AMENDMENT NO. 1660

At the request of Ms. COLLINS, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of amendment No. 1660 intended to be proposed to S. 1813, a bill to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1736. Mr. PORTMAN (for himself and Mr. COBURN) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table.

SA 1737. Mr. COBURN (for himself and Mr. UDALL of Colorado) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1738. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1739. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 1730 proposed by Mr. REID to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1740. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 1730 proposed by Mr. REID to the bill S. 1813, supra; which was ordered to lie on the table.

SA 1741. Mr. LEVIN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill S. 1813, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1736. Mr. PORTMAN (for himself and Mr. COBURN) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

Subtitle—State Transportation Flexibility

SEC. ___01. SHORT TITLE.

This subtitle may be cited as the ''State Transportation Flexibility Act''.

SEC. ___02. DIRECT FEDERAL-AID HIGHWAY PROGRAM.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code (as amended by section 1115(a)), is amended by adding at the end the following:

''§ 168. Direct Federal-aid highway program

''(a) ELECTION BY STATE NOT TO PARTICIPATE.—Notwithstanding any other provision of law, a State may elect not to participate in any Federal program relating to highways, including a Federal highway program under the SAFETEA LU (Public Law 109 59; 119 Stat. 1144), this title, or title 49.

''(b) DIRECT FEDERAL-AID HIGHWAY PROGRAM.—

''(1) IN GENERAL.—Beginning in fiscal year 2011, the Secretary shall carry out a direct Federal-aid highway program in accordance with the requirements of this section under which the legislature of a State may elect, not fewer than 90 days before the beginning of a fiscal year—

''(A) to waive the right of the State to receive amounts apportioned or allocated to the State under the Federal-aid highway program for the fiscal year to which the election relates; and

''(B) to receive an amount for that fiscal year that is determined in accordance with subsection (e) for that fiscal year.

''(2) EFFECT.—On making an election under paragraph (1), a State—

''(A) assumes all Federal obligations relating to each program that is the subject of the election; and

''(B) shall fulfill those obligations using the amounts transferred to the State under subsection (e).

''(c) STATE RESPONSIBILITY.—

''(1) IN GENERAL.—The Governor of a State making an election under subsection (b) shall—

''(A) agree to maintain the Interstate System in accordance with the current Interstate System program;

''(B) submit a plan to the Secretary describing—

''(i) the purposes, projects, and uses to which amounts received under the program will be put; and

''(ii) which programmatic requirements of this title the State elects to continue;

''(C) agree to obligate or expend amounts received under the direct Federal-aid highway program exclusively for projects that would be eligible for funding under section 133(b) if the State was not participating in the program; and

''(D) agree to report annually to the Secretary on the use of amounts received under the direct Federal-aid highway program and to make the report available to the public in an easily accessible format.

''(2) NO FEDERAL LIMITATION ON USE OF FUNDS.—Except as provided in paragraph (1), the expenditure or obligation of funds received by a State under the direct Federal-aid highway program shall not be subject to any Federal regulation under this title (except for this section), title 49, or any other Federal law.

''(3) ELECTION IRREVOCABLE.—An election under subsection (b) shall be irrevocable during the applicable fiscal year.

''(d) EFFECT ON PREEXISTING COMMITMENTS.—The making of an election under subsection (b) shall not affect any responsibility or commitment of the State under this title for any fiscal year with respect to—

''(1) a project or program funded under this title (other than under this section); or

''(2) any project or program funded under this title in any fiscal year for which an election under subsection (b) is not in effect.

''(e) TRANSFERS.—

''(1) IN GENERAL.—The amount to be transferred to a State under the direct Federal-aid highway program for a fiscal year shall be the portion of the taxes appropriated to the Highway Trust Fund under section 9503 of the Internal Revenue Code of 1986, other than for the Mass Transit Account, for that fiscal year that is attributable to highway users in that State during that fiscal year, reduced by a pro rata share withheld by the Secretary to fund contract authority for programs of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration.

''(2) TRANSFERS UNDER PROGRAM.—

''(A) IN GENERAL.—Transfers under the program—

''(i) shall be made at the same time as deposits to the Highway Trust Fund are made by the Secretary of the Treasury; and

''(ii) shall be made on the basis of estimates by the Secretary, in consultation with the Secretary of the Treasury, based on the most recent data available, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

''(B) LIMITATION.—An adjustment under subparagraph (A)(ii) to any transfer may not exceed 5 percent of the transferred amount to which the adjustment relates. If the adjustment required under subparagraph (A)(ii) exceeds that percentage, the excess shall be taken into account in making subsequent adjustments under subparagraph (A)(ii).

''(f) APPLICATION WITH OTHER AUTHORITY.—Any contract authority under this chapter (and any obligation limitation) authorized for a State for a fiscal year for which an election by that State is in effect under subsection (b)—

''(1) shall be rescinded or canceled; and

''(2) shall not be reallocated or distributed to any other State under the Federal-aid highway program.

''(g) MAINTENANCE OF EFFORT.—

''(1) IN GENERAL.—Not later than 30 days after the date on which an amount is distributed to a State or State agency under the State Highway Flexibility Act or an amendment made by that Act, the Governor of the State shall certify to the Secretary that the State will maintain the effort of the State with regard to State funding for the types of projects that are funded by the amounts.

''(2) AMOUNTS.—As part of the certification, the Governor shall submit to the Secretary a statement identifying the amount of funds the State plans to expend from State sources during the covered period, for the types of projects that are funded by the amounts.

''(h) TREATMENT OF GENERAL REVENUES.—For purposes of this section, any general revenue funds appropriated to the Highway Trust Fund shall be transferred to a State under the program in the manner described in subsection (e)(1).''.

(b) CONFORMING AMENDMENT.—The analysis for title 23, United States Code (as amended by section 1115(b)), is amended by inserting after the item relating to section 149 the following:

''168. Direct Federal-aid highway program''.

SEC. ___03. ALTERNATIVE FUNDING OF PUBLIC TRANSPORTATION PROGRAMS.

(a) IN GENERAL.—Chapter 53 of title 49, United States Code (as amended by section 20030), is amended by adding at the end the following:

''§ 5341. Alternative funding of public transportation programs

''(a) DEFINITIONS.—In this section—

''(1) ALTERNATIVE FUNDING PROGRAM.—The term 'alternative funding program' means the program established under subsection (c).

''(2) COVERED PROGRAMS.—The term 'covered programs' means the programs authorized under—

''(A) sections 5305, 5307, 5308, 5309, 5310, 5311, 5316, 5317, 5320, 5335, 5339, and 5340; and

''(B) section 3038 of the Federal Transit Act of 1998 (49 U.S.C. 5310 note).

''(b) ELECTION BY STATE NOT TO PARTICIPATE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a State may elect not to participate in all Federal programs relating to public transportation funded under the Mass Transit Account of the Highway Trust Fund, including the Federal public transportation programs under the SAFETEA LU (Public Law 109 59; 119 Stat. 1144), title 23, or this title.

''(2) EFFECT.—On making an election under paragraph (1), a State—

''(A) assumes all Federal obligations relating to each program that is the subject of the election; and

''(B) shall fulfill those obligations using the amounts transferred to the State under subsection (e).

''(c) PUBLIC TRANSPORTATION PROGRAM.—

''(1) PROGRAM ESTABLISHED.—Beginning in fiscal year 2011, the Secretary shall carry out an alternative funding program under which the legislature of a State may elect, not fewer than 90 days before the beginning of a fiscal year—

''(A) to waive the right of the State to receive amounts apportioned or allocated to the State under the covered programs for the fiscal year to which the election relates; and

''(B) to receive an amount for that fiscal year that is determined in accordance with subsection (e).

''(2) PROGRAM REQUIREMENTS.—

''(A) IN GENERAL.—The Governor of a State that participates in the alternative funding program shall—

''(i) submit a plan to the Secretary describing—

''(I) the purposes, projects, and uses to which amounts received under the alternative funding program will be put; and

''(II) which programmatic requirements of this title the State elects to continue;

''(ii) agree to obligate or expend amounts received under the alternative funding program exclusively for projects that would be eligible for funding under the covered programs if the State was not participating in the alternative funding program; and

''(iii) submit to the Secretary an annual report on the use of amounts received under the alternative funding program, and to make the report available to the public in an easily accessible format.

''(B) NO FEDERAL LIMITATION ON USE OF FUNDS.—Except as provided in subparagraph (A), the expenditure or obligation of funds received by a State under the alternative funding program shall not be subject to the provisions of this title (except for this section), title 23, or any other Federal law.

''(3) ELECTION IRREVOCABLE.—An election under paragraph (1) shall be irrevocable during the applicable fiscal year.

''(d) EFFECT ON PREEXISTING COMMITMENTS.—Participation in the alternative funding program shall not affect any responsibility or commitment of the State under this title for any fiscal year with respect to—

''(1) a project or program funded under this title (other than under this section); or

''(2) any project or program funded under this title in any fiscal year for which the State elects not to participate in the alternative funding program.

