

110TH CONGRESS  
1ST SESSION

# H. R. 2136

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2007

Mr. DOGGETT (for himself, Mr. EMANUEL, Mr. LEVIN, Ms. DELAURO, Ms. LEE, Mr. MCGOVERN, Mr. PASCRELL, Ms. SCHAKOWSKY, Mr. STARK, Ms. SUTTON, Mr. VAN HOLLEN, Mr. GRIJALVA, Mr. LYNCH, Mr. NADLER, Mr. LEWIS of Georgia, Mr. FATTAH, Mr. STUPAK, Ms. KAPTUR, Mr. RUSH, Mr. McNULTY, Mr. GEORGE MILLER of California, Mr. ANDREWS, Ms. SOLIS, Ms. WATSON, Mr. PAYNE, Mr. COSTELLO, Mr. CONYERS, Ms. SLAUGHTER, Mr. FARR, Mr. FILNER, Mr. HINCHEY, Mr. CLEAVER, Mr. JOHNSON of Georgia, Mr. WELCH of Vermont, Mr. ELLISON, Mr. BISHOP of New York, Mr. NEAL of Massachusetts, Mr. TIERNEY, Mr. DEFazio, Mr. ABERCROMBIE, and Ms. CLARKE) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Financial Services and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To restrict the use of offshore tax havens and abusive tax shelters 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,*

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

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Stop Tax Haven Abuse Act”.

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

10 (c) TABLE OF CONTENTS.—The table of contents of  
11 this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—DETECTING THE USE OF TAX HAVENS FOR TAX  
EVASION

Sec. 101. Establishing presumptions for entities and transactions involving off-  
shore secrecy jurisdictions.

Sec. 102. Authorizing special measures against foreign jurisdictions, financial  
institutions, and others that impede United States tax enforce-  
ment.

Sec. 103. Allowing more time for investigations involving offshore secrecy juris-  
dictions.

Sec. 104. Reporting United States beneficial owners of foreign owned financial  
accounts.

Sec. 105. Preventing misuse of foreign trusts for tax evasion.

Sec. 106. Limitation on legal opinion protection from penalties with respect to  
transactions involving offshore secrecy jurisdictions.

TITLE II—OTHER MEASURES TO COMBAT TAX HAVEN AND TAX  
SHELTER ABUSES

Sec. 201. Penalty for failing to disclose offshore holdings.

Sec. 202. Deadline for anti-money laundering rule for hedge funds and private  
equity funds.

Sec. 203. Anti-money laundering requirements for formation agents.

Sec. 204. Strengthening summons in cases involving offshore secrecy jurisdic-  
tions.

Sec. 205. Improving enforcement of foreign financial account reporting.

TITLE III—COMBATING TAX SHELTER PROMOTERS

Sec. 301. Penalty for promoting abusive tax shelters.

Sec. 302. Penalty for aiding and abetting the understatement of tax liability.

- Sec. 303. Prohibition on tax shelter patents.
- Sec. 304. Prohibited fee arrangement.
- Sec. 305. Preventing tax shelter activities by financial institutions.
- Sec. 306. Information sharing for enforcement purposes.
- Sec. 307. Disclosure of information to Congress.
- Sec. 308. Tax opinion standards for tax practitioners.
- Sec. 309. Denial of deduction for certain fines, penalties, and other amounts.

#### TITLE IV—REQUIRING ECONOMIC SUBSTANCE

- Sec. 401. Clarification of economic substance doctrine.
- Sec. 402. Penalty for understatements attributable to transactions lacking economic substance, etc.
- Sec. 403. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.

## 1 **TITLE I—DETECTING THE USE** 2 **OF TAX HAVENS FOR TAX** 3 **EVASION**

### 4 **SEC. 101. ESTABLISHING PRESUMPTIONS FOR ENTITIES** 5 **AND TRANSACTIONS INVOLVING OFFSHORE** 6 **SECRECY JURISDICTIONS.**

7 (a) PRESUMPTIONS FOR INTERNAL REVENUE CODE  
8 OF 1986.—

9 (1) IN GENERAL.—Chapter 76 is amended by  
10 inserting after section 7491 the following new sub-  
11 chapter:

### 12 **“Subchapter F—Presumptions for Certain** 13 **Legal Proceedings**

“Sec. 7492. Presumptions pertaining to entities and transactions involving off-shore secrecy jurisdictions.

1 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**  
2 **TRANSACTIONS INVOLVING OFFSHORE SE-**  
3 **CRECY JURISDICTIONS.**

4 “(a) CONTROL.—For purposes of any United States  
5 civil judicial or administrative proceeding to determine or  
6 collect tax, there shall be a rebuttable presumption that  
7 a United States person (other than an entity with shares  
8 regularly traded on an established securities market) who  
9 directly or indirectly formed, transferred assets to, was a  
10 beneficiary of, or received money or property or the use  
11 thereof from an entity, including a trust, corporation, lim-  
12 ited liability company, partnership, or foundation (other  
13 than an entity with shares regularly traded on an estab-  
14 lished securities market), formed, domiciled, or operating  
15 in an offshore secrecy jurisdiction, exercised control over  
16 such entity. The presumption of control created by this  
17 subsection shall not be applied to prevent the Secretary  
18 from determining or arguing the absence of control.

19 “(b) TRANSFERS OF INCOME.—For purposes of any  
20 United States civil judicial or administrative proceeding  
21 to determine or collect tax, there shall be a rebuttable pre-  
22 sumption that any amount or thing of value received by  
23 a United States person (other than an entity with shares  
24 regularly traded on an established securities market) di-  
25 rectly or indirectly from an account or entity (other than  
26 an entity with shares regularly traded on an established

1 securities market) in an offshore secrecy jurisdiction, con-  
 2 stitutes income of such person taxable in the year of re-  
 3 ceipt, and any amount or thing of value paid or trans-  
 4 ferred by or on behalf of a United States person (other  
 5 than an entity with shares regularly traded on an estab-  
 6 lished securities market) directly or indirectly to an ac-  
 7 count or entity (other than an entity with shares regularly  
 8 traded on an established securities market) in any such  
 9 jurisdiction represents previously unreported income of  
 10 such person taxable in the year of the transfer.

11 “(c) REBUTTING THE PRESUMPTIONS.—The pre-  
 12 sumptions established in this section may be rebutted only  
 13 by clear and convincing evidence, including detailed docu-  
 14 mentary, testimonial, and transactional evidence, estab-  
 15 lishing that—

16 “(1) in subsection (a), such taxpayer exercised  
 17 no control, directly or indirectly, over such entity at  
 18 the time in question, and

19 “(2) in subsection (b), such amounts or things  
 20 of value did not represent income related to such  
 21 United States person.

22 Any court having jurisdiction of a civil proceeding in which  
 23 control of such an offshore entity or the income character  
 24 of such receipts or amounts transferred is an issue shall  
 25 prohibit the introduction by the taxpayer of any foreign

1 based document that is not authenticated in open court  
 2 by a person with knowledge of such document, or any  
 3 other evidence supplied by a person outside the jurisdic-  
 4 tion of a United States court, unless such person appears  
 5 before the court.”.

6 (2) The table of subchapters for chapter 76 is  
 7 amended by inserting after the item relating to sub-  
 8 chapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

9 (b) DEFINITION OF OFFSHORE SECRECY JURISDIC-  
 10 TION.—Section 7701(a) is amended by adding at the end  
 11 the following new paragraph:

12 “(50) OFFSHORE SECRECY JURISDICTION.—

13 “(A) IN GENERAL.—The term ‘offshore se-  
 14 crecy jurisdiction’ means any foreign jurisdic-  
 15 tion which is listed by the Commissioner of In-  
 16 ternal Revenue as an offshore secrecy jurisdic-  
 17 tion for purposes of this title.

18 “(B) DETERMINATION OF JURISDICTIONS  
 19 ON LIST.—A jurisdiction shall be listed under  
 20 paragraph (A) if the Commissioner determines  
 21 that such jurisdiction has corporate, business,  
 22 bank, or tax secrecy rules and practices which,  
 23 in the judgment of the Commissioner, unrea-  
 24 sonably restrict the ability of the United States  
 25 to obtain information relevant to the enforce-

1           ment of this title, unless the Commissioner also  
2           determines that such country has effective in-  
3           formation exchange practices.

4           “(C)    SECRECY    OR    CONFIDENTIALITY  
5           RULES AND PRACTICES.—For purposes of sub-  
6           paragraph (B), corporate, business, bank, or  
7           tax secrecy or confidentiality rules and practices  
8           include both formal laws and regulations and  
9           informal government or business practices hav-  
10          ing the effect of inhibiting access of law en-  
11          forcement and tax administration authorities to  
12          beneficial ownership and other financial infor-  
13          mation.

