

108TH CONGRESS
1ST SESSION

H. R. 1555

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, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2003

Mr. DOGGETT (for himself, Mr. ALLEN, Ms. BALDWIN, Mr. BECERRA, Mr. CROWLEY, Mr. DEFazio, Ms. DELAURO, Mr. FROST, Mr. JEFFERSON, Mrs. JONES of Ohio, Mr. KLECZKA, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. McDERMOTT, Mr. MCGOVERN, Mr. McNULTY, Mr. MARKEY, Mr. MATSUI, Mr. GEORGE MILLER of California, Mr. NEAL of Massachusetts, Ms. LORETTA SANCHEZ of California, Mr. SANDERS, Mr. SHERMAN, Ms. SLAUGHTER, Ms. SOLIS, Mr. STARK, Mr. TIERNEY, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Ways and Means

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, 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; ETC.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Abusive Tax Shelter Shutdown and Taxpayer Account-
4 ability Act of 2003”.

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.—The table of contents for
12 this Act is as follows:

Sec. 1. Short title; etc.

Sec. 2. Findings and purpose.

TITLE I—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

Sec. 101. Clarification of economic substance doctrine.

Sec. 102. Penalty for failing to disclose reportable transaction.

Sec. 103. Accuracy-related penalty for listed transactions and other reportable
transactions having a significant tax avoidance purpose.

Sec. 104. Penalty for understatements attributable to transactions lacking eco-
nomic substance, etc.

Sec. 105. Modifications of substantial understatement penalty for nonreportable
transactions.

Sec. 106. Tax shelter exception to confidentiality privileges relating to taxpayer
communications.

Sec. 107. Disclosure of reportable transactions.

Sec. 108. Modifications to penalty for failure to register tax shelters.

Sec. 109. Modification of penalty for failure to maintain lists of investors.

Sec. 110. Modification of actions to enjoin certain conduct related to tax shel-
ters and reportable transactions.

Sec. 111. Understatement of taxpayer’s liability by income tax return preparer.

Sec. 112. Penalty on failure to report interests in foreign financial accounts.

Sec. 113. Frivolous tax submissions.

Sec. 114. Regulation of individuals practicing before the Department of Treas-
ury.

Sec. 115. Penalty on promoters of tax shelters.

Sec. 116. Statute of limitations for taxable years for which listed transactions
not reported.

Sec. 117. Denial of deduction for interest on underpayments attributable to nondisclosed reportable and noneconomic substance transactions.

TITLE II—OTHER PROVISIONS

Sec. 201. Limitation on transfer or importation of built-in losses.

Sec. 202. Disallowance of certain partnership loss transfers.

Sec. 203. No reduction of basis under section 734 in stock held by partnership in corporate partner.

Sec. 204. Repeal of special rules for FASITs.

Sec. 205. Expanded disallowance of deduction for interest on convertible debt.

Sec. 206. Expanded authority to disallow tax benefits under section 269.

Sec. 207. Modifications of certain rules relating to controlled foreign corporations.

Sec. 208. Basis for determining loss always reduced by nontaxed portion of dividends.

Sec. 209. Affirmation of consolidated return regulation authority.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress hereby finds that:

3 (1) Many corporate tax shelter transactions are
 4 complicated ways of accomplishing nothing aside
 5 from claimed tax benefits, and the legal opinions
 6 justifying those transactions take an inappropriately
 7 narrow and restrictive view of well-developed court
 8 doctrines under which—

9 (A) the taxation of a transaction is deter-
 10 mined in accordance with its substance and not
 11 merely its form,

12 (B) transactions which have no significant
 13 effect on the taxpayer's economic or beneficial
 14 interests except for tax benefits are treated as
 15 sham transactions and disregarded,

16 (C) transactions involving multiple steps
 17 are collapsed when those steps have no substan-

1 tial economic meaning and are merely designed
2 to create tax benefits,

3 (D) transactions with no business purpose
4 are not given effect, and

5 (E) in the absence of a specific congressional
6 authorization, it is presumed that Congress
7 did not intend a transaction to result in
8 a negative tax where the taxpayer's economic
9 position or rate of return is better after tax
10 than before tax.

11 (2) Permitting aggressive and abusive tax shelters
12 not only results in large revenue losses but also
13 undermines voluntary compliance with the Internal
14 Revenue Code of 1986.

15 (b) PURPOSE.—The purpose of this Act is to eliminate
16 abusive tax shelters by denying tax attributes claimed
17 to arise from transactions that do not meet a heightened
18 economic substance requirement and by repealing the provision
19 that permits legal opinions to be used to avoid penalties
20 on tax underpayments resulting from transactions
21 without significant economic substance or business purpose.
22 pose.

1 **TITLE I—PROVISIONS DESIGNED**
 2 **TO CURTAIL TAX SHELTERS**

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

5 (a) IN GENERAL.—Section 7701 is amended by re-
 6 designating subsection (m) as subsection (n) and by in-
 7 serting after subsection (l) the following new subsection:

8 “(m) CLARIFICATION OF ECONOMIC SUBSTANCE
 9 DOCTRINE; ETC.—

10 “(1) GENERAL RULES.—

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

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

17 “(i) IN GENERAL.—A transaction has
 18 economic substance only if—

19 “(I) the transaction changes in a
 20 meaningful way (apart from Federal
 21 tax effects and, if there are any Fed-
 22 eral tax effects, also apart from any
 23 foreign, State, or local tax effects) the
 24 taxpayer’s economic 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 is 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) SUBSTANTIAL NONTAX PURPOSE.—In
 25 applying subclause (II) of paragraph (1)(B)(i),

1 a purpose of achieving a financial accounting
2 benefit shall not be taken into account in deter-
3 mining whether a transaction has a substantial
4 nontax purpose if the origin of such financial
5 accounting benefit is a reduction of income tax.

6 “(D) EXCEPTION FOR PERSONAL TRANS-
7 ACTIONS OF INDIVIDUALS.—In the case of an
8 individual, this subsection shall apply only to
9 transactions entered into in connection with a
10 trade or business or an activity engaged in for
11 the production of income.

12 “(E) TREATMENT OF LESSORS.—In apply-
13 ing subclause (I) of paragraph (1)(B)(ii) to the
14 lessor of tangible property subject to a lease,
15 the expected net tax benefits shall not include
16 the benefits of depreciation, or any tax credit,
17 with respect to the leased property and sub-
18 clause (II) of paragraph (1)(B)(ii) shall be dis-
19 regarded in determining whether any of such
20 benefits are allowable.

21 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
22 FECTED.—Except as specifically provided in this
23 subsection, the provisions of this subsection shall not
24 be construed as altering or supplanting any other
25 rule of law, and the requirements of this subsection

1 shall be construed as being in addition to any such
2 other rule of law.

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

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to transactions entered into after
10 February 13, 2003.

11 **SEC. 102. PENALTY FOR FAILING TO DISCLOSE REPORT-**
12 **ABLE TRANSACTION.**

13 (a) IN GENERAL.—Part I of subchapter B of chapter
14 68 (relating to assessable penalties) is amended by insert-
15 ing after section 6707 the following new section:

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

19 “(a) IMPOSITION OF PENALTY.—Any person who
20 fails to include on any return or statement any informa-
21 tion with respect to a reportable transaction which is re-
22 quired under section 6011 to be included with such return
23 or statement shall pay a penalty in the amount determined
24 under subsection (b).

