

108TH CONGRESS
2D SESSION

S. 2210

To restrict the use of abusive tax shelters and offshore tax havens to inappropriately avoid Federal taxation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12, 2004

Mr. LEVIN (for himself and Mr. COLEMAN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To restrict the use of abusive tax shelters and offshore tax havens to inappropriately avoid Federal taxation, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Tax Shelter and Tax Haven Reform Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents for
 4 this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—STRENGTHENING TAX SHELTER PENALTIES

- Sec. 101. Penalty for promoting abusive tax shelters.
- Sec. 102. Penalty for aiding and abetting the understatement of tax liability.
- Sec. 103. Penalty for failing to register tax shelter.
- Sec. 104. Penalty for failing to maintain client list.
- Sec. 105. Penalty for failing to disclose potentially abusive tax shelter.
- Sec. 106. Improved disclosure of potentially abusive tax shelters.
- Sec. 107. Extension of statute of limitations for undisclosed tax shelter.
- Sec. 108. Expansion of injunctive relief to stop certain conduct related to tax shelter or understatement of tax liability.
- Sec. 109. Penalty for failing to report interests in foreign financial accounts.

TITLE II—PREVENTING ABUSIVE TAX SHELTERS

- Sec. 201. Censure, civil fines, and tax opinion standards for tax practitioners.
- Sec. 202. Expansion of tax shelter exception to tax practitioner privilege.
- Sec. 203. Information sharing for enforcement purposes.
- Sec. 204. Disclosure of information to Congress.
- Sec. 205. Contingent fee prohibition.
- Sec. 206. Sense of the Senate on tax enforcement priorities.

TITLE III—REQUIRING ECONOMIC SUBSTANCE

- Sec. 301. Clarification of economic substance doctrine.
- Sec. 302. Accuracy-related penalty for listed transactions and other potentially abusive tax shelters having a significant tax avoidance purpose.
- Sec. 303. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 304. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.

TITLE IV—DETECTING UNCOOPERATIVE TAX HAVENS

- Sec. 401. Disclosing payments to persons in uncooperative tax havens.
- Sec. 402. Deterring uncooperative tax havens by restricting allowable tax benefits.

1 **TITLE I—STRENGTHENING TAX**
 2 **SHELTER PENALTIES**

3 **SEC. 101. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**
 4 **TERS.**

5 (a) PENALTY FOR PROMOTING ABUSIVE TAX SHEL-
 6 TERS.—Section 6700 (relating to promoting abusive tax
 7 shelters, etc.) is amended—

8 (1) by redesignating subsections (b) and (c) as
 9 subsection (d) and (e), respectively,

10 (2) by striking “a penalty” and all that follows
 11 through the period in the first sentence of subsection
 12 (a) and inserting “a penalty determined under sub-
 13 section (b)”, and

14 (3) by inserting after subsection (a) the fol-
 15 lowing new subsections:

16 “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-
 17 ALTY; LIABILITY FOR PENALTY.—

18 “(1) AMOUNT OF PENALTY.—The amount of
 19 the penalty imposed by subsection (a) shall not ex-
 20 ceed the greater of—

21 “(A) 150 percent of the gross income de-
 22 rived (or to be derived) from such activity by
 23 the person or persons subject to such penalty,
 24 and

1 “(B) if readily subject to calculation, the
2 total amount of underpayment by the taxpayer
3 (including penalties, interest, and taxes) in con-
4 nection with such activity.

5 “(2) CALCULATION OF PENALTY.—The penalty
6 amount determined under paragraph (1) shall be
7 calculated with respect to each instance of an activ-
8 ity described in subsection (a), each instance in
9 which income was derived by the person or persons
10 subject to such penalty, and each person who par-
11 ticipated in such an activity.

12 “(3) LIABILITY FOR PENALTY.—If more than 1
13 person is liable under subsection (a) with respect to
14 such activity, all such persons shall be jointly and
15 severally liable for the penalty under such sub-
16 section.

17 “(c) PENALTY NOT DEDUCTIBLE.—The payment of
18 any penalty imposed under this section or the payment
19 of any amount to settle or avoid the imposition of such
20 penalty shall not be considered an ordinary and necessary
21 expense in carrying on a trade or business for purposes
22 of this title and shall not be deductible by the person who
23 is subject to such penalty or who makes such payment.”.

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

4 **SEC. 102. PENALTY FOR AIDING AND ABETTING THE UN-**
 5 **DERSTATEMENT OF TAX LIABILITY.**

6 (a) IN GENERAL.—Section 6701(a) (relating to im-
 7 position of penalty) is amended—

8 (1) by inserting “the tax liability or” after “re-
 9 spect to,” in paragraph (1),

10 (2) by inserting “aid, assistance, procurement,
 11 or advice with respect to such” before “portion”
 12 both places it appears in paragraphs (2) and (3),
 13 and

14 (3) by inserting “instance of aid, assistance,
 15 procurement, or advice or each such” before “docu-
 16 ment” in the matter following paragraph (3).

17 (b) AMOUNT OF PENALTY.—Subsection (b) of section
 18 6701 (relating to penalties for aiding and abetting under-
 19 statement of tax liability) is amended to read as follows:

20 “(b) AMOUNT OF PENALTY; CALCULATION OF PEN-
 21 ALTY; LIABILITY FOR PENALTY.—

22 “(1) AMOUNT OF PENALTY.—The amount of
 23 the penalty imposed by subsection (a) shall not ex-
 24 ceed the greater of—

1 “(i) 150 percent of the gross income
2 derived (or to be derived) from such aid,
3 assistance, procurement, or advice provided
4 by the person or persons subject to such
5 penalty, and

6 “(ii) if readily subject to calculation,
7 the total amount of underpayment by the
8 taxpayer (including penalties, interest, and
9 taxes) in connection with the understate-
10 ment of the liability for tax.

11 “(2) CALCULATION OF PENALTY.—The penalty
12 amount determined under paragraph (1) shall be
13 calculated with respect to each instance of aid, as-
14 sistance, procurement, or advice described in sub-
15 section (a), each instance in which income was de-
16 rived by the person or persons subject to such pen-
17 alty, and each person who made such an understate-
18 ment of the liability for tax.

19 “(3) LIABILITY FOR PENALTY.—If more than 1
20 person is liable under subsection (a) with respect to
21 providing such aid, assistance, procurement, or ad-
22 vice, all such persons shall be jointly and severally
23 liable for the penalty under such subsection.”.

1 (c) PENALTY NOT DEDUCTIBLE.—Section 6701 is
 2 amended by adding at the end the following new sub-
 3 section:

4 “(g) PENALTY NOT DEDUCTIBLE.—The payment of
 5 any penalty imposed under this section or the payment
 6 of any amount to settle or avoid the imposition of such
 7 penalty shall not be considered an ordinary and necessary
 8 expense in carrying on a trade or business for purposes
 9 of this title and shall not be deductible by the person who
 10 is subject to such penalty or who makes such payment.”.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to activities after the date of the
 13 enactment of this Act.

14 **SEC. 103. PENALTY FOR FAILURE TO REGISTER TAX SHEL-**
 15 **TER.**

16 (a) IN GENERAL.—Section 6707 (relating to failure
 17 to furnish information regarding tax shelters) is amended
 18 to read as follows:

19 **“SEC. 6707. FAILURE TO FURNISH INFORMATION ON PO-**
 20 **TENTIALLY ABUSIVE TAX SHELTER OR LIST-**
 21 **ED TRANSACTION.**

22 “(a) IN GENERAL.—If a person who is required to
 23 file a return under section 6111 with respect to any poten-
 24 tially abusive tax shelter—

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

3 “(2) files false or incomplete information with
4 the Secretary with respect to such shelter,
5 such person shall pay a penalty with respect to such return
6 in the amount determined under subsection (b).