''(e) TRANSFERS.—

''(1) IN GENERAL.—The amount to be transferred to a State under the alternative funding program for a fiscal year shall be the portion of the taxes transferred to the Mass Transit Account of the Highway Trust Fund under section 9503(e) of the Internal Revenue Code of 1986, for that fiscal year, that is attributable to highway users in that State during that fiscal year.

''(2) TRANSFERS.—

''(A) IN GENERAL.—Transfers under the program—

''(i) shall be made at the same time as transfers to the Mass Transit Account of the Highway Trust Fund are made by the Secretary of the Treasury; and

''(ii) shall be made on the basis of estimates by the Secretary, in consultation with the Secretary of the Treasury, based on the most recent data available, and proper adjustments shall be made in amounts subsequently transferred, to the extent prior estimates were in excess of, or less than, the amounts required to be transferred.

''(B) LIMITATION.—An adjustment under subparagraph (A)(ii) to any transfer may not exceed 5 percent of the transferred amount to which the adjustment relates. If the adjustment required under subparagraph (A)(ii) exceeds that percentage, the excess shall be taken into account in making subsequent adjustments under subparagraph (A)(ii).

''(f) CONTRACT AUTHORITY.—There shall be rescinded or canceled any contract authority under this chapter (and any obligation limitation) authorized for a State for a fiscal year for which the State elects to participate in the alternative funding program.

''(g) MAINTENANCE OF EFFORT.—

''(1) IN GENERAL.—Not later than 30 days after the date on which an amount is distributed to a State or State agency under the State Highway Flexibility Act or an amendment made by that Act, the Governor of the State shall certify to the Secretary that the State will maintain the effort of the State with regard to State funding for the types of projects that are funded by the amounts.

''(2) AMOUNTS.—The certification under paragraph (1) shall include a statement identifying the amount of funds the State plans to expend from State sources for projects funded under the alternative funding program, during the fiscal year for which the State elects to participate in the alternative funding program.

''(h) TREATMENT OF GENERAL REVENUES.—For purposes of this section, any general revenue funds appropriated to the Highway Trust Fund shall be transferred to a State under the program in the manner described in subsection (e).''.

(b) CONFORMING AMENDMENT.—The analysis for title 49, United States Code (as amended by section 20031(k)), is amended by adding after the item relating to section 5340 the following:

''5341. Alternative funding of public transportation programs''.

SA 1737. Mr. COBURN (for himself and Mr. UDALL of Colorado) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. PREVENTING DUPLICATIVE AND OVERLAPPING GOVERNMENT PROGRAMS.

(a) SHORT TITLE.—This section may be cited as the ''Preventing Duplicative and Overlapping Government Programs Act''.

(b) REPORTED LEGISLATION.—Paragraph 11 of rule XXVI of the Standing Rules of the Senate is amended—

(1) in subparagraph (c), by striking ''and (b)'' and inserting ''(b), and (c)'';

(2) by redesignating subparagraph (c) and subparagraph (d); and

(3) by inserting after subparagraph (b) the following:

''(c) The report accompanying each bill or joint resolution of a public character reported by any committee (including the Committee on Appropriations and the Committee on the Budget) shall contain—

''(1) an analysis by the Congressional Research Service to determine if the bill or joint resolution creates any new Federal program, office, or initiative that would duplicate or overlap any existing Federal program, office, or initiative with similar mission, purpose, goals, or activities along with a listing of all of the overlapping or duplicative Federal program or programs, office or offices, or initiative or initiatives; and

''(2) an explanation provided by the committee as to why the creation of each new program, office, or initiative is necessary if a similar program or programs, office or offices, or initiative or initiatives already exist.''.

(c) SENATE.—Rule XVII of the Standing Rules of the Senate is amended by inserting at the end thereof the following:

''6. (a) It shall not be in order in the Senate to proceed to any bill or joint resolution unless the committee of jurisdiction has prepared and posted on the committee website an overlapping and duplicative programs analysis and explanation for the bill or joint resolution as described in subparagraph (b) prior to proceeding.

''(b) The analysis and explanation required by this subparagraph shall contain—

''(1) an analysis by the Congressional Research Service to determine if the bill or joint resolution creates any new Federal program, office, or initiative that would duplicate or overlap any existing Federal program, office, or initiative with similar mission, purpose, goals, or activities along with a listing of all of the overlapping or duplicative Federal program or programs, office or offices, or initiative or initiatives; and

''(2) an explanation provided by the committee as to why the creation of each new program, office, or initiative is necessary if a similar program or programs, office or offices, or initiative or initiatives already exist.

''(c) This paragraph may be waived by joint agreement of the Majority Leader and the Minority Leader of the Senate upon their certification that such waiver is necessary as a result of—

''(1) a significant disruption to Senate facilities or to the availability of the Internet; or

''(2) an emergency as determined by the leaders.''.

SA 1738. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. CONSOLIDATING UNNECESSARY DUPLICATIVE AND OVERLAPPING GOVERNMENT PROGRAMS.

Notwithstanding any other provision of law and not later than 150 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall coordinate with the heads of the relevant department and agencies to—

(1) use available administrative authority to eliminate, consolidate, or streamline Government programs and agencies with duplicative and overlapping missions identified in the—

(A) March 2011 Government Accountability Office report to Congress entitled ''Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue'' (GAO 11 318SP); and

(B) February 2012 Government Accountability Office report to Congress entitled ''2012 Annual Report: Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue'' (GAO 12 342SP);

(2) identify and report to Congress any legislative changes required to further eliminate, consolidate, or streamline Government programs and agencies with duplicative and overlapping missions identified in the—

(A) March 2011 Government Accountability Office report to Congress entitled ''Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue'' (GAO 11 318SP); and

(B) February 2012 Government Accountability Office report to Congress entitled ''2012 Annual Report: Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue'' (GAO 12 342SP);

(3) determine the total cost savings that shall result to each agency, office, and department from the actions described in paragraph (1); and

(4) rescind from the appropriate accounts and apply the savings towards deficit reduction the amount greater of—

(A) $10,000,000,000; or

(B) the total amount of cost savings estimated by paragraph (3).

SA 1739. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 1730 proposed by Mr. REID to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 6, strike lines 15 through 17, and insert the following:

''(A) in which a substantial portion of each line operates in a separated right-of-way that is semi-dedicated for public transportation use during peak periods;

SA 1740. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 1730 proposed by Mr. REID to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

On page 13, line 24, insert ''and other high occupancy vehicles'' before the semicolon at the end.

SA 1741. Mr. LEVIN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill S. 1813, to reauthorize Federal-aid highway and highway safety construction programs, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

DIVISION ____—CUT LOOPHOLES

SECTION ____001. SHORT TITLE; ETC.

(a) SHORT TITLE.—This division may be cited as the ''Cut Unjustified Tax Loopholes Act'' or ''CUT Loopholes Act''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

TITLE I—ENDING OFFSHORE TAX ABUSES

Subtitle A—Deterring the Use of Tax Havens for Tax Evasion

SEC. ____101. AUTHORIZING SPECIAL MEASURES AGAINST FOREIGN JURISDICTIONS, FINANCIAL INSTITUTIONS, AND OTHERS THAT IMPEDE UNITED STATES TAX ENFORCEMENT.

(a) IN GENERAL.—Section 5318A of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following new heading:

''§ 5318A. Special measures for jurisdictions, financial institutions, or international transactions that are of primary money laundering concern or impede United States tax enforcement'';

(2) in subsection (a), by striking all before paragraph (1) and inserting the following:

''(a) SPECIAL MEASURES TO COUNTER MONEY LAUNDERING AND EFFORTS TO IMPEDE UNITED STATES TAX ENFORCEMENT.—'';

(3) in subsection (c), by striking all before paragraph (1) and inserting the following:

''(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN OR TO BE IMPEDING UNITED STATES TAX ENFORCEMENT.—'';

(4) in subsection (a)(1), by inserting ''or is impeding United States tax enforcement'' after ''primary money laundering concern'';

(5) in subsection (a)(4)—

(A) in subparagraph (A)—

(i) by inserting ''in matters involving money laundering,'' before ''shall consult''; and

(ii) by striking ''and'' at the end;

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

(C) by inserting after subparagraph (A) the following new subparagraph:

''(B) in matters involving United States tax enforcement, shall consult with the Commissioner of the Internal Revenue Service, the Secretary of State, the Attorney General of the United States, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and'';

(6) in each of paragraphs (1)(A), (2), (3), and (4) of subsection (b), by inserting ''or to be impeding United States tax enforcement'' after ''primary money laundering concern'' each place that term appears;

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

''(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING CERTAIN PAYMENT CARDS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within or involving a jurisdiction outside of the United States to be of primary money laundering concern or to be impeding United States tax enforcement, the Secretary, in consultation with the Secretary of State, the Attorney General of the United States, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon—

''(A) the opening or maintaining in the United States of a correspondent account or payable-through account; or

''(B) the authorization, approval, or use in the United States of a credit card, charge card, debit card, or similar credit or debit financial instrument by any domestic financial institution, financial agency, or credit card company or association, for or on behalf of a foreign banking institution, if such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument, involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument.'';

(8) in subsection (c)(1), by inserting ''or is impeding United States tax enforcement'' after ''primary money laundering concern'';

(9) in subsection (c)(2)(A)—

(A) in clause (ii), by striking ''bank secrecy or special regulatory advantages'' and inserting ''bank, tax, corporate, trust, or financial secrecy or regulatory advantages'';

(B) in clause (iii), by striking ''supervisory and counter-money'' and inserting ''supervisory, international tax enforcement, and counter-money'';

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

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

(10) in subsection (c)(2)(B)—

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

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

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

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

SEC. ___102. STRENGTHENING THE FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA).

