S. 1061

At the request of Mr. BARRASSO, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 1061, a bill to amend title 5 and 28, United States Code, with respect to the award of fees and other expenses in cases brought against agencies of the United States, to require the Administrative Conference of the United States to compile, and make publically available, certain data relating to the Equal Access to Justice Act, and for other purposes.

S. 1094

At the request of Mr. MENENDEZ, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1094, a bill to reauthorize the Combating Autism Act of 2006 (Public Law 109–416).

S. 1108

At the request of Mr. SANDERS, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 1108, a bill to provide local communities with tools to make solar permitting more efficient, and for other purposes.

S. 1188

At the request of Mr. BROWN of Ohio, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1188, a bill to require the purchase of domestically made flags of the United States of America for use by the Federal Government.

S. 1200

At the request of Mr. SANDERS, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1200, a bill to require the Chairman of the Commodity Futures Trading Commission to impose unilaterally position limits and margin requirements to eliminate excessive oil speculation, and to take other actions to ensure that the price of crude oil, gasoline, diesel fuel, jet fuel, and heating oil accurately reflects the fundamentals of supply and demand, to remain in effect until the date on which the Commission establishes position limits to diminish, eliminate, or prevent excessive speculation as required by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and for other purposes.

S. 1225

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 1225, a bill to transfer certain facilities, easements, and rights-of-way to Fort Sumner Irrigation District, New Mexico.

S. 1231

At the request of Mr. LEAHY, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 1231, a bill to reauthorize the Second Chance Act of 2007.

S. 1241

At the request of Mr. RUBIO, the name of the Senator from Pennsylvania (Mr. TOOMEY) was added as a cosponsor of S. 1241, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 1250

At the request of Mr. BENNET, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 1250, a bill to create and expand innovative teacher and principal preparation programs known as teacher and principal preparation academies.

S. 1299

At the request of Mr. MORAN, the names of the Senator from Oregon (Mr. MERKLEY) and the Senator from Wyoming (Mr. ENZI) were added as cosponsors of S. 1299, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the establishment of Lions Clubs International.

S. 1341

At the request of Mr. SESSIONS, the names of the Senator from South Carolina (Mr. DEMINT) and the Senator from Pennsylvania (Mr. TOOMEY) were added as cosponsors of S. 1341, a bill to provide a point of order against consideration of any measure that would increase the statutory limit on the public debt above $14.294 trillion unless that measure has been publicly available for a full 7 calendar days before consideration on the floor of the Senate.

S.J. RES. 17

At the request of Mr. MCCONNELL, the name of the Senator from Indiana (Mr. COATS) was added as a cosponsor of S.J. Res. 17, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

S.J. RES. 19

At the request of Mr. HATCH, the name of the Senator from Indiana (Mr. COATS) was added as a cosponsor of S.J. Res. 19, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEVIN (for himself, Mr. CONRAD, Mr. NELSON of Florida, Mr. SANDERS, Mrs. SHAHEEN, and Mr. WHITEHOUSE):

S. 1346. A bill to restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, I am introducing today with my colleagues Senators CONRAD, BILL NELSON, SANDERS, SHAHEEN, and WHITEHOUSE, the Stop Tax Haven Abuse Act, legislation which is geared to stop the $100 billion yearly drain on the U.S. treasury caused by offshore tax abuses. Offshore tax abuses are not only undermining public confidence in our tax system, but widening the deficit and increasing the tax burden on middle America.

People are sick and tired of tax dodgers using offshore trickery and abusive tax shelters to avoid paying their fair share. This bill offers powerful new tools to combat those offshore and tax shelter abuses, raise revenues, and eliminate incentives to send U.S. profits and jobs offshore. Its provisions will hopefully be part of any deficit reduction package this year, but should be adopted in any event.

The bill is supported by a wide array of small business, labor, and public interest groups, including the Financial Accountability and Corporate Transparency, FACT, Coalition, American Sustainable Business Council, Business for Shared Prosperity, Main Street Alliance, AFL–CIO, SEIU, Citizens for Tax Justice, Tax Justice Network-USA, U.S. Public Interest Research Group, Global Financial Integrity, Global Witness, Jubilee USA, and Public Citizen.

Frank Knapp, president and CEO of the South Carolina Small Business Chamber of Commerce, has explained small business support for the bill this way:

> Small businesses are the lifeblood of local economies. We pay our fair share of taxes and generate most of the new jobs. Why should we be subsidizing U.S. multinationals that use offshore tax havens to avoid paying taxes? Big corporations benefit immensely from all the advantages of being headquartered in our country. It is time to end tax haven abuse and level the playing field.

The Stop Tax Haven Abuse Act is a product of the investigative work of the Permanent Subcommittee on Investigations which I chair. For more than 10 years, the Subcommittee has conducted inquiries into offshore abuses, including the use of offshore corporations and trusts to hide assets, the use of tax haven banks to set up secret accounts, and the use of U.S. bankers, lawyers, accountants and other professionals to devise and conduct abusive tax shelters. Over the years, we have learned a lot of the offshore tricks and have designed this bill to fight back by closing obnoxious offshore tax loopholes and strengthening offshore tax enforcement.

The 112th Congress is the fifth Congress in which I have introduced a comprehensive bill to combat offshore and tax shelter abuses. A number of provisions from past bills have made it into law, such as measures to curb abusive foreign trusts, close offshore dividend tax loopholes, and strengthen penalties on tax shelter promoters, but much more needs to be done.

The last Congress made significant progress in the offshore battle. We finally enacted into law the economic substance doctrine which authorizes courts to strike down phony business deals with no economic purpose other than to avoid the payment of tax. My past bills supported the economic substance doctrine, and its enactment into

law is a victory many years in the making.

Last year also saw enactment of the Baucus-Rangel Foreign Account Tax Compliance Act or FATCA, which is a tough new law designed to flush out hidden offshore bank accounts. Foreign banks are currently engaged in a massive lobbying effort to weaken its disclosure requirements, but U.S. banks have had it with foreign banks using secrecy to attract U.S. clients and want those banks to have to meet the same disclosure requirements U.S. banks do. The Administration is so far resisting calls to water down the provisions.

President Obama, who when in the Senate cosponsored my bills in 2005 and 2007 to end tax haven abuses, is a longtime opponent of offshore tax evasion. He knows how fed up Americans are with tax dodgers who hide their money offshore, use complex tax shelters to thumb their nose at Uncle Sam, and offload their tax burden onto the backs of honest Americans.

The bottom line is that each of us has a legal and civil obligation to pay taxes, and most Americans fulfill that obligation. It is time to force the tax scofflaws, the tax dodgers, and the tax cheats to do the same, and end their misuse of offshore tax havens.

The bill I am introducing today is a stronger version of the Stop Tax Haven Abuse Act introduced in the last Congress. In addition to preserving the provisions from last year that have not yet been enacted into law, it contains several new measures to stop tax dodgers from taking advantage of middle Americans who play by the rules.

Among the bill's provisions are special measures to combat persons who impede U.S. tax enforcement; establishment of legal presumptions to overcome secrecy barriers; the treatment of offshore corporations as domestic corporations for tax purposes when controlled by U.S. persons; closing a tax loophole benefiting credit default swaps that send money offshore; closing another loophole that allows corporate deposits of foreign funds in U.S. accounts to be treated as nontaxable, unrepatriated foreign income; disclosure requirements for basic information on country-by-country tax payments by multinationals; and stronger penalties against tax shelter promoters and aiders and abettors of tax evasion.

Probably the biggest change in the bill from the last Congress is that it would no longer require Treasury to develop a list of offshore secrecy jurisdictions and then impose tougher requirements on U.S. taxpayers who use those jurisdictions. Instead, the bill would build on the Foreign Account Tax Compliance Act of 2010, by creating tougher disclosure, evidentiary, and enforcement consequences for U.S. persons who do business with foreign financial institutions that reject FATCA's call for disclosing accounts used by U.S. persons. By focusing on non-FATCA financial institutions instead of offshore secrecy jurisdictions, the bill relieves Treasury of a difficult task, while providing additional incentives for foreign banks to adopt FATCA's disclosure requirements.

Mr. President, I ask unanimous consent that a section by section analysis and a bill summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Section 101—Special Measures Where U.S. Tax Enforcement Is Impeded

The first section of the bill, Section 101, which is carried over from the last Congress, would allow the Treasury Secretary to apply an array of sanctions against any foreign jurisdiction or financial institution which the Secretary determined was impeding U.S. tax enforcement.

This provision has added significance now that Congress has enacted the Foreign Account Tax Compliance Act requiring foreign financial institutions with U.S. investments to disclose all accounts opened by U.S. persons or pay a hefty tax on their U.S. investment income. FATCA goes into effect in 2013, but some foreign financial institutions are saying that they will refuse to adopt FATCA's approach and will instead stop holding any U.S. assets. While that is their right, the question being raised by some foreign banks planning to comply with FATCA is what happens to non-FATCA institutions that take on U.S. clients and don't report the accounts to the United States. Right now, the U.S. government has no way to take effective action against foreign financial institutions that open secret accounts for U.S. tax evaders. Section 101 of our bill would change that by providing just the powerful new tool needed to stop non-FATCA institutions from facilitating U.S. tax evasion.

Section 101 is designed to build upon existing Treasury authority to take action against foreign financial institutions that engage in money laundering by extending that same authority to the tax area. In 2001, the Patriot Act gave Treasury the authority under 31 U.S.C. 5318A to require domestic financial institutions and agencies to take special measures with respect to foreign jurisdictions, financial institutions, or transactions found to be of ''primary money laundering concern.'' Once Treasury designates a foreign jurisdiction or financial institution to be of primary money laundering concern, Section 5318A allows Treasury to impose a range of requirements on U.S. financial institutions in their dealings with the designated entity—from requiring U.S. financial institutions, for example, to provide greater information than normal about transactions involving the designated entity, to prohibiting U.S. financial institutions from opening accounts for that foreign entity.

This Patriot Act authority has been used sparingly, but to telling effect. In some instances Treasury has employed special measures against an entire country, such as Burma, to stop its financial institutions from laundering funds through the U.S. financial system. More often, Treasury has used the authority surgically, against a single problem financial institution, to stop laundered funds from entering the United States. The provision has clearly succeeded in giving Treasury a powerful tool to protect the U.S. financial system from money laundering abuses.

The bill would authorize Treasury to use that same tool to require U.S. financial institutions to take the same special measures against foreign jurisdictions or financial institutions found by Treasury to be ''impeding U.S. tax enforcement.'' Treasury could, for example, in consultation with the IRS, the Secretary of State, and the Attorney General, require U.S. financial institutions that have correspondent accounts for a designated foreign bank to produce information on all of that foreign bank's customers. Alternatively, Treasury could prohibit U.S. financial institutions from opening accounts for a designated foreign bank, thereby cutting off that foreign bank's access to the U.S. financial system. These types of sanctions could be as effective in ending the worst tax haven abuses as they have been in curbing money laundering.

In addition to extending Treasury's ability to impose special measures against foreign entities impeding U.S. tax enforcement, the bill would add one new measure to the list of possible sanctions that could be applied: it would allow Treasury to instruct U.S. financial institutions not to authorize or accept credit card transactions involving a designated foreign jurisdiction or financial institution. Denying tax haven banks the ability to issue credit cards for use in the United States, for example, offers an effective new way to stop U.S. tax cheats from obtaining access to funds hidden offshore.