7 “(b) AMOUNT OF PENALTY.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graph (2), the penalty imposed under subsection (a)
10 with respect to any failure shall be not less than
11 \$50,000 and not more than \$100,000.

12 “(2) LISTED TRANSACTIONS.—The penalty im-
13 posed under subsection (a) with respect to any listed
14 transaction shall be an amount equal to the greater
15 of—

16 “(A) \$200,000, or

17 “(B) 100 percent of the gross income de-
18 rived by such person for providing aid, assist-
19 ance, procurement, advice, or other services
20 with respect to the listed transaction before the
21 date the return including the transaction is
22 filed under section 6111.

23 Subparagraph (B) shall be applied by substituting
24 ‘150 percent’ for ‘100 percent’ in the case of an in-
25 tentional failure or act described in subsection (a).

1 “(c) CERTAIN RULES TO APPLY.—The provisions of
 2 section 6707A(d) allowing the Commissioner of Internal
 3 Revenue to rescind a penalty under certain circumstances
 4 shall apply to any penalty imposed under this section.

5 “(d) POTENTIALLY ABUSIVE TAX SHELTERS AND
 6 LISTED TRANSACTIONS.—The terms ‘potentially abusive
 7 tax shelter’ and ‘listed transaction’ have the respective
 8 meanings given to such terms by section 6707A(c).

9 “(e) PENALTY NOT DEDUCTIBLE.—The payment of
 10 any penalty imposed under this section or the payment
 11 of any amount to settle or avoid the imposition of such
 12 penalty shall not be considered an ordinary and necessary
 13 expense in carrying on a trade or business for purposes
 14 of this title and shall not be deductible by the person who
 15 is subject to such penalty or who makes such payment.”.

16 (b) CLERICAL AMENDMENT.—The item relating to
 17 section 6707 in the table of sections for part I of sub-
 18 chapter B of chapter 68 is amended by striking “regard-
 19 ing tax shelters” and inserting “on potentially abusive tax
 20 shelter or listed transaction”.

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

1 **SEC. 104. PENALTY FOR FAILING TO MAINTAIN CLIENT**
2 **LIST.**

3 (a) IN GENERAL.—Subsection (a) of section 6708
4 (relating to failure to maintain lists of investors in poten-
5 tially abusive tax shelters) is amended to read as follows:

6 “(a) IMPOSITION OF PENALTY.—

7 “(1) IN GENERAL.—If any person who is re-
8 quired to maintain a list under section 6112(a) fails
9 to make such list available upon written request to
10 the Secretary in accordance with section
11 6112(b)(1)(A) within 20 business days after the
12 date of the Secretary’s request, such person shall
13 pay a penalty of \$10,000 for each day of such fail-
14 ure after such 20th day. If such person makes avail-
15 able an incomplete list upon such request, such per-
16 son shall pay a penalty of \$100 per each omitted
17 name for each day of such omission after such 20th
18 day.

19 “(2) GOOD CAUSE EXCEPTION.—No penalty
20 shall be imposed by paragraph (1) with respect to
21 the failure on any day if, in the judgment of the
22 Secretary, such failure is due to good cause.”.

23 (b) PENALTY NOT DEDUCTIBLE.—Section 6708 is
24 amended by adding at the end the following new sub-
25 section:

1 “(c) PENALTY NOT DEDUCTIBLE.—The payment of
 2 any penalty imposed under this section or the payment
 3 of any amount to settle or avoid the imposition of such
 4 penalty shall not be considered an ordinary and necessary
 5 expense in carrying on a trade or business for purposes
 6 of this title and shall not be deductible by the person who
 7 is subject to such penalty or who makes such payment.”.

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

12 **SEC. 105. PENALTY FOR FAILING TO DISCLOSE POTEN-**
 13 **TIAL ABUSIVE TAX SHELTER.**

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

17 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE POTEN-**
 18 **TIAL ABUSIVE TAX SHELTER INFORMA-**
 19 **TION WITH RETURN OR STATEMENT.**

20 “(a) IMPOSITION OF PENALTY.—Any person who
 21 fails to include on any return or statement any informa-
 22 tion with respect to a potentially abusive tax shelter which
 23 is required under section 6011 to be included with such
 24 return or statement shall pay a penalty in the amount de-
 25 termined under subsection (b).

1 “(b) AMOUNT OF PENALTY.—

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

5 “(2) LISTED TRANSACTION.—Except as pro-
6 vided in paragraph 3, the amount of the penalty
7 under subsection (a) with respect to a listed trans-
8 action shall be \$100,000.

9 “(3) INCREASE IN PENALTY FOR INTENTIONAL
10 NONDISCLOSURE.—In the case of an intentional fail-
11 ure by any person under subsection (a), the penalty
12 under paragraph (1) shall be \$100,000 and the pen-
13 alty under paragraph (2) shall be \$200,000.

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

15 “(1) POTENTIALLY ABUSIVE TAX SHELTER.—
16 The term ‘potentially abusive tax shelter’ means any
17 transaction with respect to which information is re-
18 quired to be included with a return or statement, be-
19 cause the Secretary has determined by regulation or
20 otherwise that such transaction has a potential for
21 tax avoidance or evasion.

22 “(2) LISTED TRANSACTION.—Except as pro-
23 vided in regulations, the term ‘listed transaction’
24 means a potentially abusive tax shelter which is the
25 same as, or substantially similar to, a transaction

1 specifically identified by the Secretary as a tax
 2 avoidance transaction for purposes of section 6011.

3 “(d) AUTHORITY TO RESCIND PENALTY.—

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

8 “(A) the violation is with respect to a po-
 9 tentially abusive tax shelter other than a listed
 10 transaction,

11 “(B) the person on whom the penalty is
 12 imposed has a history of complying with the re-
 13 quirements of this title,

14 “(C) it is shown that the violation is due
 15 to an unintentional mistake of fact,

16 “(D) imposing the penalty would be
 17 against equity and good conscience, and

18 “(E) rescinding the penalty would promote
 19 compliance with the requirements of this title
 20 and effective tax administration.

21 “(2) DISCRETION.—The exercise of authority
 22 under paragraph (1) shall be at the sole discretion
 23 of the Commissioner and may be delegated only to
 24 the head of the Office of Tax Shelter Analysis. The
 25 Commissioner, in the Commissioner’s sole discretion,

1 may establish a procedure to determine if a penalty
2 should be referred to the Commissioner or the head
3 of such Office for a determination under paragraph
4 (1).

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

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

15 “(A) the facts and circumstances of the
16 transaction,

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

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

19 A copy of such opinion shall be provided upon writ-
20 ten request to the Committee on Ways and Means
21 of the House of Representatives, the Committee on
22 Finance of the Senate, the Joint Committee on Tax-
23 ation, or the General Accounting Office.

24 “(5) REPORT.—The Commissioner shall each
25 year report to the Committee on Ways and Means

1 of the House of Representatives and the Committee
2 on Finance of the Senate—

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

6 “(B) a description of each penalty re-
7 scinded under this subsection and the reasons
8 therefor.

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

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

16 “(2) which—

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

19 “(B) is required to pay a penalty under
20 section 6662A with respect to any potentially
21 abusive tax shelter at a rate prescribed under
22 section 6662A(c), or

23 “(C) is required to pay a penalty under
24 section 6662B with respect to any noneconomic
25 substance transaction,

1 the requirement to pay such penalty shall be disclosed in
 2 such reports filed by such person for such periods as the
 3 Secretary shall specify. Failure to make a disclosure in
 4 accordance with the preceding sentence shall be treated
 5 as a failure to which the penalty under subsection (b)(2)
 6 applies.

