

108TH CONGRESS  
1ST SESSION

# H. R. 3599

To prevent corporate auditors from providing tax shelter services to their  
audit clients.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Mr. EMANUEL (for himself, Mr. FOLEY, Mr. STUPAK, Mr. CAMP, and Mr. LANTOS) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To prevent corporate auditors from providing tax shelter  
services to their audit clients.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Auditor Independence  
5 and Tax Shelters Act”.

6 **SEC. 2. PROHIBITION ON AUDITORS PROVIDING TAX SHEL-**  
7 **TER SERVICES TO AUDIT CLIENTS.**

8 Section 10A of the Securities Exchange Act of 1934  
9 (15 U.S.C. 78j–1) is amended—

10 (1) in subsection (f)—

1 (A) in the first sentence, by striking “sec-  
2 tion, the term” and inserting the following:  
3 “section—  
4 “(1) the term”;

5 (B) by striking “law. As used in this sec-  
6 tion, the term” and inserting the following:  
7 “law;  
8 “(2) the term”; and

9 (C) by striking the period at the end and  
10 inserting the following: “; and

11 “(3) the term ‘tax shelter services’ means serv-  
12 ices provided by a registered public accounting firm  
13 (or by an associated person of that firm) to an  
14 issuer, or an officer or director of an issuer, to de-  
15 sign, organize, promote, assist, or execute any in-  
16 vestment, entity, plan, arrangement, or transaction  
17 for which a significant purpose is the avoidance or  
18 evasion of Federal income tax by such issuer, or an  
19 officer or director of such issuer, whether acting as  
20 a direct or indirect participant, and for which such  
21 firm may receive fees in excess of \$100,000 in the  
22 aggregate.”;

23 (2) in subsection (g)—

24 (A) in paragraph (8), by striking “and” at  
25 the end;

1 (B) by redesignating paragraph (9) as  
2 paragraph (10); and

3 (C) by inserting after paragraph (8) the  
4 following:

5 “(9) tax shelter services; and”;

6 (3) in subsection (h)—

7 (A) by inserting “other than tax shelter  
8 services” after “tax services”; and

9 (B) by striking “(9)” and inserting “(10)”;  
10 and

11 (4) in subsection (i)(1)—

12 (A) by redesignating subparagraph (B) as  
13 subparagraph (C); and

14 (B) by inserting after subparagraph (A)  
15 the following:

16 “(B) ASSURANCE OF AUDITOR INDEPEND-  
17 ENCE.—Before preapproving a non-audit serv-  
18 ice that is not otherwise prohibited under this  
19 section, the audit committee of an issuer  
20 shall—

21 “(i) determine whether there is a rea-  
22 sonable likelihood that provision of the  
23 non-audit service would impair the inde-  
24 pendence of the registered public account-  
25 ing firm by resulting in the firm—

1                   “(I) auditing its own work for  
2                   the issuer;

3                   “(II) performing a management  
4                   function for the issuer;

5                   “(III) advocating in a public  
6                   forum for the issuer; or

7                   “(IV) promoting the stock or  
8                   other financial interest of the issuer;  
9                   and

10                  “(ii) if the audit committee deter-  
11                  mines that such a reasonable likelihood ex-  
12                  ists, the audit committee shall not provide  
13                  advance approval of such service under this  
14                  section.”.

15 **SEC. 3. EFFECTIVE DATE.**

16                  This Act, and the amendments made by this Act,  
17                  shall take effect on the date of enactment of this Act, and  
18                  shall apply to any tax shelter service, as defined in section  
19                  10A of the Securities Exchange Act of 1934, as amended  
20                  by this Act, that is submitted for preapproval to the audit  
21                  committee of an issuer or is provided by a registered pub-  
22                  lic accounting firm to an issuer in accordance with that  
23                  section 10A on or after the date of enactment of this Act.

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