Section 102—Strengthening FATCA

Section 102 of the bill is a new section that seeks to clarify, build upon, and strengthen the Foreign Account Tax Compliance Act or FATCA, to flush out hidden foreign accounts and assets used by U.S. taxpayers to evade paying U.S. taxes. When the law becomes effective in 2013, it will require disclosure of account held by U.S. persons at foreign banks, broker-dealers, investment advisers, hedge funds, private equity funds, and other financial firms.

Some foreign financial institutions are likely to choose to forego all U.S. investments rather than comply with FATCA's disclosure rules. If some foreign financial institutions decide not to participate in the FATCA system, that's their business. But if U.S. taxpayers start using those same foreign financial institutions to hide assets and evade U.S. taxes to the tune of $100 billion per year, that's our business. The United States has a right to enforce our tax laws and to expect that financial institutions will not assist U.S. tax cheats.

Section 101 of the bill would provide U.S. authorities with a way to take direct action against foreign financial institutions that decide to operate outside of the FATCA system and allow U.S. clients to open hidden accounts. If the U.S. Treasury determines that such a foreign financial institution is impeding U.S. tax enforcement, Section 101 would give U.S. authorities a menu of special measures that could be taken in response, including by prohibiting U.S. banks from doing business with that institution.

Section 102, in contrast, does not seek to take action against a non-FATCA institution, but instead seeks to strengthen tax enforcement efforts with respect to the U.S. persons taking advantage of the non-disclosure practices at non-FATCA institutions. Section 102 would also clarify when foreign financial institutions are obligated to disclose accounts to the United States under FATCA.

Background. In 2006, the Permanent Subcommittee on Investigations released a report with six case histories detailing how U.S. taxpayers were using offshore tax havens to avoid payment of the taxes they owed. These case histories examined an Internet-based company that helped persons obtain offshore entities and accounts; U.S. promoters that designed complex offshore structures to hide client assets, even providing clients with a how-to manual for

going offshore; U.S. taxpayers who diverted business income offshore through phony loans and invoices; a one-time tax dodge that deducted phantom offshore stock losses from real U.S. stock income to shelter that income from U.S. taxes; and a 13-year offshore network of 58 offshore trusts and corporations built by American brothers Sam and Charles Wyly. Each of these case histories presented the same fact pattern in which the U.S. taxpayer, through lawyers, banks, or other representatives, set up offshore trusts, corporations, or other entities which had all the trappings of independence but, in fact, were controlled by the U.S. taxpayer whose directives were implemented by compliant offshore personnel acting as the trustees, officers, directors or nominee owners of the offshore entities.

In the case of the Wylys, the brothers and their representatives communicated Wyly directives to a so-called trust protector who then relayed the directives to the offshore trustees. In the 13 years examined by the Subcommittee, the offshore trustees never once rejected a Wyly request and never once initiated an action without Wyly approval. They simply did what they were told. A U.S. taxpayer in another case history told the Subcommittee that the offshore personnel who nominally owned and controlled his offshore entities, in fact, always followed his directions, describing himself as the ''puppet master'' in charge of his offshore holdings.

When the Subcommittee discussed these case histories with financial administrators from the Isle of Man, the regulators explained that none of the offshore personnel were engaged in any wrongdoing, because their laws permit foreign clients to transmit detailed, daily instructions to offshore service providers on how to handle offshore assets, so long as it is the offshore trustee or corporate officer who gives the final order to buy or sell the assets. They explained that, under their law, an offshore entity is considered legally independent from the person directing its activities so long as that person follows the form of transmitting ''requests'' to the offshore personnel who retain the formal right to make the decisions, even though the offshore personnel always do as they are asked.

The Subcommittee case histories illustrate what the tax literature and law enforcement experience have shown for years: that the business model followed in all offshore secrecy jurisdictions is for compliant trustees, corporate administrators, and financial institutions to provide a veneer of independence while ensuring that their U.S. clients retain complete and unfettered control over ''their'' offshore assets. That's the standard operating procedure offshore. Offshore service providers pretend to own or control the offshore trusts, corporations, and accounts they help establish, but what they really do is whatever their clients tell them to do.

Rebuttable Evidentiary Presumptions. The reality behind these offshore practices makes a mockery of U.S. laws that normally view trusts and corporations as independent actors. They invite game-playing and tax evasion. To combat these abusive offshore practices, Section 102(g) of the bill would implement a bipartisan recommendation in the 2006 report by establishing several rebuttable evidentiary presumptions that would presume U.S. taxpayer control of offshore entities that they form or do business with, unless the U.S. taxpayer presents clear and convincing evidence to the contrary.

The presumptions would apply only in civil, judicial, or administrative tax or securities enforcement proceedings examining offshore entities or transactions. They would place the burden of producing evidence from offshore jurisdiction on the taxpayer who chose to do business in those jurisdictions and who has access to the information, rather than on the federal government which has little or no practical ability to get the information.

Section 102(g)(1) would establish three evidentiary presumptions that could be used in a civil tax enforcement proceeding. First is a presumption that a U.S. taxpayer who ''formed, transferred assets to, was a beneficiary of, had a beneficial interest in, or received money or property or the use thereof'' from an offshore entity, such as a trust or corporation, controls that entity. Second is a presumption that funds or other property received from offshore are taxable income, and that funds or other property transferred offshore have not yet been taxed. Third is a presumption that a financial account controlled by a U.S. taxpayer in a foreign country contains enough money—$10,000—to trigger an existing statutory reporting threshold and allow the IRS to assert the minimum penalty for nondisclosure of the account by the taxpayer.

Section 102(g)(2) would establish two evidentiary presumptions applicable to civil proceedings to enforce U.S. securities laws. The first would specify that if a director, officer, or major shareholder of a U.S. publicly traded corporation were associated with an offshore entity, that person would be presumed to control that offshore entity. The second presumption would provide that securities nominally owned by an offshore entity are presumed to be beneficially owned by any U.S. person who controlled that offshore entity.

All of these presumptions are rebuttable, which means that the U.S. person who is the subject of the proceeding could provide clear and convincing evidence to show that the presumptions were factually inaccurate. To rebut the presumptions, a taxpayer could establish, for example, that an offshore corporation really was controlled by an independent third party, or that money sent from an offshore account really represented a nontaxable gift instead of taxable income. If the taxpayer wished to introduce evidence from a foreign person, such as an offshore banker, corporate officer, or trust administrator, to establish those facts, that foreign person would have to actually appear in the U.S. proceeding in a manner that would permit cross examination.

The bill also includes several limitations on the presumptions to ensure their operation is fair and reasonable. First, criminal cases would not be affected by this bill which would apply only to civil proceedings. Second, because the presumptions apply only in enforcement ''proceedings,'' they would not directly affect, for example, a person's reporting obligations on a tax return or SEC filing. The presumptions would come into play only if the IRS or SEC were to challenge a matter in a formal proceeding. Third, the bill would not apply the presumptions to situations where either the U.S. person or the offshore entity is a publicly traded company, because in those situations, even if a transaction were abusive, IRS and SEC officials are generally able to obtain access to necessary information. Fourth, the bill recognizes that certain classes of offshore transactions, such as corporate reorganizations, may not present a potential for abuse, and accordingly authorizes Treasury and the SEC to issue regulations or guidance identifying such classes of transactions, to which the presumptions would not apply.

An even more fundamental limitation on the presumptions is that they would apply only to U.S. persons who directly or through an offshore entity choose to do business with a ''non-FATCA institution,'' meaning a foreign financial institution which has not adopted the FATCA disclosure requirements and instead takes advantage of banking, corporate, and tax secrecy laws and practices that make it very difficult for U.S. tax authorities to detect financial accounts benefiting U.S. persons.

FATCA's disclosure requirements were designed to combat offshore secrecy and flush out hidden accounts being used by U.S. persons to evade U.S. taxes. Section 102(g) would continue the fight by allowing federal authorities to benefit from rebuttable presumptions regarding the control, ownership, and assets of offshore entities that open accounts at financial institutions outside the FATCA disclosure system. These presumptions would allow U.S. law enforcement to establish what we all know from experience is normally the case in an offshore jurisdiction—that a U.S. person associated with an offshore entity controls that entity; that money and property sent to or from an offshore entity involves taxable income; and that an offshore account that hasn't been disclosed to U.S. authorities should be made subject to inspection. U.S. law enforcement can establish those facts presumptively, without having to pierce the secrecy veil. At the same time, U.S. persons who chose to transact their affairs through accounts at a non-FACTA institution are given the opportunity to lift the veil of secrecy and demonstrate that the presumptions are factually wrong. These rebuttable evidentiary presumptions will provide U.S. tax and securities law enforcement with powerful new tools to shut down tax haven abuses.

FATCA Disclosure Obligations. In addition to establishing presumptions, Section 102 would make several changes to clarify and strengthen FATCA's disclosure obligations.

Section 102(b) would amend 26 U.S.C. Section 1471 to make it clear that the types of financial accounts that must be disclosed by foreign financial institutions under FATCA include not just savings, money market, or securities accounts, but also transaction accounts that some banks might claim are not depository accounts, such as checking accounts. The section would also make it clear that financial institutions could not omit from their disclosures client assets in the form of derivatives, including swap agreements.

Section 102(c) would amend 26 U.S.C. 1472 to clarify when a withholding agent ''knows or has reason to know'' that an account is directly or indirectly owned by a U.S. person and must be disclosed to the United States. The bill provision would make it clear that the withholding agent would have to take into account information obtained as the result of ''any customer identification, anti-money laundering, anti-corruption, or similar obligation to identify accountholders.'' In other words, if a foreign bank knows, as a result of due diligence inquiries made under its anti-money laundering program, that an non-U.S. corporation was beneficially owned by a U.S. person, the foreign bank would have to report that account to the IRS—it could not treat the offshore corporation as a non-U.S. customer. That approach is already implied in the statutory language, but this amendment would make it crystal clear.

Section 102(c) would also amend the law to make it clear that the Treasury Secretary, when exercising authority under FATCA to waive disclosure or withholding requirements for non-financial foreign entities, can waive those requirements for only for a class of entities which the Secretary identifies as ''posing a low risk of tax evasion.'' A variety of foreign financial institutions are pressing Treasury to issue waivers under Section 1472, and this amendment would make it clear that such waivers are possible only when the risk of tax evasion is minimal.

Section 102(d) would amend 26 U.S.C. 1473 to clarify that the definition of ''substantial United States owner'' includes U.S. persons who are beneficial owners of corporations or the beneficial owner of an entity that is one of the partners in a partnership. While the current statutory language already implies that beneficial owners are included, this amendment would leave no doubt.

Section 102(e) would amend 26 U.S.C. 1474 to make two exceptions to the statutory provision which makes account information disclosed to the IRS by foreign financial institutions under FATCA confidential tax return information. The first exception would allow the IRS to disclose the account information to federal law enforcement agencies, including the SEC and bank regulators, investigating possible violations of U.S. law. The second would allow the IRS to disclose the name of any foreign financial institution whose disclosure agreement under FATCA was terminated, either by the institution, its government, or the IRS. Financial institutions should not be able to portray themselves as FATCA institutions if, in fact, they are not.

Section 102(f) would amend 26 U.S.C. 6038D, which creates a new tax return disclosure obligation for U.S. taxpayers with interests in ''specified foreign financial assets,'' to clarify that the disclosure requirement applies not only to persons who have a direct or nominal ownership interest in those foreign financial assets, but also to persons who have a beneficial, meaning real, ownership interest in them. While the existing statutory language implies this broad reporting obligation, the amendment would make it clear.