7 “(f) PENALTY IN ADDITION TO OTHER PEN-
 8 ALTIES.—The penalty imposed by this section shall be in
 9 addition to any other penalty provided by law.

10 “(g) PENALTY NOT DEDUCTIBLE.—The payment of
 11 any penalty imposed under this section or the payment
 12 of any amount to settle or avoid the imposition of such
 13 penalty shall not be considered an ordinary and necessary
 14 expense in carrying on a trade or business for purposes
 15 of this title and shall not be deductible by the person who
 16 is subject to such penalty or who makes such payment.”.

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 potentially abusive tax
 shelter information with return or statement.”.

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

1 **SEC. 106. IMPROVED DISCLOSURE OF POTENTIALLY ABU-**
 2 **SIVE TAX SHELTERS.**

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

5 **“SEC. 6111. DISCLOSURE OF POTENTIALLY ABUSIVE TAX**
 6 **SHELTERS.**

7 “(a) IN GENERAL.—Each material advisor with re-
 8 spect to any potentially abusive tax shelter shall make a
 9 return (in such form as the Secretary may prescribe) set-
 10 ting forth—

11 “(1) information identifying and describing
 12 such shelter,

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

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

17 Such return shall be filed not later than the date which
 18 is 30 days before the date on which the first sale of such
 19 shelter occurs or on any other date specified by the Sec-
 20 retary.

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

22 “(1) MATERIAL ADVISOR.—

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

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

1 signing, organizing, managing, promoting,
 2 selling, implementing, or carrying out any
 3 potentially abusive tax shelter, and

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

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

9 “(i) \$50,000 in the case of a poten-
 10 tially abusive tax shelter substantially all
 11 of the tax benefits from which are provided
 12 to natural persons, and

13 “(ii) \$100,000 in any other case.

14 “(2) POTENTIALLY ABUSIVE TAX SHELTER.—

15 The term ‘potentially abusive tax shelter’ has the
 16 meaning given to such term by section 6707A(c).

17 “(c) REGULATIONS.—The Secretary may prescribe
 18 regulations which provide—

19 “(1) that only 1 person shall be required to
 20 meet the requirements of subsection (a) in cases in
 21 which 2 or more persons would otherwise be re-
 22 quired to meet 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
 5 table of sections for subchapter B of chapter 61 is
 6 amended to read as follows:

“Sec. 6111. Disclosure of potentially abusive tax shelters.”.

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

9 **“SEC. 6112. MATERIAL ADVISORS OF POTENTIALLY ABU-**
 10 **SIVE TAX SHELTERS MUST KEEP CLIENT**
 11 **LISTS.**

12 “(a) IN GENERAL.—Each material advisor (as de-
 13 fined in section 6111) with respect to any potentially abu-
 14 sive tax shelter (as defined in section 6707A(c)) shall
 15 maintain, in such manner as the Secretary may by regula-
 16 tions prescribe, a list—

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

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

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

1 (B) Section 6112 is amended by redesignating
2 subsection (c) as subsection (b).

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

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

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

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

“Sec. 6112. Material advisors of potentially abusive tax shelters
must keep client lists.”.

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

14 **“SEC. 6708. FAILURE TO MAINTAIN CLIENT LISTS WITH RE-**
15 **SPECT TO POTENTIALLY ABUSIVE TAX SHEL-**
16 **TERS.”.**

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

“Sec. 6708. Failure to maintain client lists with respect to poten-
tially abusive tax shelters.”.

20 (c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM**
21 **OF CONFIDENTIALITY.**—Section 6112(b)(1), as redesign-
22 ated by subsection (b)(2)(B), is amended by adding at
23 the end the following new flush sentence:

1 “For purposes of this section, the identity of any
 2 person on such list shall not be privileged.”.

3 (d) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-
 5 graph (2), the amendments made by this section
 6 shall apply to transactions with respect to which ma-
 7 terial aid, assistance, or advice referred to in section
 8 6111(b)(1)(A)(i) of the Internal Revenue Code of
 9 1986 (as added by this section) is provided after the
 10 date of the enactment of this Act.

11 (2) NO CLAIM OF CONFIDENTIALITY AGAINST
 12 DISCLOSURE.—The amendment made by subsection
 13 (c) shall take effect as if included in the amend-
 14 ments made by section 142 of the Deficit Reduction
 15 Act of 1984.

16 **SEC. 107. EXTENSION OF STATUTE OF LIMITATIONS FOR**
 17 **UNDISCLOSED TAX SHELTER.**

18 (a) IN GENERAL.—Section 6501(c) (relating to ex-
 19 ceptions) is amended by adding at the end the following
 20 new paragraph:

21 “(10) POTENTIALLY ABUSIVE TAX SHEL-
 22 TERS.—If a taxpayer fails to include on any return
 23 or statement for any taxable year any information
 24 with respect to a potentially abusive tax shelter (as
 25 defined in section 6707A(c)) which is required under

1 section 6011 to be included with such return or
 2 statement, the time for assessment of any tax im-
 3 posed by this title with respect to such transaction
 4 shall not expire before the date which is 2 years
 5 after the earlier of—

6 “(A) the date on which the Secretary is
 7 furnished the information so required; or

8 “(B) the date that a material advisor (as
 9 defined in section 6111) meets the requirements
 10 of section 6112 with respect to a request by the
 11 Secretary under section 6112(b) relating to
 12 such transaction with respect to such tax-
 13 payer.”.

14 (b) EFFECTIVE DATE.—The amendment made by
 15 this section shall apply to taxable years with respect to
 16 which the period for assessing a deficiency did not expire
 17 before the date of the enactment of this Act.

18 **SEC. 108. EXPANSION OF INJUNCTIVE RELIEF TO STOP**
 19 **CERTAIN CONDUCT RELATED TO TAX SHEL-**
 20 **TER OR UNDERSTATEMENT OF TAX LIABIL-**
 21 **ITY.**

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

1 by striking subsections (a) and (b) and inserting the fol-
 2 lowing 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 spec-
 10 ified 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 speci-
 17 fied 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
 24 section, the term ‘specified conduct’ means any action, or

1 failure to take action, subject to penalty under section
2 6700, 6701, 6707, 6707A, 6708, or 7206.”.

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 SHELTER OR UNDERSTATE-**
8 **MENT OF TAX LIABILITY.”.**

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
12 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelter or under-
derstatement of liability.”.

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

16 **SEC. 109. PENALTY FOR FAILING TO REPORT INTERESTS IN**
17 **FOREIGN FINANCIAL ACCOUNTS.**

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

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

22 “(A) PENALTY AUTHORIZED.—The Sec-
23 retary of the Treasury may impose a civil
24 money penalty on any person who violates, or

causes any violation of, any provision of section
5314.

“(B) AMOUNT OF PENALTY.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$10,000.

“(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

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

“(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

“(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314, the amount of the civil penalty imposed under subparagraph (A) shall be—

“(i) not less than \$5,000,

1 “(ii) not more than 50 percent of the
 2 amount determined under subparagraph
 3 (D), and

4 “(iii) 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
 15 account, the balance in the account at the
 16 time of the violation.”.

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

20 **TITLE II—PREVENTING ABUSIVE** 21 **TAX SHELTERS**

22 **SEC. 201. CENSURE, CIVIL FINES, AND TAX OPINION STAND-** 23 **ARDS FOR TAX PRACTITIONERS.**

24 (a) CENSURE; IMPOSITION OF MONETARY PEN-
 25 ALTY.—

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

3 (A) by inserting “, or censure,” after “De-
4 partment”, and

5 (B) by adding at the end the following new
6 flush sentence:

7 “The Secretary may impose a monetary penalty on any
8 representative described in the preceding sentence. If the
9 representative was acting on behalf of an employer or any
10 firm or other entity in connection with the conduct giving
11 rise to such penalty, the Secretary may impose a monetary
12 penalty on such employer, firm, or entity if it knew, or
13 reasonably should have known, of such conduct. Such pen-
14 alty may be in addition to, or in lieu of, any suspension,
15 disbarment, or censure of the representative.”.