25 “(b) AMOUNT OF PENALTY.—

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

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

7 “(3) INCREASE IN PENALTY FOR LARGE ENTI-
8 TIES AND HIGH NET WORTH INDIVIDUALS.—

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

11 “(i) a large entity, or

12 “(ii) a high net worth individual,
13 the penalty under paragraph (1) or (2) shall be
14 twice the amount determined without regard to
15 this paragraph.

16 “(B) LARGE ENTITY.—For purposes of
17 subparagraph (A), the term ‘large entity’
18 means, with respect to any taxable year, a per-
19 son (other than a natural person) with gross re-
20 ceipts in excess of \$10,000,000 for the taxable
21 year in which the reportable transaction occurs
22 or the preceding taxable year. Rules similar to
23 the rules of paragraph (2) and subparagraphs
24 (B), (C), and (D) of paragraph (3) of section

1 448(c) shall apply for purposes of this subpara-
2 graph.

3 “(C) HIGH NET WORTH INDIVIDUAL.—For
4 purposes of subparagraph (A), the term ‘high
5 net worth individual’ means, with respect to a
6 reportable transaction, a natural person whose
7 net worth exceeds \$2,000,000 immediately be-
8 fore the transaction.

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

10 “(1) REPORTABLE TRANSACTION.—The term
11 ‘reportable transaction’ means any transaction with
12 respect to which information is required to be in-
13 cluded with a return or statement because, as deter-
14 mined under regulations prescribed under section
15 6011, such transaction is of a type which the Sec-
16 retary determines as having a potential for tax
17 avoidance or evasion.

18 “(2) LISTED TRANSACTION.—Except as pro-
19 vided in regulations, the term ‘listed transaction’
20 means a reportable transaction which is the same as,
21 or substantially similar to, a transaction specifically
22 identified by the Secretary as a tax avoidance trans-
23 action for purposes of section 6011.

24 “(d) AUTHORITY TO RESCIND PENALTY.—

1 “(1) IN GENERAL.—The Commissioner of In-
2 ternal Revenue may rescind all or any portion of any
3 penalty imposed by this section with respect to any
4 violation if—

5 “(A) the violation is with respect to a re-
6 portable transaction other than a listed trans-
7 action,

8 “(B) the person on whom the penalty is
9 imposed has a history of complying with the re-
10 quirements of this title,

11 “(C) it is shown that the violation is due
12 to an unintentional mistake of fact;

13 “(D) imposing the penalty would be
14 against equity and good conscience, and

15 “(E) rescinding the penalty would promote
16 compliance with the requirements of this title
17 and effective tax administration.

18 “(2) DISCRETION.—The exercise of authority
19 under paragraph (1) shall be at the sole discretion
20 of the Commissioner and may be delegated only to
21 the head of the Office of Tax Shelter Analysis. The
22 Commissioner, in the Commissioner’s sole discretion,
23 may establish a procedure to determine if a penalty
24 should be referred to the Commissioner or the head

1 of such Office for a determination under paragraph
2 (1).

3 “(3) NO APPEAL.—Notwithstanding any other
4 provision of law, any determination under this sub-
5 section may not be reviewed in any administrative or
6 judicial proceeding.

7 “(4) RECORDS.—If a penalty is rescinded under
8 paragraph (1), the Commissioner shall place in the
9 file in the Office of the Commissioner the opinion of
10 the Commissioner or the head of the Office of Tax
11 Shelter Analysis with respect to the determination,
12 including—

13 “(A) the facts and circumstances of the
14 transaction,

15 “(B) the reasons for the rescission, and

16 “(C) the amount of the penalty rescinded.

17 “(5) REPORT.—The Commissioner shall each
18 year report to the Committee on Ways and Means
19 of the House of Representatives and the Committee
20 on Finance of the Senate—

21 “(A) a summary of the total number and
22 aggregate amount of penalties imposed, and re-
23 scinded, under this section, and

1 “(B) a description of each penalty re-
2 scinded under this subsection and the reasons
3 therefor.

4 “(e) PENALTY REPORTED TO SEC.—In the case of
5 a person—

6 “(1) which is required to file periodic reports
7 under section 13 or 15(d) of the Securities Ex-
8 change Act of 1934 or is required to be consolidated
9 with another person for purposes of such reports,
10 and

11 “(2) which—

12 “(A) is required to pay a penalty under
13 this section with respect to a listed transaction,

14 “(B) is required to pay a penalty under
15 section 6662A with respect to any reportable
16 transaction at a rate prescribed under section
17 6662A(c), or

18 “(C) is required to pay a penalty under
19 section 6662B with respect to any noneconomic
20 substance transaction,

21 the requirement to pay such penalty shall be disclosed in
22 such reports filed by such person for such periods as the
23 Secretary shall specify. Failure to make a disclosure in
24 accordance with the preceding sentence shall be treated

1 as a failure to which the penalty under subsection (b)(2)
2 applies.

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

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

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

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

14 **SEC. 103. 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 PEN-**
 2 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
 3 **TO REPORTABLE TRANSACTIONS.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
 5 reportable transaction understatement for any taxable
 6 year, there shall be added to the tax an amount equal to
 7 20 percent 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
 14 any) in taxable income which results from
 15 a difference between the proper tax treat-
 16 ment of an item to which this section ap-
 17 plies and the taxpayer’s treatment of such
 18 item (as shown on the taxpayer’s return of
 19 tax), and

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

23 “(B) the amount of the decrease (if any)
 24 in the aggregate amount of credits determined
 25 under subtitle A which results from a difference
 26 between the taxpayer’s treatment of an item to

1 which this section applies (as shown on the tax-
 2 payer’s return of tax) and the proper tax treat-
 3 ment of such item.

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 SECTION APPLIES.—This
 11 section shall apply to any item which is attributable
 12 to—

13 “(A) any listed transaction, and

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 “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED
 19 AND OTHER AVOIDANCE TRANSACTIONS.—

20 “(1) IN GENERAL.—Subsection (a) shall be ap-
 21 plied by substituting ‘30 percent’ for ‘20 percent’
 22 with respect to the portion of any reportable trans-
 23 action understatement with respect to which the re-
 24 quirement of section 6664(d)(2)(A) is not met.

1 “(2) RULES APPLICABLE TO COMPROMISE OF
2 PENALTY.—

3 “(A) IN GENERAL.—If the 1st letter of
4 proposed deficiency which allows the taxpayer
5 an opportunity for administrative review in the
6 Internal Revenue Service Office of Appeals has
7 been sent with respect to a penalty to which
8 paragraph (1) applies, only the Commissioner
9 of Internal Revenue may compromise all or any
10 portion of such penalty.

11 “(B) APPLICABLE RULES.—The rules of
12 paragraphs (3), (4), and (5) of section
13 6707A(d) shall apply for purposes of subpara-
14 graph (A).

15 “(d) DEFINITIONS OF REPORTABLE AND LISTED
16 TRANSACTIONS.—For purposes of this section, the terms
17 ‘reportable transaction’ and ‘listed transaction’ have the
18 respective meanings given to such terms by section
19 6707A(c).