(a) REPORTING ACTIVITIES WITH RESPECT TO PASSIVE FOREIGN INVESTMENT COMPANIES.—Section 1298(f) is amended by inserting '', or 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,'' after ''shareholder of''.

(b) WITHHOLDABLE PAYMENTS TO FOREIGN FINANCIAL INSTITUTIONS.—Section 1471(d) is amended—

(1) by inserting ''or transaction'' after ''any depository'' in paragraph (2)(A), and

(2) by striking ''or any interest'' and all that follows in paragraph (5)(C) and inserting ''derivatives, or any interest (including a futures or forward contract, swap, or option) in such securities, partnership interests, commodities, or derivatives.''.

(c) WITHHOLDABLE PAYMENTS TO OTHER FOREIGN FINANCIAL INSTITUTIONS.—Section 1472 is amended—

(1) by inserting ''as a result of any customer identification, anti-money laundering, anti-corruption, or similar obligation to identify account holders,'' after ''reason to know,'' in subsection (b)(2), and

(2) by inserting ''as posing a low risk of tax evasion'' after ''this subsection'' in subsection (c)(1)(G).

(d) DEFINITIONS.—Clauses (i) and (ii) of section 1473(2)(A) are each amended by inserting ''or as a beneficial owner'' after ''indirectly''.

(e) SPECIAL RULES.—Section 1474(c) is amended—

(1) by inserting '', except that information provided under sections 1471(c) or 1472(b) may be disclosed to any Federal law enforcement agency, upon request or upon the initiation of the Secretary, to investigate or address a possible violation of United States law'' after ''shall apply'' in paragraph (1), and

(2) by inserting '', or has had an agreement terminated under such section,'' after ''section 1471(b)'' in paragraph (2).

(f) INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.—Section 6038D(a) is amended by inserting ''ownership or beneficial ownership'' after ''holds any''.

(g) ESTABLISHING PRESUMPTIONS FOR ENTITIES AND TRANSACTIONS INVOLVING NON-FATCA INSTITUTIONS.—

(1) PRESUMPTIONS FOR TAX PURPOSES.—

(A) IN GENERAL.—Chapter 76 is amended by inserting after section 7491 the following new subchapter:

''Subchapter F—Presumptions for Certain Legal Proceedings

''SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND TRANSACTIONS INVOLVING NON-FATCA INSTITUTIONS.

''(a) CONTROL.—For purposes of any United States civil judicial or administrative proceeding to determine or collect tax, there shall be a rebuttable presumption that a United States person (other than an entity with shares regularly traded on an established securities market) who, directly or indirectly, formed, transferred assets to, was a beneficiary of, had a beneficial interest in, or received money or property or the use thereof from an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), that holds an account, or in any other manner has assets, in a non-FATCA institution, exercised control over such entity. The presumption of control created by this subsection shall not be applied to prevent the Secretary from determining or arguing the absence of control.

''(b) TRANSFERS OF INCOME.—For purposes of any United States civil judicial or administrative proceeding to determine or collect tax, there shall be a rebuttable presumption that any amount or thing of value received by a United States person (other than an entity with shares regularly traded on an established securities market) directly or indirectly from an account or from an entity (other than an entity with shares regularly traded on an established securities market) that holds an account, or in any other manner has assets, in a non-FATCA institution, constitutes income of such person taxable in the year of receipt; and any amount or thing of value paid or transferred by or on behalf of a United States person (other than an entity with shares regularly traded on an established securities market) directly or indirectly to an account, or entity (other than an entity with shares regularly traded on an established securities market) that holds an account, or in any other manner has assets, in a non-FATCA institution, represents previously unreported income of such person taxable in the year of the transfer.

''(c) REBUTTING THE PRESUMPTIONS.—The presumptions established in this section may be rebutted only by clear and convincing evidence, including detailed documentary, testimonial, and transactional evidence, establishing that—

''(1) in subsection (a), such taxpayer exercised no control, directly or indirectly, over account or entity at the time in question, and

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

Any court having jurisdiction of a civil proceeding in which control of such an offshore account or offshore entity or the income character of such receipts or amounts transferred is an issue shall prohibit the introduction by the taxpayer of any foreign based document that is not authenticated in open court by a person with knowledge of such document, or any other evidence supplied by a person outside the jurisdiction of a United States court, unless such person appears before the court.''.

(B) The table of subchapters for chapter 76 is amended by inserting after the item relating to subchapter E the following new item:

''SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS''.

(2) DEFINITION OF NON-FATCA INSTITUTION.—Section 7701(a) is amended by adding at the end the following new paragraph:

''(51) NON-FATCA INSTITUTION.—The term 'non-FATCA institution' means any financial institution that does not meet the reporting requirements of section 1471(b).''.

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

''(j) PRESUMPTIONS PERTAINING TO CONTROL AND BENEFICIAL OWNERSHIP.—

''(1) CONTROL.—For purposes of any civil judicial or administrative proceeding under this title, there shall be a rebuttable presumption that a United States person (other than an entity with shares regularly traded on an established securities market) who, directly or indirectly, formed, transferred assets to, was a beneficiary of, had a beneficial interest in, or received money or property or the use thereof from an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), that holds an account, or in any other manner has assets, in a non-FATCA institution (as defined in section 7701(a)(51) of the Internal Revenue Code of 1986), exercised control over such entity. The presumption of control created by this paragraph shall not be applied to prevent the Commission from determining or arguing the absence of control.

''(2) BENEFICIAL OWNERSHIP.—For purposes of any civil judicial or administrative proceeding under this title, there shall be a rebuttable presumption that securities that are nominally owned by an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), and that are held in a non-FATCA institution (as so defined), are beneficially owned by any United States person (other than an entity with shares regularly traded on an established securities market) who directly or indirectly exercised control over such entity. The presumption of beneficial ownership created by this paragraph shall not be applied to prevent the Commission from determining or arguing the absence of beneficial ownership.''.

(4) PRESUMPTION FOR REPORTING PURPOSES RELATING TO FOREIGN FINANCIAL ACCOUNTS.—Section 5314 of title 31, United States Code, is amended by adding at the end the following new subsection:

''(d) REBUTTABLE PRESUMPTION.—For purposes of this section, there shall be a rebuttable presumption that any account with a non-FATCA institution (as defined in section 7701(a)(51) of the Internal Revenue Code of 1986) contains funds in an amount that is at least sufficient to require a report prescribed by regulations under this section.''.

(5) REGULATORY AUTHORITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury and the Chairman of the Securities and Exchange Commission shall each adopt regulations or other guidance necessary to implement the amendments made by this subsection. The Secretary and the Chairman may by regulation or guidance provide that the presumption of control shall not extend to particular classes of transactions, such as corporate reorganizations or transactions below a specified dollar threshold, if either determines that applying such amendments to such transactions is not necessary to carry out the purposes of such amendments.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 180 days after the date of the enactment of this Act, whether or not regulations are issued under subsection (g)(5).

SEC. ___103. TREATMENT OF FOREIGN CORPORATIONS MANAGED AND CONTROLLED IN THE UNITED STATES AS DOMESTIC CORPORATIONS.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (p) as subsection

(q) and by inserting after subsection (o) the following new subsection:

''(p) CERTAIN CORPORATIONS MANAGED AND CONTROLLED IN THE UNITED STATES TREATED AS DOMESTIC FOR INCOME TAX.—

''(1) IN GENERAL.—Notwithstanding subsection (a)(4), in the case of a corporation described in paragraph (2) if—

''(A) the corporation would not otherwise be treated as a domestic corporation for purposes of this title, but

''(B) the management and control of the corporation occurs, directly or indirectly, primarily within the United States,

then, solely for purposes of chapter 1 (and any other provision of this title relating to chapter 1), the corporation shall be treated as a domestic corporation.

''(2) CORPORATION DESCRIBED.—

''(A) IN GENERAL.—A corporation is described in this paragraph if—

''(i) the stock of such corporation is regularly traded on an established securities market, or

''(ii) the aggregate gross assets of such corporation (or any predecessor thereof), including assets under management for investors, whether held directly or indirectly, at any time during the taxable year or any preceding taxable year is $50,000,000 or more.

''(B) GENERAL EXCEPTION.—A corporation shall not be treated as described in this paragraph if—

''(i) such corporation was treated as a corporation described in this paragraph in a preceding taxable year,

''(ii) such corporation—

''(I) is not regularly traded on an established securities market, and

''(II) has, and is reasonably expected to continue to have, aggregate gross assets (including assets under management for investors, whether held directly or indirectly) of less than $50,000,000, and

''(iii) the Secretary grants a waiver to such corporation under this subparagraph.