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

19 (b) TAX OPINION STANDARDS.—Section 330 of such
20 title 31 is amended by adding at the end the following
21 new subsection:

22 “(d) The Secretary of the Treasury shall impose
23 standards applicable to the rendering of written advice
24 with respect to any potentially abusive tax shelter or any
25 entity, plan, arrangement, or transaction which has a po-

1 tential for tax avoidance or evasion. Such standards shall
 2 address, but not be limited to, the following issues:

3 “(1) Independence of the practitioner issuing
 4 such written advice from persons promoting, mar-
 5 keting, or recommending the subject of the advice.

6 “(2) Collaboration among practitioners, or be-
 7 tween a practitioner and other party, which could re-
 8 sult in such collaborating parties having a joint fi-
 9 nancial interest in the subject of the advice.

10 “(3) Avoidance of conflicts of interest which
 11 would impair auditor independence.

12 “(4) For written advice issued by a firm, stand-
 13 ards for reviewing the advice and ensuring the con-
 14 sensus support of the firm for positions taken.

15 “(5) Reliance on reasonable factual representa-
 16 tions by the taxpayer and other parties.

17 “(6) Appropriateness of the fees charged by the
 18 practitioner for the written advice.”.

19 **SEC. 202. EXPANSION OF TAX SHELTER EXCEPTION TO TAX**
 20 **PRACTITIONER PRIVILEGE.**

21 (a) IN GENERAL.—Subsection (b) of section 7525
 22 (relating to confidentiality privileges relating to taxpayer
 23 communications) is amended to read as follows:

1 “(b) NO PRIVILEGE FOR COMMUNICATIONS REGARD-
 2 ING TAX SHELTERS.—The privilege under subsection (a)
 3 shall not apply to any communication which is—

4 “(1) between a federally authorized tax practi-
 5 tioner and—

6 “(A) any person,

7 “(B) any director, officer, employee, agent,
 8 or representative of the person, or

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

11 “(2) in connection with the promotion of the di-
 12 rect or indirect participation of the person in any
 13 tax shelter (as defined in section 1274(b)(3)(C),
 14 6662, or 6707A).”.

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

18 **SEC. 203. INFORMATION SHARING FOR ENFORCEMENT**
 19 **PURPOSES.**

20 (a) PROMOTION OF PROHIBITED TAX SHELTERS OR
 21 TAX AVOIDANCE SCHEMES.—Section 6103(h) (relating to
 22 disclosure to certain Federal officers and employees for
 23 purposes of tax administration, etc.) is amended by adding
 24 at the end the following new paragraph:

1 “(7) DISCLOSURE OF RETURNS AND RETURN
2 INFORMATION RELATED TO PROMOTION OF PROHIB-
3 ITED TAX SHELTERS OR TAX AVOIDANCE
4 SCHEMES.—

5 “(A) WRITTEN REQUEST.—Upon receipt
6 by the Secretary of a written request which
7 meets the requirements of subparagraph (B)
8 from the head of the United States Securities
9 and Exchange Commission, an appropriate
10 Federal banking agency as defined under sec-
11 tion 1813(q) of title 12, United States Code, or
12 the Public Company Accounting Oversight
13 Board, a return or return information shall be
14 disclosed to such requestor’s officers and em-
15 ployees who are personally and directly engaged
16 in an investigation, examination, or proceeding
17 by such requestor to evaluate, determine, penal-
18 ize, or deter conduct by a financial institution,
19 issuer, or public accounting firm, or associated
20 person, in connection with a potential or actual
21 violation of section 6700 (promotion of abusive
22 tax shelters), 6701 (aiding and abetting under-
23 statement of tax liability), or activities related
24 to promoting or facilitating inappropriate tax
25 avoidance or tax evasion. Such disclosure shall

1 be solely for use by such officers and employees
2 in such investigation, examination, or pro-
3 ceeding.

4 “(B) REQUIREMENTS.—A request meets
5 the requirements of this subparagraph if it sets
6 forth—

7 “(i) the nature of the investigation,
8 examination, or proceeding,

9 “(ii) the statutory authority under
10 which such investigation, examination, or
11 proceeding is being conducted,

12 “(iii) the name or names of the finan-
13 cial institution, issuer, or public accounting
14 firm to which such return information re-
15 lates,

16 “(iv) the taxable period or periods to
17 which such return information relates, and

18 “(v) the specific reason or reasons
19 why such disclosure is, or may be, relevant
20 to such investigation, examination or pro-
21 ceeding.

22 “(C) FINANCIAL INSTITUTION.—For the
23 purposes of this paragraph, the term ‘financial
24 institution’ means a depository institution, for-
25 eign bank, insured institution, industrial loan

company, broker, dealer, investment company, investment advisor, or other entity subject to regulation or oversight by the United States Securities and Exchange Commission or an appropriate Federal banking agency.”.

(b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—Section 6103(i) (relating to disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration) is amended by adding at the end the following new paragraph:

“(9) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—

“(A) WRITTEN REQUEST.—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board, a return or return information shall be disclosed to such requestor’s officers and employees who are personally and directly engaged in an investigation, examination, or proceeding by such requester to evaluate the accuracy of a financial statement or report or to determine, require a restate-

1 ment, penalize, or deter conduct by an issuer,
2 investment company, or public accounting firm,
3 or associated person, in connection with a po-
4 tential or actual violation of auditing standards
5 or prohibitions against false or misleading
6 statements or omissions in financial statements
7 or reports. Such disclosure shall be solely for
8 use by such officers and employees in such in-
9 vestigation, examination or proceeding.

10 “(B) REQUIREMENTS.—A request meets
11 the requirements of this subparagraph if it sets
12 forth—

13 “(i) the nature of the investigation,
14 examination, or proceeding,

15 “(ii) the statutory authority under
16 which such investigation, examination, or
17 proceeding is being conducted,

18 “(iii) the name or names of the issuer,
19 investment company, or public accounting
20 firm to which such return information re-
21 lates,

22 “(iv) the taxable period or periods to
23 which such return information relates, and

24 “(v) the specific reason or reasons
25 why such disclosure is, or may be, relevant

1 to such investigation, examination or pro-
 2 ceeding.”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to disclosures and to information
 5 and document requests made after the date of the enact-
 6 ment of this Act.

7 **SEC. 204. DISCLOSURE OF INFORMATION TO CONGRESS.**

8 (a) DISCLOSURE BY TAX RETURN PREPARER.—

9 (1) IN GENERAL.—Subparagraph (B) of section
 10 7216(b)(1) (relating to disclosures) is amended to
 11 read as follows:

12 “(B) pursuant to any 1 of the following
 13 documents, if clearly identified:

14 “(i) The order of any Federal, State,
 15 or local court of record.

16 “(ii) A subpoena issued by a Federal
 17 or State grand jury.

18 “(iii) An administrative order, sum-
 19 mons, or subpoena which is issued in the
 20 performance of its duties by—

21 “(I) any Federal agency, includ-
 22 ing Congress or any committee or
 23 subcommittee thereof, or

24 “(II) any State agency, body, or
 25 commission charged under the laws of

1 the State or a political subdivision of
2 the State with the licensing, registra-
3 tion, or regulation of tax return pre-
4 parers.”.