20 “(e) SPECIAL RULES.—

21 “(1) COORDINATION WITH PENALTIES, ETC.,
22 ON OTHER UNDERSTATEMENTS.—In the case of an
23 understatement (as defined in section 6662(d)(2))—

24 “(A) the amount of such understatement
25 (determined without regard to this paragraph)

1 shall be increased by the aggregate amount of
2 reportable transaction understatements and
3 noneconomic substance transaction understate-
4 ments for purposes of determining whether
5 such understatement is a substantial under-
6 statement under section 6662(d)(1), and

7 “(B) the addition to tax under section
8 6662(a) shall apply only to the excess of the
9 amount of the substantial understatement (if
10 any) after the application of subparagraph (A)
11 over the aggregate amount of reportable trans-
12 action understatements and noneconomic sub-
13 stance transaction understatements.

14 “(2) COORDINATION WITH OTHER PEN-
15 ALTIES.—

16 “(A) APPLICATION OF FRAUD PENALTY.—
17 References to an underpayment in section 6663
18 shall be treated as including references to a re-
19 reportable transaction understatement and a non-
20 economic substance transaction understatement.

21 “(B) NO DOUBLE PENALTY.—This section
22 shall not apply to any portion of an understate-
23 ment on which a penalty is imposed under sec-
24 tion 6662B or 6663.

1 “(3) SPECIAL RULE FOR AMENDED RE-
 2 TURNS.—Except as provided in regulations, in no
 3 event shall any tax treatment included with an
 4 amendment or supplement to a return of tax be
 5 taken into account in determining the amount of any
 6 reportable transaction understatement or non-
 7 economic substance transaction understatement if
 8 the amendment or supplement is filed after the ear-
 9 lier of the date the taxpayer is first contacted by the
 10 Secretary regarding the examination of the return or
 11 such other date as is specified by the Secretary.

12 “(4) NONECONOMIC SUBSTANCE TRANS-
 13 ACTION UNDERSTATEMENT.—For purposes of
 14 this subsection, the term ‘noneconomic sub-
 15 stance transaction understatement’ has the
 16 meaning given such term by section 6662B(c).

17 “(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the
 Securities and Exchange Commission, see section
 6707A(e).”**

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

22 “The excess under the preceding sentence shall
 23 be determined without regard to items to which
 24 section 6662A applies and without regard to

1 items with respect to which a penalty is im-
2 posed by section 6662B.”

3 (c) REASONABLE CAUSE EXCEPTION.—

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

6 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-
7 ABLE TRANSACTION UNDERSTATEMENTS.—

8 “(1) IN GENERAL.—No penalty shall be im-
9 posed under section 6662A with respect to any por-
10 tion of a reportable transaction understatement if it
11 is shown that there was a reasonable cause for such
12 portion and that the taxpayer acted in good faith
13 with respect to such portion.

14 “(2) SPECIAL RULES.—Paragraph (1) shall not
15 apply to any reportable transaction understatement
16 unless—

17 “(A) the relevant facts affecting the tax
18 treatment of the item are adequately disclosed
19 in accordance with the regulations prescribed
20 under section 6011,

21 “(B) there is or was substantial authority
22 for such treatment, and

23 “(C) the taxpayer reasonably believed that
24 such treatment was more likely than not the
25 proper treatment.

1 A taxpayer failing to adequately disclose in accord-
2 ance with section 6011 shall be treated as meeting
3 the requirements of subparagraph (A) if the penalty
4 for such failure was rescinded under section
5 6707A(d).

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

8 “(A) IN GENERAL.—A taxpayer shall be
9 treated as having a reasonable belief with re-
10 spect to the tax treatment of an item only if
11 such belief—

12 “(i) is based on the facts and law that
13 exist at the time the return of tax which
14 includes such tax treatment is filed, and

15 “(ii) relates solely to the taxpayer’s
16 chances of success on the merits of such
17 treatment and does not take into account
18 the possibility that a return will not be au-
19 dited, such treatment will not be raised on
20 audit, or such treatment will be resolved
21 through settlement if it is raised.

22 “(B) CERTAIN OPINIONS MAY NOT BE RE-
23 LIED UPON.—

24 “(i) IN GENERAL.—An opinion of a
25 tax advisor may not be relied upon to es-

1 tablish the reasonable belief of a taxpayer
2 if—

3 “(I) the tax advisor is described
4 in clause (ii), or

5 “(II) the opinion is described in
6 clause (iii).

7 “(ii) DISQUALIFIED TAX ADVISORS.—
8 A tax advisor is described in this clause if
9 the tax advisor—

10 “(I) is a material advisor (within
11 the meaning of section 6111(b)(1))
12 who participates in the organization,
13 management, promotion, or sale of
14 the transaction or who is related
15 (within the meaning of section 267(b)
16 or 707(b)(1)) to any person who so
17 participates,

18 “(II) is compensated directly or
19 indirectly by a material advisor with
20 respect to the transaction,

21 “(III) has a fee arrangement
22 with respect to the transaction which
23 is contingent on all or part of the in-
24 tended tax benefits from the trans-
25 action being sustained, or

1 “(IV) as determined under regu-
2 lations prescribed by the Secretary,
3 has a continuing financial interest
4 with respect to the transaction.

5 “(iii) DISQUALIFIED OPINIONS.—For
6 purposes of clause (i), an opinion is dis-
7 qualified if the opinion—

8 “(I) is based on unreasonable
9 factual or legal assumptions (includ-
10 ing assumptions as to future events),

11 “(II) unreasonably relies on rep-
12 resentations, statements, findings, or
13 agreements of the taxpayer or any
14 other person,

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

17 “(IV) fails to meet any other re-
18 quirement as the Secretary may pre-
19 scribe.”

20 (2) CONFORMING AMENDMENT.—The heading
21 for subsection (c) of section 6664 is amended by in-
22 serting “FOR UNDERPAYMENTS” after “EXCEP-
23 TION”.

24 (d) CONFORMING AMENDMENTS.—

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

4 (2) Paragraph (3) of section 1274(b) is amend-
5 ed—

6 (A) by striking “(as defined in section
7 6662(d)(2)(C)(iii))” in subparagraph (B)(i),
8 and

9 (B) by adding at the end the following new
10 subparagraph:

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

13 “(i) a partnership or other entity,

14 “(ii) any investment plan or arrange-
15 ment, or

16 “(iii) any other plan or arrangement,
17 if a significant purpose of such partnership, en-
18 tity, plan, or arrangement is the avoidance or
19 evasion of Federal income tax.”

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

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

4 (6)(A) The heading for section 6662 is amend-
5 ed to read as follows:

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

8 (B) The table of sections for part II of sub-
9 chapter A of chapter 68 is amended by striking the
10 item relating to section 6662 and inserting the fol-
11 lowing 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.”

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

15 **SEC. 104. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
16 **UTABLE TO TRANSACTIONS LACKING ECO-**
17 **NOMIC SUBSTANCE, ETC.**

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

1 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
2 **UTABLE TO TRANSACTIONS LACKING ECO-**
3 **NOMIC SUBSTANCE, ETC.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
5 noneconomic substance transaction understatement for
6 any taxable year, there shall be added to the tax an
7 amount equal to 40 percent of the amount of such under-
8 statement.

9 “(b) REDUCTION OF PENALTY FOR DISCLOSED
10 TRANSACTIONS.—Subsection (a) shall be applied by sub-
11 stituting ‘20 percent’ for ‘40 percent’ with respect to the
12 portion of any noneconomic substance transaction under-
13 statement with respect to which the relevant facts affect-
14 ing the tax treatment of the item are adequately disclosed
15 in the return or a statement attached to the return.

