apply to the portion of any reportable
12 transaction income tax understatement attributable
13 to an item referred to in section 6662(i)(2) unless—

14 ~~“(A) the relevant facts affecting the tax~~
15 ~~treatment of such item are adequately disclosed~~
16 ~~in accordance with the regulations prescribed~~
17 ~~under section 6011,~~

18 ~~“(B) there is or was substantial authority~~
19 ~~for such treatment, and~~

20 ~~“(C) the taxpayer reasonably believed that~~
21 ~~such treatment was more likely than not the~~
22 ~~proper treatment.~~

23 ~~“(3) RULES RELATING TO REASONABLE BE-~~
24 ~~LIEF.~~—For purposes of paragraph (2)(C)—

1 “(A) IN GENERAL.—A taxpayer shall be
 2 treated as having a reasonable belief with re-
 3 spect to the tax treatment of an item only if
 4 such belief—

5 “(i) is based on the facts and law that
 6 exist at the time the return of tax which
 7 includes such tax treatment is filed; and

8 “(ii) relates solely to the taxpayer’s
 9 chances of success on the merits of such
 10 treatment and does not take into account
 11 the possibility that a return will not be au-
 12 dited; such treatment will not be raised on
 13 audit, or such treatment will be resolved
 14 through settlement if it is raised.

15 “(B) CERTAIN OPINIONS MAY NOT BE RE-
 16 LIED UPON.—

17 “(i) IN GENERAL.—An opinion of a
 18 tax advisor may not be relied upon to es-
 19 tablish the reasonable belief of a taxpayer
 20 if—

21 “(I) the tax advisor is described
 22 in clause (ii); or

23 “(II) the opinion is described in
 24 clause (iii).

1 ~~“(ii) DISQUALIFIED TAX ADVISORS.—~~

2 A tax advisor is described in this clause if
3 the tax advisor is a material advisor (with-
4 in the meaning of section 6111(b)(1))
5 who—

6 ~~“(I) is compensated directly or~~
7 ~~indirectly by another material advisor~~
8 ~~with respect to the transaction;~~

9 ~~“(II) has a contingent fee ar-~~
10 ~~rangement with respect to the trans-~~
11 ~~action;~~

12 ~~“(III) has any type of referral~~
13 ~~agreement or other similar agreement~~
14 ~~or understanding with another mate-~~
15 ~~rial advisor which relates to the trans-~~
16 ~~action; or~~

17 ~~“(IV) has any other char-~~
18 ~~acteristic which, as determined under~~
19 ~~regulations prescribed by the Sec-~~
20 ~~retary, is indicative of a potential con-~~
21 ~~flict of interest or compromise of inde-~~
22 ~~pendence.~~

23 ~~“(iii) DISQUALIFIED OPINIONS.—An~~
24 ~~opinion is described in this clause if the~~
25 ~~opinion—~~

1 “(I) is based on unreasonable
2 factual or legal assumptions (includ-
3 ing assumptions as to future events);

4 “(II) unreasonably relies on rep-
5 resentations, statements, findings, or
6 agreements of the taxpayer or any
7 other person;

8 “(III) does not identify and con-
9 sider all relevant facts, or

10 “(IV) fails to meet any other re-
11 quirement as the Secretary may pre-
12 scribe.”

13 (d) CONFORMING AMENDMENTS.—

14 (1) Subparagraph (C) of section 461(i)(3) is
15 amended by striking “section 6662(d)(2)(C)(iii)”
16 and inserting “section 1274(b)(3)(C)”.

17 (2) Paragraph (3) of section 1274(b) is
18 amended—

19 (A) by striking “(as defined in section
20 6662(d)(2)(C)(iii))” in subparagraph (B)(i),
21 and

22 (B) by adding at the end the following new
23 subparagraph:

24 “(C) TAX SHELTER.—For purposes of sub-
25 paragraph (B), the term ‘tax shelter’ means—

1 “(i) a partnership or other entity,
 2 “(ii) any investment plan or arrange-
 3 ment, or
 4 “(iii) any other plan or arrangement,
 5 if a significant purpose of such partnership, en-
 6 tity, plan, or arrangement is the avoidance or
 7 evasion of Federal income tax.”

8 (3) Section 6662(d)(2) is amended by striking
 9 subparagraphs (C) and (D).

10 (4) Subsection (b) of section 7525 is amended
 11 by striking “section 6662(d)(2)(C)(iii)” and insert-
 12 ing “section 1274(b)(3)(C)”.

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

16 **SEC. 103. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
 17 **MENT PENALTY FOR NONREPORTABLE**
 18 **TRANSACTIONS.**

19 (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-
 20 TIONS.—Section 6662(d)(1)(B) (relating to special rule
 21 for corporations) is amended to read as follows:

22 “(B) SPECIAL RULE FOR CORPORA-
 23 TIONS.—In the case of a corporation other than
 24 an S corporation or a personal holding company
 25 (as defined in section 542), there is a substan-

1 tial understatement of income tax for any tax-
 2 able year if the amount of the understatement
 3 for the taxable year exceeds the lesser of—

4 “(i) 10 percent of the tax required to
 5 be shown on the return for the taxable
 6 year; or

7 “(ii) \$10,000,000.”

8 (b) REDUCTION FOR UNDERSTATEMENT OF TAX-
 9 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED
 10 ITEM.—

11 (1) IN GENERAL.—Section 6662(d)(2)(B)(i)
 12 (relating to substantial authority) is amended to
 13 read as follows:

14 “(i) the tax treatment of any item by
 15 the taxpayer if the taxpayer had reason-
 16 able belief that the tax treatment was more
 17 likely than not the proper treatment, or”.

18 (2) CONFORMING AMENDMENT.—Section
 19 6662(d) is amended by adding at the end the fol-
 20 lowing new paragraph:

21 “(3) SECRETARIAL LIST.—For purposes of this
 22 subsection, section 6664(c)(2), and section
 23 6694(a)(1), the Secretary may prescribe a list of
 24 positions—

1 “(A) for which the Secretary believes there
 2 is not substantial authority or there is no rea-
 3 sonable belief that the tax treatment is more
 4 likely than not the proper tax treatment, and
 5 “(B) which affect a significant number of
 6 taxpayers.

7 Such list (and any revisions thereof) shall be pub-
 8 lished in the Federal Register or the Internal Rev-
 9 enue Bulletin.”

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

13 **SEC. 104. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
 14 **PRIVILEGES RELATING TO TAXPAYER COM-**
 15 **MUNICATIONS.**

16 (a) IN GENERAL.—Section 7525(b) (relating to sec-
 17 tion not to apply to communications regarding corporate
 18 tax shelters) is amended to read as follows:

19 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
 20 REGARDING TAX SHELTERS.—The privilege under sub-
 21 section (a) shall not apply to any written communication
 22 which is—

23 “(1) between a federally authorized tax practi-
 24 tioner and—

25 “(A) any person,

1 “(B) any director, officer, employee, agent,
2 or representative of the person; or

3 “(C) any other person holding a capital or
4 profits interest in the person; and

5 “(2) in connection with the promotion of the di-
6 rect or indirect participation of the person in any
7 tax shelter (as defined in section 1274(b)(3)(C)).”

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to communications made on or
10 after the date of the enactment of this Act.

11 **~~TITLE II—PROMOTER AND PRE-~~**
12 **~~PARER RELATED PROVISIONS~~**
13 **~~Subtitle A—Provisions Relating To~~**
14 **~~Reportable Transactions~~**

15 **SEC. 201. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

16 (a) IN GENERAL.—Section 6111 (relating to registra-
17 tion of tax shelters) is amended to read as follows:

18 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

19 “(a) IN GENERAL.—Each material advisor with re-
20 spect to any reportable transaction shall make a return
21 (in such form as the Secretary may prescribe) setting
22 forth—

23 “(1) information identifying and describing the
24 transaction;

1 ~~“(2) information describing the advice provided~~
 2 ~~by such advisor, including any potential tax benefits~~
 3 ~~represented to result from the transaction, and~~

4 ~~“(3) such other information as the Secretary~~
 5 ~~may prescribe.~~

6 ~~Such return shall be filed on the first business day fol-~~
 7 ~~lowing the earliest date on which such advisor provides~~
 8 ~~any material aid, assistance, or advice with respect to or-~~
 9 ~~ganizing, promoting, selling, implementing, or carrying~~
 10 ~~out the transaction (or such later date as the Secretary~~
 11 ~~may prescribe).~~

12 ~~“(b) DEFINITIONS.—For purposes of this section—~~

13 ~~“(1) MATERIAL ADVISOR.—The term ‘material~~
 14 ~~advisor’ means any person—~~

15 ~~“(A) who provides any material aid, assist-~~
 16 ~~ance, or advice with respect to organizing, pro-~~
 17 ~~moting, selling, implementing, or carrying out~~
 18 ~~any reportable transaction, and~~

19 ~~“(B) who directly or indirectly derives~~
 20 ~~gross income from such advice or assistance.~~

21 ~~“(2) REPORTABLE TRANSACTION.—The term~~
 22 ~~‘reportable transaction’ has the meaning given to~~
 23 ~~such term by section 6707A(e).~~

24 ~~“(c) REGULATIONS.—The Secretary may prescribe~~
 25 ~~regulations which provide—~~