''(C) EXCEPTION FROM GROSS ASSETS TEST.—Subparagraph (A)(ii) shall not apply to a corporation which is a controlled foreign corporation (as defined in section 957) and which is a member of an affiliated group (as defined section 1504, but determined without regard to section 1504(b)(3)) the common parent of which—

''(i) is a domestic corporation (determined without regard to this subsection), and

''(ii) has substantial assets (other than cash and cash equivalents and other than stock of foreign subsidiaries) held for use in the active conduct of a trade or business in the United States.

''(3) MANAGEMENT AND CONTROL.—

''(A) IN GENERAL.—The Secretary shall prescribe regulations for purposes of determining cases in which the management and control of a corporation is to be treated as occurring primarily within the United States.

''(B) EXECUTIVE OFFICERS AND SENIOR MANAGEMENT.—Such regulations shall provide that—

''(i) the management and control of a corporation shall be treated as occurring primarily within the United States if 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, and

''(ii) individuals who are not executive officers and senior management of the corporation (including individuals who are officers or employees of other corporations in the same chain of corporations as the corporation) shall be treated as executive officers and senior management if such individuals exercise the day-to-day responsibilities of the corporation described in clause (i).

''(C) CORPORATIONS PRIMARILY HOLDING INVESTMENT ASSETS.—Such regulations shall also provide that the management and control of a corporation shall be treated as occurring primarily within the United States if—

''(i) the assets of such corporation (directly or indirectly) consist primarily of assets being managed on behalf of investors, and

''(ii) decisions about how to invest the assets are made in the United States.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after the date which is 2 years after the date of the enactment of this Act, whether or not regulations are issued under section 7701(p)(3) of the Internal Revenue Code of 1986, as added by this section.

SEC. ___104. REPORTING UNITED STATES BENEFICIAL OWNERS OF FOREIGN OWNED FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6045B the following new sections:

''SEC. 6045C. RETURNS REGARDING UNITED STATES BENEFICIAL OWNERS OF FINANCIAL ACCOUNTS LOCATED IN THE UNITED STATES AND HELD IN THE NAME OF A FOREIGN ENTITY.

''(a) REQUIREMENT OF RETURN.—If—

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

''(2) such withholding agent determines for purposes of titles 14, 18, or 31 of the United States Code that a United States person has any beneficial interest in the foreign entity or in the account in such entity's name (hereafter in this section referred to as 'United States beneficial owner'),

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

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

''(1) the name, address, and, if known, the taxpayer identification number of the United States beneficial owner,

''(2) the known facts pertaining to the relationship of such United States beneficial owner to the foreign entity and the account,

''(3) the gross amount of income from sources within the United States (including gross proceeds from brokerage transactions), and

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

''(c) STATEMENTS TO BE FURNISHED TO BENEFICIAL OWNERS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE REPORTED.—A withholding agent required to make a return under subsection (a) shall furnish to each United States beneficial owner whose name is required to be set forth in such return a statement showing—

''(1) the name, address, and telephone number of the information contact of the person required to make such return, and

''(2) the information required to be shown on such return with respect to such United States beneficial owner.

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

''SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS REGARDING ESTABLISHMENT OF ACCOUNTS IN NON-FATCA INSTITUTIONS.

''(a) REQUIREMENT OF RETURN.—Any financial institution directly or indirectly opening a bank, brokerage, or other financial account for or on behalf of an offshore entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), in a non-FATCA institution (as defined in section 7701(a)(51)) at the direction of, on behalf of, or for the benefit of a United States person shall make a return according to the forms or regulations prescribed by the Secretary.

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

''(1) the name, address, and taxpayer identification number of such United States person,

''(2) the name and address of the financial institution at which a financial account is opened, the type of account, the account number, the name under which the account was opened, and the amount of the initial deposit,

''(3) if the account is held in the name of an entity, the name and address of such entity, the type of entity, and the name and address of any company formation agent or other professional employed to form or acquire the entity, and

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

''(c) STATEMENTS TO BE FURNISHED TO UNITED STATES PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE REPORTED.—A financial institution required to make a return under subsection (a) shall furnish to each United States person whose name is required to be set forth in such return a statement showing—

''(1) the name, address, and telephone number of the information contact of the person required to make such return, and

''(2) the information required to be shown on such return with respect to such United States person.

The written statement required under the preceding sentence shall be furnished to such United States person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

''(d) EXEMPTION.—The Secretary may by regulations exempt any class of United States persons or any class of accounts or entities from the requirements of this section if the Secretary determines that applying this section to such persons, accounts, or entities is not necessary to carry out the purposes of this section.''.

(b) PENALTIES.—

(1) RETURNS.—Section 6724(d)(1)(B) is amended by striking ''or'' at the end of clause (xxiv), by striking ''and'' at the end of clause (xxv), and by adding after clause (xxv) the following new clauses:

''(xxvi) section 6045C(a) (relating to returns regarding United States beneficial owners of financial accounts located in the United States and held in the name of a foreign entity), or

''(xxvii) section 6045D(a) (relating to returns by financial institutions regarding establishment of accounts at non-FATCA institutions), and''.

(2) PAYEE STATEMENTS.—Section 6724(d)(2) is amended by striking ''or'' at the end of subparagraph (GG), by striking the period at the end of subparagraph (HH), and by inserting after subparagraph (HH) the following new subparagraphs:

''(II) section 6045C(c) (relating to returns regarding United States beneficial owners of financial accounts located in the United States and held in the name of a foreign entity),

''(JJ) section 6045D(c) (relating to returns by financial institutions regarding establishment of accounts at non-FATCA institutions).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6045B the following new items:

''Sec. 6045C. Returns regarding United States beneficial owners of financial accounts located in the United States and held in the name of a foreign entity.

''Sec. 6045D. Returns by financial institutions regarding establishment of accounts at non-FATCA institutions.''.

(d) ADDITIONAL PENALTIES.—

(1) ADDITIONAL PENALTIES ON BANKS.—Section 5239(b)(1) of the Revised Statutes (12 U.S.C. 93(b)(1)) is amended by inserting ''or any of the provisions of section 6045D of the Internal Revenue Code of 1986,'' after ''any regulation issued pursuant to,''.

(2) ADDITIONAL PENALTIES ON SECURITIES FIRMS.—Section 21(d)(3)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(A)) is amended by inserting ''any of the provisions of section 6045D of the Internal Revenue Code of 1986,'' after ''the rules or regulations thereunder,''.

(e) REGULATORY AUTHORITY AND EFFECTIVE DATE.—

(1) REGULATORY AUTHORITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall adopt regulations, forms, or other guidance necessary to implement this section.

(2) EFFECTIVE DATE.—Section 6045C of the Internal Revenue Code of 1986 (as added by this section) and the amendment made by subsection (d)(1) shall take effect with respect to amounts paid into foreign owned accounts located in the United States after December 31 of the year of the date of the enactment of this Act. Section 6045D of such Code (as so added) and the amendment made by subsection (d)(2) shall take effect with respect to accounts opened after December 31 of the year of the date of the enactment of this Act.

SEC. ___105. SWAP PAYMENTS MADE FROM THE UNITED STATES TO PERSONS OFFSHORE.

(a) TAX ON SWAP PAYMENTS RECEIVED BY FOREIGN PERSONS.—Section 871(a)(1) is amended—

(1) by inserting ''swap payments (as identified in section 1256(b)(2)(B)),'' after ''annuities,'' in subparagraph (A), and

(2) by adding at the end the following new sentence: ''In the case of swap payments, the source of a swap payment is determined by reference to the location of the payor.''.

(b) TAX ON SWAP PAYMENTS RECEIVED BY FOREIGN CORPORATIONS.—Section 881(a) is amended—

(1) by inserting ''swap payments (as identified in section 1256(b)(2)(B)),'' after ''annuities,'' in paragraph (1), and

(2) by adding at the end the following new sentence: ''In the case of swap payments, the source of a swap payment is determined by reference to the location of the payor.''.

SEC. ___106. TAX ON INCOME OF CONTROLLED FOREIGN CORPORATION DEPOSITED IN FINANCIAL ACCOUNT LOCATED IN THE UNITED STATES.

Section 952(a) is amended by adding at the end the following new sentence: ''Notwithstanding section 956(c)(2)(A), any property (as defined in section 317(a)) of such controlled foreign corporation that is deposited and maintained, directly or indirectly, for or on behalf of such corporation in a financial account located in the United States, including in a correspondent account of a financial institution, is a constructive distribution with respect to the stock which such United States shareholder owns.''.

Subtitle B—Other Measures to Combat Tax Haven and Tax Shelter Abuses

SEC. ___111. COUNTRY-BY-COUNTRY REPORTING.

(a) IN GENERAL.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following new subsection:

''(r) DISCLOSURE OF FINANCIAL PERFORMANCE ON A COUNTRY-BY-COUNTRY BASIS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'issuer group' shall mean the issuer, each subsidiary of the issuer, and each entity under the control of the issuer;

''(B) the term 'country of operation' shall mean each country in which a member of the issuer group is incorporated or organized, or maintains employees or conducts business activities; and

''(C) the term 'world-wide allocation of group members' shall mean each member of the issuer group listed according to their country of operation.