14          “(D)    INEFFECTIVE    INFORMATION    EX-  
15          CHANGE PRACTICES.—For purposes of subpara-  
16          graph (B), a jurisdiction shall be deemed to  
17          have ineffective information exchange practices  
18          unless the Commissioner determines, on an an-  
19          nual basis, that—

20                 “(i) such jurisdiction has in effect a  
21                 treaty or other information exchange  
22                 agreement with the United States that  
23                 provides for the prompt, obligatory, and  
24                 automatic exchange of such information as  
25                 is foreseeably relevant for carrying out the

1 provisions of the treaty or agreement or  
2 the administration or enforcement of this  
3 title,

4 “(ii) during the 12-month period pre-  
5 ceding the annual determination, the ex-  
6 change of information between the United  
7 States and such jurisdiction was in prac-  
8 tice adequate to prevent evasion or avoid-  
9 ance of United States income tax by  
10 United States persons and to enable the  
11 United States effectively to enforce this  
12 title, and

13 “(iii) during the 12-month period pre-  
14 ceding the annual determination, such ju-  
15 risdiction was not identified by an inter-  
16 governmental group or organization of  
17 which the United States is a member as  
18 uncooperative with international tax en-  
19 forcement or information exchange and the  
20 United States concurs in such identifica-  
21 tion.

22 “(E) INITIAL LIST OF OFFSHORE SECRECY  
23 JURISDICTIONS.—For purposes of this para-  
24 graph, each of the following foreign jurisdic-  
25 tions, which have been previously and publicly



1 identified by the Internal Revenue Service as  
2 secrecy jurisdictions in Federal court pro-  
3 ceedings, shall be deemed listed by the Commis-  
4 sioner of Internal Revenue as an offshore se-  
5 crecy jurisdiction unless delisted by the Com-  
6 missioner under subparagraph (F)(ii):

7 “(i) Anguilla.

8 “(ii) Antigua and Barbuda.

9 “(iii) Aruba.

10 “(iv) Bahamas.

11 “(v) Barbados.

12 “(vi) Belize.

13 “(vii) Bermuda.

14 “(viii) British Virgin Islands.

15 “(ix) Cayman Islands.

16 “(x) Cook Islands.

17 “(xi) Costa Rica.

18 “(xii) Cyprus.

19 “(xiii) Dominica.

20 “(xiv) Gibraltar.

21 “(xv) Grenada.

22 “(xvi) Guernsey/Sark/Alderney.

23 “(xvii) Hong Kong.

24 “(xviii) Isle of Man.

25 “(xix) Jersey.

- 1 “(xx) Latvia.  
2 “(xxi) Liechtenstein.  
3 “(xxii) Luxembourg.  
4 “(xxiii) Malta.  
5 “(xxiv) Nauru.  
6 “(xxv) Netherlands Antilles.  
7 “(xxvi) Panama.  
8 “(xxvii) Samoa.  
9 “(xxviii) St. Kitts and Nevis.  
10 “(xxix) St. Lucia.  
11 “(xxx) St. Vincent and the Grena-  
12 dines.  
13 “(xxxi) Singapore.  
14 “(xxxii) Switzerland.  
15 “(xxxiii) Turks and Caicos.  
16 “(xxxiv) Vanuatu.  
17 “(F) MODIFICATIONS TO LIST.—The Com-  
18 missioner—  
19 “(i) shall add to the list under para-  
20 graph (A) jurisdictions which meet the re-  
21 quirements of paragraph (B), and  
22 “(ii) may remove from such list only  
23 those jurisdictions which do not meet the  
24 requirements of paragraph (B).”.

1       (c) PRESUMPTIONS FOR SECURITIES LAW PUR-  
2 POSES.—Section 21 of the Securities Exchange Act of  
3 1934 (15 U.S.C. 78u) is amended by adding at the end  
4 the following new subsection:

5       “(j) PRESUMPTIONS PERTAINING TO CONTROL AND  
6 BENEFICIAL OWNERSHIP.—

7               “(1) CONTROL.—For purposes of any civil judi-  
8 cial or administrative proceeding under this title,  
9 there shall be a rebuttable presumption that a  
10 United States person (other than an entity with  
11 shares regularly traded on an established securities  
12 market) who directly or indirectly formed, trans-  
13 ferred assets to, was a beneficiary of, or received  
14 money or property or the use thereof from an entity,  
15 including a trust, corporation, limited liability com-  
16 pany, partnership, or foundation (other than an en-  
17 tity with shares regularly traded on an established  
18 securities market), formed, domiciled, or operating  
19 in an offshore secrecy jurisdiction (as defined in sec-  
20 tion 7701(a)(50) of the Internal Revenue Code of  
21 1986), exercised control over such entity. The pre-  
22 sumption of control created by this paragraph shall  
23 not be applied to prevent the Commission from de-  
24 termining or arguing the absence of control.

1           “(2) BENEFICIAL OWNERSHIP.—For purposes  
2       of any civil judicial or administrative proceeding  
3       under this title, there shall be a rebuttable presump-  
4       tion that securities that are nominally owned by an  
5       entity, including a trust, corporation, limited liability  
6       company, partnership, or foundation (other than an  
7       entity with shares regularly traded on an established  
8       securities market), formed, domiciled, or operating  
9       in an offshore secrecy jurisdiction (as so defined),  
10      are beneficially owned by any United States person  
11      (other than an entity with shares regularly traded on  
12      an established securities market) who directly or in-  
13      directly exercised control over such entity. The pre-  
14      sumption of beneficial ownership created by this  
15      paragraph shall not be applied to prevent the Com-  
16      mission from determining or arguing the absence of  
17      beneficial ownership.”.

18      (d) PRESUMPTION FOR REPORTING PURPOSES RE-  
19      LATING TO FOREIGN FINANCIAL ACCOUNTS.—Section  
20      5314 of title 31, United States Code, is amended by add-  
21      ing at the end the following:

22      “(d) REBUTTABLE PRESUMPTION.—For purposes of  
23      this section, there shall be a rebuttable presumption that  
24      any account with a financial institution formed, domiciled,  
25      or operating in an offshore secrecy jurisdiction (as defined

1 in section 7701(a)(50) of the Internal Revenue Code of  
2 1986) contains funds in an amount that is at least suffi-  
3 cient to require a report prescribed by regulations under  
4 this section.”.

5 (e) REGULATORY AUTHORITY AND EFFECTIVE  
6 DATE.—

7 (1) REGULATORY AUTHORITY.—Not later than  
8 180 days after the date of the enactment of this Act,  
9 the Secretary of the Treasury and the Chairman of  
10 the Securities and Exchange Commission shall each  
11 adopt regulations or other guidance necessary to im-  
12 plement the amendments made by this section. The  
13 Secretary and the Chairman may by regulation or  
14 guidance provide that the presumption of control  
15 shall not extend to particular classes of transactions,  
16 such as corporate reorganizations or transactions  
17 below a specified dollar threshold, if either deter-  
18 mines that applying such amendments to such trans-  
19 actions is not necessary to carry out the purposes of  
20 such amendments.

21 (2) EFFECTIVE DATE.—The amendments made  
22 by this section shall take effect on the date of the  
23 enactment of this Act.

1 **SEC. 102. AUTHORIZING SPECIAL MEASURES AGAINST FOR-**  
2 **EIGN JURISDICTIONS, FINANCIAL INSTITU-**  
3 **TIONS, AND OTHERS THAT IMPEDE UNITED**  
4 **STATES TAX ENFORCEMENT.**

5 Section 5318A of title 31, United States Code, is  
6 amended—

7 (1) by striking the section heading and insert-  
8 ing the following:

9 **“§ 5318A. Special measures for jurisdictions, financial**  
10 **institutions, or international transactions**  
11 **that are of primary money laundering**  
12 **concern or impede United States tax en-**  
13 **forcement”;**

14 (2) in subsection (a), by striking the subsection  
15 heading and inserting the following:

16 **“(a) SPECIAL MEASURES TO COUNTER MONEY**  
17 **LAUNDERING AND EFFORTS TO IMPEDE UNITED STATES**  
18 **TAX ENFORCEMENT.—”;**

19 (3) in subsection (c), by striking the subsection  
20 heading and inserting the following:

21 **“(c) CONSULTATIONS AND INFORMATION TO BE**  
22 **CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,**  
23 **TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-**  
24 **MARY MONEY LAUNDERING CONCERN OR TO BE IMPED-**  
25 **ING UNITED STATES TAX ENFORCEMENT.—”;**

1 (4) in subsection (a)(1), by inserting “or is im-  
2 peding United States tax enforcement” after “pri-  
3 mary money laundering concern”;

4 (5) in subsection (a)(4)—

5 (A) in subparagraph (A)—

6 (i) by inserting “in matters involving  
7 money laundering,” before “shall consult”;  
8 and

9 (ii) by striking “and” at the end;

10 (B) by redesignating subparagraph (B) as  
11 subparagraph (C); and

12 (C) by inserting after subparagraph (A)  
13 the following:

14 “(B) in matters involving United States  
15 tax enforcement, shall consult with the Commis-  
16 sioner of the Internal Revenue Service, the Sec-  
17 retary of State, the Attorney General of the  
18 United States, and in the sole discretion of the  
19 Secretary, such other agencies and interested  
20 parties as the Secretary may find to be appro-  
21 priate; and”;

22 (6) in each of paragraphs (1)(A), (2), (3), and  
23 (4) of subsection (b), by inserting “or to be imped-  
24 ing United States tax enforcement” after “primary

1 money laundering concern” each place that term ap-  
2 pears;

3 (7) in subsection (b), by striking paragraph (5)  
4 and inserting the following:

5 “(5) PROHIBITIONS OR CONDITIONS ON OPEN-  
6 ING OR MAINTAINING CERTAIN CORRESPONDENT OR  
7 PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING  
8 CERTAIN PAYMENT CARDS.—If the Secretary finds a  
9 jurisdiction outside of the United States, 1 or more  
10 financial institutions operating outside of the United  
11 States, or 1 or more classes of transactions within  
12 or involving a jurisdiction outside of the United  
13 States to be of primary money laundering concern or  
14 to be impeding United States tax enforcement, the  
15 Secretary, in consultation with the Secretary of  
16 State, the Attorney General of the United States,  
17 and the Chairman of the Board of Governors of the  
18 Federal Reserve System, may prohibit, or impose  
19 conditions upon—

20 “(A) the opening or maintaining in the  
21 United States of a correspondent account or  
22 payable-through account; or

23 “(B) the authorization, approval, or use in  
24 the United States of a credit card, charge card,  
25 debit card, or similar credit or debit financial



1 instrument by any domestic financial institu-  
2 tion, financial agency, or credit card company  
3 or association, for or on behalf of a foreign  
4 banking institution, if such correspondent ac-  
5 count, payable-through account, credit card,  
6 charge card, debit card, or similar credit or  
7 debit financial instrument, involves any such ju-  
8 risdiction or institution, or if any such trans-  
9 action may be conducted through such cor-  
10 respondent account, payable-through account,  
11 credit card, charge card, debit card, or similar  
12 credit or debit financial instrument.”; and

13 (8) in subsection (c)(1), by inserting “or is im-  
14 peding United States tax enforcement” after “pri-  
15 mary money laundering concern”;

16 (9) in subsection (c)(2)(A)—

17 (A) in clause (ii), by striking “bank secrecy  
18 or special regulatory advantages” and inserting  
19 “bank, tax, corporate, trust, or financial secrecy  
20 or regulatory advantages”;

21 (B) in clause (iii), by striking “supervisory  
22 and counter-money” and inserting “supervisory,  
23 international tax enforcement, and counter-  
24 money”;

(C) in clause (v), by striking “banking or secrecy” and inserting “banking, tax, or secrecy”; and

(D) in clause (vi), by inserting “, tax treaty, or tax information exchange agreement” after “treaty”;

(10) in subsection (c)(2)(B)—

(A) in clause (i), by inserting “or tax evasion” after “money laundering”; and

(B) in clause (iii), by inserting “, tax evasion,” after “money laundering”; and

(11) in subsection (d), by inserting “involving money laundering, and shall notify, in writing, the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of any such action involving United States tax enforcement” after “such action”.

**SEC. 103. ALLOWING MORE TIME FOR INVESTIGATIONS INVOLVING OFFSHORE SECRECY JURISDICTIONS.**

(a) IN GENERAL.—Section 6501(c) is amended by adding at the end the following new paragraph:

“(11) RETURNS INVOLVING OFFSHORE SECRECY JURISDICTIONS.—In the case of a return for a year in which the taxpayer directly or indirectly

1       formed, owned, transferred assets to, was a bene-  
2       ficiary of, or received money or property or the use  
3       thereof from a financial account or an entity (other  
4       than an entity with shares regularly traded on an es-  
5       tablished securities market), including a trust, cor-  
6       poration, limited liability company, partnership, or  
7       foundation (other than an entity with shares regu-  
8       larly traded on an established securities market)  
9       formed, located, domiciled or operating in an off-  
10      shore secrecy jurisdiction, the tax may be assessed,  
11      or a proceeding in court for the collection of such  
12      tax may be begun without assessment, at any time  
13      within 6 years after the return was filed.”.

14      (b) EFFECTIVE DATE.—The amendment made by  
15      this section shall apply to—

16           (1) returns filed after the date of the enactment  
17           of this Act, and

18           (2) returns filed on or before such date if the  
19           period specified in section 6501 of the Internal Rev-  
20           enue Code of 1986 (determined without regard to  
21           the amendments made by subsection (a)) for assess-  
22           ment of such taxes has not expired as of such date.

1 **SEC. 104. REPORTING UNITED STATES BENEFICIAL OWN-**  
2 **ERS OF FOREIGN OWNED FINANCIAL AC-**  
3 **COUNTS.**

4 (a) IN GENERAL.—Subpart B of part III of sub-  
5 chapter A of chapter 61 is amended by inserting after sec-  
6 tion 6045 the following new sections:

7 **“SEC. 6045A. RETURNS REGARDING UNITED STATES BENE-**  
8 **FICIAL OWNERS OF FOREIGN OWNED FINAN-**  
9 **CIAL ACCOUNTS.**

10 “(a) REQUIREMENT OF RETURN.—If—

11 “(1) any withholding agent under sections 1441  
12 and 1442 has the control, receipt, custody, disposal,  
13 or payment of any amount constituting gross income  
14 from sources within the United States of any foreign  
15 entity, including a trust, corporation, limited liability  
16 company, partnership, or foundation (other than an  
17 entity with shares regularly traded on an established  
18 securities market), and

19 “(2) such withholding agent determines for pur-  
20 poses of titles 14, 18, or 31 of the United States  
21 Code that a United States person has any beneficial  
22 interest in the foreign entity or in the account in  
23 such entity’s name (hereafter in this section referred  
24 to as ‘United States beneficial owner’),

25 then the withholding agent shall make a return according  
26 to the forms or regulations prescribed by the Secretary.

1       “(b) REQUIRED INFORMATION.—For purposes of  
2 subsection (a) the information required to be included on  
3 the return shall include—

4               “(1) the name, address, and, if known, the tax-  
5 payer identification number of the United States  
6 beneficial owner,

7               “(2) the known facts pertaining to the relation-  
8 ship of such United States beneficial owner to the  
9 foreign entity and the account,

10              “(3) the gross amount of income from sources  
11 within the United States (including gross proceeds  
12 from brokerage transactions), and

13              “(4) such other information as the Secretary  
14 may by forms or regulations provide.

15       “(c) STATEMENTS TO BE FURNISHED TO BENE-  
16 FICIAL OWNERS WITH RESPECT TO WHOM INFORMATION  
17 IS REQUIRED TO BE REPORTED.—A withholding agent  
18 required to make a return under subsection (a) shall fur-  
19 nish to each United States beneficial owner whose name  
20 is required to be set forth in such return a statement  
21 showing—

22              “(1) the name, address, and telephone number  
23 of the information contact of the person required to  
24 make such return, and

1           “(2) the information required to be shown on  
2           such return with respect to such United States bene-  
3           ficial owner.

4   The written statement required under the preceding sen-  
5   tence shall be furnished to the United States beneficial  
6   owner on or before January 31 of the year following the  
7   calendar year for which the return under subsection (a)  
8   was required to be made. In the event the person filing  
9   such return does not have a current address for the United  
10   States beneficial owner, such written statement may be  
11   mailed to the address of the foreign entity.

12       “(d) CROSS REFERENCE.—

          “For provisions relating to penalties for failure to file re-  
turns and reports, see sections 6721, 7203, and 7206(1).

13   **“SEC. 6045B. RETURNS BY FINANCIAL INSTITUTIONS RE-**  
14                   **GARDING ESTABLISHMENT OF ACCOUNTS**  
15                   **AND CREATION OF ENTITIES IN OFFSHORE**  
16                   **SECRECY JURISDICTIONS.**

17       “(a) REQUIREMENT OF RETURN.—Any financial in-  
18   stitution directly or indirectly—

19           “(1) opening a bank, brokerage, or other finan-  
20   cial account, or

21           “(2) forming or acquiring an entity, including a  
22   trust, corporation, limited liability company, partner-  
23   ship, or foundation (other than an entity with shares

1 regularly traded on an established securities mar-  
2 ket),  
3 in an offshore secrecy jurisdiction at the direction of, on  
4 behalf of, or for the benefit of a United States person shall  
5 make a return according to the forms or regulations pre-  
6 scribed by the Secretary.

7 “(b) REQUIRED INFORMATION.—For purposes of  
8 subsection (a) the information required to be included on  
9 the return shall include—

10 “(1) the name, address, and taxpayer identifica-  
11 tion number of such United States person,

12 “(2) the name and address of the financial in-  
13 stitution at which a financial account is opened, the  
14 type of account, the account number, the name  
15 under which the account was opened, and the  
16 amount of the initial deposit,

17 “(3) the name and address of an entity formed  
18 or acquired, the type of entity, and the name and  
19 address of any company formation agent or other  
20 professional employed to form or acquire the entity,  
21 and

22 “(4) such other information as the Secretary  
23 may by forms or regulations provide.

24 “(c) STATEMENTS TO BE FURNISHED TO UNITED  
25 STATES PERSONS WITH RESPECT TO WHOM INFORMA-

1 TION IS REQUIRED TO BE REPORTED.—A financial insti-  
 2 tution required to make a return under subsection (a)  
 3 shall furnish to each United States person whose name  
 4 is required to be set forth in such return a statement  
 5 showing—

6 “(1) the name, address, and telephone number  
 7 of the contact information of the person required to  
 8 make such return, and

9 “(2) the information required to be shown on  
 10 such return with respect to such United States per-  
 11 son.

12 The written statement required under the preceding sen-  
 13 tence shall be furnished to such United States person on  
 14 or before January 31 of the year following the calendar  
 15 year for which the return under subsection (a) was re-  
 16 quired to be made.

17 “(d) EXEMPTION.—The Secretary may by regula-  
 18 tions exempt any class of United States persons or any  
 19 class of accounts or entities from the requirements of this  
 20 section if the Secretary determines that applying this sec-  
 21 tion to such persons, accounts, or entities is not necessary  
 22 to carry out the purposes of this section.