1 “(1) that only 1 person shall be required to
2 meet the requirements of subsection (a) in cases in
3 which 2 or more persons would otherwise be re-
4 quired to meet such requirements;

5 “(2) exemptions from the requirements of this
6 section; and

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

9 (b) CONFORMING AMENDMENTS.—

10 (1) The item relating to section 6111 in the
11 table of sections for subchapter B of chapter 61 is
12 amended to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”

13 (2)(A) So much of section 6112 as precedes
14 subsection (c) thereof is amended to read as follows:

15 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
16 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

17 “(a) IN GENERAL.—Each material advisor (as de-
18 fined in section 6111) with respect to any reportable
19 transaction (as defined in section 6707A(c)) shall main-
20 tain (in such manner as the Secretary may by regulations
21 prescribe) a list—

22 “(1) identifying each person with respect to
23 whom such advisor acted as such a material advisor
24 with respect to such transaction; and

1 ~~“(2) containing such other information as the~~
 2 ~~Secretary may by regulations require.”~~

3 ~~(B) Section 6112 is amended by redesignating~~
 4 ~~subsection (c) as subsection (b).~~

5 ~~(C) Section 6112(b)(1)(A), as redesignated by~~
 6 ~~subparagraph (B), is amending by inserting “writ-~~
 7 ~~ten” before “request”.~~

8 ~~(D) The item relating to section 6112 in the~~
 9 ~~table of sections for subchapter B of chapter 61 is~~
 10 ~~amended to read as follows:~~

~~“Sec. 6112. Material advisors of reportable transactions must
keep lists of advisees.”~~

11 ~~(3)(A) The heading for section 6708 is amend-~~
 12 ~~ed to read as follows:~~

13 ~~**“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**~~
 14 ~~**WITH RESPECT TO REPORTABLE TRANS-**~~
 15 ~~**ACTIONS.”**~~

16 ~~(B) The item relating to section 6708 in the~~
 17 ~~table of sections for part I of subchapter B of chap-~~
 18 ~~ter 68 is amended to read as follows:~~

~~“Sec. 6708. Failure to maintain lists of advisees with respect to
reportable transactions.”~~

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

1 **SEC. 202. MODIFICATIONS TO PENALTY FOR FAILURE TO**
 2 **REGISTER TAX SHELTERS.**

3 (a) ~~IN GENERAL.~~—Section 6707 (relating to failure
 4 to furnish information regarding tax shelters) is amended
 5 to read as follows:

6 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
 7 **ING REPORTABLE TRANSACTIONS.**

8 “(a) ~~IN GENERAL.~~—If a person who is required to
 9 file a return under section 6111(a) with respect to any
 10 reportable transaction—

11 “(1) fails to file such return on or before the
 12 date prescribed therefor; or

13 “(2) files false or incomplete information with
 14 the Secretary with respect to such transaction;

15 such person shall pay a penalty with respect to such return
 16 in the amount determined under subsection (b).

17 “(b) ~~AMOUNT OF PENALTY.~~—

18 “(1) ~~IN GENERAL.~~—Except as provided in para-
 19 graph (2), the penalty imposed under subsection (a)
 20 with respect to any failure shall be \$50,000.

21 “(2) ~~LISTED TRANSACTIONS.~~—The penalty im-
 22 posed under subsection (a) with respect to any listed
 23 transaction shall be an amount equal to the greater
 24 of—

25 “(A) \$200,000; or

1 ~~“(B) 50 percent of the fees paid to such~~
 2 ~~person with respect to aid, assistance, or advice~~
 3 ~~which is provided with respect to the reportable~~
 4 ~~transaction before the date the return is filed~~
 5 ~~under section 6111.~~

6 Subparagraph (B) shall be applied by substituting
 7 ‘75 percent’ for ‘50 percent’ in the case of an inten-
 8 tional failure or act described in subsection (a).

9 ~~“(c) REPORTABLE AND LISTED TRANSACTIONS.—~~
 10 ~~The terms ‘reportable transaction’ and ‘listed transaction’~~
 11 ~~have the respective meanings given to such terms by sec-~~
 12 ~~tion 6707A(c).”~~

13 (b) CLERICAL AMENDMENT.—The item relating to
 14 section 6707 in the table of sections for part I of sub-
 15 chapter B of chapter 68 is amended by striking “tax shel-
 16 ters” and inserting “reportable transactions”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to failures occurring after the date
 19 of the enactment of this Act.

20 **SEC. 203. MODIFICATION OF PENALTY FOR FAILURE TO**
 21 **MAINTAIN LISTS OF INVESTORS.**

22 (a) IN GENERAL.—Subsection (a) of section 6708 is
 23 amended to read as follows:

24 ~~“(a) IMPOSITION OF PENALTY.—~~

1 “(1) IN GENERAL.—If any person who is re-
 2 quired to maintain a list under section 6112(a) fails
 3 to make such list available to the Secretary in ac-
 4 cordance with section 6112(b)(1)(A) within 20 days
 5 after the date of the Secretary’s request, such per-
 6 son shall pay a penalty of \$10,000 for each day of
 7 such failure after such 20th day.

8 “(2) REASONABLE CAUSE EXCEPTION.—No
 9 penalty shall be imposed by paragraph (1) with re-
 10 spect to the failure on any day if such failure is due
 11 to reasonable cause.”

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

15 **SEC. 204. MODIFICATION OF ACTIONS TO ENJOIN SPECI-**
 16 **FIED CONDUCT RELATED TO TAX SHELTERS**
 17 **AND REPORTABLE TRANSACTIONS.**

18 (a) IN GENERAL.—Section 7408 (relating to action
 19 to enjoin promoters of abusive tax shelters, etc.) is amend-
 20 ed by redesignating subsection (e) as subsection (d) and
 21 by striking subsections (a) and (b) and inserting the fol-
 22 lowing new subsections:

23 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
 24 tion in the name of the United States to enjoin any person
 25 from further engaging in specified conduct may be com-

1 menced at the request of the Secretary. Any action under
 2 this section shall be brought in the district court of the
 3 United States for the district in which such person resides;
 4 has his principal place of business; or has engaged in spec-
 5 ified conduct. The court may exercise its jurisdiction over
 6 such action (as provided in section 7402(a)) separate and
 7 apart from any other action brought by the United States
 8 against such person.

9 “(b) ADJUDICATION AND DECREE.—In any action
 10 under subsection (a), if the court finds—

11 “(1) that the person has engaged in any speci-
 12 fied conduct; and

13 “(2) that injunctive relief is appropriate to pre-
 14 vent recurrence of such conduct,

15 the court may enjoin such person from engaging in such
 16 conduct or in any other activity subject to penalty under
 17 this title.

18 “(c) SPECIFIED CONDUCT.—For purposes of this
 19 section, the term ‘specified conduct’ means any action, or
 20 failure to take action, subject to penalty under section
 21 6700, 6701, 6707, or 6708.”

22 (b) CONFORMING AMENDMENTS.—

23 (1) The heading for section 7408 is amended to
 24 read as follows:

1 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
 2 **LATED TO TAX SHELTERS AND REPORTABLE**
 3 **TRANSACTIONS.”**

4 (2) The table of sections for subchapter A of
 5 chapter 67 is amended by striking the item relating
 6 to section 7408 and inserting the following new
 7 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”

8 (e) **EFFECTIVE DATE.**—The amendment made by
 9 this section shall take effect on the day after the date of
 10 the enactment of this Act.

11 **Subtitle B—Other Provisions**

12 **SEC. 211. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY**
 13 **INCOME TAX RETURN PREPARER.**

14 (a) **STANDARDS CONFORMED TO TAXPAYER STAND-**
 15 **ARDS.**—Section 6694(a) (relating to understatements due
 16 to unrealistic positions) is amended—

17 (1) by striking “realistic possibility of being
 18 sustained on its merits” in paragraph (1) and in-
 19 serting “reasonable belief that the tax treatment in
 20 such position was more likely than not the proper
 21 treatment”;

22 (2) by striking “or was frivolous” in paragraph
 23 (3) and inserting “or there was no reasonable basis
 24 for the tax treatment of such position”; and

1 (3) by striking “UNREALISTIC” in the heading
2 and inserting “IMPROPER”.

3 (b) AMOUNT OF PENALTY.—Section 6694 is
4 amended—

5 (1) by striking “\$250” in subsection (a) and in-
6 serting “\$1,000”, and

7 (2) by striking “\$1,000” in subsection (b) and
8 inserting “\$5,000”.

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

12 **SEC. 212. REPORT ON EFFECTIVENESS OF PENALTY ON**
13 **FAILURE TO REPORT INTERESTS IN FOREIGN**
14 **FINANCIAL ACCOUNTS.**

15 The Secretary of the Treasury or his delegate shall
16 report each year to the Committee on Ways and Means
17 of the House of Representatives and the Committee on
18 Finance of the Senate on—

19 (1) the number of civil and criminal penalties
20 imposed on failures to meet the reporting and rec-
21 ordkeeping requirements of section 5314 of title 31,
22 United States Code, with respect to interests held in
23 foreign financial accounts, and

24 (2) the average amount of monetary penalties
25 so imposed.

1 The Secretary shall include with such report an analysis
 2 of the effectiveness of such reporting and recordkeeping
 3 requirements in preventing the avoidance or evasion of
 4 Federal income taxes and any recommendations to im-
 5 prove such requirements and the enforcement of such re-
 6 quirements.