Finally, Section 102(a) would amend a new annual tax return obligation established in 26 U.S.C. 1298(f) for passive foreign investment companies (PFICs). PFICs are typically used as holding companies for foreign assets held by U.S. persons, and the intent of the new Section 1298(f) is to require all PFICs to begin filing annual informational tax returns with the IRS. The current statutory language, however, limits the disclosure obligation to any U.S. person who is a ''shareholder'' in a PFIC, and does not cover PFICs whose shares may be nominally held by an offshore corporation or trust, but beneficially owned by a U.S. person. The bill provision would broaden the PFIC reporting requirement to apply to any U.S. person who ''directly or indirectly, forms, transfers assets to, is a beneficiary of, has a beneficial interest in, or receives money or property or the use thereof'' from a PFIC. That broader formulation of who should file the new PFIC annual tax return would ensure that virtually all PFICs associated with U.S. persons will begin filing informational returns with the IRS.

Section 103—Corporations Managed and Controlled in the United States

Section 103 of the bill focuses on corporations which claim foreign status—often in a tax haven jurisdiction—in order to avoid payment of U.S. taxes, but then operate right here in the United States in direct competition with domestic corporations that are paying their fair share.

This offshore game is all too common. In 2008, the Senate Finance Committee held a hearing describing a trip made by GAO to the Cayman Islands to look at the infamous Ugland House, a five-story building that is the official address for over 18,800 registered companies. GAO found that about half of the alleged Ugland House tenants—around 9,000 entities—had a billing address in the United States and were not actual occupants of the building. In fact, GAO determined that none of the companies registered at the Ugland House was an actual occupant. GAO found that the only true occupant of the building was a Cayman law firm, Maples and Calder.

Here's what the GAO wrote:

''Very few Ugland House registered entities have a significant physical presence in the Cayman Islands or carry out business in the Cayman Islands. According to Maples and Calder partners, the persons establishing these entities are typically referred to Maples by counsel from outside the Cayman Islands, fund managers, and investment banks. As of March 2008 the Cayman Islands Registrar reported that 18,857 entities were registered at the Ugland House address. Approximately 96 percent of these entities were classified as exempted entities under Cayman Islands law, and were thus generally prohibited from carrying out domestic business within the Cayman Islands.''

Section 103 of the bill is designed to address the Ugland House problem. It focuses on the situation where a corporation is incorporated in a tax haven as a mere shell operation with little or no physical presence or employees in the jurisdiction. The shell entity pretends it is operating in the tax haven, even though its key personnel and decisionmakers are in the United States. The objective of this set up is to enable the owners of the shell entity to take advantage of all of the benefits provided by U.S. legal, educational, financial, and commercial systems, and at the same time avoid paying U.S. taxes.

My Subcommittee has seen numerous companies exploit this situation, declaring themselves to be foreign corporations, even though they really operate out of the United States. For example, thousands of hedge funds whose financial experts live in Connecticut, New York, Texas, or California play this game to escape taxes and avoid regulation. In an October 2008 Subcommittee hearing, three sizeable hedge funds, Highbridge Capital which is associated with JPMorgan Chase, Angelo Gordon, and Maverick Capital, admitted that, although all they claimed to be based in the Cayman Islands, none had an office or a single full time employee in that jurisdiction. Instead, their offices and key decisionmakers were located and did business right here in the United States.

According to a recent Wall Street Journal article, over 20 percent of the corporations that made initial public offerings or IPOs in the United States in 2010 and so far in 2011, have been incorporated in Bermuda or the Cayman Islands, but also described themselves to investors as based in another country, including the United States. The article also described how Samsonite, a Denver-based company, reincorporated in Luxembourg before going public. Too many of these tax-haven incorporations appear to be a deliberate effort to take advantage of U.S. benefits, while dodging U.S. taxation and undercutting U.S. competitors who pay their taxes.

Section 103 would put an end to such corporate fictions and offshore tax dodging. It provides that if a corporation is publicly traded or has aggregate gross assets of $50 million or more, and its management and control occurs primarily in the United States, that corporation will be treated as a U.S. domestic corporation for income tax purposes.

To implement this provision, Treasury is directed to issue regulations to guide the determination of when management and control occur primarily in the United States, looking at whether ''substantially all of the executive officers and senior management of the corporation who exercise day-to-day responsibility for making decisions involving strategic, financial, and operational policies of the corporation are located primarily within the United States.''

This new section relies on the same principles regarding the true location of ownership and control of a company that underlie the corporate inversion rules adopted in the American Jobs Creation Act of 2005. Those inversion rules, however, do not address the fact that some entities directly incorporate in foreign countries and manage their businesses activities from the United States. Section 103 would level the playing field and ensure that entities which incorporate directly in another country are subject to a similar management and control test. Section 103 is also similar in concept to the substantial presence test in the income tax treaty between the United States and the Netherlands, which looks to the primary place of management and control to determine corporate residency.

Section 103 would provide an exception for foreign corporations with U.S. parents. This exception from the $50 million gross assets test recognizes that, within a multinational operation, strategic, financial, and operational decisions are often made from a global or regional headquarters location and then implemented by affiliated foreign corporations. Where such decisions are undertaken by a parent corporation that is actively engaged in a U.S. trade or business and is organized in the United States—and is, therefore, already a domestic corporation—the bill generally would not override existing U.S. taxation of international operations. At the same time, the exception makes it clear that the mere existence of a U.S. parent corporation is not sufficient to shield a foreign corporation from also being treated as a domestic corporation under this section. The section would also create an exception for private companies that once met the section's test for treatment as a domestic corporation but, during a later tax year, fell below the $50 million gross assets test, do not expect to exceed that threshold again, and are granted a waiver by the Treasury Secretary.

Section 103 contains specific language to stop the outrageous tax dodging that now goes on by too many hedge funds and investment management businesses that structure themselves to appear to be foreign entities, even though their key decisionmakers—the folks who exercise control of the company, its assets, and investment decisions—live and work in the United States. It is unacceptable that such companies utilize U.S. offices, personnel, laws, and markets to make their money, but then stiff Uncle Sam and offload their tax burden onto competitors who play by the rules.

To put an end to this charade, Section 103 specifically directs Treasury regulations to specify that, when investment decisions are being made in the United States, the management and control of that corporation shall be treated as occurring primarily in the United States, and that corporation shall be subject to U.S. taxes in the same manner as any other U.S. corporation.

If enacted into law, Section 103 would put an end to the unfair situation where some U.S.-based companies pay their fair share of taxes, while others who set up a shell corporation in a tax haven are able to defer or escape taxation, despite the fact that their foreign status is nothing more than a paper fiction.

Section 104—Increased Disclosure of Offshore Accounts and Entities

Offshore tax abuses thrive in secrecy. Section 104(a) attempts to pierce that secrecy by creating two new disclosure mechanisms requiring third parties to report on offshore

transactions undertaken by U.S. persons. The first disclosure mechanism focuses on U.S. financial institutions that open a U.S. account in the name of an offshore entity, such as an offshore trust or corporation, and learn from an anti-money laundering due diligence review, that a U.S. person is the beneficial owner behind that offshore entity. In the Wyly case history examined by the Subcommittee, for example, three major U.S. financial institutions opened dozens of accounts for offshore trusts and corporations which they knew were associated with the Wyly family.

Under current anti-money laundering law, all U.S. financial institutions are supposed to know who is behind an account opened in the name of, for example, an offshore shell corporation or trust. They are supposed to obtain this information to safeguard the U.S. financial system against misuse by terrorists, money launderers, and other criminals.

Under current tax law, a bank or securities broker that opens an account for a U.S. person is also required to give the IRS a 1099 form reporting any capital gains or other reportable income earned on the account. However, the bank or securities broker need not file a 1099 form if the account is owned by a foreign entity not subject to U.S. tax law. Problems arise when an account is opened in the name of an offshore entity that is nominally not subject to tax, but which the bank or broker knows, from its anti-money laundering review, is owned or controlled by a U.S. person who is subject to tax. The U.S. person should be filing a tax return with the IRS reporting the income of the ''controlled foreign corporation.'' However, since he or she knows it is difficult for the IRS to connect an offshore accountholder to a particular taxpayer, the U.S. person may feel safe in not reporting that income. That complacency might change, however, if the U.S. person knew that the bank or broker who opened the account and learned of the connection had a legal obligation to report any account income to the IRS.

Under current law, the way the regulations are written and typically interpreted, the bank or broker can treat an account opened in the name of a foreign corporation as an account that is held by an independent entity that is separate from the U.S. person, even if it knows that the foreign corporation is acting merely as a screen to hide the identity of the U.S. person, who exercises complete authority over the corporation and benefits from any income earned on the account. Many banks and brokers contend that the current regulations impose no duty on them to file a 1099 or other form disclosing that type of account to the IRS.

The bill would strengthen current law by expressly requiring a bank or broker that knows, as a result of its anti-money laundering due diligence or otherwise that a U.S. person is the beneficial owner of a foreign entity that opened an account, to disclose that account to the IRS by filing a 1099 or equivalent form reporting the account income. This reporting obligation would not require banks or brokers to gather any new information—financial institutions are already required to perform anti-money laundering due diligence for accounts opened by offshore shell entities. The bill would instead require U.S. financial institutions to act on what they already know by filing the relevant form with the IRS.

This section would require such reports to the IRS from two sets of financial institutions. The first set are financial institutions which are located and do business in the United States. The second set is foreign financial institutions which are located and do business outside of the United States, but are voluntary participants in either the FATCA or Qualified Intermediary Program, and have agreed to provide information to the IRS about certain accounts. Under this section, if a foreign financial institution has an account under the FATCA or QI Program, and the accountholder is a non-U.S. entity that is controlled or beneficially owned by a U.S. person, then that foreign financial institution would have to report any reportable assets or income in that account to the IRS.

The second disclosure mechanism created by Section 104(a) targets U.S. financial institutions that open foreign bank accounts for U.S. clients at non-FATCA institutions, meaning foreign financial institutions that have not agreed under FATCA to disclose to the IRS the accounts they open for U.S. persons. Past Subcommittee investigations have found that some U.S. financial institutions help their U.S. clients both to form offshore entities and to open foreign bank accounts for those entities, so that their clients do not even need to leave home to set up an offshore structure. Since non-FATCA institutions, by definition, have no obligation to disclose the accounts to U.S. authorities, Section 104(a) would instead impose that disclosure obligation on the U.S. financial institution that helped set up the account for its U.S. client.

Section 104(b) imposes the same penalties for the failure to report such accounts as apply to the failure to meet other reporting obligations of withholding agents.

Section 105—CDS Loophole

Section 105 of the bill targets a tax loophole benefiting credit default swaps, which I call the CDS loophole.

A CDS in simple terms is a financial bet about whether a company, a loan, a bond, a mortgage backed security, or some other financial instrument or arrangement will default or experience some other defined ''credit event'' during a specified period of time. The CDS buyer bets that the default or other credit event will happen, while the CDS seller bets it won't. The CDS buyer typically makes a series of payments to the seller over a specified period of time in exchange for a promise that, if a default or other credit event takes place during the covered period, the seller will make a bigger payoff to the buyer. In some cases, CDS buyers and sellers also agree to make payments to each other over the course of the covered period as the CDS rises or falls in value according to whether a credit event looks more or less likely.

Five years ago, few people outside of financial circles had ever heard of a credit default swap, but we all learned more than we wanted to during the financial crisis when CDS disasters brought down storied financial firms and almost pushed the U.S. financial system over the cliff. We found out there is now a $30 trillion CDS market worldwide, and that virtually all U.S. financial players engage in CDS transactions. And credit default swaps continue to play a role in financial crises around the world, from Greece to Ireland to Portugal.