23 “(e) CROSS REFERENCE.—

“For provisions relating to penalties for failure to file returns and reports re-  
 quired under this section, see sections 6721, 7203, and  
 7206(1).”.



1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 for such subpart is amended by inserting after the item  
 3 relating to section 6045 the following new items:

“Sec. 6045A. Returns regarding United States beneficial owners of foreign  
 owned financial accounts.

“Sec. 6045B. Returns by financial institutions regarding establishment of ac-  
 counts and creation of entities in offshore secrecy jurisdic-  
 tions.”.

4 (c) ADDITIONAL PENALTIES.—

5 (1) ADDITIONAL PENALTIES ON BANKS.—Sec-  
 6 tion 5239(b)(1) of the Revised Statutes (12 U.S.C.  
 7 93(b)(1)) is amended by inserting “or any of the  
 8 provisions of section 6045B of the Internal Revenue  
 9 Code of 1986,” after “any regulation issued pursu-  
 10 ant to,”.

11 (2) ADDITIONAL PENALTIES ON SECURITIES  
 12 FIRMS.—Section 21(d)(3)(A) of the Securities Ex-  
 13 change Act of 1934 (15 U.S.C. 78u(d)(3)(A)) is  
 14 amended by inserting “any of the provisions of sec-  
 15 tion 6045B of the Internal Revenue Code of 1986,”  
 16 after “the rules or regulations thereunder,”.

17 (d) REGULATORY AUTHORITY AND EFFECTIVE  
 18 DATE.—

19 (1) REGULATORY AUTHORITY.—Not later than  
 20 180 days after the date of the enactment of this Act,  
 21 the Secretary of the Treasury shall adopt regula-  
 22 tions, forms, or other guidance necessary to imple-  
 23 ment this section.

1           (2) EFFECTIVE DATE.—Section 6045A of the  
 2       Internal Revenue Code of 1986 (as added by this  
 3       section) and the amendment made by subsection  
 4       (c)(1) shall take effect with respect to amounts paid  
 5       into foreign owned accounts after December 31 of  
 6       the year of the date of the enactment of this Act.  
 7       Section 6045B of such Code (as so added) and the  
 8       amendment made by subsection (c)(2) shall take ef-  
 9       fect with respect to accounts opened or entities  
 10      formed or acquired after December 31 of the year  
 11      of the date of the enactment of this Act.

12 **SEC. 105. PREVENTING MISUSE OF FOREIGN TRUSTS FOR**  
 13 **TAX EVASION.**

14       (a) ATTRIBUTION OF TRUST PROTECTOR POWERS  
 15 TO GRANTORS.—Section 672 is amended by redesignating  
 16 subsection (f) as subsection (g) and by inserting after sub-  
 17 section (e) the following new subsection:

18       “(f) GRANTOR TREATED AS HOLDING ANY POWER  
 19 OR INTEREST OF TRUST PROTECTOR OR ENFORCER.—  
 20 For purposes of this subpart, a grantor shall be treated  
 21 as holding any power or interest held by any trust pro-  
 22 tector or trust enforcer or similar person appointed to ad-  
 23 vise, influence, oversee, or veto the actions of the trustee.”.

24       (b) TREATMENT OF UNITED STATES RECIPIENTS OF  
 25 FOREIGN TRUST ASSETS AS TRUST BENEFICIARIES.—

1 Section 679 is amended by redesignating subsections (c)  
 2 and (d) as subsections (d) and (e), respectively, and by  
 3 inserting after subsection (b) the following new subsection:

4       “(c) CERTAIN UNITED STATES PERSONS TREATED  
 5 AS BENEFICIARIES.—Any United States person receiving  
 6 from a foreign trust cash or other property, or receiving  
 7 the use thereof, shall be treated as a beneficiary of such  
 8 trust regardless of whether such person is a named bene-  
 9 ficiary, except to the extent that such person paid fair  
 10 market value for the benefit received.”.

11       (c) TREATMENT OF FOREIGN TRUST TRANSFERS OF  
 12 REAL ESTATE, ARTWORK, OR JEWELRY CONSISTENTLY  
 13 WITH TRANSFERS OF SECURITIES.—Section 643(i)(1) is  
 14 amended by striking “or marketable securities” and in-  
 15 serting “or other property, including real estate, market-  
 16 able securities, artwork, jewelry, and other personal prop-  
 17 erty,”.

18       (d) TREATMENT OF TRUSTS WITH FUTURE OR CON-  
 19 TINGENT UNITED STATES BENEFICIARIES.—Section  
 20 679(a)(1) is amended—

21               (1) by inserting “or for any subsequent year”  
 22               after “such year”, and

23               (2) by inserting “(including a contingent bene-  
 24               ficiary)” after “beneficiary”.

1 **SEC. 106. LIMITATION ON LEGAL OPINION PROTECTION**  
2 **FROM PENALTIES WITH RESPECT TO TRANS-**  
3 **ACTIONS INVOLVING OFFSHORE SECRECY**  
4 **JURISDICTIONS.**

5 (a) IN GENERAL.—Section 6664 is amended by add-  
6 ing at the end the following new subsection:

7 “(e) CERTAIN OPINIONS MAY NOT BE RELIED  
8 UPON.—For purposes of this part, an opinion of a tax  
9 advisor may not be relied upon to establish that there was  
10 reasonable cause for any portion of an underpayment, or  
11 that the taxpayer acted in good faith with respect to such  
12 portion, if such portion is attributable to a transaction any  
13 part of which involves an entity or financial account in  
14 an offshore secrecy jurisdiction.”.

15 (b) REGULATORY AUTHORITY.—The Secretary of the  
16 Treasury may by regulation or guidance provide that sub-  
17 section (e) of section 6664 of the Internal Revenue Code  
18 of 1986, as added by subsection (a), does not apply to  
19 legal opinions that express a confidence level that substan-  
20 tially exceeds the “more likely than not” confidence level;  
21 or that such subsection does not apply to classes of trans-  
22 actions, such as corporate reorganizations, where the Sec-  
23 retary determines that applying such subsection to such  
24 transactions is not necessary to carry out the purposes of  
25 such subsection.

1 **TITLE II—OTHER MEASURES TO**  
2 **COMBAT TAX HAVEN AND TAX**  
3 **SHELTER ABUSES**

4 **SEC. 201. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**  
5 **HOLDINGS.**

6 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
7 21(d)(3)(B) of the Securities Exchange Act of 1934 (15  
8 U.S.C. 78u(d)(3)(B)) is amended by adding at the end  
9 the following:

10 “(iv) FOURTH TIER.—Notwithstanding  
11 clauses (i), (ii), and (iii), the amount of the  
12 penalty for each such violation shall not exceed  
13 \$1,000,000 for any person if the violation de-  
14 scribed in subparagraph (A) involved a knowing  
15 failure to disclose any holding or transaction in-  
16 volving equity or debt instruments of an issuer  
17 and known by such person to involve a foreign  
18 entity, including any trust, corporation, limited  
19 liability company, partnership, or foundation  
20 that is directly or indirectly controlled by such  
21 person, and which would have been otherwise  
22 subject to disclosure by such person under this  
23 title.”.

1       (b) SECURITIES ACT OF 1933.—Section 20(d)(2) of  
2 the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is  
3 amended by adding at the end the following:

4               “(D)   FOURTH   TIER.—Notwithstanding  
5               subparagraphs (A), (B), and (C), the amount of  
6               penalty for each such violation shall not exceed  
7               \$1,000,000 for any person, if the violation de-  
8               scribed in paragraph (1) involved a knowing  
9               failure to disclose any holding or transaction in-  
10              volving equity or debt instruments of an issuer  
11              and known by such person to involve a foreign  
12              entity, including any trust, corporation, limited  
13              liability company, partnership, or foundation,  
14              directly or indirectly controlled by such person,  
15              and which would have been otherwise subject to  
16              disclosure by such person under this title.”.

17       (c) INVESTMENT COMPANY ACT OF 1940.—Section  
18 9(d)(2) of the Investment Company Act of 1940 (15  
19 U.S.C. 80a–9(d)(2)) is amended by adding at the end the  
20 following:

21               “(D)   FOURTH   TIER.—Notwithstanding  
22               subparagraphs (A), (B), and (C), the amount of  
23               penalty for each such violation shall not exceed  
24               \$1,000,000 for any person, if the violation de-  
25               scribed in paragraph (1) involved a knowing

1 failure to disclose any holding or transaction in-  
2 volving equity or debt instruments of an issuer  
3 and known by such person to involve a foreign  
4 entity, including any trust, corporation, limited  
5 liability company, partnership, or foundation,  
6 directly or indirectly controlled by such person,  
7 and which would have been otherwise subject to  
8 disclosure by such person under this title.”.

9 (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
10 203(i)(2) of the Investment Advisers Act of 1940 (15  
11 U.S.C. 80b–3(i)(2)) is amended by adding at the end the  
12 following:

13 “(D) FOURTH TIER.—Notwithstanding  
14 subparagraphs (A), (B), and (C), the amount of  
15 penalty for each such violation shall not exceed  
16 \$1,000,000 for any person, if the violation de-  
17 scribed in paragraph (1) involved a knowing  
18 failure to disclose any holding or transaction in-  
19 volving equity or debt instruments of an issuer  
20 and known by such person to involve a foreign  
21 entity, including any trust, corporation, limited  
22 liability company, partnership, or foundation,  
23 directly or indirectly controlled by such person,  
24 and which would have been otherwise subject to  
25 disclosure by such person under this title.”.