''(2) COUNTRY-BY-COUNTRY REPORTING.—The Commission shall issue rules that require each issuer to include in an annual report filed by the issuer with the Commission information indicative of financial performance on a country-by-country basis during the covered period, including—

''(A) a list of each country of operation;

''(B) the world-wide allocation of group members;

''(C) the financial performance of each member of the issuer group in each country of operation, without exception, including, and set forth according to—

''(i) total number of employees physically working in the country of operation;

''(ii) total sales by the member of the issuer group to third parties;

''(iii) total sales by the member of the issuer group to other members of the issuer group and total sales to each such member;

''(iv) total purchases by the member of the issuer group from third parties;

''(v) total purchases by the member of the issuer group from other members of the issuer group and total purchases from each such member;

''(vi) total financing payments made by the member of the issuer group to third parties;

''(vii) total financing payments made by the member of the issuer group to other members of the issuer group and total financing payments made to each such member;

''(viii) pre-tax gross revenues of the member of the issuer group;

''(ix) pre-tax net revenues of the member of the issuer group; and

''(x) such other financial information as the Commission may determine is indicative of the financial performance of the issuer;

''(D) the tax paid by each member of the issuer group in each country of operation, without exception, including, and set forth according to—

''(i) total Federal, regional, local, and other tax assessed against each member of the issuer group with respect to each country of operation during the covered period;

''(ii) after taking into account any tax deductions, tax credits, tax forgiveness, or other tax benefits or waivers, total amount of tax paid from the treasury of the member of the issuer group to the government of each country of operation during the covered period; and

''(iii) such other financial information as the Commission may determine is necessary or appropriate to inform the public of the tax obligations of and payments by each member of the issuer group; and

''(E) such other financial information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.''.

(b) RULEMAKING.—

(1) DEADLINES.—Not later than 180 days after the date of the enactment of this Act, the Commission shall issue a proposed rule to carry out this section and, not later than 270 days after the date of the enactment of this Act, shall issue a final rule to carry out this section.

(2) CONSULTATION.—In issuing the rules under this section, the Commission shall consult with the Secretary of the Treasury and the Commissioner of Internal Revenue and, to the extent practicable and in furtherance of its obligation to protect investors, shall issue rules that support Federal efforts to reduce offshore tax evasion and abuses.

(3) INTERACTIVE DATA FORMAT.—The rules issued under this section shall require that the information provided by issuers in their annual reports be submitted in an interactive data format as provided in section 13(q)(2)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(q)(2)(D)), and to the extent practicable, the Commission shall make available online, to the public, a compilation of such information.

(4) AGGREGATE DATA.—The rules may allow issuers to provide the financial information required under section 13(r) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(r)), as added by this section, aggregated at the level of each country of operation instead of with respect to each member of the issuer group individually, provided that the Commission retains the authority, at its discretion, to require further disaggregation.

(5) EFFECTIVE DATE.—Each issuer shall be required to comply with the requirements of section 13(r) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(r)), as added by this section, not later than the date on which the issuer must file with the Commission its first annual report that is due not later than 1 year after the date on which the Commission issues a final rule under this section.

SEC. ___112. PENALTY FOR FAILING TO DISCLOSE OFFSHORE HOLDINGS.

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

''(iv) FOURTH TIER.—Notwithstanding clauses (i), (ii), and (iii), the amount of the penalty for each such violation shall not exceed $1,000,000 for any person if the violation described in subparagraph (A) involved a knowing failure to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity, including any trust, corporation, limited liability company, partnership, or foundation that is directly or indirectly controlled by such person, and which would have been otherwise subject to disclosure by such person under this title.''.

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

''(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the amount of

penalty for each such violation shall not exceed $1,000,000 for any person, if the violation described in paragraph (1) involved a knowing failure to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity, including any trust, corporation, limited liability company, partnership, or foundation, directly or indirectly controlled by such person, and which would have been otherwise subject to disclosure by such person under this title.''.

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

''(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the amount of penalty for each such violation shall not exceed $1,000,000 for any person, if the violation described in paragraph (1) involved a knowing failure to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity, including any trust, corporation, limited liability company, partnership, or foundation, directly or indirectly controlled by such person, and which would have been otherwise subject to disclosure by such person under this title.''.

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

''(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), the amount of penalty for each such violation shall not exceed $1,000,000 for any person, if the violation described in paragraph (1) involved a knowing failure to disclose any holding or transaction involving equity or debt instruments of an issuer and known by such person to involve a foreign entity, including any trust, corporation, limited liability company, partnership, or foundation, directly or indirectly controlled by such person, and which would have been otherwise subject to disclosure by such person under this title.''.

SEC. ___113. DEADLINE FOR ANTI-MONEY LAUNDERING RULE FOR PRIVATE FUNDS AND VENTURE CAPITAL FUNDS.

(a) IN GENERAL.—

(1) PROPOSED RULE.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission, shall publish a proposed rule in the Federal Register requiring any private fund (as defined in paragraph (29) of section 202(a) of the Investment Advisors Act of 1940 (15 U.S.C. 80b 2(a)) or venture capital fund (within the meaning of subsection (l) of section 203 of such Act (15 U.S.C. 80b 3) to establish anti-money laundering programs and submit suspicious activity reports under subsections (g) and (h) of section 5318 of title 31, United States Code.

(2) FINAL RULE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall publish a final rule in the Federal Register on the matter described in paragraph (1).

(b) CONTENTS.—The final rule published under this section shall require, at a minimum, that to safeguard against terrorist financing and money laundering, any such private fund or venture capital fund shall—

(1) use risk-based due diligence policies, procedures, and controls that are reasonably designed to ascertain the identity of any foreign person (including the nominal and beneficial owner or beneficiary of a foreign corporation, partnership, trust, or other foreign entity) planning to supply or supplying funds to be invested with the advice or assistance of such private fund or venture capital fund; and

(2) be subject to section 5318(k)(2) of title 31, United States Code.

SEC. ___114. ANTI-MONEY LAUNDERING REQUIREMENTS FOR FORMATION AGENTS.

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

(1) in subparagraph (Y), by striking ''or'' at the end;

(2) by redesignating subparagraph (Z) as subparagraph (AA); and

(3) by inserting after subparagraph (Y) the following:

''(Z) persons engaged in the business of forming new corporations, limited liability companies, partnerships, trusts, or other legal entities; or''.

(b) DEADLINE FOR ANTI-MONEY LAUNDERING RULE FOR FORMATION AGENTS.—

(1) PROPOSED RULE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Attorney General of the United States, the Secretary of Homeland Security, and the Commissioner of Internal Revenue, shall publish a proposed rule in the Federal Register requiring persons described in section 5312(a)(2)(Z) of title 31, United States Code, as added by this section, to establish anti-money laundering programs under subsections (g) and (h) of section 5318 of that title.

(2) FINAL RULE.—Not later than 270 days after such date of enactment, the Secretary of the Treasury shall publish a final rule in the Federal Register on the matter described in paragraph (1).

(3) EXCLUSIONS.—Any rule promulgated under this subsection shall exclude from the category of persons engaged in the business of forming new corporations or other entities—

(A) any government agency; and

(B) any attorney or law firm that uses a paid formation agent operating within the United States to form such corporations or other entities.

SEC. ___115. STRENGTHENING JOHN DOE SUMMONS PROCEEDINGS.

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

''(f) ADDITIONAL REQUIREMENT IN THE CASE OF A JOHN DOE SUMMONS.—

''(1) GENERAL RULE.—Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

''(A) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

''(B) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

''(C) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

''(2) EXCEPTION.—Paragraph (1) shall not apply to any summons which specifies that it is limited to information regarding a United States correspondent account (as defined in section 5318A(e)(1)(B) of title 31, United States Code) or a United States payable-through account (as defined in section 5318A(e)(1)(C) of such title) of a financial institution that is held at a non-FATCA institution (as defined in section 7701(a)(51)).

''(3) PRESUMPTION IN CASES INVOLVING NON-FATCA INSTITUTIONS.—For purposes of this section, in any case in which the particular person or ascertainable group or class of persons have financial accounts in or transactions related to a non-FATCA institution (as defined in section 7701(a)(51)), there shall be a presumption that there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with provisions of internal revenue law.

''(4) PROJECT JOHN DOE SUMMONSES.—

''(A) IN GENERAL.—Notwithstanding the requirements of paragraph (1), the Secretary may issue a summons described in paragraph (1) if the summons—

''(i) relates to a project which is approved under subparagraph (B),

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

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

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

''(i) any summons issues with respect to the project will be issued to a member of an ascertainable group or class of persons, and

''(ii) any summons issued with respect to such project will meet the requirements of paragraph (1).

''(C) EXTENSION.—Upon application of the Secretary, the court may extend the time for issuing such summonses under subparagraph (A)(i) for additional 3-year periods, but only if the court continues to exercise oversight of such project under subparagraph (D).