7 **SEC. 213. FRIVOLOUS TAX SUBMISSIONS.**

8 (a) CIVIL PENALTIES.—Section 6702 is amended to
 9 read as follows:

10 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

11 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-
 12 TURNS.—A person shall pay a penalty of \$5,000 if—

13 “(1) such person files what purports to be a re-
 14 turn of a tax imposed by this title but which—

15 “(A) does not contain information on
 16 which the substantial correctness of the self-as-
 17 sessment may be judged; or

18 “(B) contains information that on its face
 19 indicates that the self-assessment is substan-
 20 tially incorrect; and

21 “(2) the conduct referred to in paragraph (1)—

22 “(A) is based on a position which the Sec-
 23 retary has identified as frivolous under sub-
 24 section (c); or

1 ~~“(B) reflects a desire to delay or impede~~
 2 ~~the administration of Federal tax laws.~~

3 ~~“(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS~~
 4 ~~SUBMISSIONS.—~~

5 ~~“(1) IMPOSITION OF PENALTY.—Except as pro-~~
 6 ~~vided in paragraph (3), any person who submits a~~
 7 ~~specified frivolous submission shall pay a penalty of~~
 8 ~~\$5,000.~~

9 ~~“(2) SPECIFIED FRIVOLOUS SUBMISSION.—For~~
 10 ~~purposes of this section—~~

11 ~~“(A) SPECIFIED FRIVOLOUS SUBMIS-~~
 12 ~~SION.—The term ‘specified frivolous submis-~~
 13 ~~sion’ means a specified submission if any por-~~
 14 ~~tion of such submission—~~

15 ~~“(i) is based on a position which the~~
 16 ~~Secretary has identified as frivolous under~~
 17 ~~subsection (c), or~~

18 ~~“(ii) reflects a desire to delay or im-~~
 19 ~~pede the administration of Federal tax~~
 20 ~~laws.~~

21 ~~“(B) SPECIFIED SUBMISSION.—The term~~
 22 ~~‘specified submission’ means—~~

23 ~~“(i) a request for a hearing under—~~

1 “(I) section 6320 (relating to no-
2 tice and opportunity for hearing upon
3 filing of notice of lien); or

4 “(II) section 6330 (relating to
5 notice and opportunity for hearing be-
6 fore levy); and

7 “(ii) an application under—

8 “(I) section 7811 (relating to
9 taxpayer assistance orders);

10 “(II) section 6159 (relating to
11 agreements for payment of tax liabil-
12 ity in installments); or

13 “(III) section 7122 (relating to
14 compromises).

15 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-
16 SION.—If the Secretary provides a person with no-
17 tice that a submission is a specified frivolous sub-
18 mission and such person withdraws such submission
19 promptly after such notice, the penalty imposed
20 under paragraph (1) shall not apply with respect to
21 such submission.

22 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-
23 retary shall prescribe (and periodically revise) a list of po-
24 sitions which the Secretary has identified as being frivo-
25 lous for purposes of this subsection. The Secretary shall

1 not include in such list any position that the Secretary
 2 determines meets the requirement of section
 3 6662(d)(2)(B)(ii)(II).

4 “(d) REDUCTION OF PENALTY.—The Secretary may
 5 reduce the amount of any penalty imposed under this sec-
 6 tion if the Secretary determines that such reduction would
 7 promote compliance with and administration of the Fed-
 8 eral tax laws.

9 “(e) PENALTIES IN ADDITION TO OTHER PEN-
 10 ALTIES.—The penalties imposed by this section shall be
 11 in addition to any other penalty provided by law.”

12 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR
 13 HEARINGS BEFORE LEVY.—

14 (1) FRIVOLOUS REQUESTS DISREGARDED.—
 15 Section 6330 (relating to notice and opportunity for
 16 hearing before levy) is amended by adding at the
 17 end the following new subsection:

18 “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—
 19 Notwithstanding any other provision of this section, if the
 20 Secretary determines that any portion of a request for a
 21 hearing under this section or section 6320 meets the re-
 22 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
 23 then the Secretary may treat such portion as if it were
 24 never submitted and such portion shall not be subject to
 25 any further administrative or judicial review.”

1 (2) PRECLUSION FROM RAISING FRIVOLOUS
2 ISSUES AT HEARING.—Section 6330(e)(4) is
3 amended—

4 (A) by striking “(A)” and inserting
5 “(A)(i)”;

6 (B) by striking “(B)” and inserting “(ii)”;

7 (C) by striking the period at the end of the
8 first sentence and inserting “; or”; and

9 (D) by inserting after subparagraph (A)(ii)
10 (as so redesignated) the following:

11 “(B) the issue meets the requirement of
12 clause (i) or (ii) of section 6702(b)(2)(A).”

13 (3) STATEMENT OF GROUNDS.—Section
14 6330(b)(1) is amended by striking “under sub-
15 section (a)(3)(B)” and inserting “in writing under
16 subsection (a)(3)(B) and states the grounds for the
17 requested hearing”.

18 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR
19 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
20 6320 is amended—

21 (1) in subsection (b)(1), by striking “under sub-
22 section (a)(3)(B)” and inserting “in writing under
23 subsection (a)(3)(B) and states the grounds for the
24 requested hearing”; and

1 (2) in subsection (c), by striking “and (c)” and
 2 inserting “(c), and (g)”.

3 (d) ~~TREATMENT OF FRIVOLOUS APPLICATIONS FOR~~
 4 ~~OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-~~
 5 ~~MENTS.~~—Section 7122 is amended by adding at the end
 6 the following new subsection:

7 “(e) ~~FRIVOLOUS SUBMISSIONS, ETC.~~—Notwith-
 8 standing any other provision of this section, if the Sec-
 9 retary determines that any portion of an application for
 10 an offer-in-compromise or installment agreement sub-
 11 mitted under this section or section 6159 meets the re-
 12 quirement of clause (i) or (ii) of section 6702(b)(2)(A),
 13 then the Secretary may treat such portion as if it were
 14 never submitted and such portion shall not be subject to
 15 any further administrative or judicial review.”

16 (e) ~~CLERICAL AMENDMENT.~~—The table of sections
 17 for part I of subchapter B of chapter 68 is amended by
 18 striking the item relating to section 6702 and inserting
 19 the following new item:

“Sec. 6702. Frivolous tax submissions.”

20 (f) ~~EFFECTIVE DATE.~~—The amendments made by
 21 this section shall apply to submissions made and issues
 22 raised after the date on which the Secretary first pre-
 23 scribes a list under section 6702(c) of the Internal Rev-
 24 enue Code of 1986, as amended by subsection (a).

1 **SEC. 214. REGULATION OF INDIVIDUALS PRACTICING BE-**
2 **FORE THE DEPARTMENT OF TREASURY.**

3 (a) **CENSURE; IMPOSITION OF PENALTY.—**

4 (1) **IN GENERAL.**—Section 330(b) of title 31,
5 United States Code, is amended—

6 (A) by inserting “, or censure,” after “De-
7 partment”, and

8 (B) by adding at the end the following new
9 flush sentence:

10 “The Secretary may impose a monetary penalty on any
11 representative described in the preceding sentence. If the
12 representative was acting on behalf of an employer or any
13 firm or other entity in connection with the conduct giving
14 rise to such penalty, the Secretary may impose a monetary
15 penalty on such employer, firm, or entity if it knew, or
16 reasonably should have known, of such conduct. Such pen-
17 alty shall not exceed the gross income derived (or to be
18 derived) from the conduct giving rise to the penalty and
19 may be in addition to, or in lieu of, any suspension, disbar-
20 ment, or censure.”

21 (2) **EFFECTIVE DATE.**—The amendments made
22 by this subsection shall apply to actions taken after
23 the date of the enactment of this Act.

24 (b) **TAX SHELTER OPINIONS, ETC.**—Section 330 of
25 such title 31 is amended by adding at the end the fol-
26 lowing new subsection:

1 “(d) Nothing in this section or in any other provision
 2 of law shall be construed to limit the authority of the Sec-
 3 retary of the Treasury to impose standards applicable to
 4 the rendering of written advice with respect to any entity,
 5 transaction plan or arrangement, or other plan or arrange-
 6 ment, which is of a type which the Secretary determines
 7 as having a potential for tax avoidance or evasion.”

8 **SEC. 215. PENALTY ON PROMOTERS OF TAX SHELTERS.**

9 (a) **PENALTY ON PROMOTING ABUSIVE TAX SHEL-**
 10 **TTERS.**—Section 6700(a) is amended by adding at the end
 11 the following new sentence: “Notwithstanding the first
 12 sentence, if an activity with respect to which a penalty
 13 imposed under this subsection involves a statement de-
 14 scribed in paragraph (2)(A), the amount of the penalty
 15 shall be equal to 50 percent of the gross income derived
 16 (or to be derived) from such activity by the person on
 17 which the penalty is imposed.”

18 (b) **EFFECTIVE DATE.**—The amendment made by
 19 this section shall apply to activities after the date of the
 20 enactment of this Act.