5 (2) EFFECTIVE DATE.—The amendment made
6 by this subsection shall apply to disclosures made
7 after the date of the enactment of this Act pursuant
8 to any document in effect on or after such date.

9 (b) DISCLOSURE BY SECRETARY.—Paragraph (2) of
10 section 6104(a) (relating to inspection of applications for
11 tax exemption or notice of status) is amended to read as
12 follows:

13 “(2) INSPECTION BY CONGRESS.—

14 “(A) IN GENERAL.—Upon receipt of a
15 written request from a committee or sub-
16 committee of Congress, copies of documents re-
17 lated to a determination by the Secretary to
18 grant, deny, revoke, or restore an organization’s
19 exemption from taxation under section 501 or
20 527 shall be provided to such committee or sub-
21 committee, including any application, notice of
22 status, or supporting information provided by
23 such organization to the Internal Revenue Serv-
24 ice; any letter, analysis or other document pro-
25 duced by or for the Internal Revenue Service

1 evaluating, determining, explaining, or relating
2 to the tax exempt status of such organization
3 (other than returns, unless such returns are
4 available to the public under this section or sec-
5 tion 6103 or 6110); and any communication be-
6 tween the Internal Revenue Service and any
7 other party relating to the tax exempt status of
8 such organization.

9 “(B) ADDITIONAL INFORMATION.—Section
10 6103(f) shall apply with respect to—

11 “(i) the application for exemption of
12 any organization described in subsection
13 (c) or (d) of section 501 which is exempt
14 from taxation under section 501(a) for any
15 taxable year or notice of status of any po-
16 litical organization which is exempt from
17 taxation under section 527 for any taxable
18 year, and any application referred to in
19 subparagraph (B) of subsection (a)(1) of
20 this section, and

21 “(ii) any other papers which are in
22 the possession of the Secretary and which
23 relate to such application,

24 as if such papers constituted returns.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to disclosures and to information
 3 and document requests made after the date of the enact-
 4 ment of this Act.

5 **SEC. 205. CONTINGENT FEE PROHIBITION.**

6 (a) IN GENERAL.—Section 6701, as amended by this
 7 Act, is amended—

8 (1) by redesignating subsections (f) and (g) as
 9 subsections (g) and (h), respectively,

10 (2) by striking “subsection (a).” in paragraphs
 11 (2) and (3) of subsection (g) (as redesignated by
 12 paragraph (1)) and inserting “subsection (a) or
 13 (f).”, and

14 (3) by inserting after subsection (e) the fol-
 15 lowing new subsection:

16 “(f) CONTINGENT FEE PROHIBITION.—

17 “(1) IN GENERAL.—Any person who makes an
 18 agreement for, charges, or collects a fee which is for
 19 services provided in connection with the internal rev-
 20 enue laws, and which is contingent upon the actual
 21 or projected achievement of—

22 “(A) Federal tax savings or benefits, or

23 “(B) losses which can be used to offset
 24 other taxable income,

1 shall pay a penalty with respect to each such fee ac-
 2 tivity in the amount determined under subsection
 3 (b).

4 “(2) REGULATIONS.—The Secretary may issue
 5 rules to carry out the purposes of this subsection
 6 and may provide for exceptions for fee arrangements
 7 that are in the public interest.”.

8 (b) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to fee agreements, charges, and
 10 collections made after the date of the enactment of this
 11 Act.

12 **SEC. 206. SENSE OF THE SENATE ON TAX ENFORCEMENT**
 13 **PRIORITIES.**

14 It is the sense of the Senate that additional funds
 15 should be appropriated for Internal Revenue Service en-
 16 forcement efforts and that the Internal Revenue Service
 17 should devote proportionately more of its enforcement
 18 funds—

19 (1) to combat the promotion of abusive tax
 20 shelters for corporations and high net worth individ-
 21 uals and the aiding and abetting of tax evasion,

22 (2) to stop accounting, law, and financial firms
 23 involved in such promotion and aiding and abetting,
 24 and

(3) to combat the use of offshore financial accounts to conceal taxable income.

TITLE III—REQUIRING ECONOMIC SUBSTANCE

SEC. 301. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

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

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction satisfies such doctrine shall be made as provided in this subsection.

“(B) APPLICATION OF ECONOMIC SUBSTANCE DOCTRINE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction satisfies the economic substance doctrine only if—

“(I) the transaction changes in a meaningful way, apart from Federal

1 tax effects (and, if there are any Fed-
 2 eral tax effects, also apart from any
 3 foreign, State, or local tax effects),
 4 the taxpayer's economic position, and

5 “(II) the taxpayer has a substan-
 6 tial nontax purpose for entering into
 7 such transaction and the transaction
 8 is a reasonable means of accom-
 9 plishing such purpose.

10 In applying subclause (II), a purpose of
 11 achieving a financial accounting benefit
 12 shall not be taken into account in deter-
 13 mining whether a transaction has a sub-
 14 stantial nontax purpose if the origin of
 15 such financial accounting benefit is a re-
 16 duction of income tax or achievement of a
 17 tax benefit.

18 “(ii) SPECIAL RULE WHERE TAX-
 19 PAYER RELIES ON PROFIT POTENTIAL.—A
 20 transaction shall not be treated as satis-
 21 fying the economic substance doctrine by
 22 reason of having a potential for profit un-
 23 less—

24 “(I) the present value of the rea-
 25 sonably expected pre-tax profit from

1 the transaction is substantial in rela-
 2 tion to the present value of the ex-
 3 pected net tax benefits that would be
 4 allowed if the transaction were re-
 5 spected, and

6 “(II) the reasonably expected
 7 pre-tax profit from the transaction ex-
 8 ceeds a risk-free rate of return.

9 “(C) TREATMENT OF FEES AND FOREIGN
 10 TAXES.—Fees and other transaction expenses
 11 and foreign taxes shall be taken into account as
 12 expenses in determining pre-tax profit under
 13 subparagraph (B)(ii).

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

16 “(A) SPECIAL RULES FOR FINANCING
 17 TRANSACTIONS.—The form of a transaction
 18 which is in substance the borrowing of money
 19 or the acquisition of financial capital directly or
 20 indirectly from a tax-indifferent party shall not
 21 be respected if the present value of the deduc-
 22 tions to be claimed with respect to the trans-
 23 action is substantially in excess of the present
 24 value of the anticipated economic returns of the
 25 person lending the money or providing the fi-

nancial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

“(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party’s economic income or gain, or

“(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

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

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does

1 not have economic substance or lacks a business
2 purpose.

3 “(B) TAX-INDIFFERENT PARTY.—The
4 term ‘tax-indifferent party’ means any person
5 or entity not subject to tax imposed by subtitle
6 A. A person shall be treated as a tax-indifferent
7 party with respect to a transaction if the items
8 taken into account with respect to the trans-
9 action have no substantial impact on such per-
10 son’s liability under subtitle A.

11 “(C) EXCEPTION FOR PERSONAL TRANS-
12 ACTIONS OF INDIVIDUALS.—In the case of an
13 individual, this subsection shall apply only to
14 transactions entered into in connection with a
15 trade or business or an activity engaged in for
16 the production of income.

17 “(D) TREATMENT OF LESSORS.—In apply-
18 ing subclause (I) of paragraph (1)(B)(ii) to the
19 lessor of tangible property subject to a lease—

20 “(i) the expected net tax benefits with
21 respect to the leased property shall not in-
22 clude the benefits of—

23 “(I) depreciation,

24 “(II) any tax credit, or

1 “(III) any other deduction as
2 provided in guidance by the Secretary,
3 and

4 “(ii) subclause (II) of paragraph
5 (1)(B)(ii) shall be disregarded in deter-
6 mining whether any of such benefits are al-
7 lowable.