''(D) ONGOING COURT OVERSIGHT.—During any period in which the Secretary is authorized to issue summonses in relation to a project approved under subparagraph (B) (including during any extension under subparagraph (C)), the Secretary shall report annually to the court on the use of such authority, provide copies of all summonses with such report, and comply with the court's direction with respect to the issuance of any John Doe summons under such project.''.

(b) JURISDICTION OF COURT.—

(1) IN GENERAL.—Paragraph (1) of section 7609(h) is amended by inserting after the first sentence the following new sentence: ''Any United States district court in which a member of the group or class to which a summons may be issued resides or is found shall have jurisdiction to hear and determine the approval of a project under subsection (f)(2)(B).''.

(2) CONFORMING AMENDMENT.—The first sentence of section 7609(h)(1) is amended by striking ''(f)'' and inserting ''(f)(1)''.

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

SEC. ___116. IMPROVING ENFORCEMENT OF FOREIGN FINANCIAL ACCOUNT REPORTING.

(a) CLARIFYING THE CONNECTION OF FOREIGN FINANCIAL ACCOUNT REPORTING TO TAX ADMINISTRATION.—Paragraph (4) of section 6103(b) is amended by adding at the end the following new sentence:

''For purposes of subparagraph (A)(i), section 5314 of title 31, United States Code, and sections 5321 and 5322 of such title (as such sections pertain to such section 5314), shall be considered related statutes.''.

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

the violation'' and inserting ''the highest balance in the account during the reporting period to which the violation relates''.

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

Subtitle C—Combating Tax Shelter Promoters

SEC. ___121. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.—Section 6700 is amended—

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

(2) by striking ''a penalty'' and all that follows through the period in the first sentence of subsection (a) and inserting ''a penalty determined under subsection (b)'', and

(3) by inserting after subsection (a) the following new subsections:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 150 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to such activity, all such persons shall be jointly and severally liable for the penalty under such subsection.

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

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

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

SEC. ___122. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) is amended—

(1) by inserting ''the tax liability or'' after ''respect to,'' in paragraph (1),

(2) by inserting ''aid, assistance, procurement, or advice with respect to such'' before ''portion'' both places it appears in paragraphs (2) and (3), and

(3) by inserting ''instance of aid, assistance, procurement, or advice or each such'' before ''document'' in the matter following paragraph (3).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 is amended to read as follows:

''(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

''(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 150 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

''(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

''(3) LIABILITY FOR PENALTY.—If more than 1 person is liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice, all such persons shall be jointly and severally liable for the penalty under such subsection.''.

(c) PENALTY NOT DEDUCTIBLE.—Section 6701 is amended by adding at the end the following new subsection:

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

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

SEC. ___123. PROHIBITED FEE ARRANGEMENT.

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

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

(2) by striking ''subsection (a).'' in paragraphs (2) and (3) of subsection (g) (as redesignated by paragraph (1)) and inserting ''subsection (a) or (f).'', and

(3) by inserting after subsection (e) the following new subsection:

''(f) PROHIBITED FEE ARRANGEMENT.—

''(1) IN GENERAL.—Any person who makes an agreement for, charges, or collects a fee which is for services provided in connection with the internal revenue laws, and the amount of which is calculated according to, or is dependent upon, a projected or actual amount of—

''(A) tax savings or benefits, or

''(B) losses which can be used to offset other taxable income,

shall pay a penalty with respect to each such fee activity in the amount determined under subsection (b).

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

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

SEC. ___124. PREVENTING TAX SHELTER ACTIVITIES BY FINANCIAL INSTITUTIONS.

(a) EXAMINATIONS.—

(1) DEVELOPMENT OF EXAMINATION TECHNIQUES.—Each of the Federal banking agencies and the Commission shall, in consultation with the Internal Revenue Service, develop examination techniques to detect potential violations of section 6700 or 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

(2) IMPLEMENTATION.—Each of the Federal banking agencies and the Commission shall implement the examination techniques developed under paragraph (1) with respect to each of the depository institutions, brokers, dealers, or investment advisers subject to their enforcement authority. Such examination shall, to the extent possible, be combined with any examination by such agency otherwise required or authorized by Federal law.

(b) REPORT TO INTERNAL REVENUE SERVICE.—In any case in which an examination conducted under this section with respect to a financial institution or other entity reveals a potential violation, such agency shall promptly notify the Internal Revenue Service of such potential violation for investigation and enforcement by the Internal Revenue Service, in accordance with applicable provisions of law.

(c) REPORT TO CONGRESS.—The Federal banking agencies and the Commission shall submit a joint written report to Congress in 2013 on their progress in preventing violations of sections 6700 and 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

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

(1) the terms ''broker'', ''dealer'', and ''investment adviser'' have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(2) the term ''Commission'' means the Securities and Exchange Commission;

(3) the term ''depository institution'' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

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

(5) the term ''Secretary'' means the Secretary of the Treasury.

SEC. ___125. INFORMATION SHARING FOR ENFORCEMENT PURPOSES.

(a) PROMOTION OF PROHIBITED TAX SHELTERS OR TAX AVOIDANCE SCHEMES.—Section 6103(h) is amended by adding at the end the following new paragraph:

''(7) DISCLOSURE OF RETURNS AND RETURN INFORMATION RELATED TO PROMOTION OF PROHIBITED TAX SHELTERS OR TAX AVOIDANCE SCHEMES.—

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

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

''(i) the nature of the investigation, examination, or proceeding,

''(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted,

''(iii) the name or names of the financial institution, issuer, or public accounting firm to which such return information relates,

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

''(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination or proceeding.

''(C) FINANCIAL INSTITUTION.—For the purposes of this paragraph, the term 'financial institution' means a depository institution, foreign bank, insured institution, industrial loan company, broker, dealer, investment company, investment advisor, or other entity subject to regulation or oversight by the United States Securities and Exchange Commission or an appropriate Federal banking agency.''.

(b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—Section 6103(i) is amended by adding at the end the following new paragraph:

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

''(A) WRITTEN REQUEST.—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board, a return or return information shall be disclosed to such requestor's officers and employees who are personally and directly engaged in an investigation, examination, or proceeding by such requester to evaluate the accuracy of a financial statement or report, or to determine whether to require a restatement, penalize, or deter conduct by an issuer, investment company, or public accounting firm, or associated person, in connection with a potential or actual violation of auditing standards or prohibitions against false or misleading statements or omissions in financial statements or reports. Such disclosure shall be solely for use by such officers and employees in such investigation, examination, or proceeding.

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

''(i) the nature of the investigation, examination, or proceeding,

''(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted,

''(iii) the name or names of the issuer, investment company, or public accounting firm to which such return information relates,

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

''(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination or proceeding.''.

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

SEC. ___126. DISCLOSURE OF INFORMATION TO CONGRESS.

(a) DISCLOSURE BY TAX RETURN PREPARER.—

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

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

''(i) The order of any Federal, State, or local court of record.

''(ii) A subpoena issued by a Federal or State grand jury.

''(iii) An administrative order, summons, or subpoena which is issued in the performance of its duties by—

''(I) any Federal agency, including Congress or any committee or subcommittee thereof, or

''(II) any State agency, body, or commission charged under the laws of the State or a political subdivision of the State with the licensing, registration, or regulation of tax return preparers.''.

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

(b) DISCLOSURE BY SECRETARY.—Paragraph (2) of section 6104(a) is amended to read as follows:

''(2) INSPECTION BY CONGRESS.—

''(A) IN GENERAL.—Upon receipt of a written request from a committee or subcommittee of Congress, copies of documents related to a determination by the Secretary to grant, deny, revoke, or restore an organization's exemption from taxation under section 501 shall be provided to such committee or subcommittee, including any application, notice of status, or supporting information provided by such organization to the Internal Revenue Service; any letter, analysis, or other document produced by or for the Internal Revenue Service evaluating, determining, explaining, or relating to the tax exempt status of such organization (other than returns, unless such returns are available to the public under this section or section 6103 or 6110); and any communication between the Internal Revenue Service and any other party relating to the tax exempt status of such organization.

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

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

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

as if such papers constituted returns.''.

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

SEC. ___127. TAX OPINION STANDARDS FOR TAX PRACTITIONERS.

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

''(d) The Secretary of the Treasury shall impose standards applicable to the rendering of written advice with respect to any listed transaction or any entity, plan, arrangement, or other transaction which has a potential for tax avoidance or evasion. Such standards shall address, but not be limited to, the following issues:

''(1) Independence of the practitioner issuing such written advice from persons promoting, marketing, or recommending the subject of the advice.

''(2) Collaboration among practitioners, or between a practitioner and other party, which could result in such collaborating parties having a joint financial interest in the subject of the advice.

''(3) Avoidance of conflicts of interest which would impair auditor independence.

''(4) For written advice issued by a firm, standards for reviewing the advice and ensuring the consensus support of the firm for positions taken.

''(5) Reliance on reasonable factual representations by the taxpayer and other parties.

''(6) Appropriateness of the fees charged by the practitioner for the written advice.

''(7) Preventing practitioners and firms from aiding or abetting the understatement of tax liability by clients.