1 **SEC. 202. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**  
2 **FOR HEDGE FUNDS AND PRIVATE EQUITY**  
3 **FUNDS.**

4 (a) IN GENERAL.—Not later than 180 days after the  
5 date of the enactment of this Act, the Secretary of the  
6 Treasury, in consultation with the Chairman of the Secu-  
7 rities and Exchange Commission and the Chairman of the  
8 Commodity Futures Trading Commission, shall publish a  
9 final rule in the Federal Register requiring unregistered  
10 investment companies, including hedge funds or private  
11 equity funds, to establish anti-money laundering programs  
12 and submit suspicious activity reports under subsections  
13 (g) and (h) of section 5318 of title 31, United States Code.

14 (b) CONTENTS.—The final rule published under this  
15 section—

16 (1) shall require, at a minimum, that to safe-  
17 guard against terrorist financing and money laun-  
18 dering, all unregistered investment companies  
19 shall—

20 (A) use risk-based due diligence policies,  
21 procedures, and controls that are reasonably de-  
22 signed to ascertain the identity of and evaluate  
23 foreign persons (including, where appropriate,  
24 the nominal and beneficial owner or beneficiary  
25 of a foreign corporation, partnership, trust, or  
26 other foreign entity) planning to supply or sup-



1           plying funds to be invested with the advice or  
 2           assistance of that unregistered investment com-  
 3           pany; and

4           (B) be subject to section 5318(k)(2) of  
 5           title 31, United States Code; and

6           (2) may incorporate aspects of the proposed  
 7           rule for unregistered investment companies pub-  
 8           lished in the Federal Register on September 26,  
 9           2002 (67 Fed. Reg. 60617) (relating to anti-money  
 10          laundering programs).

11       (c) DEFINITIONS.—In this section—

12           (1) the terms “investment company” and  
 13           “issuer” have the same meanings as in section 2 of  
 14           the Investment Company Act of 1940 (15 U.S.C.  
 15           80a–2); and

16           (2) the term “unregistered investment com-  
 17           pany” means an issuer that would be an investment  
 18           company, but for the exclusion under paragraph (1)  
 19           or (7) of section 3(c) of the Investment Company  
 20           Act of 1940 (15 U.S.C. 80a–3(c)).

21   **SEC. 203. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**  
 22                           **FORMATION AGENTS.**

23       (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR  
 24       FORMATION AGENTS.—Section 5312(a)(2) of title 31,  
 25       United States Code, is amended—

1           (1) in subparagraph (Y), by striking “or” at  
2     the end;

3           (2) by redesignating subparagraph (Z) as sub-  
4     paragraph (AA); and

5           (3) by inserting after subparagraph (Y) the fol-  
6     lowing:

7                     “(Z) persons involved in forming new cor-  
8                     porations, limited liability companies, partner-  
9                     ships, trusts, or other legal entities; or”.

10       (b) DEADLINE FOR ANTI-MONEY LAUNDERING  
11     RULE FOR FORMATION AGENTS.—Not later than 90 days  
12     after the date of the enactment of this Act, after con-  
13     sulting with the Attorney General of the United States,  
14     the Commissioner of the Internal Revenue Service, and  
15     Chairman of the Securities and Exchange Commission,  
16     the Secretary of the Treasury shall publish a proposed rule  
17     in the Federal Register requiring persons described in sec-  
18     tion 5312(a)(2)(Z) of title 31, United States Code, as  
19     added by this section, to establish anti-money laundering  
20     programs under subsection (h) of section 5318 of that  
21     title. The Secretary shall publish such rule in final form  
22     in the Federal Register not later than 180 days after the  
23     date of the enactment of this Act.

1 **SEC. 204. STRENGTHENING SUMMONS IN CASES INVOLVING**  
2 **OFFSHORE SECRECY JURISDICTIONS.**

3 (a) IN GENERAL.—Subsection (f) of section 7609 is  
4 amended to read as follows:

5 “(f) ADDITIONAL REQUIREMENT IN THE CASE OF A  
6 JOHN DOE SUMMONS.—

7 “(1) GENERAL RULE.—Any summons described  
8 in subsection (c)(1) which does not identify the per-  
9 son with respect to whose liability the summons is  
10 issued may be served only after a court proceeding  
11 in which the Secretary establishes that—

12 “(A) the summons relates to the investiga-  
13 tion of a particular person or ascertainable  
14 group or class of persons,

15 “(B) there is a reasonable basis for believ-  
16 ing that such person or group or class of per-  
17 sons may fail or may have failed to comply with  
18 any provision of any internal revenue law, and

19 “(C) the information sought to be obtained  
20 from the examination of the records or testi-  
21 mony (and the identity of the person or persons  
22 with respect to whose liability the summons is  
23 issued) is not readily available from other  
24 sources.

25 “(2) EXCEPTION.—Paragraph (1) shall not  
26 apply to any summons which specifies that it is lim-

1       ited to information regarding a United States cor-  
2       respondent account (as defined in section  
3       5318A(e)(1)(B) of title 31, United States Code) or  
4       a United States payable-through account (as defined  
5       in section 5318A(e)(1)(C) of such title) of a finan-  
6       cial institution in an offshore secrecy jurisdiction.

7               “(3) PRESUMPTION IN CASES INVOLVING OFF-  
8       SHORE SECRECY JURISDICTIONS.—For purposes of  
9       this section, in any case in which the particular per-  
10      son or ascertainable group or class of persons has fi-  
11      nancial accounts in or transactions related to off-  
12      shore secrecy jurisdictions, there shall be a presump-  
13      tion that there is a reasonable basis for believing  
14      that such person or group or class of persons may  
15      fail or may have failed to comply with provisions of  
16      internal revenue law.

17              “(4) PROJECT JOHN DOE SUMMONSES.—

18                      “(A) IN GENERAL.—Notwithstanding the  
19              requirements of paragraph (1), the Secretary  
20              may issue a summons described in paragraph  
21              (1) if the summons—

22                              “(i) relates to a project which is ap-  
23                      proved under subparagraph (B),

1 “(ii) is issued to a person who is a  
2 member of the group or class established  
3 under subparagraph (B)(i), and

4 “(iii) is issued within 3 years of the  
5 date on which such project was approved  
6 under subparagraph (B).

7 “(B) APPROVAL OF PROJECTS.—A project  
8 may only be approved under this subparagraph  
9 after a court proceeding in which the Secretary  
10 establishes that—

11 “(i) any summons issues with respect  
12 to the project will be issued to a member  
13 of an ascertainable group or class of per-  
14 sons, and

15 “(ii) any summons issued with respect  
16 to such project will meet the requirements  
17 of subparagraphs (A), (B), and (C) of  
18 paragraph (1).

19 “(C) EXTENSION.—Upon application of  
20 the Secretary, the court may extend the time  
21 for issuing such summonses under subpara-  
22 graph (A)(i) for additional 3-year periods, but  
23 only if the court continues to exercise oversight  
24 of such project under subparagraph (D).

1           “(D) ONGOING COURT OVERSIGHT.—Dur-  
2           ing any period in which the Secretary is author-  
3           ized to issue summonses in relation to a project  
4           approved under subparagraph (B) (including  
5           during any extension under subparagraph (C)),  
6           the Secretary shall report annually to the court  
7           on the use of such authority, provide copies of  
8           all summonses with such report, and comply  
9           with the court’s direction with respect to the  
10          issuance of any John Doe summons under such  
11          project.”.

12       (b) JURISDICTION OF COURT.—

13           (1) IN GENERAL.—Paragraph (1) of section  
14       7609(h) is amended by inserting after the first sen-  
15       tence the following new sentence: “Any United  
16       States district court in which a member of the group  
17       or class to which a summons may be issued resides  
18       or is found shall have jurisdiction to hear and deter-  
19       mine the approval of a project under subsection  
20       (f)(4)(B).”.

21           (2) CONFORMING AMENDMENT.—The first sen-  
22       tence of section 7609(h)(1) is amended by striking  
23       “(f)” and inserting “(f)(1)”.

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

4 (d) GAO REPORT.—Not later than the date which  
 5 is 5 years after the date of the enactment of this Act,  
 6 the Comptroller General of the United States shall issue  
 7 a report on the implementation of section 7609(f)(4) of  
 8 the Internal Revenue Code of 1986, as added by this sec-  
 9 tion.

10 **SEC. 205. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**  
 11 **CIAL ACCOUNT REPORTING.**

12 (a) CLARIFYING THE CONNECTION OF FOREIGN FI-  
 13 NANCIAL ACCOUNT REPORTING TO TAX ADMINISTRA-  
 14 TION.—Paragraph (4) of section 6103(b) (relating to tax  
 15 administration) is amended by adding at the end the fol-  
 16 lowing new sentence:

17 “For purposes of clause (i), section 5314 of title 31,  
 18 United States Code, and sections 5321 and 5322 of  
 19 such title (as such sections pertain to such section  
 20 5314), shall be considered to be an internal revenue  
 21 law.”.

22 (b) SIMPLIFYING THE CALCULATION OF FOREIGN  
 23 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section  
 24 5321(a)(5)(D)(ii) of title 31, United States Code, is  
 25 amended by striking “the balance in the account at the

1 time of the violation” and inserting “the highest balance  
 2 in the account during the reporting period to which the  
 3 violation relates”.