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

18 “(1) IN GENERAL.—The term ‘noneconomic
19 substance transaction understatement’ means any
20 amount which would be an understatement under
21 section 6662A(b)(1) if section 6662A were applied
22 by taking into account items attributable to non-
23 economic substance transactions rather than items
24 to which section 6662A would apply without regard
25 to this paragraph.

1 “(2) NONECONOMIC SUBSTANCE TRANS-
2 ACTION.—The term ‘noneconomic substance trans-
3 action’ means any transaction if—

4 “(A) there is a lack of economic substance
5 (within the meaning of section 7701(m)(1)) for
6 the transaction giving rise to the claimed tax
7 benefit or the transaction was not respected
8 under section 7701(m)(2), or

9 “(B) the transaction fails to meet the re-
10 quirements of any similar rule of law.

11 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
12 ALTY.—

13 “(1) IN GENERAL.—If the 1st letter of pro-
14 posed deficiency which allows the taxpayer an oppor-
15 tunity for administrative review in the Internal Rev-
16 enue Service Office of Appeals has been sent with
17 respect to a penalty to which this section applies,
18 only the Commissioner of Internal Revenue may
19 compromise all or any portion of such penalty.

20 “(2) APPLICABLE RULES.—The rules of para-
21 graphs (3), (4), and (5) of section 6707A(d) shall
22 apply for purposes of paragraph (1).

23 “(e) COORDINATION WITH OTHER PENALTIES.—Ex-
24 cept as otherwise provided in this part, the penalty im-

1 posed by this section shall be in addition to any other pen-
 2 alty imposed by this title.

3 “(f) CROSS REFERENCES.—

“**(1) For coordination of penalty with understate-
 ments under section 6662 and other special rules,
 see section 6662A(e).**

“**(2) For reporting of penalty imposed under this
 section to the Securities and Exchange Commission,
 see section 6707A(e).**”

4 (b) CLERICAL AMENDMENT.—The table of sections
 5 for part II of subchapter A of chapter 68 is amended by
 6 inserting after the item relating to section 6662A the fol-
 7 lowing new item:

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

8 (c) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to transactions entered into after
 10 February 13, 2003.

11 **SEC. 105. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**
 12 **MENT PENALTY FOR NONREPORTABLE**
 13 **TRANSACTIONS.**

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

17 “(B) SPECIAL RULE FOR CORPORA-
 18 TIONS.—In the case of a corporation other than
 19 an S corporation or a personal holding company
 20 (as defined in section 542), there is a substan-
 21 tial understatement of income tax for any tax-

1 able year if the amount of the understatement
2 for the taxable year exceeds the lesser of—

3 “(i) 10 percent of the tax required to
4 be shown on the return for the taxable
5 year (or, if greater, \$10,000), or

6 “(ii) \$10,000,000.”

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

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

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

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

20 “(3) SECRETARIAL LIST.—For purposes of this
21 subsection, section 6664(d)(2), and section
22 6694(a)(1), the Secretary may prescribe a list of po-
23 sitions for which the Secretary believes there is not
24 substantial authority or there is no reasonable belief
25 that the tax treatment is more likely than not the

1 proper tax treatment. Such list (and any revisions
 2 thereof) shall be published in the Federal Register
 3 or the Internal Revenue Bulletin.”

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

7 **SEC. 106. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**
 8 **PRIVILEGES RELATING TO TAXPAYER COM-**
 9 **MUNICATIONS.**

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

13 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS
 14 REGARDING TAX SHELTERS.—The privilege under sub-
 15 section (a) shall not apply to any written communication
 16 which is—

17 “(1) between a federally authorized tax practi-
 18 tioner and—

19 “(A) any person,

20 “(B) any director, officer, employee, agent,
 21 or representative of the person, or

22 “(C) any other person holding a capital or
 23 profits interest in the person, and

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

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

7 **SEC. 107. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

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

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

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

15 “(1) information identifying and describing the
 16 transaction,

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

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

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

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

24 “(1) MATERIAL ADVISOR.—

1 “(A) IN GENERAL.—The term ‘material
2 advisor’ means any person—

3 “(i) who provides any material aid,
4 assistance, or advice with respect to orga-
5 nizing, promoting, selling, implementing,
6 or carrying out any reportable transaction,
7 and

8 “(ii) who directly or indirectly derives
9 gross income in excess of the threshold
10 amount for such aid, assistance, or advice.

11 “(B) THRESHOLD AMOUNT.—For purposes
12 of subparagraph (A), the threshold amount is—

13 “(i) \$50,000 in the case of a report-
14 able transaction substantially all of the tax
15 benefits from which are provided to nat-
16 ural persons, and

17 “(ii) \$250,000 in any other case.

18 “(2) REPORTABLE TRANSACTION.—The term
19 ‘reportable transaction’ has the meaning given to
20 such term by section 6707A(c).

21 “(c) REGULATIONS.—The Secretary may prescribe
22 regulations which provide—

23 “(1) that only 1 person shall be required to
24 meet the requirements of subsection (a) in cases in

1 which 2 or more persons would otherwise be re-
2 quired to meet such requirements,

3 “(2) exemptions from the requirements of this
4 section, and

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

7 (b) CONFORMING AMENDMENTS.—

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

 “Sec. 6111. Disclosure of reportable transactions.”

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

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

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

20 “(1) identifying each person with respect to
21 whom such advisor acted as such a material advisor
22 with respect to such transaction, and

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

1 This section shall apply without regard to whether a mate-
 2 rial advisor is required to file a return under section 6111
 3 with respect to such transaction.”

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

6 (C) Section 6112(b), as redesignated by sub-
 7 paragraph (B), is amended—

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

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

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

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

15 (3)(A) The heading for section 6708 is amend-
 16 ed to read as follows:

17 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**
 18 **WITH RESPECT TO REPORTABLE TRANS-**
 19 **ACTIONS.”**

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

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

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to transactions with respect to
 3 which material aid, assistance, or advice referred to in sec-
 4 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of
 5 1986 (as added by this section) is provided after the date
 6 of the enactment of this Act.

7 **SEC. 108. MODIFICATIONS TO PENALTY FOR FAILURE TO**
 8 **REGISTER TAX SHELTERS.**

9 (a) IN GENERAL.—Section 6707 (relating to failure
 10 to furnish information regarding tax shelters) is amended
 11 to read as follows:

12 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**
 13 **ING REPORTABLE TRANSACTIONS.**

14 “(a) IN GENERAL.—If a person who is required to
 15 file a return under section 6111(a) with respect to any
 16 reportable transaction—

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

19 “(2) files false or incomplete information with
 20 the Secretary with respect to such transaction,

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

23 “(b) AMOUNT OF PENALTY.—

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

4 “(2) LISTED TRANSACTIONS.—The penalty im-
 5 posed under subsection (a) with respect to any listed
 6 transaction shall be an amount equal to the greater
 7 of—

8 “(A) \$200,000, or

9 “(B) 50 percent of the gross income de-
 10 rived by such person with respect to aid, assist-
 11 ance, or advice which is provided with respect
 12 to the reportable transaction before the date the
 13 return including the transaction is filed under
 14 section 6111.