21 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

22 **TABLE OF CONTENTS.**

23 (a) **SHORT TITLE.**—*This Act may be cited as the “Tax*
 24 *Shelter Transparency Act”.*

1 (b) *AMENDMENT OF 1986 CODE.*—*Except as otherwise*
 2 *expressly provided, whenever in this Act an amendment or*
 3 *repeal is expressed in terms of an amendment to, or repeal*
 4 *of, a section or other provision, the reference shall be consid-*
 5 *ered to be made to a section or other provision of the Inter-*
 6 *nal Revenue Code of 1986.*

7 (c) *TABLE OF CONTENTS.*—

Section 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—TAX SHELTER TRANSPARENCY REQUIREMENTS

Sec. 101. Penalty for failing to disclose reportable transaction.

Sec. 102. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.

Sec. 103. Modifications of substantial understatement penalty for nonreportable transactions.

Sec. 104. Tax shelter exception to confidentiality privileges relating to taxpayer communications.

TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS

SUBTITLE A—PROVISIONS RELATING TO REPORTABLE TRANSACTIONS

Sec. 201. Disclosure of reportable transactions.

Sec. 202. Modifications to penalty for failure to register tax shelters.

Sec. 203. Modification of penalty for failure to maintain lists of investors.

Sec. 204. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.

SUBTITLE B—OTHER PROMOTER AND PREPARER PROVISIONS

Sec. 211. Understatement of taxpayer's liability by income tax return preparer.

Sec. 212. Penalty on failure to report interests in foreign financial accounts.

Sec. 213. Frivolous tax submissions.

Sec. 214. Regulation of individuals practicing before the Department of Treasury.

Sec. 215. Penalty on promoters of tax shelters.

TITLE III—OTHER PROVISIONS

Sec. 301. Affirmation of consolidated return regulation authority.

1 ***TITLE I—TAX SHELTER***
 2 ***TRANSPARENCY REQUIREMENTS***

3 ***SEC. 101. PENALTY FOR FAILING TO DISCLOSE REPORT-***
 4 ***ABLE TRANSACTION.***

5 (a) *IN GENERAL.*—Part I of subchapter B of chapter
 6 68 (relating to assessable penalties) is amended by inserting
 7 after section 6707 the following new section:

8 ***“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-***
 9 ***ABLE TRANSACTION INFORMATION WITH RE-***
 10 ***TURN OR STATEMENT.***

11 “(a) *IMPOSITION OF PENALTY.*—Any person who fails
 12 to include on any return or statement any information with
 13 respect to a reportable transaction which is required under
 14 section 6011 to be included with such return or statement
 15 shall pay a penalty in the amount determined under sub-
 16 section (b).

17 “(b) *AMOUNT OF PENALTY.*—

18 “(1) *IN GENERAL.*—Except as provided in para-
 19 graphs (2) and (3), the amount of the penalty under
 20 subsection (a) shall be \$50,000.

21 “(2) *LISTED TRANSACTION.*—The amount of the
 22 penalty under subsection (a) with respect to a listed
 23 transaction shall be \$100,000.

24 “(3) *INCREASE IN PENALTY FOR LARGE ENTITIES*
 25 *AND HIGH NET WORTH INDIVIDUALS.*—

1 “(A) *IN GENERAL.*—*In the case of a failure*
 2 *under subsection (a) by—*

3 “(i) *a large entity, or*

4 “(ii) *a high net worth individual,*
 5 *the penalty under paragraph (1) or (2) shall be*
 6 *twice the amount determined without regard to*
 7 *this paragraph.*

8 “(B) *LARGE ENTITY.*—*For purposes of sub-*
 9 *paragraph (A), the term ‘large entity’ means,*
 10 *with respect to any taxable year, a person (other*
 11 *than a natural person) with gross receipts in ex-*
 12 *cess of \$10,000,000 for the taxable year in which*
 13 *the reportable transaction occurs or the pre-*
 14 *ceding taxable year. Rules similar to the rules of*
 15 *paragraph (2) and subparagraphs (B), (C), and*
 16 *(D) of paragraph (3) of section 448(c) shall*
 17 *apply for purposes of this subparagraph.*

18 “(C) *HIGH NET WORTH INDIVIDUAL.*—*The*
 19 *term ‘high net worth individual’ means, with re-*
 20 *spect to a reportable transaction, a natural per-*
 21 *son whose net worth exceeds \$2,000,000 imme-*
 22 *diately before the transaction.*

23 “(c) *DEFINITIONS.*—*For purposes of this section—*

24 “(1) *REPORTABLE TRANSACTION.*—*The term ‘re-*
 25 *portable transaction’ means any transaction with re-*

1 *spect to which information is required to be included*
 2 *with a return or statement because, as determined*
 3 *under regulations prescribed under section 6011, such*
 4 *transaction is of a type which the Secretary deter-*
 5 *mines as having a potential for tax avoidance or eva-*
 6 *sion.*

7 *“(2) LISTED TRANSACTION.—Except as provided*
 8 *in regulations, the term ‘listed transaction’ means a*
 9 *reportable transaction which is the same as, or simi-*
 10 *lar to, a transaction specifically identified by the Sec-*
 11 *retary as a tax avoidance transaction for purposes of*
 12 *section 6011.*

13 *“(d) AUTHORITY TO RESCIND PENALTY.—*

14 *“(1) IN GENERAL.—The Commissioner of Inter-*
 15 *nal Revenue may rescind all or any portion of any*
 16 *penalty imposed by this section with respect to any*
 17 *violation if—*

18 *“(A) the violation is with respect to a re-*
 19 *portable transaction other than a listed trans-*
 20 *action,*

21 *“(B) the person on whom the penalty is im-*
 22 *posed has a history of complying with the re-*
 23 *quirements of this title,*

24 *“(C) it is shown that the violation is due to*
 25 *an unintentional mistake of fact;*

1 “(D) imposing the penalty would be against
2 equity and good conscience, and

3 “(E) rescinding the penalty would promote
4 compliance with the requirements of this title
5 and effective tax administration.

6 “(2) *DISCRETION.*—The exercise of authority
7 under paragraph (1) shall be at the sole discretion of
8 the Commissioner and may be delegated only to the
9 head of the Office of Tax Shelter Analysis. The Com-
10 missioner, in his sole discretion, may establish a pro-
11 cedure to determine if a penalty should be referred to
12 the Commissioner or the head of such Office for a de-
13 termination under paragraph (1).

14 “(3) *NO APPEAL.*—Notwithstanding any other
15 provision of law, any determination under this sub-
16 section may not be reviewed in any administrative or
17 judicial proceeding.

18 “(4) *RECORDS.*—If a penalty is rescinded under
19 paragraph (1), the Commissioner shall place in the
20 file in the Office of the Commissioner the opinion of
21 the Commissioner or the head of the Office of Tax
22 Shelter Analysis with respect to the determination,
23 including—

24 “(A) the reasons for the rescission, and

25 “(B) the amount of the penalty rescinded.

1 “(5) *REPORT.—The Commissioner shall each*
 2 *year report to the Committee on Ways and Means of*
 3 *the House of Representatives and the Committee on*
 4 *Finance of the Senate—*

5 “(A) *a summary of the total number and*
 6 *aggregate amount of penalties imposed, and re-*
 7 *scinded, under this section, and*

8 “(B) *a description of each penalty rescinded*
 9 *under this subsection and the reasons therefor.*

10 “(e) *PENALTY REPORTED TO SEC.—In the case of a*
 11 *person—*

12 “(1) *which is required to file periodic reports*
 13 *under section 13 or 15(d) of the Securities Exchange*
 14 *Act of 1934 or is required to be consolidated with an-*
 15 *other person for purposes of such reports, and*

16 “(2) *which—*

17 “(A) *is required to pay a penalty under*
 18 *this section with respect to a listed transaction,*
 19 *or*

20 “(B) *is required to pay a penalty under sec-*
 21 *tion 6662A with respect to any reportable trans-*
 22 *action at a rate prescribed under section*
 23 *6662A(c),*

24 *the requirement to pay such penalty shall be disclosed in*
 25 *such reports filed by such person for such periods as the*

1 *Secretary shall specify. Failure to make a disclosure in ac-*
 2 *cordance with the preceding sentence shall be treated as a*
 3 *failure to which the penalty under subsection (b)(2) applies.*

4 “(f) *COORDINATION WITH OTHER PENALTIES.*—The
 5 *penalty imposed by this section is in addition to any pen-*
 6 *alty imposed under section 6662.*”

7 (b) *CONFORMING AMENDMENT.*—The table of sections
 8 for part I of subchapter B of chapter 68 is amended by
 9 inserting after the item relating to section 6707 the fol-
 10 lowing:

“Sec. 6707A. *Penalty for failure to include reportable transaction
 information with return or statement.*”

11 (c) *EFFECTIVE DATE.*—The amendments made by this
 12 section shall apply to returns and statements the due date
 13 for which is after the date of the enactment of this Act.

14 **SEC. 102. ACCURACY-RELATED PENALTY FOR LISTED**
 15 **TRANSACTIONS AND OTHER REPORTABLE**
 16 **TRANSACTIONS HAVING A SIGNIFICANT TAX**
 17 **AVOIDANCE PURPOSE.**

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

1 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY**
 2 **ON UNDERSTATEMENTS WITH RESPECT TO**
 3 **REPORTABLE TRANSACTIONS.**

4 “(a) *IMPOSITION OF PENALTY.*—If a taxpayer has a
 5 reportable transaction understatement for any taxable year,
 6 there shall be added to the tax an amount equal to 20 per-
 7 cent of the amount of such understatement.