4 (c) CLARIFYING THE USE OF SUSPICIOUS ACTIVITY  
 5 REPORTS UNDER THE BANK SECRECY ACT FOR CIVIL  
 6 TAX LAW ENFORCEMENT.—Section 5319 of title 31,  
 7 United States Code, is amended by inserting “the civil and  
 8 criminal enforcement divisions of the Internal Revenue  
 9 Service,” after “including”.

## 10 **TITLE III—COMBATING TAX** 11 **SHELTER PROMOTERS**

### 12 **SEC. 301. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-** 13 **TERS.**

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

17 (1) by redesignating subsections (b) and (c) as  
 18 subsections (d) and (e), respectively,

19 (2) by striking “a penalty” and all that follows  
 20 through the period in the first sentence of subsection  
 21 (a) and inserting “a penalty determined under sub-  
 22 section (b)”, and

23 (3) by inserting after subsection (a) the fol-  
 24 lowing new subsections:



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

3               “(1) AMOUNT OF PENALTY.—The amount of  
4 the penalty imposed by subsection (a) shall not ex-  
5 ceed 150 percent of the gross income derived (or to  
6 be derived) from such activity by the person or per-  
7 sons subject to such penalty.

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

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

20               “(c) PENALTY NOT DEDUCTIBLE.—The payment of  
21 any penalty imposed under this section or the payment  
22 of any amount to settle or avoid the imposition of such  
23 penalty shall not be considered an ordinary and necessary  
24 expense in carrying on a trade or business for purposes

1 of this title and shall not be deductible by the person who  
 2 is subject to such penalty or who makes such payment.”.

3 (b) CONFORMING AMENDMENT.—Section 6700(a) is  
 4 amended by striking the last sentence.

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

8 **SEC. 302. PENALTY FOR AIDING AND ABETTING THE UN-**  
 9 **DERSTATEMENT OF TAX LIABILITY.**

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

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

14 (2) by inserting “aid, assistance, procurement,  
 15 or advice with respect to such” before “portion”  
 16 both places it appears in paragraphs (2) and (3),  
 17 and

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

21 (b) AMOUNT OF PENALTY.—Subsection (b) of section  
 22 6701 (relating to penalties for aiding and abetting under-  
 23 statement of tax liability) is amended to read as follows:

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

1           “(1) AMOUNT OF PENALTY.—The amount of  
2           the penalty imposed by subsection (a) shall not ex-  
3           ceed 150 percent of the gross income derived (or to  
4           be derived) from such aid, assistance, procurement,  
5           or advice provided by the person or persons subject  
6           to such penalty.

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

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

20          (c) PENALTY NOT DEDUCTIBLE.—Section 6701 is  
21          amended by adding at the end the following new sub-  
22          section:

23          “(g) PENALTY NOT DEDUCTIBLE.—The payment of  
24          any penalty imposed under this section or the payment  
25          of any amount to settle or avoid the imposition of such

1 penalty shall not be considered an ordinary and necessary  
 2 expense in carrying on a trade or business for purposes  
 3 of this title and shall not be deductible by the person who  
 4 is subject to such penalty or who makes such payment.”.

5 (d) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to activities after the date of the  
 7 enactment of this Act.

8 **SEC. 303. PROHIBITION ON TAX SHELTER PATENTS.**

9 (a) IN GENERAL.—Section 102 of title 35, United  
 10 States Code, is amended—

11 (1) by redesignating subsection (g) as sub-  
 12 section (h); and

13 (2) by inserting after subsection (f) the fol-  
 14 lowing:

15 “(g) the invention is designed to minimize, avoid,  
 16 defer, or otherwise affect the liability for Federal, State,  
 17 local, or foreign tax, or”.

18 (b) EFFECTIVE DATE AND APPLICATION.—The  
 19 amendment made by this section shall take effect on the  
 20 date of the enactment of this Act and apply to any applica-  
 21 tion for a patent that has not been granted by that date.

22 **SEC. 304. PROHIBITED FEE ARRANGEMENT.**

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

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

3           (2) by striking “subsection (a).” in paragraphs  
4           (2) and (3) of subsection (g) (as redesignated by  
5           paragraph (1)) and inserting “subsection (a) or  
6           (f).”, and

7           (3) by inserting after subsection (e) the fol-  
8           lowing new subsection:

9           “(f) PROHIBITED FEE ARRANGEMENT.—

10           “(1) IN GENERAL.—Any person who makes an  
11           agreement for, charges, or collects a fee which is for  
12           services provided in connection with the internal rev-  
13           enue laws, and the amount of which is calculated ac-  
14           cording to, or is dependent upon, a projected or ac-  
15           tual amount of—

16                   “(A) tax savings or benefits, or

17                   “(B) losses which can be used to offset  
18           other taxable income,

19           shall pay a penalty with respect to each such fee ac-  
20           tivity in the amount determined under subsection  
21           (b).

22           “(2) RULES.—The Secretary may issue rules to  
23           carry out the purposes of this subsection and may  
24           provide exceptions for fee arrangements that are in  
25           the public interest.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to fee agreements, charges, and  
3 collections made after the date of the enactment of this  
4 Act.

5 **SEC. 305. PREVENTING TAX SHELTER ACTIVITIES BY FI-**  
6 **NANCIAL INSTITUTIONS.**

7 (a) EXAMINATIONS.—

8 (1) DEVELOPMENT OF EXAMINATION TECH-  
9 NIQUES.—Each of the Federal banking agencies and  
10 the Commission shall, in consultation with the Inter-  
11 nal Revenue Service, develop examination techniques  
12 to detect potential violations of section 6700 or 6701  
13 of the Internal Revenue Code of 1986, by depository  
14 institutions, brokers, dealers, and investment advis-  
15 ers, as appropriate.

16 (2) IMPLEMENTATION.—Each of the Federal  
17 banking agencies and the Commission shall imple-  
18 ment the examination techniques developed under  
19 paragraph (1) with respect to each of the depository  
20 institutions, brokers, dealers, or investment advisers  
21 subject to their enforcement authority. Such exam-  
22 ination shall, to the extent possible, be combined  
23 with any examination by such agency otherwise re-  
24 quired or authorized by Federal law.

1 (b) REPORT TO INTERNAL REVENUE SERVICE.—In  
2 any case in which an examination conducted under this  
3 section with respect to a financial institution or other enti-  
4 ty reveals a potential violation, such agency shall promptly  
5 notify the Internal Revenue Service of such potential viola-  
6 tion for investigation and enforcement by the Internal  
7 Revenue Service, in accordance with applicable provisions  
8 of law.

9 (c) REPORT TO CONGRESS.—The Federal banking  
10 agencies and the Commission shall submit a joint written  
11 report to Congress in 2009 and 2012 on their progress  
12 in preventing violations of sections 6700 and 6701 of the  
13 Internal Revenue Code of 1986, by depository institutions,  
14 brokers, dealers, and investment advisers, as appropriate.

15 (d) DEFINITIONS.—For purposes of this section—

16 (1) the terms “broker”, “dealer”, and “invest-  
17 ment adviser” have the same meanings as in section  
18 3 of the Securities Exchange Act of 1934 (15 U.S.C.  
19 78c);

20 (2) the term “Commission” means the Securi-  
21 ties and Exchange Commission;

22 (3) the term “depository institution” has the  
23 same meaning as in section 3(c) of the Federal De-  
24 posit Insurance Act (12 U.S.C. 1813(c));

1           (4) the term “Federal banking agencies” has  
 2           the same meaning as in section 3(q) of the Federal  
 3           Deposit Insurance Act (12 U.S.C. 1813(q)); and

4           (5) the term “Secretary” means the Secretary  
 5           of the Treasury.

6 **SEC. 306. INFORMATION SHARING FOR ENFORCEMENT**  
 7 **PURPOSES.**

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

13           “(7) DISCLOSURE OF RETURNS AND RETURN  
 14 INFORMATION RELATED TO PROMOTION OF PROHIB-  
 15 ITED TAX SHELTERS OR TAX AVOIDANCE  
 16 SCHEMES.—

17           “(A) WRITTEN REQUEST.—Upon receipt  
 18 by the Secretary of a written request which  
 19 meets the requirements of subparagraph (B)  
 20 from the head of the United States Securities  
 21 and Exchange Commission, an appropriate  
 22 Federal banking agency as defined under sec-  
 23 tion 1813(q) of title 12, United States Code, or  
 24 the Public Company Accounting Oversight  
 25 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 requestor to evaluate, determine, penalize, or deter conduct by a financial institution, issuer, or public accounting firm, or associated person, in connection with a potential or actual violation of section 6700 (promotion of abusive tax shelters), 6701 (aiding and abetting understatement of tax liability), or activities related to promoting or facilitating inappropriate tax avoidance or tax evasion. Such disclosure shall be solely for use by such officers and employees in such investigation, examination, or proceeding. In the discretion of the Secretary, such disclosure may take the form of the participation of Internal Revenue Service employees in a joint investigation, examination, or proceeding with the Securities Exchange Commission, Federal banking agency, or Public Company Accounting Oversight Board.

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

1 “(i) the nature of the investigation,  
2 examination, or proceeding,

3 “(ii) the statutory authority under  
4 which such investigation, examination, or  
5 proceeding is being conducted,

6 “(iii) the name or names of the finan-  
7 cial institution, issuer, or public accounting  
8 firm to which such return information re-  
9 lates,

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

12 “(v) the specific reason or reasons  
13 why such disclosure is, or may be, relevant  
14 to such investigation, examination or pro-  
15 ceeding.