8 “(4) OTHER COMMON LAW DOCTRINES NOT AF-
9 FECTED.—Except as specifically provided in this
10 subsection, the provisions of this subsection shall not
11 be construed as altering or supplanting any other
12 rule of law, and the requirements of this subsection
13 shall be construed as being in addition to any such
14 other rule of law.

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

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

1 **SEC. 302. ACCURACY-RELATED PENALTY FOR LISTED**
 2 **TRANSACTIONS AND OTHER POTENTIALLY**
 3 **ABUSIVE TAX SHELTERS HAVING A SIGNIFI-**
 4 **CANT TAX AVOIDANCE PURPOSE.**

5 (a) IN GENERAL.—Subchapter A of chapter 68 is
 6 amended by inserting after section 6662 the following new
 7 section:

8 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**
 9 **ALTY ON UNDERSTATEMENTS WITH RESPECT**
 10 **TO POTENTIALLY ABUSIVE TAX SHELTER.**

11 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
 12 potentially abusive tax shelter understatement for any tax-
 13 able year, there shall be added to the tax an amount equal
 14 to 20 percent of the amount of such understatement.

15 “(b) POTENTIALLY ABUSIVE TAX SHELTER UNDER-
 16 STATEMENT.—For purposes of this section—

17 “(1) IN GENERAL.—The term ‘potentially abu-
 18 sive tax shelter understatement’ means the sum of—

19 “(A) the product of—

20 “(i) the amount of the increase (if
 21 any) in taxable income which results from
 22 a difference between the proper tax treat-
 23 ment of an item to which this section ap-
 24 plies and the taxpayer’s treatment of such
 25 item (as shown on the taxpayer’s return of
 26 tax), and

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

4 “(B) the amount of the decrease (if any)
5 in the aggregate amount of credits determined
6 under subtitle A which results from a difference
7 between the taxpayer’s treatment of an item to
8 which this section applies (as shown on the tax-
9 payer’s return of tax) and the proper tax treat-
10 ment of such item.

11 For purposes of subparagraph (A), any reduction of
12 the excess of deductions allowed for the taxable year
13 over gross income for such year, and any reduction
14 in the amount of capital losses which would (without
15 regard to section 1211) be allowed for such year,
16 shall be treated as an increase in taxable income.

17 “(2) ITEMS TO WHICH SECTION APPLIES.—This
18 section shall apply to any item which is attributable
19 to—

20 “(A) any listed transaction, and

21 “(B) any potentially abusive tax shelter
22 (other than a listed transaction) if a significant
23 purpose of such transaction is the avoidance or
24 evasion of Federal income tax.

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

3 “(1) IN GENERAL.—Subsection (a) shall be ap-
4 plied by substituting ‘30 percent’ for ‘20 percent’
5 with respect to the portion of any potentially abusive
6 tax shelter understatement with respect to which the
7 requirement of section 6664(d)(2)(A) is not met.

8 “(2) RULES APPLICABLE TO ASSERTION AND
9 COMPROMISE OF PENALTY.—

10 “(A) IN GENERAL.—Only upon the ap-
11 proval by the Chief Counsel for the Internal
12 Revenue Service or the Chief Counsel’s delegate
13 at the national office of the Internal Revenue
14 Service may a penalty to which paragraph (1)
15 applies be included in a 1st letter of proposed
16 deficiency which allows the taxpayer an oppor-
17 tunity for administrative review in the Internal
18 Revenue Service Office of Appeals. If such a
19 letter is provided to the taxpayer, only the Com-
20 missioner of Internal Revenue may compromise
21 all or any portion of such penalty.

22 “(B) APPLICABLE RULES.—The rules of
23 paragraphs (2), (3), (4), and (5) of section
24 6707A(d) shall apply for purposes of subpara-
25 graph (A).

1 “(d) DEFINITIONS OF POTENTIALLY ABUSIVE TAX
 2 SHELTER AND LISTED TRANSACTION.—For purposes of
 3 this section, the terms ‘potentially abusive tax shelter’ and
 4 ‘listed transaction’ have the respective meanings given to
 5 such terms by section 6707A(c).

6 “(e) SPECIAL RULES.—

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

10 “(A) the amount of such understatement
 11 (determined without regard to this paragraph)
 12 shall be increased by the aggregate amount of
 13 potentially abusive tax shelter understatements
 14 and noneconomic substance transaction under-
 15 statements for purposes of determining whether
 16 such understatement is a substantial under-
 17 statement under section 6662(d)(1), and

18 “(B) the addition to tax under section
 19 6662(a) shall apply only to the excess of the
 20 amount of the substantial understatement (if
 21 any) after the application of subparagraph (A)
 22 over the aggregate amount of potentially abu-
 23 sive tax shelter understatements and non-
 24 economic substance transaction understate-
 25 ments.

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

3 “(A) APPLICATION OF FRAUD PENALTY.—
4 References to an underpayment in section 6663
5 shall be treated as including references to a po-
6 tentially abusive tax shelter understatement and
7 a noneconomic substance transaction under-
8 statement.

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

13 “(3) SPECIAL RULE FOR AMENDED RE-
14 TURNS.—Except as provided in regulations, in no
15 event shall any tax treatment included with an
16 amendment or supplement to a return of tax be
17 taken into account in determining the amount of any
18 potentially abusive tax shelter understatement or
19 noneconomic substance transaction understatement
20 if the amendment or supplement is filed after the
21 earlier of the date the taxpayer is first contacted by
22 the Secretary regarding the examination of the re-
23 turn or such other date as is specified by the Sec-
24 retary.

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

6 “(5) CROSS REFERENCE.—

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

7 (b) DETERMINATION OF OTHER UNDERSTATE-
 8 MENTS.—Subparagraph (A) of section 6662(d)(2) is
 9 amended by adding at the end the following flush sen-
 10 tence:

11 “The excess under the preceding sentence shall
 12 be determined without regard to items to which
 13 section 6662A applies and without regard to
 14 items with respect to which a penalty is im-
 15 posed by section 6662B.”.

16 (c) REASONABLE CAUSE EXCEPTION.—

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

19 “(d) REASONABLE CAUSE EXCEPTION FOR POTEN-
 20 TIALY ABUSIVE TAX SHELTER UNDERSTATEMENTS.—

21 “(1) IN GENERAL.—No penalty shall be im-
 22 posed under section 6662A with respect to any por-
 23 tion of a potentially abusive tax shelter understate-
 24 ment if it is shown that there was a reasonable

1 cause for such portion and that the taxpayer acted
2 in good faith with respect to such portion.

3 “(2) SPECIAL RULES.—Paragraph (1) shall not
4 apply to any potentially abusive tax shelter under-
5 statement unless—

6 “(A) the relevant facts affecting the tax
7 treatment of the item are adequately disclosed
8 in accordance with the regulations prescribed
9 under section 6011,

10 “(B) there is or was substantial authority
11 for such treatment, and

12 “(C) the taxpayer reasonably believed that
13 such treatment was more likely than not the
14 proper treatment.

15 A taxpayer failing to adequately disclose in accord-
16 ance with section 6011 shall be treated as meeting
17 the requirements of subparagraph (A) if the penalty
18 for such failure was rescinded under section
19 6707A(d).

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

22 “(A) IN GENERAL.—A taxpayer shall be
23 treated as having a reasonable belief with re-
24 spect to the tax treatment of an item only if
25 such belief—

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

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

11 “(B) CERTAIN OPINIONS MAY NOT BE RE-
 12 LIED UPON.—

13 “(i) IN GENERAL.—An opinion of a
 14 tax advisor may not be relied upon to es-
 15 tablish the reasonable belief of a taxpayer
 16 if—

17 “(I) the tax advisor is described
 18 in clause (ii), or

19 “(II) the opinion is described in
 20 clause (iii).