''(8) Banning the promotion of potentially abusive or illegal tax shelters.''.

Subtitle D—Reformation of U.S. International Tax System

SEC. ___131. ALLOCATION OF EXPENSES AND TAXES ON BASIS OF REPATRIATION OF FOREIGN INCOME.

(a) IN GENERAL.—Part III of subchapter N of chapter 1 is amended by inserting after subpart G the following new subpart:

''Subpart H—Special Rules for Allocation of Foreign-Related Deductions and Foreign Tax Credits

''SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOREIGN INCOME MAY NOT OFFSET UNITED STATES SOURCE INCOME.

''(a) CURRENT YEAR DEDUCTIONS.—For purposes of this chapter, foreign-related deductions for any taxable year—

''(1) shall be taken into account for such taxable year only to the extent that such deductions are allocable to currently-taxed foreign income, and

''(2) to the extent not so allowed, shall be taken into account in subsequent taxable years as provided in subsection (b).

Foreign-related deductions shall be allocated to currently taxed foreign income in the same proportion which currently taxed foreign income bears to the sum of currently taxed foreign income and deferred foreign income.

''(b) DEDUCTIONS RELATED TO REPATRIATED DEFERRED FOREIGN INCOME.—

''(1) IN GENERAL.—If there is repatriated foreign income for a taxable year, the portion of the previously deferred deductions allocated to the repatriated foreign income shall be taken into account for the taxable year as a deduction allocated to income from sources outside the United States. Any such amount shall not be included in foreign-related deductions for purposes of applying subsection (a) to such taxable year.

''(2) PORTION OF PREVIOUSLY DEFERRED DEDUCTIONS.—For purposes of paragraph (1), the portion of the previously deferred deductions allocated to repatriated foreign income is—

''(A) the amount which bears the same proportion to such deductions, as

''(B) the repatriated income bears to the previously deferred foreign income.

''(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

''(1) FOREIGN-RELATED DEDUCTIONS.—The term 'foreign-related deductions' means the total amount of deductions and expenses which would be allocated or apportioned to gross income from sources without the United States for the taxable year if both the currently-taxed foreign income and deferred foreign income were taken into account.

''(2) CURRENTLY-TAXED FOREIGN INCOME.—The term 'currently-taxed foreign income' means the amount of gross income from sources without the United States for the taxable year (determined without regard to repatriated foreign income for such year).

''(3) DEFERRED FOREIGN INCOME.—The term 'deferred foreign income' means the excess of—

''(A) the amount that would be includible in gross income under subpart F of this part for the taxable year if—

''(i) all controlled foreign corporations were treated as one controlled foreign corporation, and

''(ii) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952), over

''(B) the sum of—

''(i) all dividends received during the taxable year from controlled foreign corporations, plus

''(ii) amounts includible in gross income under section 951(a).

''(4) PREVIOUSLY DEFERRED FOREIGN INCOME.—The term 'previously deferred foreign income' means the aggregate amount of deferred foreign income for all prior taxable years to which this part applies, determined as of the beginning of the taxable year, reduced by the repatriated foreign income for all such prior taxable years.

''(5) REPATRIATED FOREIGN INCOME.—The term 'repatriated foreign income' means the amount included in gross income on account of distributions out of previously deferred foreign income.

''(6) PREVIOUSLY DEFERRED DEDUCTIONS.—The term 'previously deferred deductions' means the aggregate amount of foreign-related deductions not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.

''(7) TREATMENT OF CERTAIN FOREIGN TAXES.—

''(A) PAID BY CONTROLLED FOREIGN CORPORATION.—Section 78 shall not apply for purposes of determining currently-taxed foreign income and deferred foreign income.

''(B) PAID BY TAXPAYER.—For purposes of determining currently-taxed foreign income, gross income from sources without the United States shall be reduced by the aggregate amount of taxes described in the applicable paragraph of section 901(b) which are paid by the taxpayer (without regard to sections 902 and 960) during the taxable year.

''(8) COORDINATION WITH SECTION 976.—In determining currently-taxed foreign income and deferred foreign income, the amount of deemed foreign tax credits shall be determined with regard to section 976.

''SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON OVERALL BASIS.

''(a) CURRENT YEAR ALLOWANCE.—For purposes of this chapter, the amount taken into account as foreign income taxes for any taxable year shall be an amount which bears the same ratio to the total foreign income taxes for that taxable year as—

''(1) the currently-taxed foreign income for such taxable year, bears to

''(2) the sum of the currently-taxed foreign income and deferred foreign income for such year.

The portion of the total foreign income taxes for any taxable year not taken into account under the preceding sentence for a taxable year shall only be taken into account as provided in subsection (b) (and shall not be taken into account for purposes of applying sections 902 and 960).

''(b) ALLOWANCE RELATED TO REPATRIATED DEFERRED FOREIGN INCOME.—

''(1) IN GENERAL.—If there is repatriated foreign income for any taxable year, the portion of the previously deferred foreign income taxes paid or accrued during such taxable year shall be taken into account for the taxable year as foreign taxes paid or accrued. Any such taxes so taken into account shall not be included in foreign income taxes for purposes of applying subsection (a) to such taxable year.

''(2) PORTION OF PREVIOUSLY DEFERRED FOREIGN INCOME TAXES.—For purposes of paragraph (1), the portion of the previously deferred foreign income taxes allocated to repatriated deferred foreign income is—

''(A) the amount which bears the same proportion to such taxes, as

''(B) the repatriated deferred income bears to the previously deferred foreign income.

''(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

''(1) PREVIOUSLY DEFERRED FOREIGN INCOME TAXES.—The term 'previously deferred foreign income taxes' means the aggregate amount of total foreign income taxes not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.

''(2) TOTAL FOREIGN INCOME TAXES.—The term 'total foreign income taxes' means the sum of foreign income taxes paid or accrued during the taxable year (determined without regard to section 904(c)) plus the increase in foreign income taxes that would be paid or accrued during the taxable year under sections 902 and 960 if—

''(A) all controlled foreign corporations were treated as one controlled foreign corporation, and

''(B) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952).

''(3) FOREIGN INCOME TAXES.—The term 'foreign income taxes' means any income, war profits, or excess profits taxes paid by the taxpayer to any foreign country or possession of the United States.

''(4) CURRENTLY-TAXED FOREIGN INCOME AND DEFERRED FOREIGN INCOME.—The terms 'currently-taxed foreign income' and 'deferred foreign income' have the meanings given such terms by section 975(c)).

''SEC. 977. APPLICATION OF SUBPART.

''This subpart—

''(1) shall be applied before subpart A, and

''(2) shall be applied separately with respect to the categories of income specified in section 904(d)(1).''.

(b) CLERICAL AMENDMENT.—The table of subparts for part III of subpart N of chapter 1 is amended by inserting after the item relating to subpart G the following new item:

''SUBPART H. SPECIAL RULES FOR ALLOCATION OF FOREIGN-RELATED DEDUCTIONS AND FOREIGN TAX CREDITS.''.

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

SEC. ___132. EXCESS INCOME FROM TRANSFERS OF INTANGIBLES TO LOW-TAXED AFFILIATES TREATED AS SUBPART F INCOME.

(a) IN GENERAL.—Subsection (a) of section 954 is amended by inserting after paragraph (3) the following new paragraph:

''(4) the foreign base company excess intangible income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and''.

(b) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—Section 954 is amended by inserting after subsection (e) the following new subsection:

''(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—For purposes of subsection (a)(4) and this subsection:

''(1) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME DEFINED.—

''(A) IN GENERAL.—The term 'foreign base company excess intangible income' means, with respect to any covered intangible, the excess of—

''(i) the sum of—

''(I) gross income from the sale, lease, license, or other disposition of property in which such covered intangible is used directly or indirectly, and

''(II) gross income from the provision of services related to such covered intangible or in connection with property in which such covered intangible is used directly or indirectly, over

''(ii) 150 percent of the costs properly allocated and apportioned to the gross income taken into account under clause (i) other than expenses for interest and taxes and any expenses which are not directly allocable to such gross income.

''(B) SAME COUNTRY INCOME NOT TAKEN INTO ACCOUNT.—If—

''(i) the sale, lease, license, or other disposition of the property referred to in subparagraph (A)(i)(I) is for use, consumption, or disposition in the country under the laws of which the controlled foreign corporation is created or organized, or

''(ii) the services referred to in subparagraph (A)(i)(II) are performed in such country,

the gross income from such sale, lease, license, or other disposition, or provision of services, shall not be taken into account under subparagraph (A)(i).

''(2) EXCEPTION BASED ON EFFECTIVE FOREIGN INCOME TAX RATE.—

''(A) IN GENERAL.—Foreign base company excess intangible income shall not include the applicable percentage of any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country in excess of 5 percent.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means the ratio (expressed as a percentage), not greater than 100 percent, of—

''(i) the number of percentage points by which the effective rate of income tax referred to in subparagraph (A) exceeds 5 percentage points, over

''(ii) 10 percentage points.