16 “(C) FINANCIAL INSTITUTION.—For the  
17 purposes of this paragraph, the term ‘financial  
18 institution’ means a depository institution, for-  
19 eign bank, insured institution, industrial loan  
20 company, broker, dealer, investment company,  
21 investment advisor, or other entity subject to  
22 regulation or oversight by the United States Se-  
23 curities and Exchange Commission or an appro-  
24 priate Federal banking agency.”.

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

6               “(9) DISCLOSURE OF RETURNS AND RETURN  
7 INFORMATION FOR USE IN FINANCIAL AND AC-  
8 COUNTING FRAUD INVESTIGATIONS.—

9               “(A) WRITTEN REQUEST.—Upon receipt  
10 by the Secretary of a written request which  
11 meets the requirements of subparagraph (B)  
12 from the head of the United States Securities  
13 and Exchange Commission or the Public Com-  
14 pany Accounting Oversight Board, a return or  
15 return information shall be disclosed to such re-  
16 questor’s officers and employees who are per-  
17 sonally and directly engaged in an investigation,  
18 examination, or proceeding by such requestor to  
19 evaluate the accuracy of a financial statement  
20 or report, or to determine whether to require a  
21 restatement, penalize, or deter conduct by an  
22 issuer, investment company, or public account-  
23 ing firm, or associated person, in connection  
24 with a potential or actual violation of auditing  
25 standards or prohibitions against false or mis-

1           leading statements or omissions in financial  
2           statements or reports. Such disclosure shall be  
3           solely for use by such officers and employees in  
4           such investigation, examination, or proceeding.

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

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

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

13                   “(iii) the name or names of the issuer,  
14                   investment company, or public accounting  
15                   firm to which such return information re-  
16                   lates,

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

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

23           (c) EFFECTIVE DATE.—The amendments made by  
24           this section shall apply to disclosures and to information

1 and document requests made after the date of the enact-  
2 ment of this Act.

3 **SEC. 307. DISCLOSURE OF INFORMATION TO CONGRESS.**

4 (a) DISCLOSURE BY TAX RETURN PREPARER.—

5 (1) IN GENERAL.—Subparagraph (B) of section  
6 7216(b)(1) (relating to disclosures) is amended to  
7 read as follows:

8 “(B) pursuant to any one of the following  
9 documents, if clearly identified:

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

12 “(ii) A subpoena issued by a Federal  
13 or State grand jury.

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

17 “(I) any Federal agency, includ-  
18 ing Congress or any committee or  
19 subcommittee thereof, or

20 “(II) any State agency, body, or  
21 commission charged under the laws of  
22 the State or a political subdivision of  
23 the State with the licensing, registra-  
24 tion, or regulation of tax return pre-  
25 parers.”.

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

5       (b) DISCLOSURE BY SECRETARY.—Paragraph (2) of  
6       section 6104(a) (relating to inspection of applications for  
7       tax exemption or notice of status) is amended to read as  
8       follows:

9           “(2) INSPECTION BY CONGRESS.—

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

tion 6103 or 6110); and any communication between the Internal Revenue Service and any other party relating to the tax exempt status of such organization.

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

“(i) the application for exemption of any organization described in subsection (c) or (d) of section 501 which is exempt from taxation under section 501(a) for any taxable year and any application referred to in subparagraph (B) of subsection (a)(1) of this section, and

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

as if such papers constituted returns.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures and to information and document requests made after the date of the enactment of this Act.

**SEC. 308. TAX OPINION STANDARDS FOR TAX PRACTITIONERS.**

Section 330(d) of title 31, United States Code, is amended to read as follows:

1       “(d) The Secretary of the Treasury shall impose  
2 standards applicable to the rendering of written advice  
3 with respect to any listed transaction or any entity, plan,  
4 arrangement, or other transaction which has a potential  
5 for tax avoidance or evasion. Such standards shall ad-  
6 dress, but not be limited to, the following issues:

7               “(1) Independence of the practitioner issuing  
8 such written advice from persons promoting, mar-  
9 keting, or recommending the subject of the advice.

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

14              “(3) Avoidance of conflicts of interest which  
15 would impair auditor independence.

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

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

21              “(6) Appropriateness of the fees charged by the  
22 practitioner for the written advice.

23              “(7) Preventing practitioners and firms from  
24 aiding or abetting the understatement of tax liability  
25 by clients.



1 “(8) Banning the promotion of potentially abu-  
 2 sive or illegal tax shelters.”.

3 **SEC. 309. DENIAL OF DEDUCTION FOR CERTAIN FINES,**  
 4 **PENALTIES, AND OTHER AMOUNTS.**

5 (a) IN GENERAL.—Subsection (f) of section 162 (re-  
 6 lating to trade or business expenses) is amended to read  
 7 as follows:

8 “(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

9 “(1) IN GENERAL.—Except as provided in para-  
 10 graph (2), no deduction otherwise allowable shall be  
 11 allowed under this chapter for any amount paid or  
 12 incurred (whether by suit, agreement, or otherwise)  
 13 to, or at the direction of, a government or entity de-  
 14 scribed in paragraph (4) in relation to the violation  
 15 of any law or the investigation or inquiry by such  
 16 government or entity into the potential violation of  
 17 any law.

18 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING  
 19 RESTITUTION.—Paragraph (1) shall not apply to  
 20 any amount which—

21 “(A) the taxpayer establishes constitutes  
 22 restitution (including remediation of property)  
 23 for damage or harm caused by or which may be  
 24 caused by the violation of any law or the poten-  
 25 tial violation of any law, and

1           “(B) is identified as restitution in the  
2           court order or settlement agreement.

3           Identification pursuant to subparagraph (B) alone  
4           shall not satisfy the requirement under subpara-  
5           graph (A). This paragraph shall not apply to any  
6           amount paid or incurred as reimbursement to the  
7           government or entity for the costs of any investiga-  
8           tion or litigation.

9           “(3) EXCEPTION FOR AMOUNTS PAID OR IN-  
10          CURRED AS THE RESULT OF CERTAIN COURT OR-  
11          DERS.—Paragraph (1) shall not apply to any  
12          amount paid or incurred by order of a court in a  
13          suit in which no government or entity described in  
14          paragraph (4) is a party.

15          “(4) CERTAIN NONGOVERNMENTAL REGU-  
16          LATORY ENTITIES.—An entity is described in this  
17          paragraph if it is—

18                 “(A) a nongovernmental entity which exer-  
19                 cises self-regulatory powers (including imposing  
20                 sanctions) in connection with a qualified board  
21                 or exchange (as defined in section 1256(g)(7)),  
22                 or

23                 “(B) to the extent provided in regulations,  
24                 a nongovernmental entity which exercises self-  
25                 regulatory powers (including imposing sanc-

1           tions) as part of performing an essential gov-  
2           ernmental function.

3           “(5) EXCEPTION FOR TAXES DUE.—Paragraph  
4           (1) shall not apply to any amount paid or incurred  
5           as taxes due.”.

6           (b) EFFECTIVE DATE.—The amendment made by  
7           this section shall apply to amounts paid or incurred on  
8           or after the date of the enactment of this Act, except that  
9           such amendment shall not apply to amounts paid or in-  
10          curred under any binding order or agreement entered into  
11          before such date. Such exception shall not apply to an  
12          order or agreement requiring court approval unless the ap-  
13          proval was obtained before such date.

## 14                   **TITLE IV—REQUIRING** 15                   **ECONOMIC SUBSTANCE**

### 16   **SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-** 17                   **TRINE.**

18          (a) IN GENERAL.—Section 7701 is amended by re-  
19          designating subsection (p) as subsection (q) and by insert-  
20          ing after subsection (o) the following new subsection:

21          “(p) CLARIFICATION OF ECONOMIC SUBSTANCE  
22          DOCTRINE; ETC.—

23                  “(1) GENERAL RULES.—

24                          “(A) IN GENERAL.—In any case in which  
25                  a court determines that the economic substance

1 doctrine is relevant for purposes of this title to  
2 a transaction (or series of transactions), such  
3 transaction (or series of transactions) shall have  
4 economic substance only if the requirements of  
5 this paragraph are met.

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

8 “(i) IN GENERAL.—A transaction has  
9 economic substance only if—

10 “(I) the transaction changes in a  
11 meaningful way (apart from Federal  
12 tax effects) the taxpayer’s economic  
13 position, and

14 “(II) the taxpayer has a substan-  
15 tial nontax purpose for entering into  
16 such transaction and the transaction  
17 is a reasonable means of accom-  
18 plishing such purpose.

19 In applying subclause (II), a purpose of  
20 achieving a financial accounting benefit  
21 shall not be taken into account in deter-  
22 mining whether a transaction has a sub-  
23 stantial nontax purpose if the origin of  
24 such financial accounting benefit is a re-  
25 duction of income tax.

1                   “(ii) SPECIAL RULE WHERE TAX-  
2                   PAYER RELIES ON PROFIT POTENTIAL.—A  
3                   transaction shall not be treated as having  
4                   economic substance by reason of having a  
5                   potential for profit unless—

6                               “(I) the present value of the rea-  
7                               sonably expected pre-tax profit from  
8                               the transaction is substantial in rela-  
9                               tion to the present value of the ex-  
10                              pected net tax benefits that would be  
11                              allowed if the transaction were re-  
12                              spected, and

13                             “(II) the reasonably expected  
14                             pre-tax profit from the transaction ex-  
15                             ceeds a risk-free rate of return.