21 “(ii) DISQUALIFIED TAX ADVISORS.—
 22 A tax advisor is described in this clause if
 23 the tax advisor—

24 “(I) is a material advisor (within
 25 the meaning of section 6111(b)(1))

1 who participates in the organization,
2 management, promotion, or sale of
3 the transaction or who is related
4 (within the meaning of section 267(b)
5 or 707(b)(1)) to any person who so
6 participates,

7 “(II) is compensated directly or
8 indirectly by a material advisor with
9 respect to the transaction,

10 “(III) has a fee arrangement
11 with respect to the transaction which
12 is contingent on all or part of the in-
13 tended tax benefits from the trans-
14 action being sustained, or

15 “(IV) as determined under regu-
16 lations prescribed by the Secretary,
17 has a disqualifying financial interest
18 with respect to the transaction.

19 “(iii) DISQUALIFIED OPINIONS.—For
20 purposes of clause (i), an opinion is dis-
21 qualified if the opinion—

22 “(I) is based on unreasonable
23 factual or legal assumptions (includ-
24 ing assumptions as to future events),

1 “(II) unreasonably relies on rep-
 2 resentations, statements, findings, or
 3 agreements of the taxpayer or any
 4 other person,

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

7 “(IV) fails to meet any other re-
 8 quirement as the Secretary may pre-
 9 scribe.”.

10 (2) CONFORMING AMENDMENT.—The heading
 11 for subsection (c) of section 6664 is amended by in-
 12 serting “FOR UNDERPAYMENTS” after “EXCEP-
 13 TION”.

14 (d) CONFORMING AMENDMENTS.—

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

18 (2) Paragraph (3) of section 1274(b) is amend-
 19 ed—

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

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

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

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

(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:

•S 2210 IS

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to potentially abusive tax shelter.”.

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

4 **SEC. 303. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
5 **UTABLE TO TRANSACTIONS LACKING ECO-**
6 **NOMIC SUBSTANCE, ETC.**

7 (a) IN GENERAL.—Subchapter A of chapter 68, as
8 amended by section 302, is amended by inserting after
9 section 6662A the following new section:

10 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
11 **UTABLE TO TRANSACTIONS LACKING ECO-**
12 **NOMIC SUBSTANCE, ETC.**

13 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a
14 noneconomic substance transaction understatement for
15 any taxable year, there shall be added to the tax an
16 amount equal to 40 percent of the amount of such under-
17 statement.

18 “(b) REDUCTION OF PENALTY FOR DISCLOSED
19 TRANSACTIONS.—Subsection (a) shall be applied by sub-
20 stituting ‘20 percent’ for ‘40 percent’ with respect to the
21 portion of any noneconomic substance transaction under-
22 statement with respect to which the relevant information
23 affecting the tax treatment of the item is adequately dis-
24 closed in the return or a statement attached to the return.

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

3 “(1) IN GENERAL.—The term ‘noneconomic
4 substance transaction understatement’ means the
5 sum of—

6 “(A) the product of—

7 “(i) the amount of the increase (if
8 any) in taxable income which results from
9 a difference between the proper tax treat-
10 ment of an item attributable to a non-
11 economic substance transaction and the
12 taxpayer’s treatment of such item (as
13 shown on the taxpayer’s return of tax),
14 and

15 “(ii) the highest rate of tax imposed
16 by section 1 (section 11 in the case of a
17 taxpayer which is a corporation), and

18 “(B) the amount of the decrease (if any)
19 in the aggregate amount of credits determined
20 under subtitle A which results from a difference
21 between the taxpayer’s treatment of an item at-
22 tributable to a noneconomic substance trans-
23 action (as shown on the taxpayer’s return of
24 tax) and the proper tax treatment of such item.

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

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

10 “(A) there is a lack of economic substance
 11 (within the meaning of section 7701(n)(1)) for
 12 the transaction giving rise to the claimed ben-
 13 efit or the transaction was not respected under
 14 section 7701(n)(2), or

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

17 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
 18 ALTY.—

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

1 “(2) DISCRETION.—The exercise of authority
 2 under paragraph (1) shall be at the sole discretion
 3 of the Commissioner and may be delegated only to
 4 the head of the Office of Tax Shelter Analysis. The
 5 Commissioner, in the Commissioner’s sole discretion,
 6 may establish a procedure to determine if a penalty
 7 should be referred to the Commissioner or the head
 8 of such Office for a determination under paragraph
 9 (1).

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

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

20 “(A) the facts and circumstances of the
 21 transaction,

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

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

24 “(5) REPORT.—The Commissioner shall each
 25 year report to the Committee on Ways and Means

1 of the House of Representatives and the Committee
2 on Finance of the Senate—

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

6 “(B) a description of each penalty re-
7 scinded under this subsection and the reasons
8 therefor.

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

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

16 “(2) which is required to pay a penalty under
17 this section with respect to any noneconomic sub-
18 stance transaction,

19 the requirement to pay such penalty shall be disclosed in
20 such reports filed by such person for such periods as the
21 Secretary shall specify. Failure to make a disclosure in
22 accordance with the preceding sentence shall be treated
23 as a failure to which the penalty under subsection (b) ap-
24 plies.

25 “(f) SPECIAL RULES.—

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

4 “(A) the amount of such understatement
 5 (determined without regard to this paragraph)
 6 shall be increased by the aggregate amount of
 7 noneconomic substance transaction understate-
 8 ments for purposes of determining whether
 9 such understatement is a substantial under-
 10 statement under section 6662(d)(1), and

11 “(B) the addition to tax under section
 12 6662(a) shall apply only to the excess of the
 13 amount of the substantial understatement (if
 14 any) after the application of subparagraph (A)
 15 over the aggregate amount of noneconomic sub-
 16 stance transaction understatements.

17 “(2) COORDINATION WITH OTHER PEN-
 18 ALTIES.—

19 “(A) IN GENERAL.—Except as otherwise
 20 provided in subparagraph (C), the penalty im-
 21 posed by this section shall be in addition to any
 22 other penalty imposed by this title.

23 “(B) APPLICATION OF FRAUD PENALTY.—
 24 References to an underpayment in section 6663
 25 shall be treated as including references to a

1 noneconomic substance transaction understate-
 2 ment.

3 “(C) 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 RE-
 8 TURNS.—Except as provided in regulations, in no
 9 event shall any tax treatment included with an
 10 amendment or supplement to a return of tax be
 11 taken into account in determining the amount of any
 12 noneconomic substance transaction understatement
 13 if the amendment or supplement is filed after the
 14 earlier of the date the taxpayer is first contacted by
 15 the Secretary regarding the examination of the re-
 16 turn or such other date as is specified by the Sec-
 17 retary.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
 19 for part II of subchapter A of chapter 68, as amended
 20 by section 302, is amended by inserting after the item re-
 21 lating to section 6662 the following new item:

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

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

1 **SEC. 304. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
 2 **DERPAYMENTS ATTRIBUTABLE TO NON-**
 3 **ECONOMIC SUBSTANCE TRANSACTIONS.**

4 (a) IN GENERAL.—Section 163 (relating to deduction
 5 for interest) is amended by redesignating subsection (m)
 6 as subsection (n) and by inserting after subsection (l) the
 7 following new subsection:

8 “(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE
 9 TO NONECONOMIC SUBSTANCE TRANSACTIONS.—No de-
 10 duction shall be allowed under this chapter for any inter-
 11 est paid or accrued under section 6601 on any under-
 12 payment of tax which is attributable to any noneconomic
 13 substance transaction understatement (as defined in sec-
 14 tion 6662A(c)(1)).”.

