

108TH CONGRESS
1ST SESSION

S. 1767

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 21, 2003

Mr. LEVIN (for himself, Mr. MCCAIN, and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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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