16                   “(C) TREATMENT OF FEES AND FOREIGN  
17                   TAXES.—Fees and other transaction expenses  
18                   and foreign taxes shall be taken into account as  
19                   expenses in determining pre-tax profit under  
20                   subparagraph (B)(ii).

21                   “(2) SPECIAL RULES FOR TRANSACTIONS WITH  
22                   TAX-INDIFFERENT PARTIES.—

23                             “(A) SPECIAL RULES FOR FINANCING  
24                             TRANSACTIONS.—The form of a transaction  
25                             which is in substance the borrowing of money

1 or the acquisition of financial capital directly or  
2 indirectly from a tax-indifferent party shall not  
3 be respected if the present value of the deduc-  
4 tions to be claimed with respect to the trans-  
5 action is substantially in excess of the present  
6 value of the anticipated economic returns of the  
7 person lending the money or providing the fi-  
8 nancial capital. A public offering shall be treat-  
9 ed as a borrowing, or an acquisition of financial  
10 capital, from a tax-indifferent party if it is rea-  
11 sonably expected that at least 50 percent of the  
12 offering will be placed with tax-indifferent par-  
13 ties.

14 “(B) ARTIFICIAL INCOME SHIFTING AND  
15 BASIS ADJUSTMENTS.—The form of a trans-  
16 action with a tax-indifferent party shall not be  
17 respected if—

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

22 “(ii) it results in a basis adjustment  
23 or shifting of basis on account of over-  
24 stating the income or gain of the tax-indif-  
25 ferent party.

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

3           “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
4           The term ‘economic substance doctrine’ means  
5 the common law doctrine under which tax bene-  
6 fits under subtitle A with respect to a trans-  
7 action are not allowable if the transaction does  
8 not have economic substance or lacks a business  
9 purpose.

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

18           “(C) EXCEPTION FOR PERSONAL TRANS-  
19 ACTIONS OF INDIVIDUALS.—In the case of an  
20 individual, this subsection shall apply only to  
21 transactions entered into in connection with a  
22 trade or business or an activity engaged in for  
23 the production of income.

1                   “(D) TREATMENT OF LESSORS.—In apply-  
 2                   ing paragraph (1)(B)(ii) to the lessor of tan-  
 3                   gible property subject to a lease—

4                   “(i) the expected net tax benefits with  
 5                   respect to the leased property shall not in-  
 6                   clude the benefits of—

7                   “(I) depreciation,

8                   “(II) any tax credit, or

9                   “(III) any other deduction as  
 10                  provided in guidance by the Secretary,  
 11                  and

12                  “(ii) subclause (II) of paragraph  
 13                  (1)(B)(ii) shall be disregarded in deter-  
 14                  mining whether any of such benefits are al-  
 15                  lowable.

16                  “(4) OTHER COMMON LAW DOCTRINES NOT AF-  
 17                  FECTED.—Except as specifically provided in this  
 18                  subsection, the provisions of this subsection shall not  
 19                  be construed as altering or supplanting any other  
 20                  rule of law, and the requirements of this subsection  
 21                  shall be construed as being in addition to any such  
 22                  other rule of law.

23                  “(5) REGULATIONS.—The Secretary shall pre-  
 24                  scribe such regulations as may be necessary or ap-  
 25                  propriate to carry out the purposes of this sub-



1 section. Such regulations may include exemptions  
 2 from the application of this subsection.”.

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

6 **SEC. 402. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
 7 **UTABLE TO TRANSACTIONS LACKING ECO-**  
 8 **NOMIC SUBSTANCE, ETC.**

9 (a) IN GENERAL.—Subchapter A of chapter 68 is  
 10 amended by inserting after section 6662A the following  
 11 new section:

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

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

20 “(b) REDUCTION OF PENALTY FOR DISCLOSED  
 21 TRANSACTIONS.—Subsection (a) shall be applied by sub-  
 22 stituting ‘20 percent’ for ‘40 percent’ with respect to the  
 23 portion of any noneconomic substance transaction under-  
 24 statement with respect to which the relevant facts affect-

1 ing the tax treatment of the item are adequately disclosed  
 2 in the return or a statement attached to the return.

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

5 “(1) IN GENERAL.—The term ‘noneconomic  
 6 substance transaction understatement’ means any  
 7 amount which would be an understatement under  
 8 section 6662A(b)(1) if section 6662A were applied  
 9 by taking into account items attributable to non-  
 10 economic substance transactions rather than items  
 11 to which section 6662A would apply without regard  
 12 to this paragraph.

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

16 “(A) there is a lack of economic substance  
 17 (within the meaning of section 7701(p)(1)) for  
 18 the transaction giving rise to the claimed ben-  
 19 efit or the transaction was not respected under  
 20 section 7701(p)(2), or

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

23 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-  
 24 ALTY.—

1           “(1) IN GENERAL.—If the first letter of pro-  
 2           posed deficiency which allows the taxpayer an oppor-  
 3           tunity for administrative review in the Internal Rev-  
 4           enue Service Office of Appeals has been sent with  
 5           respect to a penalty to which this section applies,  
 6           only the Commissioner of Internal Revenue may  
 7           compromise all or any portion of such penalty.

8           “(2) APPLICABLE RULES.—The rules of para-  
 9           graphs (2) and (3) of section 6707A(d) shall apply  
 10          for purposes of paragraph (1).

11          “(e) COORDINATION WITH OTHER PENALTIES.—Ex-  
 12          cept as otherwise provided in this part, the penalty im-  
 13          posed by this section shall be in addition to any other pen-  
 14          alty imposed by this title.

15          “(f) CROSS REFERENCES.—

          “(1) For coordination of penalty with understatements  
 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).”.

16          (b) COORDINATION WITH OTHER UNDERSTATE-  
 17          MENTS AND PENALTIES.—

18               (1) The second sentence of section  
 19               6662(d)(2)(A) is amended by inserting “and without  
 20               regard to items with respect to which a penalty is  
 21               imposed by section 6662B” before the period at the  
 22               end.

1           (2) Subsection (e) of section 6662A is amend-  
2       ed—

3           (A) in paragraph (1), by inserting “and  
4       noneconomic substance transaction understate-  
5       ments” after “reportable transaction under-  
6       statements” both places it appears,

7           (B) in paragraph (2)(A), by inserting “and  
8       a noneconomic substance transaction under-  
9       statement” after “reportable transaction under-  
10      statement”,

11          (C) in paragraph (2)(B), by inserting  
12      “6662B or” before “6663”,

13          (D) in paragraph (2)(C)(i), by inserting  
14      “or section 6662B” before the period at the  
15      end,

16          (E) in paragraph (2)(C)(ii), by inserting  
17      “and section 6662B” after “This section”,

18          (F) in paragraph (3), by inserting “or non-  
19      economic substance transaction understate-  
20      ment” after “reportable transaction understate-  
21      ment”, and

22          (G) by adding at the end the following new  
23      paragraph:

24      “(4) NONECONOMIC SUBSTANCE TRANSACTION  
25      UNDERSTATEMENT.—For purposes of this sub-

1 section, the term ‘noneconomic substance trans-  
2 action understatement’ has the meaning given such  
3 term by section 6662B(c).”.

4 (3) Subsection (e) of section 6707A is amend-  
5 ed—

6 (A) by striking “or” at the end of subpara-  
7 graph (B), and

8 (B) by striking subparagraph (C) and in-  
9 serting the following new subparagraphs:

10 “(C) is required to pay a penalty under  
11 section 6662B with respect to any noneconomic  
12 substance transaction, or

13 “(D) is required to pay a penalty under  
14 section 6662(h) with respect to any transaction  
15 and would (but for section 6662A(e)(2)(C))  
16 have been subject to penalty under section  
17 6662A at a rate prescribed under section  
18 6662A(c) or under section 6662B,”.

19 (c) CLERICAL AMENDMENT.—The table of sections  
20 for part II of subchapter A of chapter 68 is amended by  
21 inserting after the item relating to section 6662A the fol-  
22 lowing new item:

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

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

4 **SEC. 403. DENIAL OF DEDUCTION FOR INTEREST ON UN-**  
 5 **DERPAYMENTS ATTRIBUTABLE TO NON-**  
 6 **ECONOMIC SUBSTANCE TRANSACTIONS.**

7 (a) IN GENERAL.—Section 163(m) (relating to inter-  
 8 est on unpaid taxes attributable to nondisclosed reportable  
 9 transactions) is amended—

10 (1) by striking “attributable” and all that fol-  
 11 lows and inserting the following: “attributable to—

12 “(1) the portion of any reportable transaction  
 13 understatement (as defined in section 6662A(b))  
 14 with respect to which the requirement of section  
 15 6664(d)(2)(A) is not met, or

16 “(2) any noneconomic substance transaction  
 17 understatement (as defined in section 6662B(c)).”,  
 18 and

19 (2) by inserting “AND NONECONOMIC SUB-  
 20 STANCE TRANSACTIONS” after “TRANSACTIONS”.

21 (b) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to transactions after the date of  
 23 the enactment of this Act in taxable years ending after  
 24 such date.

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