Well it turns out there's a tax angle which promotes not only CDS gambling, but also offshore finagling. That's because U.S. tax regulations currently allow CDS payments that are sent from the United States to someone offshore to be treated as non-taxable, non-U.S. source income. Let me repeat that. CDS payments sent from the United States are now deemed non-U.S. source income to the recipient for tax purposes. That's because current regs deem the ''source'' of the CDS payment to be where the payment ends up—exactly the opposite of the normal definition of the word ''source.''

Well, you can imagine the use that some hedge funds that operate here in the United States, but are incorporated offshore and maintain post office boxes and bank accounts in tax havens, may be making of that tax loophole. They can tell their CDS counterparties to send any CDS payments to their offshore post box or bank account, tell Uncle Sam that those payments are legally considered non-U.S. source income, and bank the CDS payments as foreign income immune to U.S. tax. Hedge funds are likely far from alone in sheltering their CDS income from taxation by sending it offshore. Banks, securities firms, other financial firms, and a lot of commercial firms may be doing the same thing.

Our bill would shut down that offshore game simply by recognizing reality—that CDS payments sent from the United States are U.S. source income subject to taxation.

Section 106—Foreign Subsidiary Deposits Loophole

Section 106 of the bill would take on another type of offshore trickery, closing what I call the foreign subsidiary deposits loophole.

Right now, U.S. corporations report holding substantial funds offshore, in the range of $1 trillion in accumulated undistributed earnings. Some of that cash is the result of legitimate foreign business operations, such as plants, stores, or restaurant chains located in other countries. Some of it is the result of transfer pricing arrangements that moved the funds out of the United States with varying degrees of legitimacy. But regardless of how or why the funds are outside of the United States, U.S. corporations generally do not pay taxes on them, invoking tax code provisions that allow them to defer taxation of foreign income as long as those funds are not brought back—repatriated—to the United States.

But we need to look closer at the corporations claiming that their funds are offshore. In some cases, those so-called offshore funds are apparently being held in U.S. dollars in U.S. bank and securities accounts located right here in the United States.

One easy way for that to happen is for a U.S. corporation to direct its foreign subsidiary to deposit its foreign earnings at a foreign bank, let's say in the Cayman Islands, and ask the Cayman bank to convert any foreign currency into U.S. dollars. The Cayman bank typically complies by opening a U.S. dollar account at a U.S. bank. When one bank opens an account at another bank, the account is generally referred to as a correspondent account.

So the Cayman bank opens a correspondent account at a U.S. bank, deposits the funds belonging to the foreign subsidiary of the U.S. corporation, converts the funds into U.S. dollars, and perhaps even invests those dollars in an overnight or money market account or certificate of deposit to earn interest on the money. The U.S. corporation or its foreign subsidiary could even direct the Cayman bank to invest the U.S. dollars in U.S. securities, which the Cayman bank could do by opening a correspondent account at a U.S. securities firm, depositing the corporate dollars, and directing those dollars to be used to buy stocks or bonds. Again, the correspondent account would be in the name of the Cayman bank rather than in the name of the U.S. corporation or its foreign subsidiary, although the funds involved are beneficially owned by the corporate client.

The end result is that the U.S. corporation's offshore funds aren't really offshore at all. They are sitting in a U.S. bank or securities firm right here in the United States. The U.S. corporation is getting the benefit of using U.S. dollars, the safest currency in the world. It is also getting the benefit of using U.S. financial institutions, sending funds

through U.S. wire transfer networks, and investing in U.S. financial markets, all without paying a dime of income taxes.

Our bill would put an end to the fiction that corporate funds deposited in U.S. financial accounts somehow still qualify as offshore funds that have not been repatriated to the United States. Instead, the bill would recognize the reality that the funds are in the United States and are no longer immune to taxation. It would do so by treating any funds that have been deposited by or on behalf of a foreign subsidiary in an account physically located in the United States as a taxable distribution by that foreign subsidiary to its U.S. parent.

If U.S. corporations want to defer U.S. taxation on their foreign income by keeping that income offshore, then they should have to actually keep those funds outside of the United States. If they bring that income here to the United States to seek the protections and benefits of having it deposited in U.S. currency at U.S. financial institutions, then those deposits should be treated as repatriated and subject to the same taxes that other domestic corporations pay.

Section 201—Country-by-Country Reporting

Section 201 of the bill would tackle the problem of offshore secrecy that currently surrounds most multinational corporations by requiring them to provide basic information on a country-by-country basis to the investing public and government authorities.

Many multinationals today are complex businesses with sprawling operations that cross multiple international boundaries. In many cases, no one outside of the corporations themselves knows much about what a particular corporation is doing on a per country basis or how its country-specific activities fit into the corporation's overall performance, planning, and operations.

The lack of country-specific information deprives investors of key data to analyze a multinational's financial health, exposure to individual countries' problems, and worldwide operations. There is also a lack of information to evaluate tax revenues on a country-specific basis to combat tax evasion, financial fraud, and corruption by government officials.

The lack of country-specific information also impedes efficient tax administration, leaving tax authorities unable to effectively analyze transfer pricing arrangements, foreign tax credits, business arrangements that attempt to play one country off another to avoid taxation, and illicit tactics to move profits to tax havens.

The bill would assist investors and tax administrators by requiring corporations that are registered with the Securities and Exchange Commission to provide basic information concerning their operations on a country-by-country basis. This basic information would be the approximate number of their employees per country, total amount of sales and purchases involving related and third parties, total amount of financing arrangements with related and third parties; and the total amount of tax obligations and actual tax payments made on a per country basis. This information would have to be furnished to the SEC as part of the corporation's existing SEC filings.

The bill requires disclosure of basic data that most multinational corporations would already have. The data wouldn't be burdensome to collect; it's just information that isn't routinely released by many multinationals. It's time to end the secrecy that now enables too many multinationals to run circles around tax administrators.

In the case of the United States, the value of country-by-country data becomes apparent after reading a recent article by Professor Kimberly Clausing who estimated that, in 2008 alone, ''the income shifting of multinational firms reduced U.S. government corporate tax revenue by about $90 billion,'' which was ''approximately 30 percent of corporate tax revenues.'' Think about that. Incoming shifting—in which multinationals use various tactics to shift income to tax havens to escape U.S. taxes—is responsible for $90 billion in unpaid taxes in a single year. Over ten years, that translates into $900 billion—nearly a trillion dollars. It is unacceptable to allow that magnitude of nonpayment of corporate taxes to continue year after year in light of the mounting deficits facing this country.

IRS data shows that the overall share of federal taxes paid by U.S. corporations has fallen dramatically, from 32% in 1952, to about 9% in 2009, the last year in which data is available. A 2008 report by the Government Accountability Office found that, over an eight-year period, about 1.2 million U.S. controlled corporations, or 67% of the corporate tax returns filed, paid no federal corporate income tax at all, despite total gross receipts of $2.1 trillion. At the same time corporations are dodging payment of U.S. taxes, corporate misconduct is continuing to drain the U.S. treasury of billions upon billions of taxpayer dollars to combat mortgage fraud, oil spills, bank bailouts, and more.

Corporate nonpayment of tax involves a host of issues, but transfer pricing and offshore tax dodging by multinationals is a big part of the problem. Section 201 of the bill would take the necessary first step to stop multinational corporations from continuing to dodge payment of U.S. taxes through offshore trickery by requiring them to disclose basic corporate data on a country-by-country basis.

Section 202—$1 Million Penalty for Hiding Offshore Stock Holdings

In addition to tax abuses, the 2006 Subcommittee investigation into the Wyly case history uncovered a host of troubling transactions involving U.S. securities held by the 58 offshore trusts and corporations associated with the two Wyly brothers. Over the course of a number of years, the Wylys had obtained about $190 million in stock options as compensation from three U.S. publicly traded corporations at which they were directors and major shareholders. Over time, the Wylys transferred these stock options to the network of offshore entities they had established.

The investigation found that, for years, the Wylys had generally failed to report the offshore entities' stock holdings or transactions in their filings with the Securities and Exchange Commission (SEC). They did not report these stock holdings on the ground that the 58 offshore trusts and corporations functioned as independent entities, even though the Wylys continued to direct the entities' investment activities. The public companies where the Wylys were corporate insiders also failed to include in their SEC filings information about the company shares held by the offshore entities, even though the companies knew of their close relationship to the Wylys, that the Wylys had provided the offshore entities with significant stock options, and that the offshore entities held large blocks of the company stock. On other occasions, the public companies and various financial institutions failed to treat the shares held by the offshore entities as affiliated stock, even though they were aware of the offshore entities' close association with the Wylys. The investigation found that, because both the Wylys and the public companies had failed to disclose the holdings of the offshore entities, for 13 years federal regulators had been unaware of those stock holdings and the relationships between the offshore entities and the Wyly brothers.

Corporate insiders and public companies are already obligated by current law to disclose stock holdings and transactions of offshore entities affiliated with a company director, officer, or major shareholder. In fact, in 2010, the SEC filed a civil complaint against the Wylys in connection with their hidden offshore holdings and alleged insider trading. Current penalties, however, appear insufficient to ensure compliance in light of the low likelihood that U.S. authorities will learn of transactions that take place in an offshore jurisdiction. To address this problem, Section 202 of the bill would establish a new monetary penalty of up to $1 million for persons who knowingly fail to disclose offshore stock holdings and transactions in violation of U.S. securities laws.

Sections 203 and 204—Anti-Money Laundering Programs

The Subcommittee's 2006 investigation showed that the Wyly brothers used two hedge funds and a private equity fund controlled by them to funnel millions of untaxed offshore dollars into U.S. investments. Other Subcommittee investigations provide extensive evidence of the role played by U.S. formation agents in assisting U.S. persons to set up offshore structures as well as U.S. shell companies later used in illicit activities, including money laundering, terrorism, tax evasion, and other misconduct. Because hedge funds, private equity funds, and formation agents are as vulnerable as other financial institutions to money launderers seeking entry into the U.S. financial system, the bill contains two provisions aimed at ensuring that these groups know their clients and do not accept or transmit suspect funds into the U.S. financial system.

Currently, many unregistered investment companies, such as hedge funds and private equity funds, transmit substantial offshore funds into the United States, yet are not required by law to have anti-money laundering programs, including Know-Your-Customer due diligence procedures and procedures to file suspicious activity reports. There is no reason why this sector of our financial services industry should continue to serve as a gateway into the U.S. financial system for substantial funds that could be connected to tax evasion, terrorist financing, money laundering, or other misconduct.

Nine years ago, in 2002, the Treasury Department proposed anti-money laundering regulations for these companies, but never finalized them. In 2008, the Department withdrew them with no explanation. Section 203 of the bill would require Treasury to issue final anti-money laundering regulations for unregistered investment companies within 180 days of the enactment of the bill. Treasury would be free to draw upon its 2002 proposal, but the bill would also require the final regulations to direct hedge funds and private equity funds to exercise due diligence before accepting offshore funds and to comply with the same procedures as other financial institutions if asked by federal regulators to produce records kept offshore.

In addition, Section 204 of the bill would add formation agents to the list of persons with anti-money laundering obligations. For the first time, those engaged in the business of forming corporations and other entities, both offshore and in the 50 States, would be responsible for knowing who their clients were and avoiding suspect funds. The bill also directs Treasury to develop anti-money laundering regulations for this group. Treasury's key anti-money laundering agency, the Financial Crimes Enforcement Network, testified before the Subcommittee in 2006, that it was considering drafting such regulations

but five years later has yet to do so. Section 204 also creates an exemption for government personnel and for attorneys who use paid formation agents when forming entities for their clients. Since paid formation agents would already be subject to anti-money laundering obligations under the bill, there would be no reason to simultaneously subject attorneys using their services to the same anti-money laundering requirements.