8 “(b) *REPORTABLE TRANSACTION UNDERSTATE-*
 9 *MENT.*—For purposes of this section—

10 “(1) *IN GENERAL.*—The term ‘reportable trans-
 11 action understatement’ means the sum of—

12 “(A) the product of—

13 “(i) the amount of the increase (if any)
 14 in taxable income which results from a dif-
 15 ference between the proper tax treatment of
 16 an item to which this section applies and
 17 the taxpayer’s treatment of such item (as
 18 shown on the taxpayer’s return of tax), and

19 “(ii) the highest rate of tax imposed by
 20 section 1 (section 11 in the case of a tax-
 21 payer which is a corporation), and

22 “(B) the amount of the decrease (if any) in
 23 the aggregate amount of credits determined
 24 under subtitle A which results from a difference
 25 between the taxpayer’s treatment of an item to
 26 which this section applies (as shown on the tax-

1 payer’s return of tax) and the proper tax treat-
2 ment of such item.

3 For purposes of subparagraph (A), any reduction of
4 the excess of deductions allowed for the taxable year
5 over gross income for such year, and any reduction
6 in the amount of capital losses which would (without
7 regard to section 1211) be allowed for such year, shall
8 be treated as an increase in taxable income.

9 “(2) *ITEMS TO WHICH SECTION APPLIES.*—This
10 section shall apply to any item which is attributable
11 to—

12 “(A) any listed transaction, and

13 “(B) any reportable transaction (other than
14 a listed transaction) if a significant purpose of
15 such transaction is the avoidance or evasion of
16 Federal income tax.

17 “(c) *HIGHER PENALTIES FOR NONDISCLOSED LISTED*
18 *AND OTHER AVOIDANCE TRANSACTIONS.*—If the require-
19 ment of section 6664(d)(2)(A) is not met with respect to
20 any portion of any reportable transaction understatement,
21 then subsection (a) shall be applied by substituting—

22 “(1) ‘30 percent’ for ‘20 percent’ if such under-
23 statement is attributable to a listed transaction, and

24 “(2) ‘25 percent’ for ‘20 percent’ in the case of
25 any other understatement.

1 “(d) *DEFINITIONS OF REPORTABLE AND LISTED*
 2 *TRANSACTIONS.*—*For purposes of this section, the terms ‘re-*
 3 *portable transaction’ and ‘listed transaction’ have the re-*
 4 *spective meanings given to such terms by section 6707A(c).*

5 “(e) *SPECIAL RULES.*—

6 “(1) *COORDINATION WITH PENALTIES, ETC., ON*
 7 *OTHER UNDERSTATEMENTS.*—*In the case of an under-*
 8 *statement (as defined in section 6662(d)(2))—*

9 “(A) *the amount of such understatement*
 10 *(determined without regard to this paragraph)*
 11 *shall be increased by the aggregate amount of re-*
 12 *portable transaction understatements for pur-*
 13 *poses of determining whether such understate-*
 14 *ment is a substantial understatement under sec-*
 15 *tion 6662(d)(1), but*

16 “(B) *the addition to tax under section*
 17 *6662(a) shall apply only to the excess of the*
 18 *amount of the substantial understatement (if*
 19 *any) after the application of subparagraph (A)*
 20 *over the aggregate amount of reportable trans-*
 21 *action understatements.*

22 “(2) *COORDINATION WITH FRAUD PENALTY.*—

23 “(A) *IN GENERAL.*—*References to an under-*
 24 *payment in section 6663 shall be treated as in-*

1 cluding references to a reportable transaction un-
2 derstatement.

3 “(B) NO DOUBLE PENALTY.—This section
4 shall not apply to any portion of an understate-
5 ment on which a penalty is imposed under sec-
6 tion 6663.

7 “(3) SPECIAL RULE FOR AMENDED RETURNS.—
8 Except as provided in regulations, in no event shall
9 any tax treatment included with an amendment or
10 supplement to a return of tax be taken into account
11 in determining the amount of any reportable trans-
12 action understatement if the amendment or supple-
13 ment is filed after the earlier of the date the taxpayer
14 is first contacted by the Secretary regarding the ex-
15 amination of the return or such other date as is speci-
16 fied by the Secretary.”

17 (b) DETERMINATION OF OTHER UNDERSTATE-
18 MENTS.—Subparagraph (A) of section 6662(d)(2) is
19 amended by adding at the end the following flush sentence:

20 “The excess under the preceding sentence shall be
21 determined without regard to items to which sec-
22 tion 6662A applies.”

23 (c) REASONABLE CAUSE EXCEPTION.—

24 (1) IN GENERAL.—Section 6664 is amended by
25 adding at the end the following new subsection:

1 “(d) *REASONABLE CAUSE EXCEPTION FOR REPORT-*
2 *ABLE TRANSACTION UNDERSTATEMENTS.*—

3 “(1) *IN GENERAL.*—No penalty shall be imposed
4 under section 6662A with respect to any portion of a
5 reportable transaction understatement if it is shown
6 that there was a reasonable cause for such portion
7 and that the taxpayer acted in good faith with respect
8 to such portion.

9 “(2) *SPECIAL RULES.*—Paragraph (1) shall not
10 apply to any reportable transaction understatement
11 unless—

12 “(A) the relevant facts affecting the tax
13 treatment of the item are adequately disclosed in
14 accordance with the regulations prescribed under
15 section 6011,

16 “(B) there is or was substantial authority
17 for such treatment, and

18 “(C) the taxpayer reasonably believed that
19 such treatment was more likely than not the
20 proper treatment.

21 A taxpayer failing to adequately disclose in accord-
22 ance with section 6011 shall be treated as meeting the
23 requirements of subparagraph (A) if the penalty for
24 such failure was rescinded under section 6707A(d).

1 “(3) *RULES RELATING TO REASONABLE BE-*
 2 *LIEF.—For purposes of paragraph (2)(C)—*

3 “(A) *IN GENERAL.—A taxpayer shall be*
 4 *treated as having a reasonable belief with respect*
 5 *to the tax treatment of an item only if such*
 6 *belief—*

7 “(i) *is based on the facts and law that*
 8 *exist at the time the return of tax which in-*
 9 *cludes such tax treatment is filed, and*

10 “(ii) *relates solely to the taxpayer’s*
 11 *chances of success on the merits of such*
 12 *treatment and does not take into account*
 13 *the possibility that a return will not be au-*
 14 *dated, such treatment will not be raised on*
 15 *audit, or such treatment will be resolved*
 16 *through settlement if it is raised.*

17 “(B) *CERTAIN OPINIONS MAY NOT BE RE-*
 18 *LIED UPON.—*

19 “(i) *IN GENERAL.—An opinion of a*
 20 *tax advisor may not be relied upon to estab-*
 21 *lish the reasonable belief of a taxpayer if—*

22 “(I) *the tax advisor is described*
 23 *in clause (ii), or*

24 “(II) *the opinion is described in*
 25 *clause (iii).*

1 “(ii) *DISQUALIFIED TAX ADVISORS.*—A
 2 *tax advisor is described in this clause if the*
 3 *tax advisor is a material advisor (within*
 4 *the meaning of section 6111(b)(1)) who—*

5 “(I) *participates in the organiza-*
 6 *tion, management, promotion, or sale*
 7 *of the transaction or is related (within*
 8 *the meaning of section 267 or 707) to*
 9 *any person who so participates,*

10 “(II) *is compensated by another*
 11 *material advisor with respect to the*
 12 *transaction,*

13 “(III) *has a fee arrangement with*
 14 *respect to the transaction which is con-*
 15 *tingent on all or part of the intended*
 16 *tax benefits from the transaction being*
 17 *sustained, or*

18 “(IV) *as determined under regula-*
 19 *tions prescribed by the Secretary, has a*
 20 *continuing financial interest with re-*
 21 *spect to the transaction.*

22 “(iii) *DISQUALIFIED OPINIONS.*—*For*
 23 *purposes of clause (i), an opinion is dis-*
 24 *qualified if the opinion—*

1 “(I) is based on unreasonable fac-
2 tual or legal assumptions (including
3 assumptions as to future events),

4 “(II) unreasonably relies on rep-
5 resentations, statements, findings, or
6 agreements of the taxpayer or any
7 other person,

8 “(III) does not identify and con-
9 sider all relevant facts, or

10 “(IV) fails to meet any other re-
11 quirement as the Secretary may pre-
12 scribe.”

13 (2) *CONFORMING AMENDMENT.*—The heading for
14 subsection (c) of section 6664 is amended by inserting
15 “FOR UNDERPAYMENTS” after “EXCEPTION”.

16 (d) *CONFORMING AMENDMENTS.*—

17 (1) Subparagraph (C) of section 461(i)(3) is
18 amended by striking “section 6662(d)(2)(C)(iii)” and
19 inserting “section 1274(b)(3)(C)”.

20 (2) Paragraph (3) of section 1274(b) is
21 amended—

22 (A) by striking “(as defined in section
23 6662(d)(2)(C)(iii))” in subparagraph (B)(i), and

24 (B) by adding at the end the following new
25 subparagraph:

“(C) *TAX SHELTER.*—For purposes of subparagraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

“(ii) any investment plan or arrangement, or

“(iii) any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking “part” and inserting “section 6662 or 6663”.