15 Subparagraph (B) shall be applied by substituting
 16 ‘75 percent’ for ‘50 percent’ in the case of an inten-
 17 tional failure or act described in subsection (a).

18 “(c) RESCISSION AUTHORITY.—The provisions of
 19 section 6707A(d) (relating to authority of Commissioner
 20 to rescind penalty) shall apply to any penalty imposed
 21 under this section.

22 “(d) REPORTABLE AND LISTED TRANSACTIONS.—
 23 The terms ‘reportable transaction’ and ‘listed transaction’
 24 have the respective meanings given to such terms by sec-
 25 tion 6707A(c).”.

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

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to returns the due date for which
 7 is after the date of the enactment of this Act.

8 **SEC. 109. MODIFICATION OF PENALTY FOR FAILURE TO**
 9 **MAINTAIN LISTS OF INVESTORS.**

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

12 “(a) IMPOSITION OF PENALTY.—

13 “(1) IN GENERAL.—If any person who is re-
 14 quired to maintain a list under section 6112(a) fails
 15 to make such list available upon written request to
 16 the Secretary in accordance with section
 17 6112(b)(1)(A) within 20 business days after the
 18 date of the Secretary’s request, such person shall
 19 pay a penalty of \$10,000 for each day of such fail-
 20 ure after such 20th day.

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

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

4 **SEC. 110. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN**
5 **CONDUCT RELATED TO TAX SHELTERS AND**
6 **REPORTABLE TRANSACTIONS.**

7 (a) IN GENERAL.—Section 7408 (relating to action
8 to enjoin promoters of abusive tax shelters, etc.) is amend-
9 ed by redesignating subsection (c) as subsection (d) and
10 by striking subsections (a) and (b) and inserting the fol-
11 lowing new subsections:

12 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-
13 tion in the name of the United States to enjoin any person
14 from further engaging in specified conduct may be com-
15 menced at the request of the Secretary. Any action under
16 this section shall be brought in the district court of the
17 United States for the district in which such person resides,
18 has his principal place of business, or has engaged in spec-
19 ified conduct. The court may exercise its jurisdiction over
20 such action (as provided in section 7402(a)) separate and
21 apart from any other action brought by the United States
22 against such person.

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

1 “(1) that the person has engaged in any speci-
2 fied conduct, and

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

5 the court may enjoin such person from engaging in such
6 conduct or in any other activity subject to penalty under
7 this title.

8 “(c) SPECIFIED CONDUCT.—For purposes of this
9 section, the term ‘specified conduct’ means any action, or
10 failure to take action, subject to penalty under section
11 6700, 6701, 6707, or 6708.”

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading for section 7408 is amended to
14 read as follows:

15 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**
16 **LATED TO TAX SHELTERS AND REPORTABLE**
17 **TRANSACTIONS.”**

18 (2) The table of sections for subchapter A of
19 chapter 67 is amended by striking the item relating
20 to section 7408 and inserting the following new
21 item:

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

22 (c) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect on the day after the date of
24 the enactment of this Act.

1 **SEC. 111. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY**
2 **INCOME TAX RETURN PREPARER.**

3 (a) STANDARDS CONFORMED TO TAXPAYER STAND-
4 ARDS.—Section 6694(a) (relating to understatements due
5 to unrealistic positions) is amended—

6 (1) by striking “realistic possibility of being
7 sustained on its merits” in paragraph (1) and in-
8 serting “reasonable belief that the tax treatment in
9 such position was more likely than not the proper
10 treatment”,

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

14 (3) by striking “UNREALISTIC” in the heading
15 and inserting “IMPROPER”.

16 (b) AMOUNT OF PENALTY.—Section 6694 is amend-
17 ed—

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

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

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

1 **SEC. 112. PENALTY ON FAILURE TO REPORT INTERESTS IN**
2 **FOREIGN FINANCIAL ACCOUNTS.**

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

5 “(5) FOREIGN FINANCIAL AGENCY TRANS-
6 ACTION VIOLATION.—

7 “(A) PENALTY AUTHORIZED.—The Sec-
8 retary of the Treasury may impose a civil
9 money penalty on any person who violates, or
10 causes any violation of, any provision of section
11 5314.

12 “(B) AMOUNT OF PENALTY.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in subparagraph (C), the amount of
15 any civil penalty imposed under subpara-
16 graph (A) shall not exceed \$5,000.

17 “(ii) REASONABLE CAUSE EXCEP-
18 TION.—No penalty shall be imposed under
19 subparagraph (A) with respect to any vio-
20 lation if—

21 “(I) such violation was due to
22 reasonable cause, and

23 “(II) the amount of the trans-
24 action or the balance in the account
25 at the time of the transaction was
26 properly reported.

1 “(C) WILLFUL VIOLATIONS.—In the case
2 of any person willfully violating, or willfully
3 causing any violation of, any provision of sec-
4 tion 5314—

5 “(i) the maximum penalty under sub-
6 paragraph (B)(i) shall be increased to the
7 greater of—

8 “(I) \$25,000, or

9 “(II) the amount (not exceeding
10 \$100,000) determined under subpara-
11 graph (D), and

12 “(ii) subparagraph (B)(ii) shall not
13 apply.

14 “(D) AMOUNT.—The amount determined
15 under this subparagraph is—

16 “(i) in the case of a violation involving
17 a transaction, the amount of the trans-
18 action, or

19 “(ii) in the case of a violation involv-
20 ing a failure to report the existence of an
21 account or any identifying information re-
22 quired to be provided with respect to an
23 account, the balance in the account at the
24 time of the violation.”

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

4 **SEC. 113. FRIVOLOUS TAX SUBMISSIONS.**

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

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

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

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

12 “(A) does not contain information on
13 which the substantial correctness of the self-as-
14 sessment may be judged, or

15 “(B) contains information that on its face
16 indicates that the self-assessment is substan-
17 tially incorrect; and

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

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

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

24 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS
25 SUBMISSIONS.—

1 “(1) IMPOSITION OF PENALTY.—Except as pro-
 2 vided in paragraph (3), any person who submits a
 3 specified frivolous submission shall pay a penalty of
 4 \$5,000.

5 “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For
 6 purposes of this section—

7 “(A) SPECIFIED FRIVOLOUS SUBMIS-
 8 SION.—The term ‘specified frivolous submis-
 9 sion’ means a specified submission if any por-
 10 tion of such submission—

11 “(i) is based on a position which the
 12 Secretary has identified as frivolous under
 13 subsection (c), or

14 “(ii) reflects a desire to delay or im-
 15 pede the administration of Federal tax
 16 laws.

17 “(B) SPECIFIED SUBMISSION.—The term
 18 ‘specified submission’ means—

19 “(i) a request for a hearing under—

20 “(I) section 6320 (relating to no-
 21 tice and opportunity for hearing upon
 22 filing of notice of lien), or

23 “(II) section 6330 (relating to
 24 notice and opportunity for hearing be-
 25 fore levy), and

1 “(ii) an application under—

2 “(I) section 6159 (relating to
3 agreements for payment of tax liabil-
4 ity in installments),

5 “(II) section 7122 (relating to
6 compromises), or

7 “(III) section 7811 (relating to
8 taxpayer assistance orders).