''(C) TREATMENT OF LOSSES IN DETERMINING EFFECTIVE RATE OF FOREIGN INCOME TAX.—For purposes of determining the effective rate of income tax imposed by any foreign country—

''(i) such effective rate shall be determined without regard to any losses carried to the relevant taxable year, and

''(ii) to the extent the income with respect to such intangible reduces losses in the relevant taxable year, such effective rate shall be treated as being the effective rate which would have been imposed on such income without regard to such losses.

''(3) COVERED INTANGIBLE.—The term 'covered intangible' means, with respect to any controlled foreign corporation, any intangible property (as defined in section 936(h)(3)(B))—

''(A) which is sold, leased, licensed, or otherwise transferred (directly or indirectly) to such controlled foreign corporation from a related person, or

''(B) with respect to which such controlled foreign corporation and one or more related persons has (directly or indirectly) entered into any shared risk or development agreement (including any cost sharing agreement).

''(4) RELATED PERSON.—The term 'related person' has the meaning given such term in subsection (d)(3).''.

(c) SEPARATE BASKET FOR FOREIGN TAX CREDIT.—Subsection (d) of section 904 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

''(6) SEPARATE APPLICATION TO FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—

''(A) IN GENERAL.—Subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to each item of income which is taken into account under section 954(a)(4) as foreign base company excess intangible income.

''(B) REGULATIONS.—The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the

purposes of this subsection, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph.''.

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (4) of section 954(b) is amended by inserting ''foreign base company excess intangible income described in subsection (a)(4) or'' before ''foreign base company oil-related income'' in the last sentence thereof.

(2) Subsection (b) of section 954 is amended by adding at the end the following new paragraph:

''(7) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME NOT TREATED AS ANOTHER KIND OF BASE COMPANY INCOME.—Income of a corporation which is foreign base company excess intangible income shall not be considered foreign base company income of such corporation under paragraph (2), (3), or (5) of subsection (a).''.

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

SEC. ___133. LIMITATIONS ON INCOME SHIFTING THROUGH INTANGIBLE PROPERTY TRANSFERS.

(a) CLARIFICATION OF DEFINITION OF INTANGIBLE ASSET.—Clause (vi) of section 936(h)(3)(B) is amended by inserting ''(including any section 197 intangible described in subparagraph (A), (B), or (C)(i) of subsection (d)(1) of such section)'' after ''item''.

(b) CLARIFICATION OF ALLOWABLE VALUATION METHODS.—

(1) FOREIGN CORPORATIONS.—Paragraph (2) of section 367(d) is amended by adding at the end the following new subparagraph:

''(D) REGULATORY AUTHORITY.—For purposes of the last sentence of subparagraph (A), the Secretary may require—

''(i) the valuation of transfers of intangible property on an aggregate basis, or

''(ii) the valuation of such a transfer on the basis of the realistic alternatives to such a transfer,

in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.''.

(2) ALLOCATION AMONG TAXPAYERS.—Section 482 is amended by adding at the end the following: ''For purposes of the preceding sentence, the Secretary may require the valuation of transfers of intangible property on an aggregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer, in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers in taxable years beginning after the date of the enactment of this Act.

(2) NO INFERENCE.—Nothing in the amendment made by subsection (a) shall be construed to create any inference with respect to the application of section 936(h)(3) of the Internal Revenue Code of 1986, or the authority of the Secretary of the Treasury to provide regulations for such application, on or before the date of the enactment of such amendment.

SEC. ___134. LIMITATION ON EARNINGS STRIPPING BY EXPATRIATED ENTITIES.

(a) IN GENERAL.—Subsection (j) of section 163 is amended—

(1) by redesignating paragraph (9) as paragraph (10), and

(2) by inserting after paragraph (8) the following new paragraph:

''(9) SPECIAL RULES FOR EXPATRIATED ENTITIES.—

''(A) IN GENERAL.—In the case of a corporation to which this subsection applies which is an expatriated entity, this subsection shall apply to such corporation with the following modifications:

''(i) Paragraph (2)(A) shall be applied without regard to clause (ii) thereof.

''(ii) Paragraph (1)(B) shall be applied—

''(I) without regard to the parenthetical, and

''(II) by substituting 'in the 1st succeeding taxable year and in the 2nd through 10th succeeding taxable years to the extent not previously taken into account under this subparagraph' for 'in the succeeding taxable year'.

''(iii) Paragraph (2)(B) shall be applied—

''(I) without regard to clauses (ii) and (iii), and

''(II) by substituting '25 percent of the adjusted taxable income of the corporation for such taxable year' for the matter of clause (i)(II) thereof.

''(B) EXPATRIATED ENTITY.—For purposes of this paragraph—

''(i) IN GENERAL.—With respect to a corporation and a taxable year, the term 'expatriated entity' has the meaning given such term by section 7874(a)(2), determined as if such section and the regulations under such section as in effect on the first day of such taxable year applied to all taxable years of the corporation beginning after July 10, 1989.

''(ii) EXCEPTION FOR SURROGATES TREATED AS A DOMESTIC CORPORATION.—The term 'expatriated entity' does not include a surrogate foreign corporation which is treated as a domestic corporation by reason of section 7874(b).''.

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

TITLE II—ENDING EXCESSIVE CORPORATE TAX DEDUCTIONS FOR STOCK OPTIONS

SEC. ___201. CONSISTENT TREATMENT OF STOCK OPTIONS BY CORPORATIONS.

(a) CONSISTENT TREATMENT FOR WAGE DEDUCTION.—

(1) IN GENERAL.—Section 83(h) is amended—

(A) by striking ''In the case of'' and inserting:

''(1) IN GENERAL.—In the case of'', and

(B) by adding at the end the following new paragraph:

''(2) STOCK OPTIONS.—In the case of property transferred to a person in connection with a stock option, any deduction related to such stock option shall be allowed only under section 162(q) and paragraph (1) shall not apply.''.

(2) TREATMENT OF COMPENSATION PAID WITH STOCK OPTIONS.—Section 162 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

''(q) TREATMENT OF COMPENSATION PAID WITH STOCK OPTIONS.—

''(1) IN GENERAL.—In the case of compensation for personal services that is paid with stock options, the deduction under subsection (a)(1) shall not exceed the amount the taxpayer has treated as compensation cost with respect to such stock options for the purpose of ascertaining income, profit, or loss in a report or statement to shareholders, partners, or other proprietors (or to beneficiaries), and shall be taken into account in the same period that such compensation cost is recognized for such purpose.

''(2) SPECIAL RULES FOR CONTROLLED GROUPS.—The Secretary may prescribe rules for the application of paragraph (1) in cases where the stock option is granted by—

''(A) a parent or subsidiary corporation (within the meaning of section 424) of the taxpayer, or

''(B) another corporation.''.

(b) CONSISTENT TREATMENT FOR RESEARCH TAX CREDIT.—Section 41(b)(2)(D) is amended by inserting at the end the following new clause:

''(iv) SPECIAL RULE FOR STOCK OPTIONS.—The amount which may be treated as wages for any taxable year in connection with the issuance of a stock option shall not exceed the amount allowed for such taxable year as a compensation deduction under section 162(q) with respect to such stock option.''.

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply to stock options exercised after the date of the enactment of this Act, except that—

(1) such amendments shall not apply to stock options that were granted before such date and that vested in taxable periods beginning on or before June 15, 2005,

(2) for stock options that were granted before such date of enactment and vested during taxable periods beginning after June 15, 2005, and ending before such date of enactment, a deduction under section 162(q) of the Internal Revenue Code of 1986 (as added by subsection (a)(2)) shall be allowed in the first taxable period of the taxpayer that ends after such date of enactment,

(3) for public entities reporting as small business issuers and for non-public entities required to file public reports of financial condition, paragraphs (1) and (2) shall be applied by substituting ''December 15, 2005'' for ''June 15, 2005'', and

(4) no deduction shall be allowed under section 83(h) or section 162(q) of such Code with respect to any stock option the vesting date of which is changed to accelerate the time at which the option may be exercised in order to avoid the applicability of such amendments.

SEC. ___202. APPLICATION OF EXECUTIVE PAY DEDUCTION LIMIT.

(a) IN GENERAL.—Subparagraph (D) of section 162(m)(4) is amended to read as follows:

''(D) STOCK OPTION COMPENSATION.—The term 'applicable employee remuneration' shall include any compensation deducted under subsection (q), and such compensation shall not qualify as performance-based compensation under subparagraph (C).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to stock options exercised or granted after the date of the enactment of this Act.

NOTICES OF HEARINGS

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Subcommittee on Primary Health and Aging of the Committee on Health, Education, Labor, and Pensions will meet in open session on Wednesday, February 29, 2012, at 10 a.m. in SD 430 Dirksen Senate Office Building to conduct a hearing entitled Dental Crisis in America: The Need to Expand Access.

For further information regarding this meeting, please contact the subcommittee on (202) 224 5480.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HARKIN. Mr. President, I wish to announce that the Committee on Health, Education, Labor, and Pensions will meet in open session on Thursday, March 1, 2012, at 10 a.m. in SD 430 Dirksen Senate Office Building to conduct a hearing entitled The Key to America's Global Competitiveness: A Quality Education.