We expect and intend that, as in the case of all other entities required to institute anti-money laundering programs, the regulations issued in response to this bill would instruct hedge funds, private equity funds, and formation agents to adopt risk-based procedures that would concentrate their due diligence efforts on clients that pose the highest risk of money laundering.

Section 205—IRS John Doe Summons

Section 205 of the bill focuses on an important tool used by the IRS in recent years to uncover taxpayers involved in offshore tax schemes, known as John Doe summons. Section 205 would make three technical changes to make the use of John Doe summons more effective in offshore and other complex investigations.

A John Doe summons is an administrative IRS summons used to request information in cases where the identity of a taxpayer is unknown. In cases involving a known taxpayer, the IRS may issue a summons to a third party to obtain information about the U.S. taxpayer, but must also notify the taxpayer who then has 20 days to petition a court to quash the summons to the third party. With a John Doe summons, however, IRS does not have the taxpayer's name and does not know where to send the taxpayer notice, so the statute substitutes a procedure in which the IRS must instead apply to a court for advance permission to serve the summons on the third party. To obtain approval of the summons, the IRS must show the court, in public filings to be resolved in open court, that: (1) the summons relates to a particular person or ascertainable class of persons, (2) there is a reasonable basis for concluding that there is a tax compliance issue involving that person or class of persons, and (3) the information sought is not readily available from other sources.

In recent years, the IRS has used John Doe summonses to try to obtain information about taxpayers operating in offshore secrecy jurisdictions. For example, the IRS obtained court approval to serve a John Doe summons on a Swiss bank, UBS AG, to obtain the names of tens of thousands of U.S. clients who opened UBS accounts in Switzerland without disclosing those accounts to the IRS. This landmark effort to overcome Swiss secrecy laws not only led to the bank's turning over thousands of U.S. client names to the United States, but also to abandon the country's longtime stance of using its secrecy rules to protect U.S. tax evaders. In earlier years, the IRS obtained court approval to issue John Doe summonses to credit card associations, credit card processors, and credit card merchants, to collect information about taxpayers using credit cards issued by offshore banks. This information led to many successful cases in which the IRS identified funds hidden offshore and recovered unpaid taxes.

Currently, however, use of the John Doe summons process is time consuming and expensive. For each John Doe summons involving an offshore secrecy jurisdiction, the IRS has had to establish in court that the involvement of accounts and transactions in offshore secrecy jurisdictions meant there was a significant likelihood of tax compliance problems. To relieve the IRS of the need to make this same proof over and over in court after court, the bill would provide that, in any John Doe summons proceeding involving a class defined in terms of a correspondent or payable through account at a non-FATCA institution, the court may presume that the case raises tax compliance issues. This presumption would then eliminate the need for the IRS to repeatedly establish in court the obvious fact that accounts at non-FATCA institutions raise tax compliance issues.

Finally, the bill would streamline the John Doe summons approval process in large ''project'' investigations where the IRS anticipates issuing multiple summonses to definable classes of third parties, such as banks or credit card associations, to obtain information related to particular taxpayers. Right now, for each summons issued in connection with a project, the IRS has to obtain the approval of a court, often having to repeatedly establish the same facts before multiple judges in multiple courts. This repetitive exercise wastes IRS, Justice Department, and court resources, and fragments oversight of the overall IRS investigative effort.

To streamline this process and strengthen court oversight of IRS use of John Doe summons, the bill would authorize the IRS to present an investigative project, as a whole, to a single judge to obtain approval for issuing multiple summonses related to that project. In such cases, the court would retain jurisdiction over the case after approval is granted, to exercise ongoing oversight of IRS issuance of summonses under the project. To further strengthen court oversight, the IRS would be required to file a publicly available report with the court on at least an annual basis describing the summonses issued under the project. The court would retain authority to restrict the use of further summonses at any point during the project. To evaluate the effectiveness of this approach, the bill would also direct the Government Accountability Office to report on the use of the provision after five years.

Section 206—FBAR Investigations and Suspicious Activity Reports

Section 206 of the bill would make several amendments to strengthen the ability of the IRS to enforce the Foreign Bank Account Report (FBAR) requirements and clarify the right of access by IRS civil enforcement authorities to Suspicious Activity Reports.

Under present law, a person controlling a foreign financial account with over $10,000 is required to check a box on his or her income tax return and, under Title 31, also file an FBAR form with the IRS. Treasury has delegated to the IRS responsibility for investigating FBAR violations and assessing FBAR penalties. Because the FBAR enforcement jurisdiction derives from Title 31, however, the IRS has set up a complex process for when its personnel may use tax return information when acting in its role as FBAR enforcer. The tax disclosure law, in Section 6103(b)(4) of the tax code, permits the use of tax information only for the administration of the internal revenue laws or ''related statutes.'' To implement this statutory requirement, the IRS currently requires its personnel to determine, at a managerial level and on a case by case basis, that the Title 31 FBAR law is a ''related statute.'' Not only does this necessitate a repetitive determination in every FBAR case before an IRS agent can look at the potential non-filer's income tax return to determine if filer checked the FBAR box, but it also prevents the IRS from comparing FBAR filing records to bulk data on foreign accounts received from tax treaty partners to find non-filers.

One of the stated purposes for the FBAR filing requirement is that such reports ''have a high degree of usefulness in . . . tax . . . investigations or proceedings.'' 31 U.S.C. 5311. If one of the reasons for requiring taxpayers to file FBARs is to use the information for tax purposes, and if the IRS has been charged with FBAR enforcement because of the FBARs' close connection to tax administration, common sense dictates that the FBAR statute should be viewed as a ''related statute'' as for tax disclosure purposes. Section 206(a) of the bill would make that clear by adding a provision to Section 6103(b) of the tax code deeming FBAR-related statutes to be ''related statutes,'' thereby allowing IRS personnel to make routine use of tax return information when working on FBAR matters.

The second change that would be made by Section 206 is an amendment to simplify the calculation of FBAR penalties. Currently the penalty is determined in part by the balance in the foreign bank account at the time of the ''violation.'' The violation has been interpreted to have occurred on the due date of the FBAR return, which is June 30 of the year following the year to which the report relates. The statute's use of this specific June 30th date can lead to strange results if money is withdrawn from the foreign account after the reporting period closed but before the return due date. To eliminate this unintended problem, Section 206(b) of the bill would instead calculate the penalty using the highest balance in the account during the covered reporting period.

The third part of section 206 relates to Suspicious Activity Reports or SARs, which financial institutions are required to file with the Financial Crimes Enforcement Center (FinCEN) of the Treasury Department when they encounter suspicious transactions. FinCEN is required to share this information with law enforcement, but currently does not permit IRS civil investigators access to the information, even though IRS civil investigators are federal law enforcement officials. Sharing SAR information with civil IRS investigators would likely prove very useful in tax investigations and would not increase the risk of disclosure of SAR information, since IRS civil personnel operate under the same tough disclosure rules as IRS criminal investigators. In some cases, IRS civil agents are now issuing an IRS summons to a financial institution to get access, for a production fee, to the very same information the financial institution has already filed with Treasury in a SAR. Section 206(c) of the bill would end that inefficient and costly practice by making it clear that ''law enforcement'' includes civil tax law enforcement.

Title III on Abusive Tax Shelters

Until now, I've been talking about what the bill would do to combat offshore tax abuses. Now I want to turn to the final title of the bill which offers measures to do combat abusive tax shelters and their promoters who use both domestic and offshore means to achieve their ends.

Abusive tax shelters are complicated transactions promoted to provide tax benefits unintended by the tax code. They are very different from legitimate tax shelters, such as deducting the interest paid on a home mortgage or Congressionally approved tax deductions for building affordable housing. Some abusive tax shelters involve complicated domestic transactions; others make use of offshore shenanigans. All abusive tax shelters are marked by one characteristic: there is no real economic or business rationale other than tax avoidance. As Judge Learned Hand wrote in Gregory v. Helvering, they are ''entered upon for no other motive but to escape taxation.''

Abusive tax shelters are usually tough to prosecute. Crimes such as terrorism and

murder produce instant recognition of the immorality involved. Abusive tax shelters, by contrast, are often ''MEGOs,'' meaning ''My Eyes Glaze Over.'' Those who cook up these concoctions count on their complexity to escape scrutiny and public ire. But regardless of how complicated or eye-glazing, the hawking of abusive tax shelters by tax professionals like accountants, bankers, investment advisers, and lawyers to thousands of people like late-night, cut-rate T.V. bargains is scandalous, and we need to stop it.

My Subcommittee has spent years examining the design, sale, and implementation of abusive tax shelters. Our first hearing on this topic in recent years was held in January 2002, when the Subcommittee examined an abusive tax shelter purchased by Enron. In November 2003, the Subcommittee held two days of hearings and released a staff report that pulled back the curtain on how even some respected accounting firms, banks, investment advisors, and law firms had become engines pushing the design and sale of abusive tax shelters to corporations and individuals across this country. In February 2005, the Subcommittee issued a bipartisan report that provided further details on the role these professional firms played in the proliferation of these abusive shelters. Our Subcommittee report was endorsed by the full Committee on Homeland Security and Governmental Affairs in April 2005.

In 2006, the Subcommittee released a report and held a hearing showing how financial and legal professionals designed and sold an abusive tax shelter known as the POINT Strategy, which depended upon secrecy laws and practices in the Isle of Man to conceal the phony nature of securities trades that lay at the center of this tax shelter transaction. In 2008, the Subcommittee released a staff report and held a hearing on how financial firms have designed and sold so-called dividend enhancement transactions to help offshore hedge funds and others escape payment of U.S. taxes on U.S. stock dividends.

The Subcommittee investigations have found that many abusive tax shelters are not dreamed up by the taxpayers who use them. Instead, they are devised by tax professionals who then sell the tax shelter to clients for a fee. In fact, over the years we've found U.S. tax advisors cooking up one complex scheme after another, packaging them up as generic ''tax products'' with boilerplate legal and tax opinion letters, and then undertaking elaborate marketing schemes to peddle these products to literally thousands of persons across the country. In return, these tax shelter promoters were getting hundreds of millions of dollars in fees, while diverting billions of dollars in tax revenues from the U.S. Treasury each year.

For example, one shelter investigated by the Subcommittee and featured in the 2003 hearings became part of an IRS settlement effort involving a set of abusive tax shelters known as ''Son of Boss.'' Following our hearing, more than 1,200 taxpayers admitted wrongdoing and agreed to pay back taxes, interest and penalties totaling more than $3.7 billion. That's billions of dollars the IRS collected on just one type of tax shelter, demonstrating both the depth of the problem and the potential for progress. The POINT shelter featured in our 2006 hearing involved another $300 million in tax loss on transactions conducted by just six taxpayers. The offshore dividend tax scams we examined in 2008 meant additional billions of dollars in unpaid taxes over a ten year period.

Title III of the bill contains a number of measures to curb abusive tax shelters. It would strengthen the penalties imposed on those who aid or abet tax evasion. Several provisions would deter bank participation in abusive tax shelter activities by requiring regulators to develop new examination procedures to detect and stop such activities. Others would end outdated communication barriers between the IRS and other federal enforcement agencies such as the SEC, bank regulators, and the Public Company Accounting Oversight Board, to allow the exchange of information relating to tax evasion cases. The bill also provides for increased disclosure of tax shelter information to Congress. In addition, the bill would simplify and clarify an existing prohibition on the payment of fees linked to tax benefits; and authorize Treasury to issue tougher standards for tax shelter opinion letters.