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(6)(A) The heading for section 6662 is amended to read as follows:

**“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY
ON UNDERPAYMENTS.”**

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”

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

4 **SEC. 103. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
 5 **MENT PENALTY FOR NONREPORTABLE**
 6 **TRANSACTIONS.**

7 *(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-*
 8 *TIONS.—Section 6662(d)(1)(B) (relating to special rule for*
 9 *corporations) is amended to read as follows:*

10 *“(B) SPECIAL RULE FOR CORPORATIONS.—*

11 *In the case of a corporation other than an S cor-*
 12 *poration or a personal holding company (as de-*
 13 *finied in section 542), there is a substantial un-*
 14 *derstatement of income tax for any taxable year*
 15 *if the amount of the understatement for the tax-*
 16 *able year exceeds the lesser of—*

17 *“(i) 10 percent of the tax required to*
 18 *be shown on the return for the taxable year*
 19 *(or, if greater, \$10,000), or*

20 *“(ii) \$10,000,000.”*

21 *(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER*
 22 *DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—*

1 (1) *IN GENERAL.*—Section 6662(d)(2)(B)(i) (re-
 2 lating to substantial authority) is amended to read as
 3 follows:

4 “(i) the tax treatment of any item by
 5 the taxpayer if the taxpayer had reasonable
 6 belief that the tax treatment was more likely
 7 than not the proper treatment, or”.

8 (2) *CONFORMING AMENDMENT.*—Section 6662(d)
 9 is amended by adding at the end the following new
 10 paragraph:

11 “(3) *SECRETARIAL LIST.*—For purposes of this
 12 subsection, section 6664(d)(2), and section 6694(a)(1),
 13 the Secretary may prescribe a list of positions for
 14 which the Secretary believes there is not substantial
 15 authority or there is no reasonable belief that the tax
 16 treatment is more likely than not the proper tax
 17 treatment. Such list (and any revisions thereof) shall
 18 be published in the Federal Register or the Internal
 19 Revenue Bulletin.”

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

1 **SEC. 104. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
 2 **PRIVILEGES RELATING TO TAXPAYER COM-**
 3 **MUNICATIONS.**

4 (a) *IN GENERAL.*—Section 7525(b) (relating to section
 5 not to apply to communications regarding corporate tax
 6 shelters) is amended to read as follows:

7 “(b) *SECTION NOT TO APPLY TO COMMUNICATIONS*
 8 *REGARDING TAX SHELTERS.*—The privilege under sub-
 9 section (a) shall not apply to any written communication
 10 which is—

11 “(1) *between a federally authorized tax practi-*
 12 *tioner and—*

13 “(A) *any person,*

14 “(B) *any director, officer, employee, agent,*
 15 *or representative of the person, or*

16 “(C) *any other person holding a capital or*
 17 *profits interest in the person, and*

18 “(2) *in connection with the promotion of the di-*
 19 *rect or indirect participation of the person in any tax*
 20 *shelter (as defined in section 1274(b)(3)(C)).”*

21 (b) *EFFECTIVE DATE.*—The amendment made by this
 22 section shall apply to communications made on or after the
 23 date of the enactment of this Act.

1 **TITLE II—PROMOTER AND PRE-**
 2 **PARER RELATED PROVISIONS**
 3 **Subtitle A—Provisions Relating to**
 4 **Reportable Transactions**

5 **SEC. 201. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

6 (a) *IN GENERAL.*—Section 6111 (relating to registra-
 7 tion of tax shelters) is amended to read as follows:

8 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

9 “(a) *IN GENERAL.*—Each material advisor with re-
 10 spect to any reportable transaction shall make a return (in
 11 such form as the Secretary may prescribe) setting forth—

12 “(1) information identifying and describing the
 13 transaction,

14 “(2) information describing any potential tax
 15 benefits expected to result from the transaction, and

16 “(3) such other information as the Secretary
 17 may prescribe.

18 Such return shall be filed not later than the date specified
 19 by the Secretary.

20 “(b) *DEFINITIONS.*—For purposes of this section—

21 “(1) *MATERIAL ADVISOR.*—

22 “(A) *IN GENERAL.*—The term ‘material ad-
 23 visor’ means any person—

24 “(i) who provides any material aid,
 25 assistance, or advice with respect to orga-

1 nizing, promoting, selling, implementing, or
 2 carrying out any reportable transaction,
 3 and

4 “(ii) who directly or indirectly derives
 5 gross income in excess of the threshold
 6 amount for such advice or assistance.

7 “(B) *THRESHOLD AMOUNT*.—For purposes
 8 of subparagraph (A), the threshold amount is—

9 “(i) \$50,000 in the case of a reportable
 10 transaction substantially all of the tax bene-
 11 fits from which are provided to natural per-
 12 sons, and

13 “(ii) \$250,000 in any other case.

14 “(2) *REPORTABLE TRANSACTION*.—The term ‘re-
 15 portable transaction’ has the meaning given to such
 16 term by section 6707A(c).

17 “(c) *REGULATIONS*.—The Secretary may prescribe reg-
 18 ulations which provide—

19 “(1) that only 1 person shall be required to meet
 20 the requirements of subsection (a) in cases in which
 21 2 or more persons would otherwise be required to meet
 22 such requirements,

23 “(2) exemptions from the requirements of this
 24 section, and

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

3 (b) CONFORMING AMENDMENTS.—

4 (1) The item relating to section 6111 in the table
5 of sections for subchapter B of chapter 61 is amended
6 to read as follows:

 “Sec. 6111. Disclosure of reportable transactions.”

7 (2)(A) So much of section 6112 as precedes sub-
8 section (c) thereof is amended to read as follows:

9 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**
10 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

11 “(a) *IN GENERAL.*—Each material advisor (as defined
12 in section 6111) with respect to any reportable transaction
13 (as defined in section 6707A(c)) shall maintain, in such
14 manner as the Secretary may by regulations prescribe, a
15 list—

16 “(1) identifying each person with respect to
17 whom such advisor acted as such a material advisor
18 with respect to such transaction, and

19 “(2) containing such other information as the
20 Secretary may by regulations require.

21 This section shall apply without regard to whether a mate-
22 rial advisor is required to file a return under section 6111
23 with regard to such transaction.”

24 (B) Section 6112 is amended by redesignating
25 subsection (c) as subsection (b).

1 (C) Section 6112(b), as redesignated by subpara-
2 graph (B), is amended—

3 (i) by inserting “written” before “request”
4 in paragraph (1)(A), and

5 (ii) by striking “shall prescribe” in para-
6 graph (2) and inserting “may prescribe”.

7 (D) The item relating to section 6112 in the
8 table of sections for subchapter B of chapter 61 is
9 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must keep
lists of advisees.”

10 (3)(A) The heading for section 6708 is amended
11 to read as follows:

12 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
13 **WITH RESPECT TO REPORTABLE TRANS-**
14 **ACTIONS.”**

15 (B) The item relating to section 6708 in the
16 table of sections for part I of subchapter B of chapter
17 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to re-
portable transactions.”

18 (c) *EFFECTIVE DATE.*—The amendments made by this
19 section shall apply to transactions with respect to which
20 material aid, assistance, or advice referred to in section
21 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as
22 added by this section) is provided after the date of the enact-
23 ment of this Act.

1 **SEC. 202. MODIFICATIONS TO PENALTY FOR FAILURE TO**
 2 **REGISTER TAX SHELTERS.**

3 (a) *IN GENERAL.*—Section 6707 (relating to failure to
 4 furnish information regarding tax shelters) is amended to
 5 read as follows:

6 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
 7 **ING REPORTABLE TRANSACTIONS.**

8 “(a) *IN GENERAL.*—If a person who is required to file
 9 a return under section 6111(a) with respect to any report-
 10 able transaction—

11 “(1) fails to file such return on or before the date
 12 prescribed therefor, or

13 “(2) files false or incomplete information with
 14 the Secretary with respect to such transaction,
 15 such person shall pay a penalty with respect to such return
 16 in the amount determined under subsection (b).

17 “(b) *AMOUNT OF PENALTY.*—

18 “(1) *IN GENERAL.*—Except as provided in para-
 19 graph (2), the penalty imposed under subsection (a)
 20 with respect to any failure shall be \$50,000.

21 “(2) *LISTED TRANSACTIONS.*—The penalty im-
 22 posed under subsection (a) with respect to any listed
 23 transaction shall be an amount equal to the greater
 24 of—

25 “(A) \$200,000, or

1 “(B) 50 percent of the gross income derived
 2 by such person with respect to aid, assistance, or
 3 advice which is provided with respect to the re-
 4 portable transaction before the date the return
 5 including the transaction is filed under section
 6 6111.

7 Subparagraph (B) shall be applied by substituting
 8 ‘75 percent’ for ‘50 percent’ in the case of an inten-
 9 tional failure or act described in subsection (a).

10 “(c) *REPORTABLE AND LISTED TRANSACTIONS.*—The
 11 terms ‘reportable transaction’ and ‘listed transaction’ have
 12 the respective meanings given to such terms by section
 13 6707A(c).