9 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-
10 SION.—If the Secretary provides a person with no-
11 tice that a submission is a specified frivolous sub-
12 mission and such person withdraws such submission
13 within 30 days after such notice, the penalty im-
14 posed under paragraph (1) shall not apply with re-
15 spect to such submission.

16 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-
17 retary shall prescribe (and periodically revise) a list of po-
18 sitions which the Secretary has identified as being frivo-
19 lous for purposes of this subsection. The Secretary shall
20 not include in such list any position that the Secretary
21 determines meets the requirement of section
22 6662(d)(2)(B)(ii)(II).

23 “(d) REDUCTION OF PENALTY.—The Secretary may
24 reduce the amount of any penalty imposed under this sec-
25 tion if the Secretary determines that such reduction would

1 promote compliance with and administration of the Fed-
2 eral tax laws.

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

6 (b) TREATMENT OF FRIVOLOUS REQUESTS FOR
7 HEARINGS BEFORE LEVY.—

8 (1) FRIVOLOUS REQUESTS DISREGARDED.—

9 Section 6330 (relating to notice and opportunity for
10 hearing before levy) is amended by adding at the
11 end the following new subsection:

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

20 (2) PRECLUSION FROM RAISING FRIVOLOUS
21 ISSUES AT HEARING.—Section 6330(c)(4) is amend-
22 ed—

23 (A) by striking “(A)” and inserting
24 “(A)(i)”;

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

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

3 (D) by inserting after subparagraph (A)(ii)
4 (as so redesignated) the following:

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

7 (3) STATEMENT OF GROUNDS.—Section
8 6330(b)(1) is amended by striking “under sub-
9 section (a)(3)(B)” and inserting “in writing under
10 subsection (a)(3)(B) and states the grounds for the
11 requested hearing”.

12 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR
13 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
14 6320 is amended—

15 (1) in subsection (b)(1), by striking “under sub-
16 section (a)(3)(B)” and inserting “in writing under
17 subsection (a)(3)(B) and states the grounds for the
18 requested hearing”, and

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

21 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR
22 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-
23 MENTS.—Section 7122 is amended by adding at the end
24 the following new subsection:

“Sec. 6702. Frivolous tax submissions.”

19 SEC. 114. REGULATION OF INDIVIDUALS PRACTICING BE-
20 FORE THE DEPARTMENT OF TREASURY.

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

24 (A) by inserting “, or censure,” after “De-
25 partment”, and

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

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

14 (2) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to actions taken after
16 the date of the enactment of this Act.

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

20 “(d) Nothing in this section or in any other provision
21 of law shall be construed to limit the authority of the Sec-
22 retary of the Treasury to impose standards applicable to
23 the rendering of written advice with respect to any entity,
24 transaction plan or arrangement, or other plan or arrange-

1 ment, which is of a type which the Secretary determines
 2 as having a potential for tax avoidance or evasion.”

3 **SEC. 115. PENALTY ON PROMOTERS OF TAX SHELTERS.**

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

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

16 **SEC. 116. STATUTE OF LIMITATIONS FOR TAXABLE YEARS**
 17 **FOR WHICH LISTED TRANSACTIONS NOT RE-**
 18 **PORTED.**

19 (a) IN GENERAL.—Section 6501(e)(1) (relating to
 20 substantial omission of items for income taxes) is amended
 21 by adding at the end the following new subparagraph:

22 “(C) LISTED TRANSACTIONS.—If a tax-
 23 payer fails to include on any return or state-
 24 ment for any taxable year any information with
 25 respect to a listed transaction (as defined in

1 section 6707A(c)(2)) which is required under
 2 section 6011 to be included with such return or
 3 statement, the tax for such taxable year may be
 4 assessed, or a proceeding in court for collection
 5 of such tax may be begun without assessment,
 6 at any time within 6 years after the time the
 7 return is filed. This subparagraph shall not
 8 apply to any taxable year if the time for assess-
 9 ment or beginning the proceeding in court has
 10 expired before the time a transaction is treated
 11 as a listed transaction under section 6011.”

12 (b) EFFECTIVE DATE.—The amendment made by
 13 this section shall apply to transactions after the date of
 14 the enactment of this Act in taxable years ending after
 15 such date.

16 **SEC. 117. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
 17 **DERPAYMENTS ATTRIBUTABLE TO NONDIS-**
 18 **CLOSED REPORTABLE AND NONECONOMIC**
 19 **SUBSTANCE TRANSACTIONS.**

20 (a) IN GENERAL.—Section 163 (relating to deduction
 21 for interest) is amended by redesignating subsection (m)
 22 as subsection (n) and by inserting after subsection (l) the
 23 following new subsection:

24 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
 25 TO NONDISCLOSED REPORTABLE TRANSACTIONS AND

1 NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduc-
 2 tion shall be allowed under this chapter for any interest
 3 paid or accrued under section 6601 on any underpayment
 4 of tax which is attributable to—

5 “(1) the portion of any reportable transaction
 6 understatement (as defined in section 6662A(b))
 7 with respect to which the requirement of section
 8 6664(d)(2)(A) is not met, or

9 “(2) any noneconomic substance transaction
 10 understatement (as defined in section 6662B(c)).”

11 (b) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to transactions after the date of
 13 the enactment of this Act in taxable years ending after
 14 such date.

15 **TITLE II—OTHER PROVISIONS**

16 **SEC. 201. LIMITATION ON TRANSFER OR IMPORTATION OF** 17 **BUILT-IN LOSSES.**

18 (a) IN GENERAL.—Section 362 (relating to basis to
 19 corporations) is amended by adding at the end the fol-
 20 lowing new subsection:

21 “(e) LIMITATIONS ON BUILT-IN LOSSES.—

22 “(1) LIMITATION ON IMPORTATION OF BUILT-
 23 IN LOSSES.—

24 “(A) IN GENERAL.—If in any transaction
 25 described in subsection (a) or (b) there would

(but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

“(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this paragraph if—

“(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

“(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner’s proportionate share of the property of such partnership.

“(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in

a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction."

"(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

"(A) IN GENERAL.—If—

"(i) property is transferred in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

"(ii) the transferee's aggregate adjusted bases of the property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

"(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by

1 reason of subparagraph (A) shall be allocated
 2 among the property so transferred in proportion
 3 to their respective built-in losses immediately
 4 before the transaction.

5 “(C) EXCEPTION FOR TRANSFERS WITHIN
 6 AFFILIATED GROUP.—Subparagraph (A) shall
 7 not apply to any transaction if the transferor
 8 owns stock in the transferee meeting the re-
 9 quirements of section 1504(a)(2). In the case of
 10 property to which subparagraph (A) does not
 11 apply by reason of the preceding sentence, the
 12 transferor’s basis in the stock received for such
 13 property shall not exceed its fair market value
 14 immediately after the transfer.”