Let me be more specific about these key provisions to curb abusive tax shelters.

Sections 301 and 302—Strengthening Tax Shelter Penalties

Sections 301 and 302 of the bill would strengthen two very important penalties that the IRS can use in its fight against the professionals who make complex abusive shelters possible. When we started investigating abusive tax shelters, the penalty for promoting these scams, as set forth in Section 6700 of the tax code, was the lesser of $1,000 or 100 percent of the promoter's gross income derived from the prohibited activity. That meant in most cases the maximum fine was just $1,000.

We've investigated abusive tax shelters that sold for $100,000 or $250,000 apiece, and some that sold for as much as $5 million apiece. We also saw instances in which the same cookie-cutter tax opinion letter was sold to 100 or even 200 clients. Given the huge profits, the $1,000 fine was laughable.

The Senate acknowledged that in 2004, when it adopted the Levin-Coleman amendment to the JOBS Act, S. 1637, raising the Section 6700 penalty on abusive tax shelter promoters to 100 percent of the fees earned by the promoter from the abusive shelter. A 100 percent penalty would have ensured that the abusive tax shelter hucksters would not get to keep a single penny of their ill-gotten gains. That figure, however, was cut in half during the conference on the JOBS Act, with the result being that the current Section 6700 penalty can now reach, but not exceed, 50 percent of the fees earned by a promoter of an abusive tax shelter.

While a 50 percent penalty is an obvious improvement over $1,000, this penalty still is inadequate and makes no sense. Why should anyone who pushes an illegal tax shelter that robs our Treasury of needed revenues get to keep half of their ill-gotten gains? What deterrent effect is created by a penalty that allows promoters to keep half of their fees if caught, and all of their fees if they are not caught?

Effective penalties should make sure that the peddler of an abusive tax shelter is deprived of every penny of profit earned from selling or implementing the shelter and then is fined on top of that. Section 301 of this bill would do just that by increasing the penalty on tax shelter promoters to an amount equal to up to 150 percent of the promoters' gross income from the prohibited activity.

Section 302 of the bill would address a second weak tax code penalty which currently is supposed to deter and punish those who knowingly help taxpayers understate their taxes to the IRS. Aside from tax shelter ''promoters,'' there are many other types of professional firms that aid and abet tax evasion by helping taxpayers carry out abusive tax schemes. For example, law firms are often asked to write ''opinion letters'' to help taxpayers head off IRS inquiries and fines that might otherwise apply to their use of an abusive shelter. Currently, under Section 6701 of the tax code, these aiders and abettors face a maximum penalty of only $1,000, or $10,000 if the offender is a corporation. When law firms are getting $50,000 for issuing cookie-cutter opinion letters, a $1,000 fine provides no deterrent effect whatsoever. A $1,000 fine is like getting a jaywalking ticket for robbing a bank.

Section 302 of the bill would strengthen Section 6701 of the tax code by subjecting aiders and abettors to a maximum fine of up to 150 percent of the aider and abettor's gross income from the prohibited activity. This penalty would apply to all aiders and abettors, not just tax return preparers.

Again, the Senate has recognized the need to toughen this critical penalty. In the 2004 JOBS Act, Senator Coleman and I successfully increased this fine to 100 percent of the gross income derived from the prohibited activity. Unfortunately, the conference report completely omitted this change, allowing many aiders and abettors to continue to profit without penalty from their wrongdoing.

If further justification for toughening these penalties is needed, one document uncovered by our investigation shows the cold calculation engaged in by a tax advisor facing low fines. A senior tax professional at accounting giant KPMG compared possible tax shelter fees with possible tax shelter penalties if the firm were caught promoting an illegal tax shelter. This senior tax professional wrote to his colleagues the following: ''[O]ur average deal would result in KPMG fees of $360,000 with a maximum penalty exposure of only $31,000.'' He then recommended the obvious: going forward with sales of the abusive tax shelter on a cost-benefit basis.

Section 303—Fees Contingent upon Obtaining Tax Benefits

Another finding of the Subcommittee investigations is that some tax practitioners are circumventing current state and federal constraints on charging tax service fees that are dependent on the amount of promised tax benefits. Traditionally, accounting firms charged flat fees or hourly fees for their tax services. In the 1990s, however, they began charging ''value added'' fees based on, in the words of one accounting firm's manual, ''the value of the services provided, as opposed to the time required to perform the services.'' In addition, some firms began charging ''contingent fees'' that were calculated according to the size of the paper ''loss'' that could be produced for a client and used to offset the client's taxable income—the greater the so-called loss, the greater the fee.

In response, many states prohibited accounting firms from charging contingent fees for tax work to avoid creating incentives for these firms to devise ways to shelter substantial sums. The SEC and the American Institute of Certified Public Accountants also issued rules restricting contingent fees, allowing them in only limited circumstances. The Public Company Accounting Oversight Board issued a similar rule prohibiting public accounting firms from charging contingent fees for tax services provided to the public companies they audit. Each of these federal, state, and professional ethics rules seeks to limit the use of contingent fees under certain, limited circumstances.

The Subcommittee investigation found several instances of tax shelter fees that were linked to the amount of a taxpayer's projected paper losses which could be used to shelter income from taxation. For example, in four tax shelters examined by the Subcommittee in 2003, documents showed that the fees were equal to a percentage of the paper loss to be generated by the transaction. In one case, the fees were typically set at 7 percent of the transaction's generated ''tax loss'' that clients could use to

reduce other taxable income. In another, the fee was only 3.5 percent of the loss, but the losses were large enough to generate a fee of over $53 million on a single transaction. In other words, the greater the loss that could be concocted for the taxpayer or ''investor,'' the greater the profit for the tax promoter. Think about that—greater the loss, the greater the fee. How's that for turning capitalism on its head?

In addition, evidence indicated that, in at least one instance, a tax advisor was willing to deliberately manipulate the way it handled certain tax products to circumvent contingent fee prohibitions. An internal document at an accounting firm related to a specific tax shelter, for example, identified the states that prohibited contingent fees. Then, rather than prohibit the tax shelter transactions in those states or require an alternative fee structure, the memorandum directed the firm's tax professionals to make sure the engagement letter was signed, the engagement was managed, and the bulk of services was performed ''in a jurisdiction that does not prohibit contingency fees.''

Right now, the prohibitions on contingent fees are complex and must be evaluated in the context of a patchwork of federal, state, and professional ethics rules. Section 303 of the bill would establish a single enforceable rule, applicable nationwide, that would prohibit tax practitioners from charging fees calculated according to a projected or actual amount of tax savings or paper losses.

Section 304—Deterring Participation in Abusive Tax Shelter Activities

Section 304 of the bill targets financial institutions that offer financing or securities transactions to advance abusive tax shelters disguised as investment opportunities. Tax shelter schemes lack the economic risks and rewards associated with true investments. But to make these phony transactions look legitimate, some abusive tax shelters make use of significant amounts of money in low risk schemes mischaracterized as real investments. The financing or securities transactions called for by these schemes are often supplied by a bank, securities firm, or other financial institution and used to generate paper losses that the taxpayer can then use to shelter income from taxation.

Currently the tax code prohibits financial institutions from providing products or services that aid or abet tax evasion or that promote or implement abusive tax shelters. The agencies that oversee these financial institutions on a daily basis, however, are experts in banking and securities law and generally lack the expertise to spot abusive tax shelter activity. Section 304 would crack down on financial institutions' illegal tax shelter activities by requiring federal bank regulators and the SEC to work with the IRS to develop examination techniques to detect such abusive activities and put an end to them.

These examination techniques are intended to be part of routine regulatory examinations, with regulators reporting suspect activity or potential violations to the IRS. The agencies would also be required to prepare a joint report to Congress in 2013 on preventing the participation of financial institutions in tax evasion or tax shelter activities.

Section 305—Ending Communication Barriers between Enforcement Agencies

During hearings before the Permanent Subcommittee on Investigations on tax shelters in November 2003, IRS Commissioner Mark Everson testified that his agency was barred by Section 6103 of the tax code from communicating information to other federal agencies that would assist those agencies in their law enforcement duties. He pointed out that the IRS was barred from providing tax return information to the SEC, federal bank regulators, and the Public Company Accounting Oversight Board (PCAOB)—even, for example, when that information might assist the SEC in evaluating whether an abusive tax shelter resulted in deceptive accounting in a public company's financial statements, might help the Federal Reserve determine whether a bank selling tax products to its clients had violated the law against promoting abusive tax shelters, or help the PCAOB judge whether an accounting firm had impaired its independence by selling tax shelters to its audit clients.

Another example demonstrates how harmful these information barriers are to legitimate law enforcement efforts. In 2004, the IRS offered a settlement initiative to companies and corporate executives who participated in an abusive tax shelter involving the transfer of stock options to family-controlled entities. Over a hundred corporations and executives responded with admissions of wrongdoing. In addition to tax violations, their misconduct may be linked to securities law violations and improprieties by corporate auditors or banks, but the IRS told the Subcommittee that it was barred by law from sharing the names of the wrongdoers with the SEC, banking regulators, or PCAOB. The same is true for the offshore dividend tax shelters exposed in the Subcommittee's 2008 hearing. The IRS knows who the offending banks and investment firms are that designed and sold questionable dividend enhancement transactions to offshore hedge funds and others, but it is barred by Section 6103 of the tax code from providing detailed information or documents to the SEC or banking regulators who oversee the relevant financial institutions.

These communication barriers are outdated, inefficient, and ill-suited to stopping the tax schemes now affecting public companies, banks, investment firms, and accounting firms. To address this problem, Section 305 of this bill would authorize the Treasury Secretary, with appropriate privacy safeguards, to disclose to the SEC, federal banking agencies, and the PCAOB, upon request, tax return information related to abusive tax shelters, inappropriate tax avoidance, or tax evasion. The agencies could then use this information only for law enforcement purposes, such as preventing accounting firms, investment firms, or banks from promoting abusive tax shelters, or detecting accounting fraud in the financial statements of public companies.

Section 306—Increased Disclosure of Tax Shelter Information to Congress

The bill would also provide for increased disclosure of tax shelter information to Congress. Section 306 would make it clear that companies providing tax return preparation services to taxpayers cannot refuse to comply with a Congressional document subpoena by citing Section 7216, which prohibits tax return preparers from disclosing taxpayer information to third parties. Several accounting and law firms raised this claim in response to document subpoenas issued by the Permanent Subcommittee on Investigations, contending they were barred by the nondisclosure provision in Section 7216 from producing documents related to the sale of abusive tax shelters to clients.

The accounting and law firms maintained this position despite an analysis provided by the Senate legal counsel showing that the nondisclosure provision was never intended to create a privilege or to override a Senate subpoena, as demonstrated in federal regulations interpreting the provision. This bill would codify the existing regulations interpreting Section 7216 and make it clear that Congressional document subpoenas must be honored.

Section 306 would also ensure Congress has access to information about decisions by Treasury related to an organization's tax exempt status. A 2003 decision by the D.C. Circuit Court of Appeals, Tax Analysts v. IRS, struck down certain IRS regulations and held that the IRS must disclose letters denying or revoking an organization's tax exempt status. Despite this court decision, the IRS has been reluctant to disclose such information, not only to the public, but also to Congress, including in response to requests by the Subcommittee.