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

18 **TITLE IV—DETERRING**
 19 **UNCOOPERATIVE TAX HAVENS**

20 **SEC. 401. DISCLOSING PAYMENTS TO PERSONS IN UNCO-**
 21 **OPERATIVE TAX HAVENS.**

22 (a) IN GENERAL.—Subpart A of part III of sub-
 23 chapter A of chapter 61 is amended by inserting after sec-
 24 tion 6038C the following new section:

1 **“SEC. 6038D. DETERRING UNCOOPERATIVE TAX HAVENS**
2 **THROUGH LISTING AND REPORTING RE-**
3 **QUIREMENTS.**

4 “(a) IN GENERAL.—Each United States person who
5 transfers money or other property directly or indirectly to
6 any uncooperative tax haven, to any financial institution
7 licensed by or operating in any uncooperative tax haven,
8 or to any person who is a resident of any uncooperative
9 tax haven shall furnish to the Secretary, at such time and
10 in such manner as the Secretary shall by regulation pre-
11 scribe, such information with respect to such transfer as
12 the Secretary may require.

13 “(b) EXCEPTIONS.—Subsection (a) shall not apply to
14 a transfer by a United States person if the amount of
15 money (and the fair market value of property) transferred
16 is less than \$10,000. Related transfers shall be treated
17 as 1 transfer for purposes of this subsection.

18 “(c) UNCOOPERATIVE TAX HAVEN.—For purposes of
19 this section—

20 “(1) IN GENERAL.—The term ‘uncooperative
21 tax haven’ means any foreign jurisdiction which is
22 identified on a list maintained by the Secretary
23 under paragraph (2) as being a jurisdiction—

24 “(A) which imposes no or nominal taxation
25 either generally or on specified classes of in-
26 come, and

1 “(B) has corporate, business, bank, or tax
2 secrecy or confidentiality rules and practices, or
3 has ineffective information exchange practices
4 which, in the judgment of the Secretary, effec-
5 tively limit or restrict the ability of the United
6 States to obtain information relevant to the en-
7 forcement of this title.

8 “(2) MAINTENANCE OF LIST.—Not later than
9 November 1 of each calendar year, the Secretary
10 shall issue a list of foreign jurisdictions which the
11 Secretary determines qualify as uncooperative tax
12 havens under paragraph (1).

13 “(3) INEFFECTIVE INFORMATION EXCHANGE
14 PRACTICES.—For purposes of paragraph (1), a juris-
15 diction shall be deemed to have ineffective informa-
16 tion exchange practices if the Secretary determines
17 that during any taxable year ending in the 12-month
18 period preceding the issuance of the list under para-
19 graph (2)—

20 “(A) the exchange of information between
21 the United States and such jurisdiction was in-
22 adequate to prevent evasion or avoidance of
23 United States income tax by United States per-
24 sons or to enable the United States effectively
25 to enforce this title, or

1 “(B) such jurisdiction was identified by an
 2 intergovernmental group or organization of
 3 which the United States is a member as unco-
 4 operative with international tax enforcement or
 5 information exchange and the United States
 6 concurs in the determination.

7 “(d) PENALTY FOR FAILURE TO FILE INFORMA-
 8 TION.—If a United States person fails to furnish the infor-
 9 mation required by subsection (a) with respect to any
 10 transfer within the time prescribed therefor (including ex-
 11 tensions), such United States person shall pay (upon no-
 12 tice and demand by the Secretary and in the same manner
 13 as tax) an amount equal to 20 percent of the amount of
 14 such transfer.

15 “(e) SIMPLIFIED REPORTING.—The Secretary may
 16 by regulations provide for simplified reporting under this
 17 section for United States persons making large volumes
 18 of similar payments.

19 “(f) REGULATIONS.—The Secretary shall prescribe
 20 such regulations as may be necessary or appropriate to
 21 carry out the purposes of this section.”.

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

“Sec. 6038D. Deterring uncooperative tax havens through listing and reporting requirements.”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to transfers after the date which
 3 is 180 days after the date of the enactment of this Act.

4 **SEC. 402. DETERRING UNCOOPERATIVE TAX HAVENS BY**
 5 **RESTRICTING ALLOWABLE TAX BENEFITS.**

6 (a) LIMITATION ON DEFERRAL.—

7 (1) IN GENERAL.—Subsection (a) of section
 8 952 (defining subpart F income) is amended by
 9 striking “and” at the end of paragraph (4), by strik-
 10 ing the period at the end of paragraph (5) and in-
 11 serting “, and”, and by inserting after paragraph
 12 (5) the following new paragraph:

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

16 “(A) is attributable to earnings and profits
 17 of the foreign corporation included in the gross
 18 income of a United States person under section
 19 951 (other than by reason of this paragraph or
 20 paragraph (3)(A)(i)), or

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

22 (2) APPLICABLE FRACTION.—Section 952 is
 23 amended by adding at the end the following new
 24 subsection:

1 “(e) IDENTIFIED TAX HAVEN INCOME WHICH IS
2 SUBPART F INCOME.—

3 “(1) IN GENERAL.—For purposes of subsection
4 (a)(6), the term ‘applicable fraction’ means the frac-
5 tion—

6 “(A) the numerator of which is the aggre-
7 gate identified tax haven income for the taxable
8 year, and

9 “(B) the denominator of which is the ag-
10 gregate income for the taxable year which is
11 from sources outside the United States.

12 “(2) IDENTIFIED TAX HAVEN INCOME.—For
13 purposes of paragraph (1), the term ‘identified tax
14 haven income’ means income for the taxable year
15 which is attributable to a foreign jurisdiction for any
16 period during which such jurisdiction has been iden-
17 tified as an uncooperative tax haven under section
18 6038D(c).

19 “(3) REGULATIONS.—The Secretary shall pre-
20 scribe regulations similar to the regulations issued
21 under section 999(c) to carry out the purposes of
22 this subsection.”.

23 (b) DENIAL OF FOREIGN TAX CREDIT.—Section 901
24 (relating to taxes of foreign countries and of possessions
25 of United States) is amended by redesignating subsection

1 (l) as subsection (m) and by inserting after subsection (k)
 2 the following new subsection:

3 “(l) REDUCTION OF FOREIGN TAX CREDIT, ETC.,
 4 FOR IDENTIFIED TAX HAVEN INCOME.—

5 “(1) IN GENERAL.—Notwithstanding any other
 6 provision of this part—

7 “(A) no credit shall be allowed under sub-
 8 section (a) for any income, war profits, or ex-
 9 cess profits taxes paid or accrued (or deemed
 10 paid under section 902 or 960) to any foreign
 11 jurisdiction if such taxes are with respect to in-
 12 come attributable to a period during which such
 13 jurisdiction has been identified as an unco-
 14 operative tax haven under section 6038D(c),
 15 and

16 “(B) subsections (a), (b), (c), and (d) of
 17 section 904 and sections 902 and 960 shall be
 18 applied separately with respect to all income of
 19 a taxpayer attributable to periods described in
 20 subparagraph (A) with respect to all such juris-
 21 dictions.

22 “(2) TAXES ALLOWED AS A DEDUCTION, ETC.—
 23 Sections 275 and 78 shall not apply to any tax
 24 which is not allowable as a credit under subsection
 25 (a) by reason of this subsection.

1 “(3) REGULATIONS.—The Secretary shall pre-
2 scribe such regulations as may be necessary or ap-
3 propriate to carry out the purposes of this sub-
4 section, including regulations which treat income
5 paid through 1 or more entities as derived from a
6 foreign jurisdiction to which this subsection applies
7 if such income was, without regard to such entities,
8 derived from such jurisdiction.”.

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

○