15 (b) COMPARABLE TREATMENT WHERE LIQUIDA-
 16 TION.—Paragraph (1) of section 334(b) (relating to liq-
 17 uidation of subsidiary) is amended to read as follows:

18 “(1) IN GENERAL.—If property is received by a
 19 corporate distributee in a distribution in a complete
 20 liquidation to which section 332 applies (or in a
 21 transfer described in section 337(b)(1)), the basis of
 22 such property in the hands of such distributee shall
 23 be the same as it would be in the hands of the trans-
 24 feror; except that the basis of such property in the
 25 hands of such distributee shall be the fair market

1 value of the property at the time of the distribu-
 2 tion—

3 “(A) in any case in which gain or loss is
 4 recognized by the liquidating corporation with
 5 respect to such property, or

6 “(B) in any case in which the liquidating
 7 corporation is a foreign corporation, the cor-
 8 porate distributee is a domestic corporation,
 9 and the corporate distributee’s aggregate ad-
 10 justed bases of property described in section
 11 362(e)(1)(B) which is distributed in such liq-
 12 uidation would (but for this subparagraph) ex-
 13 ceed the fair market value of such property im-
 14 mediately after such liquidation.”

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

18 **SEC. 202. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS**
 19 **TRANSFERS.**

20 (a) TREATMENT OF CONTRIBUTED PROPERTY WITH
 21 BUILT-IN LOSS.—Paragraph (1) of section 704(c) is
 22 amended by striking “and” at the end of subparagraph
 23 (A), by striking the period at the end of subparagraph
 24 (B) and inserting “, and”, and by adding at the end the
 25 following:

1 “(C) if any property so contributed has a
2 built-in loss—

3 “(i) such built-in loss shall be taken
4 into account only in determining the
5 amount of items allocated to the contrib-
6 uting partner, and

7 “(ii) except as provided in regulations,
8 in determining the amount of items allo-
9 cated to other partners, the basis of the
10 contributed property in the hands of the
11 partnership shall be treated as being equal
12 to its fair market value immediately after
13 the contribution.

14 For purposes of subparagraph (C), the term ‘built-
15 in loss’ means the excess of the adjusted basis of the
16 property (determined without regard to subpara-
17 graph (C)(ii)) over its fair market value immediately
18 after the contribution.”

19 (b) ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-
20 ERTY ON TRANSFER OF PARTNERSHIP INTEREST IF
21 THERE IS SUBSTANTIAL BUILT-IN LOSS.—

22 (1) ADJUSTMENT REQUIRED.—Subsection (a)
23 of section 743 (relating to optional adjustment to
24 basis of partnership property) is amended by insert-
25 ing before the period “or unless the partnership has

1 a substantial built-in loss immediately after such
2 transfer”.

3 (2) ADJUSTMENT.—Subsection (b) of section
4 743 is amended by inserting “or with respect to
5 which there is a substantial built-in loss immediately
6 after such transfer” after “section 754 is in effect”.

7 (3) SUBSTANTIAL BUILT-IN LOSS.—Section 743
8 is amended by adding at the end the following new
9 subsection:

10 “(d) SUBSTANTIAL BUILT-IN LOSS.—

11 “(1) IN GENERAL.—For purposes of this sec-
12 tion, a partnership has a substantial built-in loss
13 with respect to a transfer of an interest in a part-
14 nership if the transferee partner’s proportionate
15 share of the adjusted basis of the partnership prop-
16 erty exceeds by more than \$250,000 the basis of
17 such partner’s interest in the partnership.

18 “(2) REGULATIONS.—The Secretary shall pre-
19 scribe such regulations as may be appropriate to
20 carry out the purposes of paragraph (1) and section
21 734(d), including regulations aggregating related
22 partnerships and disregarding property acquired by
23 the partnership in an attempt to avoid such pur-
24 poses.”

25 (4) CLERICAL AMENDMENTS.—

1 (A) The section heading for section 743 is
 2 amended to read as follows:

3 **“SEC. 743. ADJUSTMENT TO BASIS OF PARTNERSHIP PROP-**
 4 **ERTY WHERE SECTION 754 ELECTION OR**
 5 **SUBSTANTIAL BUILT-IN LOSS.”**

6 (B) The table of sections for subpart C of
 7 part II of subchapter K of chapter 1 is amend-
 8 ed by striking the item relating to section 743
 9 and inserting the following new item:

“Sec. 743. Adjustment to basis of partnership property where sec-
 tion 754 election or substantial built-in loss.”

10 (c) **ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
 11 **PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL**
 12 **BASIS REDUCTION.—**

13 (1) **ADJUSTMENT REQUIRED.—**Subsection (a)
 14 of section 734 (relating to optional adjustment to
 15 basis of undistributed partnership property) is
 16 amended by inserting before the period “or unless
 17 there is a substantial basis reduction”.

18 (2) **ADJUSTMENT.—**Subsection (b) of section
 19 734 is amended by inserting “or unless there is a
 20 substantial basis reduction” after “section 754 is in
 21 effect”.

22 (3) **SUBSTANTIAL BASIS REDUCTION.—**Section
 23 734 is amended by adding at the end the following
 24 new subsection:

1 “(d) SUBSTANTIAL BASIS REDUCTION.—

2 “(1) IN GENERAL.—For purposes of this sec-
 3 tion, there is a substantial basis reduction with re-
 4 spect to a distribution if the sum of the amounts de-
 5 scribed in subparagraphs (A) and (B) of subsection
 6 (b)(2) exceeds \$250,000.

7 “(2) REGULATIONS.—

“For regulations to carry out this subsection, see
 section 743(d)(2).”

8 (4) CLERICAL AMENDMENTS.—

9 (A) The section heading for section 734 is
 10 amended to read as follows:

11 **“SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED**
 12 **PARTNERSHIP PROPERTY WHERE SECTION**
 13 **754 ELECTION OR SUBSTANTIAL BASIS RE-**
 14 **DUCTION.”**

15 (B) The table of sections for subpart B of
 16 part II of subchapter K of chapter 1 is amend-
 17 ed by striking the item relating to section 734
 18 and inserting the following new item:

“Sec. 734. Adjustment to basis of undistributed partnership prop-
 erty where section 754 election or substantial basis
 reduction.”

19 (d) EFFECTIVE DATES.—

20 (1) SUBSECTION (a).—The amendment made
 21 by subsection (a) shall apply to contributions made
 22 after the date of the enactment of this Act.

1 (2) SUBSECTION (b).—The amendments made
2 by subsection (b) shall apply to transfers after the
3 date of the enactment of this Act.

4 (3) SUBSECTION (c).—The amendments made
5 by subsection (c) shall apply to distributions after
6 the date of the enactment of this Act.

7 **SEC. 203. NO REDUCTION OF BASIS UNDER SECTION 734 IN**
8 **STOCK HELD BY PARTNERSHIP IN COR-**
9 **PORATE PARTNER.**

10 (a) IN GENERAL.—Section 755 is amended by adding
11 at the end the following new subsection:

12 “(c) NO ALLOCATION OF BASIS DECREASE TO
13 STOCK OF CORPORATE PARTNER.—In making an alloca-
14 tion under subsection (a) of any decrease in the adjusted
15 basis of partnership property under section 734(b)—

16 “(1) no allocation may be made to stock in a
17 corporation which is a partner in the partnership,
18 and

19 “(2) any amount not allocable to stock by rea-
20 son of paragraph (1) shall be allocated under sub-
21 section (a) to other partnership property.

22 Gain shall be recognized to the partnership to the extent
23 that the amount required to be allocated under paragraph
24 (2) to other partnership property exceeds the aggregate

1 adjusted basis of such other property immediately before
2 the allocation required by paragraph (2).”