14 “(d) *RESCISSION AUTHORITY.*—The provisions of sec-
 15 tion 6707A(d) (relating to authority of Commissioner to re-
 16 scind penalty) shall apply to any penalty imposed under
 17 this section.”

18 (b) *CLERICAL AMENDMENT.*—The item relating to sec-
 19 tion 6707 in the table of sections for part I of subchapter
 20 B of chapter 68 is amended by striking “tax shelters” and
 21 inserting “reportable transactions”.

22 (c) *EFFECTIVE DATE.*—The amendments made by this
 23 section shall apply to returns the due date for which is after
 24 the date of the enactment of this Act.

1 **SEC. 203. MODIFICATION OF PENALTY FOR FAILURE TO**
 2 **MAINTAIN LISTS OF INVESTORS.**

3 (a) *IN GENERAL.*—Subsection (a) of section 6708 is
 4 amended to read as follows:

5 “(a) *IMPOSITION OF PENALTY.*—

6 “(1) *IN GENERAL.*—If any person who is re-
 7 quired to maintain a list under section 6112(a) fails
 8 to make such list available to the Secretary in accord-
 9 ance with section 6112(b)(1)(A) within 20 business
 10 days after the date of the Secretary’s request, such
 11 person shall pay a penalty of \$10,000 for each day
 12 of such failure after such 20th day.

13 “(2) *REASONABLE CAUSE EXCEPTION.*—No pen-
 14 alty shall be imposed by paragraph (1) with respect
 15 to the failure on any day if such failure is due to rea-
 16 sonable cause.”

17 (b) *EFFECTIVE DATE.*—The amendment made by this
 18 section shall apply to requests made after the date of the
 19 enactment of this Act.

20 **SEC. 204. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
 21 **CONDUCT RELATED TO TAX SHELTERS AND**
 22 **REPORTABLE TRANSACTIONS.**

23 (a) *IN GENERAL.*—Section 7408 (relating to action to
 24 enjoin promoters of abusive tax shelters, etc.) is amended
 25 by redesignating subsection (c) as subsection (d) and by

1 *striking subsections (a) and (b) and inserting the following*
 2 *new subsections:*

3 “(a) *AUTHORITY TO SEEK INJUNCTION.—A civil ac-*
 4 *tion in the name of the United States to enjoin any person*
 5 *from further engaging in specified conduct may be com-*
 6 *menced at the request of the Secretary. Any action under*
 7 *this section shall be brought in the district court of the*
 8 *United States for the district in which such person resides,*
 9 *has his principal place of business, or has engaged in speci-*
 10 *fied conduct. The court may exercise its jurisdiction over*
 11 *such action (as provided in section 7402(a)) separate and*
 12 *apart from any other action brought by the United States*
 13 *against such person.*

14 “(b) *ADJUDICATION AND DECREE.—In any action*
 15 *under subsection (a), if the court finds—*

16 “(1) *that the person has engaged in any specified*
 17 *conduct, and*

18 “(2) *that injunctive relief is appropriate to pre-*
 19 *vent recurrence of such conduct,*

20 *the court may enjoin such person from engaging in such*
 21 *conduct or in any other activity subject to penalty under*
 22 *this title.*

23 “(c) *SPECIFIED CONDUCT.—For purposes of this sec-*
 24 *tion, the term ‘specified conduct’ means any action, or fail-*

1 *ure to take action, subject to penalty under section 6700,*
 2 *6701, 6707, or 6708.”*

3 *(b) CONFORMING AMENDMENTS.—*

4 *(1) The heading for section 7408 is amended to*
 5 *read as follows:*

6 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
 7 **LATED TO TAX SHELTERS AND REPORTABLE**
 8 **TRANSACTIONS.”**

9 *(2) The table of sections for subchapter A of*
 10 *chapter 67 is amended by striking the item relating*
 11 *to section 7408 and inserting the following new item:*

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and re-
portable transactions.”

12 *(c) EFFECTIVE DATE.—The amendment made by this*
 13 *section shall take effect on the day after the date of the en-*
 14 *actment of this Act.*

15 ***Subtitle B—Other Promoter and***
 16 ***Preparer Provisions***

17 ***SEC. 211. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY***
 18 ***INCOME TAX RETURN PREPARER.***

19 *(a) STANDARDS CONFORMED TO TAXPAYER STAND-*
 20 *ARDS.—Section 6694(a) (relating to understatements due to*
 21 *unrealistic positions) is amended—*

22 *(1) by striking “realistic possibility of being sus-*
 23 *tained on its merits” in paragraph (1) and inserting*

1 *“reasonable belief that the tax treatment in such posi-*
 2 *tion was more likely than not the proper treatment”,*

3 *(2) by striking “or was frivolous” in paragraph*
 4 *(3) and inserting “or there was no reasonable basis*
 5 *for the tax treatment of such position”, and*

6 *(3) by striking “UNREALISTIC” in the heading*
 7 *and inserting “IMPROPER”.*

8 **(b) AMOUNT OF PENALTY.**—*Section 6694 is*
 9 *amended—*

10 *(1) by striking “\$250” in subsection (a) and in-*
 11 *serting “\$1,000”, and*

12 *(2) by striking “\$1,000” in subsection (b) and*
 13 *inserting “\$5,000”.*

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

17 **SEC. 212. PENALTY ON FAILURE TO REPORT INTERESTS IN**
 18 **FOREIGN FINANCIAL ACCOUNTS.**

19 **(a) IN GENERAL.**—*Section 5321(a)(5) of title 31,*
 20 *United States Code, is amended to read as follows:*

21 **“(5) FOREIGN FINANCIAL AGENCY TRANSACTION**
 22 **VIOLATION.—**

23 **“(A) PENALTY AUTHORIZED.**—*The Sec-*
 24 *retary of the Treasury may impose a civil money*

1 *penalty on any person who violates, or causes*
2 *any violation of, any provision of section 5314.*

3 *“(B) AMOUNT OF PENALTY.—*

4 *“(i) IN GENERAL.—Except as provided*
5 *in subparagraph (C), the amount of any*
6 *civil penalty imposed under subparagraph*
7 *(A) shall not exceed \$5,000.*

8 *“(ii) REASONABLE CAUSE EXCEP-*
9 *TION.—No penalty shall be imposed under*
10 *subparagraph (A) with respect to any viola-*
11 *tion if—*

12 *“(I) such violation was due to*
13 *reasonable cause, and*

14 *“(II) the amount of the trans-*
15 *action or the balance in the account at*
16 *the time of the transaction was prop-*
17 *erly reported.*

18 *“(C) WILLFUL VIOLATIONS.—In the case of*
19 *any person willfully violating, or willfully caus-*
20 *ing any violation of, any provision of section*
21 *5314—*

22 *“(i) the maximum penalty under sub-*
23 *paragraph (B)(i) shall be increased to the*
24 *greater of—*

25 *“(I) \$25,000, or*

1 “(II) the amount (not exceeding
2 \$100,000) determined under subpara-
3 graph (D), and

4 “(ii) subparagraph (B)(ii) shall not
5 apply.

6 “(D) AMOUNT.—The amount determined
7 under this subparagraph is—

8 “(i) in the case of a violation involving
9 a transaction, the amount of the trans-
10 action, or

11 “(ii) in the case of a violation involv-
12 ing a failure to report the existence of an
13 account or any identifying information re-
14 quired to be provided with respect to an ac-
15 count, the balance in the account at the
16 time of the violation.”

17 (b) EFFECTIVE DATE.—The amendment made by this
18 section shall apply to violations occurring after the date of
19 the enactment of this Act.

20 **SEC. 213. FRIVOLOUS TAX SUBMISSIONS.**

21 (a) CIVIL PENALTIES.—Section 6702 is amended to
22 read as follows:

23 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

24 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-
25 TURNS.—A person shall pay a penalty of \$5,000 if—

1 “(1) such person files what purports to be a re-
2 turn of a tax imposed by this title but which—

3 “(A) does not contain information on which
4 the substantial correctness of the self-assessment
5 may be judged, or

6 “(B) contains information that on its face
7 indicates that the self-assessment is substantially
8 incorrect; and

9 “(2) the conduct referred to in paragraph (1)—

10 “(A) is based on a position which the Sec-
11 retary has identified as frivolous under sub-
12 section (c), or

13 “(B) reflects a desire to delay or impede the
14 administration of Federal tax laws.

15 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUB-
16 MISSIONS.—

17 “(1) IMPOSITION OF PENALTY.—Except as pro-
18 vided in paragraph (3), any person who submits a
19 specified frivolous submission shall pay a penalty of
20 \$5,000.