For example, in 2005, the IRS revoked the tax exempt status of four credit counseling firms, and, despite the Tax Analysts case, claimed that it could not disclose to the Subcommittee the names of the four firms or the reasons for revoking their tax exemption. Section 306 would make it clear that, upon receipt of a request from a Congressional committee or subcommittee, the IRS must disclose documents, other than a tax return, related to the agency's determination to grant, deny, revoke or restore an organization's exemption from taxation.

Section 307—Tax Shelter Opinion Letters

The final provision in the bill would address issues related to opinion letters issued by law firms and others in support of complex tax schemes. The Treasury Department has already issued a set of standards for tax practitioners who provide opinion letters on the tax implications of potential tax shelters under Circular 230. Section 308 of the bill would not only provide the express statutory authority which is currently lacking for these standards, but also strengthen them.

The public has traditionally relied on tax opinion letters to obtain informed and trustworthy advice about whether a tax-motivated transaction meets the requirements of the law. The Permanent Subcommittee on Investigations has found that, in too many cases, tax opinion letters no longer contain disinterested and reliable tax advice, even when issued by supposedly reputable accounting or law firms. Instead, some tax opinion letters have become marketing tools used by tax shelter promoters and their allies to sell clients on their latest tax products. In many of these cases, financial interests and biases were concealed, unreasonable factual assumptions were used to justify dubious legal conclusions, and taxpayers were misled about the risk that the proposed transaction would later be designated an illegal tax shelter. Reforms are essential to address these abuses and restore the integrity of tax opinion letters.

The Circular 230 standards should be strengthened by addressing a wider spectrum of tax shelter opinion letter problems, including preventing concealed collaboration among supposedly independent letter writers; avoiding conflicts of interest that would impair auditor independence; ensuring appropriate fee charges; preventing practitioners and firms from aiding and abetting the understatement of tax liability by clients; and banning the promotion of potentially abusive tax shelters. By authorizing Treasury to address each of these areas, a beefed-up Circular 230 could help reduce the ongoing abusive practices related to tax shelter opinion letters.

Conclusion. Tax evasion eats at the fabric of society, not only by widening deficits and starving health care, education, and other needed government services of resources, but also by undermining public trust—making honest folks feel like they are being taken advantage of when they pay their fair share. While the eyes of some people may glaze over when tax havens and tax shelters are discussed, unscrupulous taxpayers and tax professionals see illicit dollar signs. Our

commitment to crack down on their abuses must be as strong as their determination to get away with ripping off Uncle Sam and honest American taxpayers.

We can fight back against offshore tax abuses and abusive tax shelters if we summon the political will. The Stop Tax Haven Abuse Act, which is the product of years of work, offers the tools needed to tear down tax haven secrecy walls in favour of transparency, cooperation, and tax compliance. I urge my colleagues to include its provisions in any deficit reduction or budget package this year or, if not, to adopt it by separate action.

I ask unanimous consent that following my remarks that a summary of the bill be reprinted in the record.

STOP TAX HAVEN ABUSE ACT

Targeting $100 billion in lost revenue each year from offshore tax dodges, the bill would:

Authorize Special Measures To Stop Offshore Tax Abuse (§101) by allowing Treasury to take specified steps against foreign jurisdictions or financial institutions that impede U.S. tax enforcement.

Strengthen FATCA (§102) by clarifying under the Foreign Account Tax Compliance Act when foreign financial institutions and U.S. persons must report foreign financial accounts to the IRS.

Establish Rebuttable Presumptions To Combat Offshore Secrecy (§102) in U.S. tax and securities law enforcement proceedings by treating non-publicly traded offshore entities as controlled by the U.S. taxpayer who formed them, sent them assets, received assets from them, or benefited from them when those entities have accounts or assets in non-FATCA institutions, unless the taxpayer proves otherwise.

Stop Companies Run From the United States Claiming Foreign Status (§103) by treating foreign corporations that are publicly traded or have gross assets of $50 million or more and whose management and control occur primarily in the United States as U.S. domestic corporations for income tax purposes.

Strengthen Detection of Offshore Activities (§104) by requiring U.S. financial institutions that open accounts for foreign entities controlled by U.S. clients or open foreign accounts in non-FATCA institutions for U.S. clients to report the accounts to the IRS.

Close Credit Default Swap (CDS) Loophole (§105) by treating CDS payments sent offshore from the United States as taxable U.S. source income.

Close Foreign Subsidiary Deposits Loophole (§106) by treating deposits made by a controlled foreign corporation (CFC) to a financial account located in the United States, including a correspondent account of a foreign bank, as a taxable constructive distribution by the CFC to its U.S. parent.

Require Annual Country-by-Country Reporting (§201) by SEC-registered corporations on employees, sales, financing, tax obligations, and tax payments.

Establish a Penalty for Corporate Insiders Who Hide Offshore Holdings (§202) by authorizing a fine of up to $1 million per violation of securities laws.

Require Anti-Money Laundering Programs (§§203–204) for hedge funds, private equity funds, and formation agents to ensure they screen clients and offshore funds.

Strenghthen John Doe Summons (§205) by allowing the IRS to issue summons to a class of persons that relate to a long-term project approved and overseen by a court.

Combat Hidden Foreign Financial Accounts (§206) by allowing IRS use of tax return information to evaluate foreign financial account reports, simplifying penalty calculations for unreported foreign accounts, and facilitating use of suspicious activity reports in civil tax enforcement.

Strengthen Penalties (§§301–302) on tax shelter promoters and those who aid and abet tax evasion by increasing the maximum fine to 150 percent of any ill-gotten gains.

Prohibit Fee Arrangements (§303) in which a tax advisor is paid a fee based upon the amount of paper losses generated to shelter income or taxes not paid by a client.

Require Bank Examination Techniques (§304) to detect and prevent abusive tax shelter activities or the aiding and abetting of tax evasion by financial institutions.

Allow Sharing of Tax Information (§305) upon request by a federal financial regulator engaged in a law enforcement effort.

Require Disclosure of Information to Congress (§306) related to an IRS determination of whether to exempt an organization from taxation.

Direct the Establishment of Standards for Tax Opinions (§307) rendering advice on transactions with a potential for tax avoidance or evasion.

By Mr. LIEBERMAN (for himself and Mr. BLUMENTHAL):

S. 1347. A bill to establish Coltsville National Historical Park in the State of Connecticut, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. LIEBERMAN. Mr. President, I rise today to introduce the Coltsville National Historical Park Act, and express my strong support for the designation of the Coltsville Historical District in Hartford, Connecticut as a National Park. I thank my colleague Senator BLUMENTHAL for joining me as an original cosponsor of this legislation, and also wish to thank my longtime friend and colleague, Congressman JOHN LARSON, who recently introduced an identical version of this bill in the House.

In 1990, I had the privilege of introducing and successfully fighting for the legislation that established the Weir Farm National Historic Site as Connecticut's first and, as yet, only contribution to the National Park System. Over two decades later, I am honored to strive for the same outcome for Coltsville.

Located on the banks of the Connecticut River in Hartford, Coltsville is at the heart of a cluster of historical landmarks of great significance for Connecticut and our entire Nation. A newly established national park in Coltsville would span more than 200 acres and beckon tourists to such Hartford destinations as the homes of Mark Twain and Harriet Beecher Stowe, as well as to the great events organized by Riverfront Recapture, along our beautiful waterfront.

Coltsville's past is as compelling as its future possibilities. Samuel Colt, born in Hartford, was first famous for developing the revolving-breech pistol, which became one of the standard small arms of the world in the last half of the nineteenth century. Production of that firearm helped build a model town on the banks of the Connecticut River, including the Colt Armory, workers' housing, Colt Park, the Church of the Good Shepherd, and the Colt family home, known as ''Armsmear.'' At its peak during the twentieth century, the factory at Coltsville employed over 10,000 people and made a significant contribution to the country's war effort.

But the legacy of the Colt operation goes well beyond the manufacturing of guns. Colt himself invented a submarine battery used in harbor defense, a submarine telegraph cable, and other innovations. The success of Samuel and Elizabeth Colt's precision firearms business led to other industrial advancements in Connecticut and throughout New England, including the manufacture of sewing machines and typewriters. Ultimately, the spirit of innovation fostered at Coltsville was crucial to establishing Connecticut's proud tradition of manufacturing everything from small arms to jet engines, and even the submarines that our servicemembers use to defend our freedoms.

The early industrial innovators represented the same pioneering spirit of American ingenuity that we see today in defense, information, and biotechnology firms. Today, we sometimes take this innovation for granted. In Samuel Colt's day, every ingenious development was a grand achievement and a small revelation.

The industrial revolution transformed our nation culturally and economically like no other force ever has. People moved into the cities. Living standards rose. The middle class grew and economic growth intensified.

Unfortunately, Hartford has not been immune to the economic hardships the country is facing. That is why Coltsville must be a beacon to our nation of what once was and can be again, the center of industry, innovation, and prosperity. Just as Coltsville did for Hartford during the Industrial Revolution, the designation of a National Park will serve as a catalyst for growth in a struggling city.

I believe that memorializing Sam and Elizabeth Colt and their movement is particularly important as Americans struggle to emerge from a deep recession. The way we are going to revitalize our economy is to invest in people, to invest in and inspire innovation that will pioneer new industries that will create millions of new jobs. Coltsville is a historic landmark and a living reminder of the extraordinary advances in technology and innovation that have been America's story for over 400 years.

I thank Senator BLUMENTHAL and Congressman LARSON for their work and dedication to advance Coltsville's status as a National Historical Park. I reaffirm my strong support today for recognizing these values, and I look forward to working cooperatively with my colleagues in making it happen.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1347

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Coltsville National Historical Park Act''.

SEC. 2. DEFINITIONS.

For the purposes of this Act:

(1) CITY.—The term ''city'' means the city of Hartford, Connecticut.

(2) COMMISSION.—The term ''Commission'' means the Coltsville National Historical Park Advisory Commission established by subsection 6(a).

(3) HISTORIC DISTRICT.—The term ''Historic District'' means the Coltsville Historic District.

(4) MAP.—The term ''map'' means the map titled ''Coltsville National Historical Park—Proposed Boundary'', numbered T25/102087, and dated May 11, 2010.

(5) PARK.—The term ''park'' means the Coltsville National Historical Park in the State of Connecticut.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) STATE.—The term ''State'' means the State of Connecticut.

SEC. 3. COLTSVILLE NATIONAL HISTORICAL PARK.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Subject to paragraph (2), there is established in the State a unit of the National Park System to be known as the ''Coltsville National Historical Park''.

(2) CONDITIONS FOR ESTABLISHMENT.—The park shall not be established until the date on which the Secretary determines that—

(A) the Secretary has acquired by donation sufficient land or an interest in land within the boundary of the park to constitute a manageable unit;

(B) the State, city, or private property owner, as appropriate, has entered into a written agreement with the Secretary to donate at least 10,000 square feet of space in the East Armory which would include facilities for park administration and visitor services;

(C) the Secretary has entered into a written agreement with the State, city, or other public entity, as appropriate, providing that—

(i) land owned by the State, city, or other public entity within the Coltsville Historic District shall be managed consistent with this section; and

(ii) future uses of land within the historic district shall be compatible with the designation of the park and the city's preservation ordinance; and

(D) the Secretary has reviewed the financial resources of the owners of private and public property within the boundary of the proposed park to ensure the viability of the park based on those resources.

(b) BOUNDARIES.—The park shall include and provide appropriate interpretation and viewing of the following sites, as generally depicted on the map:

(1) The East Armory.