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

6 **SEC. 204. REPEAL OF SPECIAL RULES FOR FASITS.**

7 (a) IN GENERAL.—Part V of subchapter M of chap-
8 ter 1 (relating to financial asset securitization investment
9 trusts) is hereby repealed.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Paragraph (6) of section 56(g) is amended
12 by striking “REMIC, or FASIT” and inserting “or
13 REMIC”.

14 (2) Clause (ii) of section 382(l)(4)(B) is amend-
15 ed by striking “a REMIC to which part IV of sub-
16 chapter M applies, or a FASIT to which part V of
17 subchapter M applies,” and inserting “or a REMIC
18 to which part IV of subchapter M applies,”.

19 (3) Paragraph (1) of section 582(c) is amended
20 by striking “, and any regular interest in a
21 FASIT,”.

22 (4) Subparagraph (E) of section 856(c)(5) is
23 amended by striking the last sentence.

24 (5) Paragraph (5) of section 860G(a) is amend-
25 ed by adding “and” at the end of subparagraph (B),

1 by striking “, and” at the end of subparagraph (C)
2 and inserting a period, and by striking subparagraph
3 (D).

4 (6) Subparagraph (C) of section 1202(e)(4) is
5 amended by striking “REMIC, or FASIT” and in-
6 serting “or REMIC”.

7 (7) Subparagraph (C) of section 7701(a)(19) is
8 amended by adding “and” at the end of clause (ix),
9 by striking “, and” at the end of clause (x) and in-
10 serting a period, and by striking clause (xi).

11 (8) The table of parts for subchapter M of
12 chapter 1 is amended by striking the item relating
13 to part V.

14 (c) EFFECTIVE DATE.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the amendments made by this section
17 shall apply to taxable years beginning after Decem-
18 ber 31, 2003.

19 (2) EXCEPTION FOR EXISTING FASITS.—

20 (A) IN GENERAL.—Paragraph (1) shall not
21 apply to any FASIT in existence on the date of
22 the enactment of this Act.

23 (B) TRANSFER OF ADDITIONAL ASSETS
24 NOT PERMITTED.—Except as provided in regu-
25 lations prescribed by the Secretary of the

1 Treasury or the Secretary's delegate, subpara-
 2 graph (A) shall cease to apply as of the earliest
 3 date after the date of the enactment of this Act
 4 that any property is transferred to the FASIT.

5 **SEC. 205. EXPANDED DISALLOWANCE OF DEDUCTION FOR**
 6 **INTEREST ON CONVERTIBLE DEBT.**

7 (a) IN GENERAL.—Paragraph (2) of section 163(l)
 8 is amended by striking “or a related party” and inserting
 9 “or equity held by the issuer (or any related party) in any
 10 other person”.

11 (b) CONFORMING AMENDMENT.—Paragraph (3) of
 12 section 163(l) is amended by striking “or a related party”
 13 in the material preceding subparagraph (A) and inserting
 14 “or any other person”.

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

18 **SEC. 206. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**
 19 **FITS UNDER SECTION 269.**

20 (a) IN GENERAL.—Subsection (a) of section 269 (re-
 21 lating to acquisitions made to evade or avoid income tax)
 22 is amended to read as follows:

23 “(a) IN GENERAL.—If—

24 “(1)(A) any person acquires stock in a corpora-
 25 tion, or

1 “(B) any corporation acquires, directly or indi-
2 rectly, property of another corporation and the basis
3 of such property, in the hands of the acquiring cor-
4 poration, is determined by reference to the basis in
5 the hands of the transferor corporation, and

6 “(2) the principal purpose for which such acqui-
7 sition was made is evasion or avoidance of Federal
8 income tax by securing the benefit of a deduction,
9 credit, or other allowance,
10 then the Secretary may disallow such deduction, credit,
11 or other allowance.”

12 (b) EFFECTIVE DATE.—The amendment made by
13 this section shall apply to stock and property acquired
14 after February 13, 2003.

15 **SEC. 207. MODIFICATIONS OF CERTAIN RULES RELATING**
16 **TO CONTROLLED FOREIGN CORPORATIONS.**

17 (a) LIMITATION ON EXCEPTION FROM PFIC RULES
18 FOR UNITED STATES SHAREHOLDERS OF CONTROLLED
19 FOREIGN CORPORATIONS.—Paragraph (2) of section
20 1297(e) (relating to passive investment company) is
21 amended by adding at the end the following flush sen-
22 tence:

23 “Such term shall not include any period if there is
24 only a remote likelihood of an inclusion in gross in-

1 come under section 951(a)(1)(A)(i) of subpart F in-
2 come of such corporation for such period.”

3 (b) DETERMINATION OF PRO RATA SHARE OF SUB-
4 PART F INCOME.—Subsection (a) of section 951 (relating
5 to amounts included in gross income of United States
6 shareholders) is amended by adding at the end the fol-
7 lowing new paragraph:

8 “(4) SPECIAL RULES FOR DETERMINING PRO
9 RATA SHARE OF SUBPART F INCOME.—The pro rata
10 share under paragraph (2) shall be determined by
11 disregarding—

12 “(A) any rights lacking substantial eco-
13 nomic effect, and

14 “(B) stock owned by a shareholder who is
15 a tax-indifferent party (as defined in section
16 7701(m)(3)) if the amount which would (but
17 for this paragraph) be allocated to such share-
18 holder does not reflect such shareholder’s eco-
19 nomic share of the earnings and profits of the
20 corporation.”

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years on controlled for-
23 eign corporation beginning after February 13, 2003, and
24 to taxable years of United States shareholder in which or

1 with which such taxable years of controlled foreign cor-
2 porations end.

3 **SEC. 208. BASIS FOR DETERMINING LOSS ALWAYS RE-**
4 **DUCED BY NONTAXED PORTION OF DIVI-**
5 **DENDS.**

6 (a) IN GENERAL.—Section 1059 (relating to cor-
7 porate shareholder’s basis in stock reduced by nontaxed
8 portion of extraordinary dividends) is amended by redesign-
9 nating subsection (g) as subsection (h) and by inserting
10 after subsection (f) the following new subsection:

11 “(g) BASIS FOR DETERMINING LOSS ALWAYS RE-
12 DUCED BY NONTAXED PORTION OF DIVIDENDS.—The
13 basis of stock in a corporation (for purposes of deter-
14 mining loss) shall be reduced by the nontaxed portion of
15 any dividend received with respect to such stock if this
16 section does not otherwise apply to such dividend.”

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

20 **SEC. 209. AFFIRMATION OF CONSOLIDATED RETURN REGU-**
21 **LATION AUTHORITY.**

22 (a) IN GENERAL.—Section 1502 (relating to consoli-
23 dated return regulations) is amended by adding at the end
24 the following new sentence: “In prescribing such regula-
25 tions, the Secretary may prescribe rules applicable to cor-

1 porations filing consolidated returns under section 1501
2 that are different from other provisions of this title that
3 would apply if such corporations filed separate returns.”

4 (b) RESULT NOT OVERTURNED.—Notwithstanding
5 subsection (a), the Internal Revenue Code of 1986 shall
6 be construed by treating Treasury regulation § 1.1502–
7 20(c)(1)(iii) (as in effect on January 1, 2001) as being
8 inapplicable to the type of factual situation in 255 F.3d
9 1357 (Fed. Cir. 2001).

10 (c) EFFECTIVE DATE.—The provisions of this section
11 shall apply to taxable years beginning before, on, or after
12 the date of the enactment of this Act.

○