21 “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For
22 purposes of this section—

23 “(A) SPECIFIED FRIVOLOUS SUBMISSION.—
24 The term ‘specified frivolous submission’ means

1 *a specified submission if any portion of such*
 2 *submission—*

3 “(i) *is based on a position which the*
 4 *Secretary has identified as frivolous under*
 5 *subsection (c), or*

6 “(ii) *reflects a desire to delay or im-*
 7 *pede the administration of Federal tax*
 8 *laws.*

9 “(B) *SPECIFIED SUBMISSION.—The term*
 10 *‘specified submission’ means—*

11 “(i) *a request for a hearing under—*

12 “(I) *section 6320 (relating to no-*
 13 *tice and opportunity for hearing upon*
 14 *filing of notice of lien), or*

15 “(II) *section 6330 (relating to no-*
 16 *tice and opportunity for hearing before*
 17 *levy), and*

18 “(ii) *an application under—*

19 “(I) *section 6159 (relating to*
 20 *agreements for payment of tax liability*
 21 *in installments),*

22 “(II) *section 7122 (relating to*
 23 *compromises), or*

24 “(III) *section 7811 (relating to*
 25 *taxpayer assistance orders).*

1 “(3) *OPPORTUNITY TO WITHDRAW SUBMIS-*
 2 *SION.—If the Secretary provides a person with notice*
 3 *that a submission is a specified frivolous submission*
 4 *and such person withdraws such submission within*
 5 *30 days after such notice, the penalty imposed under*
 6 *paragraph (1) shall not apply with respect to such*
 7 *submission.*

8 “(c) *LISTING OF FRIVOLOUS POSITIONS.—The Sec-*
 9 *retary shall prescribe (and periodically revise) a list of posi-*
 10 *tions which the Secretary has identified as being frivolous*
 11 *for purposes of this subsection. The Secretary shall not in-*
 12 *clude in such list any position that the Secretary deter-*
 13 *mines meets the requirement of section*
 14 *6662(d)(2)(B)(ii)(II).*

15 “(d) *REDUCTION OF PENALTY.—The Secretary may*
 16 *reduce the amount of any penalty imposed under this sec-*
 17 *tion if the Secretary determines that such reduction would*
 18 *promote compliance with and administration of the Federal*
 19 *tax laws.*

20 “(e) *PENALTIES IN ADDITION TO OTHER PEN-*
 21 *ALTIES.—The penalties imposed by this section shall be in*
 22 *addition to any other penalty provided by law.”*

23 (b) *TREATMENT OF FRIVOLOUS REQUESTS FOR HEAR-*
 24 *INGS BEFORE LEVY.—*

1 (1) *FRIVOLOUS REQUESTS DISREGARDED.*—Sec-
 2 tion 6330 (relating to notice and opportunity for
 3 hearing before levy) is amended by adding at the end
 4 the following new subsection:

5 “(g) *FRIVOLOUS REQUESTS FOR HEARING, ETC.*—
 6 Notwithstanding any other provision of this section, if the
 7 Secretary determines that any portion of a request for a
 8 hearing under this section or section 6320 meets the require-
 9 ment of clause (i) or (ii) of section 6702(b)(2)(A), then the
 10 Secretary may treat such portion as if it were never sub-
 11 mitted and such portion shall not be subject to any further
 12 administrative or judicial review.”

13 (2) *PRECLUSION FROM RAISING FRIVOLOUS*
 14 *ISSUES AT HEARING.*—Section 6330(c)(4) is
 15 amended—

16 (A) by striking “(A)” and inserting
 17 “(A)(i)”;

18 (B) by striking “(B)” and inserting “(ii)”;

19 (C) by striking the period at the end of the
 20 first sentence and inserting “; or”; and

21 (D) by inserting after subparagraph (A)(ii)
 22 (as so redesignated) the following:

23 “(B) the issue meets the requirement of
 24 clause (i) or (ii) of section 6702(b)(2)(A).”

1 (3) *STATEMENT OF GROUNDS.*—Section
 2 6330(b)(1) is amended by striking “under subsection
 3 (a)(3)(B)” and inserting “in writing under subsection
 4 (a)(3)(B) and states the grounds for the requested
 5 hearing”.

6 (c) *TREATMENT OF FRIVOLOUS REQUESTS FOR HEAR-*
 7 *INGS UPON FILING OF NOTICE OF LIEN.*—Section 6320 is
 8 amended—

9 (1) in subsection (b)(1), by striking “under sub-
 10 section (a)(3)(B)” and inserting “in writing under
 11 subsection (a)(3)(B) and states the grounds for the re-
 12 quested hearing”, and

13 (2) in subsection (c), by striking “and (e)” and
 14 inserting “(e), and (g)”.

15 (d) *TREATMENT OF FRIVOLOUS APPLICATIONS FOR*
 16 *OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-*
 17 *MENTS.*—Section 7122 is amended by adding at the end
 18 the following new subsection:

19 “(e) *FRIVOLOUS SUBMISSIONS, ETC.*—Notwith-
 20 standing any other provision of this section, if the Secretary
 21 determines that any portion of an application for an offer-
 22 in-compromise or installment agreement submitted under
 23 this section or section 6159 meets the requirement of clause
 24 (i) or (ii) of section 6702(b)(2)(A), then the Secretary may
 25 treat such portion as if it were never submitted and such

1 *portion shall not be subject to any further administrative*
 2 *or judicial review.”*

3 *(e) CLERICAL AMENDMENT.—The table of sections for*
 4 *part I of subchapter B of chapter 68 is amended by striking*
 5 *the item relating to section 6702 and inserting the following*
 6 *new item:*

“Sec. 6702. Frivolous tax submissions.”

7 *(f) EFFECTIVE DATE.—The amendments made by this*
 8 *section shall apply to submissions made and issues raised*
 9 *after the date on which the Secretary first prescribes a list*
 10 *under section 6702(c) of the Internal Revenue Code of 1986,*
 11 *as amended by subsection (a).*

12 **SEC. 214. REGULATION OF INDIVIDUALS PRACTICING BE-**
 13 **FORE THE DEPARTMENT OF TREASURY.**

14 *(a) CENSURE; IMPOSITION OF PENALTY.—*

15 *(1) IN GENERAL.—Section 330(b) of title 31,*
 16 *United States Code, is amended—*

17 *(A) by inserting “, or censure,” after “De-*
 18 *partment”, and*

19 *(B) by adding at the end the following new*
 20 *flush sentence:*

21 *“The Secretary may impose a monetary penalty on any*
 22 *representative described in the preceding sentence. If the*
 23 *representative was acting on behalf of an employer or any*
 24 *firm or other entity in connection with the conduct giving*
 25 *rise to such penalty, the Secretary may impose a monetary*

1 penalty on such employer, firm, or entity if it knew, or
 2 reasonably should have known, of such conduct. Such pen-
 3 alty shall not exceed the gross income derived (or to be de-
 4 rived) from the conduct giving rise to the penalty and may
 5 be in addition to, or in lieu of, any suspension, disbarment,
 6 or censure.”

7 (2) *EFFECTIVE DATE.*—The amendments made
 8 by this subsection shall apply to actions taken after
 9 the date of the enactment of this Act.

10 (b) *TAX SHELTER OPINIONS, ETC.*—Section 330 of
 11 such title 31 is amended by adding at the end the following
 12 new subsection:

13 “(d) Nothing in this section or in any other provision
 14 of law shall be construed to limit the authority of the Sec-
 15 retary of the Treasury to impose standards applicable to
 16 the rendering of written advice with respect to any entity,
 17 transaction plan or arrangement, or other plan or arrange-
 18 ment, which is of a type which the Secretary determines
 19 as having a potential for tax avoidance or evasion.”

20 **SEC. 215. PENALTY ON PROMOTERS OF TAX SHELTERS.**

21 (a) *PENALTY ON PROMOTING ABUSIVE TAX SHEL-*
 22 *TERS.*—Section 6700(a) is amended by adding at the end
 23 the following new sentence: “Notwithstanding the first sen-
 24 tence, if an activity with respect to which a penalty im-
 25 posed under this subsection involves a statement described

1 *in paragraph (2)(A), the amount of the penalty shall be*
 2 *equal to 50 percent of the gross income derived (or to be*
 3 *derived) from such activity by the person on which the pen-*
 4 *alty is imposed.”*

5 (b) *EFFECTIVE DATE.*—*The amendment made by this*
 6 *section shall apply to activities after the date of the enact-*
 7 *ment of this Act.*

8 ***TITLE III—OTHER PROVISIONS***

9 ***SEC. 301. AFFIRMATION OF CONSOLIDATED RETURN REGU-*** 10 ***LATION AUTHORITY.***

11 (a) *IN GENERAL.*—*Section 1502 (relating to consoli-*
 12 *dated return regulations) is amended by adding at the end*
 13 *the following new sentence: “In prescribing such regula-*
 14 *tions, the Secretary may prescribe rules applicable to cor-*
 15 *porations filing consolidated returns under section 1501*
 16 *that are different from other provisions of this title that*
 17 *would apply if such corporations filed separate returns.”*

18 (b) *RESULT NOT OVERTURNED.*—*Notwithstanding*
 19 *subsection (a), the Internal Revenue Code of 1986 shall be*
 20 *construed by treating Treasury regulation § 1.1502–*
 21 *20(c)(1)(iii) (as in effect on January 1, 2001) as being in-*
 22 *applicable to the type of factual situation in Rite Aid Cor-*
 23 *poration v. United States, 255 F.3d 1357 (Fed. Cir. 2001).*

1 (c) *EFFECTIVE DATE.*—*The provisions of this section*
2 *shall apply to taxable years beginning before, on, or after*
3 *the date of the enactment of this Act.*

Calendar No. 466

107TH CONGRESS
2D SESSION

S. 2498

[Report No. 107-189]

A BILL

To amend the Internal Revenue Code of 1986 to
require adequate disclosure of transactions which
have a potential for tax avoidance or evasion, and
for other purposes.

JUNE 28, 2002

Reported with an amendment