(2) The Church of the Good Shepherd.

(3) The Caldwell/Colt Memorial Parish House.

(4) Colt Park.

(5) The Potsdam Cottages.

(6) Armsmear.

(7) The James Colt House.

(c) COLLECTIONS.—The Secretary shall enter into a written agreement with the State of Connecticut State Library, Wadsworth Atheneum, and the Colt Trust, or other public entities, as appropriate, to gain appropriate access to Colt-related artifacts for the purposes of having items routinely on display in the East Armory or within the park as determined by the Secretary as a major function of the visitor experience.

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the park in accordance with—

(1) this Act; and

(2) the laws generally applicable to units of the National Park System, including—

(A) the National Park Service Organic Act (16 U.S.C. 1 et seq.); and

(B) the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(b) STATE AND LOCAL JURISDICTION.—Nothing in this Act enlarges, diminishes, or modifies any authority of the State, or any political subdivision of the State (including the city)—

(1) to exercise civil and criminal jurisdiction; or

(2) to carry out State laws (including regulations) and rules on non-Federal land located within the boundary of the park.

(c) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—As the Secretary determines to be appropriate to carry out this Act, the Secretary may enter into cooperative agreements with the owner of any property within the Coltsville Historic District or any nationally significant properties within the boundary of the park, under which the Secretary may identify, interpret, restore, rehabilitate, and provide technical assistance for the preservation of the properties.

(2) RIGHT OF ACCESS.—A cooperative agreement entered into under paragraph (1) shall provide that the Secretary, acting through the Director of the National Park Service, shall have the right of access at all reasonable times to all public portions of the property covered by the agreement for the purposes of—

(A) conducting visitors through the properties; and

(B) interpreting the properties for the public.

(3) CHANGES OR ALTERATIONS.—No changes or alterations shall be made to any properties covered by a cooperative agreement entered into under paragraph (1) unless the Secretary and the other party to the agreement agree to the changes or alterations.

(4) CONVERSION, USE, OR DISPOSAL.—Any payment by the Secretary under this subsection shall be subject to an agreement that the conversion, use, or disposal of a project for purposes contrary to the purposes of this section, as determined by the Secretary, shall entitle the United States to reimbursement in an amount equal to the greater of—

(A) the amounts made available to the project by the United States; or

(B) the portion of the increased value of the project attributable to the amounts made available under this subsection, as determined at the time of the conversion, use, or disposal.

(5) MATCHING FUNDS.—

(A) IN GENERAL.—As a condition of the receipt of funds under this subsection, the Secretary shall require that any Federal funds made available under a cooperative agreement shall be matched on a 1-to-1 basis by non-Federal funds.

(B) FORM.—With the approval of the Secretary, the non-Federal share required under subparagraph (A) may be in the form of donated property, goods, or services from a non-Federal source, fairly valued.

(d) ACQUISITION OF LAND.—The Secretary is authorized to acquire land or interests in land by donation, purchase with donated or appropriated funds, or exchange. Land or interests in land owned by the State or any political subdivision of the State may be acquired only by donation.

(e) TECHNICAL ASSISTANCE AND PUBLIC INTERPRETATION.—The Secretary may provide technical assistance and public interpretation of related historic and cultural resources within the boundary of the historic district.

SEC. 5. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 fiscal years after the date on which funds are made available to carry out this Act, the Secretary, in consultation with the Commission, shall complete a management plan for the park in accordance with—

(1) section 12(b) of Public Law 91–383 (commonly known as the National Park Service General Authorities Act) (16 U.S.C. 1a–7(b)); and

(2) other applicable laws.

(b) COST SHARE.—The management plan shall include provisions that identify costs to be shared by the Federal Government, the State, and the city, and other public or private entities or individuals for necessary capital improvements to, and maintenance and operations of, the park.

(c) SUBMISSION TO CONGRESS.—On completion of the management plan, the Secretary shall submit the management plan to—

(1) the Committee on Natural Resources of the House of Representatives; and

(2) the Committee on Energy and Natural Resources of the Senate.

SEC. 6. COLTSVILLE NATIONAL HISTORICAL PARK ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is established a Commission to be known as the Coltsville National Historical Park Advisory Commission.

(b) DUTY.—The Commission shall advise the Secretary in the development and implementation of the management plan.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 11 members, to be appointed by the Secretary, of whom—

(A) 2 members shall be appointed after consideration of recommendations submitted by the Governor of the State;

(B) 1 member shall be appointed after consideration of recommendations submitted by the State Senate President;

(C) 1 member shall be appointed after consideration of recommendations submitted by the Speaker of the State House of Representatives;

(D) 2 members shall be appointed after consideration of recommendations submitted by the Mayor of Hartford, Connecticut;

(E) 2 members shall be appointed after consideration of recommendations submitted by Connecticut's 2 United States Senators;

(F) 1 member shall be appointed after consideration of recommendations submitted by Connecticut's First Congressional District Representative;

(G) 2 members shall have experience with national parks and historic preservation;

(H) all appointments must have significant experience with and knowledge of the Coltsville Historic District; and

(I) 1 member of the Commission must live in the Sheldon/Charter Oak neighborhood within the Coltsville Historic District.

(2) INITIAL APPOINTMENTS.—The Secretary shall appoint the initial members of the Commission not later than the earlier of—

(A) the date that is 30 days after the date on which the Secretary has received all of the recommendations for appointments under paragraph (1); or

(B) the date that is 30 days after the park is established.

(d) TERM; VACANCIES.—

(1) TERM.—

(A) IN GENERAL.—A member shall be appointed for a term of 3 years.

(B) REAPPOINTMENT.—A member may be reappointed for not more than 1 additional term.

(2) VACANCIES.—A vacancy on the Commission shall be filled in the same manner as the original appointment was made.

(e) MEETINGS.—The Commission shall meet at the call of—

(1) the Chairperson; or

(2) a majority of the members of the Commission.

(f) QUORUM.—A majority of the Commission shall constitute a quorum.

(g) CHAIRPERSON AND VICE CHAIRPERSON.—

(1) IN GENERAL.—The Commission shall select a Chairperson and Vice Chairperson from among the members of the Commission.

(2) VICE CHAIRPERSON.—The Vice Chairperson shall serve as Chairperson in the absence of the Chairperson.

(3) TERM.—A member may serve as Chairperson or Vice Chairperson for not more than 1 year in each office.

(h) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—

(A) IN GENERAL.—Members of the Commission shall serve without compensation.

(B) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duty of the Commission.

(2) STAFF.—

(A) IN GENERAL.—The Secretary shall provide the Commission with any staff members and technical assistance that the Secretary, after consultation with the Commission, determines to be appropriate to enable the Commission to carry out the duty of the Commission.

(B) DETAIL OF EMPLOYEES.—The Secretary may accept the services of personnel detailed from the State or any political subdivision of the State.

(i) FACA NONAPPLICABILITY.—Section 14(b) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(j) TERMINATION.—

(1) IN GENERAL.—Unless extended under paragraph (2), the Commission shall terminate on the date that is 10 years after the date of the enactment of this Act.

(2) EXTENSION.—Eight years after the date of the enactment of this Act, the Commission shall make a recommendation to the Secretary if a body of its nature is still necessary to advise on the development of the park. If, based on a recommendation under this paragraph, the Secretary determines that the Commission is still necessary, the Secretary may extend the life of the Commission for not more than 10 years.

AMENDMENTS SUBMITTED AND PROPOSED

SA 534. Mr. RUBIO submitted an amendment intended to be proposed by him to the bill S. 1323, to express the sense of the Senate on shared sacrifice in resolving the budget deficit; which was ordered to lie on the table.

SA 535. Mr. WHITEHOUSE (for himself, Mr. BLUMENTHAL, Mr. SANDERS, Mr. FRANKEN, Mr. BROWN of Ohio, and Mr. MERKLEY) submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 536. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1323, supra; which was ordered to lie on the table.

SA 537. Mrs. HUTCHISON (for herself and Ms. SNOWE) submitted an amendment intended to be proposed by her to the bill S. 1323, supra; which was ordered to lie on the table.

SA 538. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 539. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

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SA 541. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 542. Mr. THUNE submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 543. Mr. BROWN of Ohio submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 544. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 545. Mr. BARRASSO submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 546. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 547. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 548. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

SA 549. Mr. ROCKEFELLER submitted an amendment intended to be proposed by him to the bill S. 1323, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 534. Mr. RUBIO submitted an amendment intended to be proposed by him to the bill S. 1323, to express the sense of the Senate on shared sacrifice in resolving the budget deficit; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. __. SENSE OF THE SENATE THAT INCREASED REVENUE SHOULD COME FROM NEW TAXPAYERS, NOT NEW TAXES.

(a) FINDINGS.—

(1) According to the Bureau of Labor Statistics, the national unemployment rate is 9.2 percent and 25 million Americans are unemployed or underemployed.

(2) According to the Congressional Budget Office—

(A) the historical burden of government spending is 20.6 percent of Gross Domestic Product;

(B) government spending is currently above 24 percent of Gross Domestic Product;

(C) tax revenues have historically averaged between 18 and 19 percent of Gross Domestic Product regardless of how high the top marginal tax rate is; and

(D) tax revenues are projected to reach 18.4 percent in 2021 without tax increases.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) Washington has a spending problem, not a revenue problem;

(2) raising taxes on our fragile economy will neither create jobs nor generate significant revenue for debt reduction;

(3) increased tax revenue should come from economic growth that creates new taxpayers, not new taxes, and such revenue increases should be dedicated to reducing the national debt;

(4) to boost the economy and reduce our Nation's unsustainable debt in the process, Congress should pursue comprehensive tax reform in lieu of tax increases that—

(A) simplifies the tax code and sharply reduces marginal tax rates for individuals, families, and businesses;

(B) broadens the tax base;

(C) ends punitive double taxation of savings and investment; and

(D) does not impose a net tax increase on the American economy.

SA 535. Mr. WHITEHOUSE (for himself, Mr. BLUMENTHAL, Mr. SANDERS, Mr. FRANKEN, Mr. BROWN of Ohio, and Mr. MERKLEY) submitted an amendment intended to be proposed by him to the bill S. 1323, to express the sense of the Senate on shared sacrifice in resolving the budget deficit; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. SENSE OF THE SENATE ON PROTECTING SOCIAL SECURITY AND MEDICARE.

(a) FINDINGS.—

(1) Over 34,000,000 retired workers currently receive Social Security benefits in amounts that average a modest $14,100 a year.

(2) In 2008, 23 percent of retired workers receiving Social Security benefits depended on those benefits for all or almost all of their income.

(3) According to AARP, Social Security benefits kept 36 percent of seniors out of poverty in 2008.

(4) Reducing Social Security benefits would cause many seniors to have to choose between food, drugs, rent, and heat.

(5) Ninety-five percent of seniors in the United States, who numbered almost 37,000,000 in 2008, got their health care coverage through the Medicare program.

(6) Without Medicare benefits, seniors, many of whom live off of Social Security benefits, would have to turn to the costly and uncertain private market for health care coverage.

(7) The Social Security program and the Medicare program are extremely successful social insurance programs that permit seniors in America to retire with dignity and security after a lifetime of hard work.

(8) The Social Security program and the Medicare program help relieve young American families from worry about their own futures, allowing freedom of opportunity in America.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any agreement to reduce the budget deficit should not include cuts to Social Security benefits or Medicare benefits.

SA 536. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill S. 1323, to express the sense of the Senate on shared sacrifice in resolving the budget deficit; which was ordered to lie on the table; as follows:

At the end, add the following: