

111TH CONGRESS
1ST SESSION

H. R. 1265

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2009

Mr. DOGGETT (for himself, Mr. LARSON of Connecticut, Mr. VAN HOLLEN, Ms. BERKLEY, Mr. BLUMENAUER, Mr. DAVIS of Illinois, Mr. HIGGINS, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. MCDERMOTT, Mr. NEAL of Massachusetts, Mr. PASCRELL, Ms. LINDA T. SÁNCHEZ of California, Mr. STARK, Mr. YARMUTH, Ms. DELAURO, Mr. GEORGE MILLER of California, Mr. ABERCROMBIE, Mr. ANDREWS, Mr. BISHOP of New York, Mr. CLEAVER, Mr. CONYERS, Mr. COSTELLO, Mr. CUMMINGS, Mr. DEFazio, Mr. ELLISON, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HARE, Mr. HINCHEY, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Ms. KAPTUR, Ms. LEE of California, Mr. LOEBSACK, Mr. LYNCH, Mr. MARKEY of Massachusetts, Mr. MCGOVERN, Ms. MOORE of Wisconsin, Mr. MORAN of Virginia, Mr. NADLER of New York, Mr. PAYNE, Mr. RUSH, Ms. SCHAKOWSKY, Mr. SESTAK, Mr. SHERMAN, Ms. SLAUGHTER, Mr. STUPAK, Ms. SUTTON, Mr. TIERNEY, Ms. WATSON, Mr. WELCH, Mr. HOLT, and Ms. JACKSON-LEE of Texas) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Financial Services and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

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

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

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

12 (c) **TABLE OF CONTENTS.**—The table of contents of
 13 this Act is as follows:

Sec. 1. Short title; etc.

**TITLE I—DETERRING THE USE OF TAX HAVENS FOR TAX
 EVASION**

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

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

Sec. 103. Treatment of foreign corporations managed and controlled in the
 United States as domestic corporations.

Sec. 104. Allowing more time for investigations involving offshore secrecy juris-
 dictions.

Sec. 105. Reporting United States beneficial owners of foreign owned financial
 accounts.

Sec. 106. Preventing misuse of foreign trusts for tax evasion.

Sec. 107. Limitation on legal opinion protection from penalties with respect to
 transactions involving offshore secrecy jurisdictions.

Sec. 108. Closing the offshore dividend tax loophole.

Sec. 109. Reporting of activities with respect to passive foreign investment com-
 panies.

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

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

- Sec. 202. Deadline for anti-money laundering rule for hedge funds and private equity funds.
- Sec. 203. Anti-money laundering requirements for formation agents.
- Sec. 204. Strengthening summons in cases involving offshore secrecy jurisdictions.
- Sec. 205. Improving enforcement of foreign financial account reporting.

TITLE III—COMBATING TAX SHELTER PROMOTERS

- Sec. 301. Penalty for promoting abusive tax shelters.
- Sec. 302. Penalty for aiding and abetting the understatement of tax liability.
- Sec. 303. Tax planning inventions not patentable.
- Sec. 304. Prohibited fee arrangement.
- Sec. 305. Preventing tax shelter activities by financial institutions.
- Sec. 306. Information sharing for enforcement purposes.
- Sec. 307. Disclosure of information to Congress.
- Sec. 308. Tax opinion standards for tax practitioners.
- Sec. 309. Denial of deduction for certain fines, penalties, and other amounts.

TITLE IV—REQUIRING ECONOMIC SUBSTANCE

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

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

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

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

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

1 **“Subchapter F—Presumptions for Certain**
2 **Legal Proceedings**

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

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

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

22 “(b) TRANSFERS OF INCOME.—For purposes of any
23 United States civil judicial or administrative proceeding
24 to determine or collect tax, there shall be a rebuttable pre-

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

16 “(c) REBUTTING THE PRESUMPTIONS.—The pre-
17 sumptions established in this section may be rebutted only
18 by clear and convincing evidence, including detailed docu-
19 mentary, testimonial, and transactional evidence, estab-
20 lishing that—

21 “(1) in subsection (a), such taxpayer exercised
22 no control, directly or indirectly, over such entity at
23 the time in question, and

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

4 Any court having jurisdiction of a civil proceeding in which
5 control of such an offshore entity or the income character
6 of such receipts or amounts transferred is an issue shall
7 prohibit the introduction by the taxpayer of any foreign
8 based document that is not authenticated in open court
9 by a person with knowledge of such document, or any
10 other evidence supplied by a person outside the jurisdic-
11 tion of a United States court, unless such person appears
12 before the court.”.

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

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

19 “(50) OFFSHORE SECRECY JURISDICTION.—

20 “(A) IN GENERAL.—The term ‘offshore se-
21 crecy jurisdiction’ means any foreign jurisdic-
22 tion which is listed by the Secretary as an off-
23 shore secrecy jurisdiction for purposes of this
24 title.

1 “(B) DETERMINATION OF JURISDICTIONS
2 ON LIST.—A jurisdiction shall be listed under
3 paragraph (A) if the Secretary determines that
4 such jurisdiction has corporate, business, bank,
5 or tax secrecy rules and practices which, in the
6 judgment of the Secretary, unreasonably re-
7 strict the ability of the United States to obtain
8 information relevant to the enforcement of this
9 title, unless the Secretary also determines that
10 such country has effective information exchange
11 practices.

12 “(C) SECRECY OR CONFIDENTIALITY
13 RULES AND PRACTICES.—For purposes of sub-
14 paragraph (B), corporate, business, bank, or
15 tax secrecy or confidentiality rules and practices
16 include both formal laws and regulations and
17 informal government or business practices hav-
18 ing the effect of inhibiting access of law en-
19 forcement and tax administration authorities to
20 beneficial ownership and other financial infor-
21 mation.

22 “(D) INEFFECTIVE INFORMATION EX-
23 CHANGE PRACTICES.—For purposes of subpara-
24 graph (B), a jurisdiction shall be deemed to
25 have ineffective information exchange practices

1 unless the Secretary determines, on an annual
2 basis, that—

3 “(i) such jurisdiction has in effect a
4 treaty or other information exchange
5 agreement with the United States that
6 provides for the prompt, obligatory, and
7 automatic exchange of such information as
8 is foreseeably relevant for carrying out the
9 provisions of the treaty or agreement or
10 the administration or enforcement of this
11 title,

12 “(ii) during the 12-month period pre-
13 ceding the annual determination, the ex-
14 change of information between the United
15 States and such jurisdiction was in prac-
16 tice adequate to prevent evasion or avoid-
17 ance of United States income tax by
18 United States persons and to enable the
19 United States effectively to enforce this
20 title, and

21 “(iii) during the 12-month period pre-
22 ceding the annual determination, such ju-
23 risdiction was not identified by an inter-
24 governmental group or organization of
25 which the United States is a member as

1 uncooperative with international tax en-
2 forcement or information exchange and the
3 United States concurs in such identifica-
4 tion.

5 “(E) INITIAL LIST OF OFFSHORE SECRECY
6 JURISDICTIONS.—For purposes of this para-
7 graph, each of the following foreign jurisdic-
8 tions, which have been previously and publicly
9 identified by the Internal Revenue Service as
10 secrecy jurisdictions in Federal court pro-
11 ceedings, shall be deemed listed by the Sec-
12 retary as an offshore secrecy jurisdiction unless
13 delisted by the Secretary under subparagraph
14 (F)(ii):

15 “(i) Anguilla.

16 “(ii) Antigua and Barbuda.

17 “(iii) Aruba.

18 “(iv) Bahamas.

19 “(v) Barbados.

20 “(vi) Belize.

21 “(vii) Bermuda.

22 “(viii) British Virgin Islands.

23 “(ix) Cayman Islands.

24 “(x) Cook Islands.

25 “(xi) Costa Rica.

- 1 “(xii) Cyprus.
- 2 “(xiii) Dominica.
- 3 “(xiv) Gibraltar.
- 4 “(xv) Grenada.
- 5 “(xvi) Guernsey/Sark/Alderney.
- 6 “(xvii) Hong Kong.
- 7 “(xviii) Isle of Man.
- 8 “(xix) Jersey.
- 9 “(xx) Latvia.
- 10 “(xxi) Liechtenstein.
- 11 “(xxii) Luxembourg.
- 12 “(xxiii) Malta.
- 13 “(xxiv) Nauru.
- 14 “(xxv) Netherlands Antilles.
- 15 “(xxvi) Panama.
- 16 “(xxvii) Samoa.
- 17 “(xxviii) St. Kitts and Nevis.
- 18 “(xxix) St. Lucia.
- 19 “(xxx) St. Vincent and the Grena-
- 20 dines.
- 21 “(xxxi) Singapore.
- 22 “(xxxii) Switzerland.
- 23 “(xxxiii) Turks and Caicos.
- 24 “(xxxiv) Vanuatu.

1 “(F) MODIFICATIONS TO LIST.—The Sec-
2 retary—

3 “(i) shall add to the list under para-
4 graph (A) jurisdictions which meet the re-
5 quirements of paragraph (B), and

6 “(ii) may remove from such list only
7 those jurisdictions which do not meet the
8 requirements of paragraph (B).”.

9 (c) PRESUMPTIONS FOR SECURITIES LAW PUR-
10 POSES.—Section 21 of the Securities Exchange Act of
11 1934 (15 U.S.C. 78u) is amended by adding at the end
12 the following the following new subsection:

13 “(j) PRESUMPTIONS PERTAINING TO CONTROL AND
14 BENEFICIAL OWNERSHIP.—

15 “(1) CONTROL.—For purposes of any civil judi-
16 cial or administrative proceeding under this title,
17 there shall be a rebuttable presumption that a
18 United States person (other than an entity with
19 shares regularly traded on an established securities
20 market) who directly or indirectly formed, trans-
21 ferred assets to, was a beneficiary of, had a bene-
22 ficial interest in, or received money or property or
23 the use thereof from an entity, including a trust,
24 corporation, limited liability company, partnership,
25 or foundation (other than an entity with shares reg-

1 ularly traded on an established securities market),
2 formed, domiciled, or operating in an offshore se-
3 crecy jurisdiction (as defined in section 7701(a)(50)
4 of the Internal Revenue Code of 1986), exercised
5 control over such entity. The presumption of control
6 created by this paragraph shall not be applied to
7 prevent the Commission from determining or argu-
8 ing the absence of control.

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

1 (d) PRESUMPTION FOR REPORTING PURPOSES RE-
2 LATING TO FOREIGN FINANCIAL ACCOUNTS.—Section
3 5314 of title 31, United States Code, is amended by add-
4 ing at the end the following:

5 “(d) REBUTTABLE PRESUMPTION.—For purposes of
6 this section, there shall be a rebuttable presumption that
7 any account with a financial institution formed, domiciled,
8 or operating in an offshore secrecy jurisdiction (as defined
9 in section 7701(a)(50) of the Internal Revenue Code of
10 1986) contains funds in an amount that is at least suffi-
11 cient to require a report prescribed by regulations under
12 this section.”.

13 (e) REGULATORY AUTHORITY AND EFFECTIVE
14 DATE.—

15 (1) REGULATORY AUTHORITY.—Not later than
16 180 days after the date of the enactment of this Act,
17 the Secretary of the Treasury and the Chairman of
18 the Securities and Exchange Commission shall each
19 adopt regulations or other guidance necessary to im-
20 plement the amendments made by this section. The
21 Secretary and the Chairman may by regulation or
22 guidance provide that the presumption of control
23 shall not extend to particular classes of transactions,
24 such as corporate reorganizations or transactions
25 below a specified dollar threshold, if either deter-

1 mines that applying such amendments to such trans-
2 actions is not necessary to carry out the purposes of
3 such amendments.

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

7 **SEC. 102. AUTHORIZING SPECIAL MEASURES AGAINST FOR-**
8 **EIGN JURISDICTIONS, FINANCIAL INSTITU-**
9 **TIONS, AND OTHERS THAT IMPEDE UNITED**
10 **STATES TAX ENFORCEMENT.**

11 Section 5318A of title 31, United States Code, is
12 amended—

13 (1) by striking the section heading and insert-
14 ing the following:

15 **“§ 5318A. Special measures for jurisdictions, financial**
16 **institutions, or international transactions**
17 **that are of primary money laundering**
18 **concern or impede United States tax en-**
19 **forcement”;**

20 (2) in subsection (a), by striking the subsection
21 heading and inserting the following:

22 **“(a) SPECIAL MEASURES TO COUNTER MONEY**
23 **LAUNDERING AND EFFORTS TO IMPEDE UNITED STATES**
24 **TAX ENFORCEMENT.—”;**

1 (3) in subsection (c), by striking the subsection
2 heading and inserting the following:

3 “(c) CONSULTATIONS AND INFORMATION TO BE
4 CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,
5 TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-
6 MARY MONEY LAUNDERING CONCERN OR TO BE IMPED-
7 ING UNITED STATES TAX ENFORCEMENT.—”;

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

11 (5) in subsection (a)(4)—

12 (A) in subparagraph (A)—

13 (i) by inserting “in matters involving
14 money laundering,” before “shall consult”;
15 and

16 (ii) by striking “and” at the end;

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

19 (C) by inserting after subparagraph (A)
20 the following:

21 “(B) in matters involving United States
22 tax enforcement, shall consult with the Commis-
23 sioner of the Internal Revenue Service, the Sec-
24 retary of State, the Attorney General of the
25 United States, and in the sole discretion of the

1 Secretary, such other agencies and interested
2 parties as the Secretary may find to be appro-
3 priate; and”;

4 (6) in each of paragraphs (1)(A), (2), (3), and
5 (4) of subsection (b), by inserting “or to be imped-
6 ing United States tax enforcement” after “primary
7 money laundering concern” each place that term ap-
8 pears;

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

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

1 “(A) the opening or maintaining in the
2 United States of a correspondent account or
3 payable-through account; or

4 “(B) the authorization, approval, or use in
5 the United States of a credit card, charge card,
6 debit card, or similar credit or debit financial
7 instrument by any domestic financial institu-
8 tion, financial agency, or credit card company
9 or association, for or on behalf of a foreign
10 banking institution, if such correspondent ac-
11 count, payable-through account, credit card,
12 charge card, debit card, or similar credit or
13 debit financial instrument, involves any such ju-
14 risdiction or institution, or if any such trans-
15 action may be conducted through such cor-
16 respondent account, payable-through account,
17 credit card, charge card, debit card, or similar
18 credit or debit financial instrument.”; and

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

22 (9) in subsection (c)(2)(A)—

23 (A) in clause (ii), by striking “bank secrecy
24 or special regulatory advantages” and inserting

1 “bank, tax, corporate, trust, or financial secrecy
2 or regulatory advantages”;

3 (B) in clause (iii), by striking “supervisory
4 and counter-money” and inserting “supervisory,
5 international tax enforcement, and counter-
6 money”;

7 (C) in clause (v), by striking “banking or
8 secrecy” and inserting “banking, tax, or se-
9 crecy”; and

10 (D) in clause (vi), by inserting “, tax trea-
11 ty, or tax information exchange agreement”
12 after “treaty”;

13 (10) in subsection (c)(2)(B)—

14 (A) in clause (i), by inserting “or tax eva-
15 sion” after “money laundering”; and

16 (B) in clause (iii), by inserting “, tax eva-
17 sion,” after “money laundering”; and

18 (11) in subsection (d), by inserting “involving
19 money laundering, and shall notify, in writing, the
20 Committee on Finance of the Senate and the Com-
21 mittee on Ways and Means of the House of Rep-
22 resentatives of any such action involving United
23 States tax enforcement” after “such action”.

1 **SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MAN-**
2 **AGED AND CONTROLLED IN THE UNITED**
3 **STATES AS DOMESTIC CORPORATIONS.**

4 (a) IN GENERAL.—Section 7701 (relating to defini-
5 tions) is amended by redesignating subsection (o) as sub-
6 section (p) and by inserting after subsection (n) the fol-
7 lowing new subsection:

8 “(o) CERTAIN CORPORATIONS MANAGED AND CON-
9 TROLLED IN THE UNITED STATES TREATED AS DOMES-
10 TIC FOR INCOME TAX.—

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

14 “(A) the corporation would not otherwise
15 be treated as a domestic corporation for pur-
16 poses of this title, but

17 “(B) the management and control of the
18 corporation occurs, directly or indirectly, pri-
19 marily within the United States,
20 then, solely for purposes of chapter 1 (and any other
21 provision of this title relating to chapter 1), the cor-
22 poration shall be treated as a domestic corporation.

23 “(2) CORPORATION DESCRIBED.—

24 “(A) IN GENERAL.—A corporation is de-
25 scribed in this paragraph if—

1 “(i) the stock of such corporation is
2 regularly traded on an established securi-
3 ties market, or

4 “(ii) the aggregate gross assets of
5 such corporation (or any predecessor there-
6 of), including assets under management
7 for investors, whether held directly or indi-
8 rectly, at any time during the taxable year
9 or any preceding taxable year is
10 \$50,000,000 or more.

11 “(B) GENERAL EXCEPTION.—A corpora-
12 tion shall not be treated as described in this
13 paragraph if—

14 “(i) such corporation was treated as a
15 corporation described in this paragraph in
16 a preceding taxable year,

17 “(ii) such corporation—

18 “(I) is not regularly traded on an
19 established securities market, and

20 “(II) has, and is reasonably ex-
21 pected to continue to have, aggregate
22 gross assets (including assets under
23 management for investors, whether
24 held directly or indirectly) of less than
25 \$50,000,000, and

1 “(iii) the Secretary grants a waiver to
2 such corporation under this subparagraph.

3 “(C) EXCEPTION FROM GROSS ASSETS
4 TEST.—Subparagraph (A)(ii) shall not apply to
5 a corporation which is a controlled foreign cor-
6 poration (as defined in section 957) and which
7 is a member of an affiliated group (as defined
8 section 1504, but determined without regard to
9 section 1504(b)(3)) the common parent of
10 which—

11 “(i) is a domestic corporation (deter-
12 mined without regard to this subsection),
13 and

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

19 “(3) MANAGEMENT AND CONTROL.—

20 “(A) IN GENERAL.—The Secretary shall
21 prescribe regulations for purposes of deter-
22 mining cases in which the management and
23 control of a corporation is to be treated as oc-
24 curring primarily within the United States.

1 “(B) EXECUTIVE OFFICERS AND SENIOR
2 MANAGEMENT.—Such regulations shall provide
3 that—

4 “(i) the management and control of a
5 corporation shall be treated as occurring
6 primarily within the United States if sub-
7 stantially all of the executive officers and
8 senior management of the corporation who
9 exercise day-to-day responsibility for mak-
10 ing decisions involving strategic, financial,
11 and operational policies of the corporation
12 are located primarily within the United
13 States, and

14 “(ii) individuals who are not executive
15 officers and senior management of the cor-
16 poration (including individuals who are of-
17 ficers or employees of other corporations in
18 the same chain of corporations as the cor-
19 poration) shall be treated as executive offi-
20 cers and senior management if such indi-
21 viduals exercise the day-to day responsibil-
22 ities of the corporation described in clause
23 (i).

24 “(C) CORPORATIONS PRIMARILY HOLDING
25 INVESTMENT ASSETS.—Such regulations shall

1 also provide that the management and control
2 of a corporation shall be treated as occurring
3 primarily within the United States if—

4 “(i) the assets of such corporation (di-
5 rectly or indirectly) consist primarily of as-
6 sets being managed on behalf of investors,
7 and

8 “(ii) decisions about how to invest the
9 assets are made in the United States.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years beginning on or
12 after the date which is 2 years after the date of the enact-
13 ment of this Act.

14 **SEC. 104. ALLOWING MORE TIME FOR INVESTIGATIONS IN-**
15 **VOLVING OFFSHORE SECRECY JURISDIC-**
16 **TIONS.**

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

19 “(11) RETURNS INVOLVING OFFSHORE SE-
20 CRECY JURISDICTIONS.—In the case of a return for
21 a year in which the taxpayer directly or indirectly
22 formed, owned, transferred assets to, was a bene-
23 ficiary of, had a beneficial interest in, or received
24 money or property or the use thereof from a finan-
25 cial account or an entity (other than an entity with

1 shares regularly traded on an established securities
2 market), including a trust, corporation, limited li-
3 ability company, partnership, or foundation formed,
4 located, domiciled or operating in an offshore secrecy
5 jurisdiction, the tax may be assessed, or a pro-
6 ceeding in court for the collection of such tax may
7 be begun without assessment, at any time within 6
8 years after the return was filed.”.

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

11 (1) returns filed after the date of the enactment
12 of this Act, and

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

18 **SEC. 105. REPORTING UNITED STATES BENEFICIAL OWN-**
19 **ERS OF FOREIGN OWNED FINANCIAL AC-**
20 **COUNTS.**

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

1 **“SEC. 6045C. RETURNS REGARDING UNITED STATES BENE-**
2 **FIICIAL OWNERS OF FOREIGN OWNED FINAN-**
3 **CIAL ACCOUNTS.**

4 “(a) REQUIREMENT OF RETURN.—If—

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

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

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

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

24 “(1) the name, address, and, if known, the tax-
25 payer identification number of the United States
26 beneficial owner,

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

4 “(3) the gross amount of income from sources
5 within the United States (including gross proceeds
6 from brokerage transactions), and

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

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

16 “(1) the name, address, and telephone number
17 of the information contact of the person required to
18 make such return, and

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

22 The written statement required under the preceding sen-
23 tence shall be furnished to the United States beneficial
24 owner on or before January 31 of the year following the
25 calendar year for which the return under subsection (a)

1 was required to be made. In the event the person filing
2 such return does not have a current address for the United
3 States beneficial owner, such written statement may be
4 mailed to the address of the foreign entity.

5 **“SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS RE-**
6 **GARDING ESTABLISHMENT OF ACCOUNTS**
7 **AND CREATION OF ENTITIES IN OFFSHORE**
8 **SECRECY JURISDICTIONS.**

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

11 “(1) opening a bank, brokerage, or other finan-
12 cial account, or

13 “(2) forming or acquiring an entity, including a
14 trust, corporation, limited liability company, partner-
15 ship, or foundation (other than an entity with shares
16 regularly traded on an established securities mar-
17 ket),

18 in an offshore secrecy jurisdiction at the direction of, on
19 behalf of, or for the benefit of a United States person shall
20 make a return according to the forms or regulations pre-
21 scribed by the Secretary.

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

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

3 “(2) the name and address of the financial in-
4 stitution at which a financial account is opened, the
5 type of account, the account number, the name
6 under which the account was opened, and the
7 amount of the initial deposit,

8 “(3) the name and address of an entity formed
9 or acquired, the type of entity, and the name and
10 address of any company formation agent or other
11 professional employed to form or acquire the entity,
12 and

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

15 “(c) STATEMENTS TO BE FURNISHED TO UNITED
16 STATES PERSONS WITH RESPECT TO WHOM INFORMA-
17 TION IS REQUIRED TO BE REPORTED.—A financial insti-
18 tution required to make a return under subsection (a)
19 shall furnish to each United States person whose name
20 is required to be set forth in such return a statement
21 showing—

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

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

4 The written statement required under the preceding sen-
5 tence shall be furnished to such United States person on
6 or before January 31 of the year following the calendar
7 year for which the return under subsection (a) was re-
8 quired to be made.

9 “(d) EXEMPTION.—The Secretary may by regula-
10 tions exempt any class of United States persons or any
11 class of accounts or entities from the requirements of this
12 section if the Secretary determines that applying this sec-
13 tion to such persons, accounts, or entities is not necessary
14 to carry out the purposes of this section.”.

15 (b) PENALTIES.—

16 (1) RETURNS.—Section 6724(d)(1)(B) is
17 amended by redesignating clauses (v) through (xxiii)
18 as clauses (vii) through (xxv), respectively, and by
19 inserting after clause (iv) the following new clauses:

20 “(v) section 6045C(a) (relating to re-
21 turns regarding United States beneficial
22 owners of foreign owned financial ac-
23 counts),

24 “(vi) section 6045D(a) (relating to re-
25 turns by financial institutions regarding

1 establishment of accounts and creation of
2 entities in offshore secrecy jurisdictions),”.

3 (2) PAYEE STATEMENTS.—Section 6724(d)(2)
4 is amended by redesignating subparagraphs (K)
5 through (FF) as subparagraphs (M) through (HH),
6 respectively, and by inserting after subparagraph (J)
7 the following new subparagraphs:

8 “(K) section 6045C(e) (relating to returns
9 regarding United States beneficial owners of
10 foreign owned financial accounts),

11 “(L) section 6045D(e) (relating to returns
12 by financial institutions regarding establish-
13 ment of accounts and creation of entities in off-
14 shore secrecy jurisdictions),”.

15 (c) CLERICAL AMENDMENT.—The table of sections
16 for such subpart is amended by inserting after the item
17 relating to section 6045B the following new items:

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

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

18 (d) ADDITIONAL PENALTIES.—

19 (1) ADDITIONAL PENALTIES ON BANKS.—Sec-
20 tion 5239(b)(1) of the Revised Statutes (12 U.S.C.
21 93(b)(1)) is amended by inserting “or any of the
22 provisions of section 6045D of the Internal Revenue

1 Code of 1986,” after “any regulation issued pursu-
2 ant to,”.

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

9 (e) REGULATORY AUTHORITY AND EFFECTIVE
10 DATE.—

11 (1) REGULATORY AUTHORITY.—Not later than
12 180 days after the date of the enactment of this Act,
13 the Secretary of the Treasury shall adopt regula-
14 tions, forms, or other guidance necessary to imple-
15 ment this section.

16 (2) EFFECTIVE DATE.—Section 6045C of the
17 Internal Revenue Code of 1986 (as added by this
18 section) and the amendment made by subsection
19 (d)(1) shall take effect with respect to amounts paid
20 into foreign owned accounts after December 31 of
21 the year of the date of the enactment of this Act.
22 Section 6045D of such Code (as so added) and the
23 amendment made by subsection (d)(2) shall take ef-
24 fect with respect to accounts opened or entities

1 formed or acquired after December 31 of the year
2 of the date of the enactment of this Act.

3 **SEC. 106. PREVENTING MISUSE OF FOREIGN TRUSTS FOR**
4 **TAX EVASION.**

5 (a) **ATTRIBUTION OF TRUST PROTECTOR POWERS**
6 **TO GRANTORS.**—Section 672 is amended by redesignating
7 subsection (f) as subsection (g) and by inserting after sub-
8 section (e) the following new subsection:

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

15 (b) **TREATMENT OF UNITED STATES RECIPIENTS OF**
16 **FOREIGN TRUST ASSETS AS TRUST BENEFICIARIES.**—
17 Section 679 is amended by redesignating subsections (c)
18 and (d) as subsections (d) and (e), respectively, and by
19 inserting after subsection (b) the following new subsection:

20 “(c) **CERTAIN UNITED STATES PERSONS TREATED**
21 **AS BENEFICIARIES.**—Any United States person receiving
22 from a foreign trust cash or other property, or receiving
23 the use thereof, shall be treated as a beneficiary of such
24 trust regardless of whether such person is a named bene-

1 ficiary, except to the extent that such person paid fair
2 market value for the benefit received.”.

3 (c) TREATMENT OF FOREIGN TRUST TRANSFERS OF
4 REAL ESTATE, ARTWORK, OR JEWELRY CONSISTENTLY
5 WITH TRANSFERS OF SECURITIES.—Section 643(i)(1) is
6 amended by striking “or marketable securities” and in-
7 serting “or other property, including real estate, market-
8 able securities, artwork, jewelry, and other personal prop-
9 erty,”.

10 (d) TREATMENT OF TRUSTS WITH FUTURE OR CON-
11 TINGENT UNITED STATES BENEFICIARIES.—Section
12 679(a)(1) is amended—

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

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

17 **SEC. 107. LIMITATION ON LEGAL OPINION PROTECTION**
18 **FROM PENALTIES WITH RESPECT TO TRANS-**
19 **ACTIONS INVOLVING OFFSHORE SECRECY**
20 **JURISDICTIONS.**

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

23 “(e) CERTAIN OPINIONS MAY NOT BE RELIED
24 UPON.—For purposes of this part, an opinion of a tax
25 advisor may not be relied upon to establish that there was

1 reasonable cause for any portion of an underpayment, or
2 that the taxpayer acted in good faith with respect to such
3 portion, if such portion is attributable to a transaction any
4 part of which involves an entity or financial account in
5 an offshore secrecy jurisdiction.”.

6 (b) REGULATORY AUTHORITY.—The Secretary of the
7 Treasury may by regulation or guidance provide that sub-
8 section (e) of section 6664 of the Internal Revenue Code
9 of 1986, as added by subsection (a), does not apply to
10 legal opinions that express a confidence level that substan-
11 tially exceeds the “more likely than not” confidence level;
12 or that such subsection does not apply to classes of trans-
13 actions, such as corporate reorganizations, where the Sec-
14 retary determines that applying such subsection to such
15 transactions is not necessary to carry out the purposes of
16 such subsection.

17 **SEC. 108. CLOSING THE OFFSHORE DIVIDEND TAX LOOP-**
18 **HOLE.**

19 (a) IN GENERAL.—Section 871 is amended by redес-
20 ignating subsection (l) as subsection (m) and by inserting
21 after subsection (k) the following new subsection:

22 “(l) TREATMENT OF DIVIDEND EQUIVALENTS AND
23 SUBSTITUTE DIVIDEND PAYMENTS.—

24 “(1) IN GENERAL.—For purposes of this sec-
25 tion and section 881—

1 “(A) the term ‘dividend’ shall include divi-
2 dend equivalents and substitute dividends,

3 “(B) a dividend equivalent with respect to
4 the stock of one or more domestic corporations
5 shall be treated as sourced within the United
6 States, and

7 “(C) a substitute dividend payment shall
8 be sourced in the same manner as a dividend
9 distribution with respect to the transferred se-
10 curity to which the substitute dividend relates.

11 “(2) DIVIDEND EQUIVALENT.—For purposes of
12 this subsection—

13 “(A) IN GENERAL.—The term ‘dividend
14 equivalent’ includes any payment that is made
15 pursuant to a notional principal contract and is
16 contingent upon, or is referenced to, the pay-
17 ment of a dividend on stock or the payment of
18 a dividend on property that is substantially
19 similar or related to stock (determined in a
20 manner similar to the manner under section
21 246(c)(4)(C)).

22 “(B) NOTIONAL PRINCIPAL CONTRACT.—
23 For purposes of subparagraph (A), the term
24 ‘notional principal contract’ means a financial
25 instrument that provides for the payment of

1 amounts by 1 party to another at specified in-
2 tervals calculated by reference to a specified
3 index upon a notional principal amount in ex-
4 change for specified consideration or a promise
5 to pay similar amounts.

6 “(3) SUBSTITUTE DIVIDEND.—For purposes of
7 this subsection—

8 “(A) IN GENERAL.—The term ‘substitute
9 dividend’ means a payment, made to the trans-
10 feror of a security in a securities lending trans-
11 action or a sale-repurchase transaction, of an
12 amount equivalent to a dividend distribution
13 which the owner of the transferred security is
14 entitled to receive during the term of the trans-
15 action.

16 “(B) SECURITIES LENDING TRANS-
17 ACTION.—For purposes of subparagraph (A),
18 the term ‘securities lending transaction’ means
19 a transfer of 1 or more securities that is de-
20 scribed in section 1058(a) or a substantially
21 similar transaction.

22 “(C) SALE-REPURCHASE TRANSACTION.—
23 For purposes of subparagraph (A), the term
24 ‘sale-repurchase transaction’ means an agree-
25 ment under which a person transfers a security

1 in exchange for cash and simultaneously agrees
2 to receive substantially identical securities from
3 the transferee in the future in exchange for
4 cash.

5 “(4) COORDINATION WITH TAX TREATIES.—
6 The meaning of the term ‘dividend’ in any income
7 tax convention shall be construed to include dividend
8 equivalents and substitute dividends in accordance
9 with this section.

10 “(5) PREVENTION OF OVER-WITHHOLDING.—In
11 the case of any dividend equivalent or substitute div-
12 idend that is subject to withholding under this sec-
13 tion or section 881, the Secretary may by regulation
14 reduce such withholding, but only to the extent that
15 the taxpayer can establish that the dividend for
16 which the payment to be withheld upon is a dividend
17 equivalent or a substitute dividend that was pre-
18 viously withheld upon under this section or under
19 section 881.”.

20 (b) REGULATIONS.—

21 (1) PROPOSED RULE.—Not later than 90 days
22 after the date of the enactment of this Act, the Sec-
23 retary of the Treasury (or the Secretary’s designee)
24 shall issue proposed regulations relating to section

1 871(l) of the Internal Revenue Code of 1986 (as
2 added by this section).

3 (2) FINAL RULE.—Not later than 150 days
4 after the date of the enactment of this Act, the Sec-
5 retary of the Treasury (or the Secretary’s designee)
6 shall issue final regulations relating to such section.

7 (3) MATTERS INCLUDED.—The regulations
8 issued pursuant to this subsection shall require the
9 imposition of withholding—

10 (A) in cases where dividend equivalent pay-
11 ments under notional principal contracts are
12 netted with other payments under the same in-
13 strument,

14 (B) in cases where fees and other pay-
15 ments are netted to disguise the characteriza-
16 tion of a payment as a substitute dividend, and

17 (C) in cases where option or forward con-
18 tracts (or similar arrangements) achieve the
19 same or substantially similar economic results
20 as the notional principal contracts covered
21 under section 871(l) of such Code.

22 (c) QUALIFIED INTERMEDIARIES.—The Secretary of
23 the Treasury (or the Secretary’s designee) shall ensure
24 that any qualified intermediary withholding agreement
25 that the United States enters into or renews after the date

1 of the enactment of this Act with a foreign financial insti-
2 tution or foreign branch of a United States financial insti-
3 tution conforms with the amendments made by this sec-
4 tion to ensure appropriate withholding related to dividend
5 equivalents and substitute dividends.

6 (d) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to payments made on or after the
8 date that is 90 days after the date of the enactment of
9 this Act.

10 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
11 tion or the amendments made by this section shall be con-
12 strued to limit the authority of the Commissioner of the
13 Internal Revenue Service to collect taxes, interest, and
14 penalties on dividend equivalent or substitute dividend
15 payments (as defined in section 871(l) of the Internal Rev-
16 enue Code of 1986) made prior to the date of the enact-
17 ment of this Act in connection with swap agreements,
18 stock loan transactions, or other financial transactions in-
19 volving nonresident aliens or foreign corporations.

20 **SEC. 109. REPORTING OF ACTIVITIES WITH RESPECT TO**
21 **PASSIVE FOREIGN INVESTMENT COMPANIES.**

22 (a) IN GENERAL.—Section 1298 is amended by re-
23 designating subsection (f) as subsection (g) and by insert-
24 ing after subsection (e) the following new subsection:

1 “(f) REPORTING REQUIREMENT.—Each person who
2 is a shareholder of, or who directly or indirectly forms,
3 transfers assets to, is a beneficiary of, has a beneficial in-
4 terest in, or receives money or property or the use thereof
5 from, a passive foreign investment company shall file a
6 report containing such information as the Secretary may
7 require.”.

8 (b) CONFORMING AMENDMENT.—Subsection (e) of
9 section 1291 is amended by striking “, (d), and (f)” and
10 inserting “and (d)”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section take effect on the date of the enactment of
13 this Act.

14 **TITLE II—OTHER MEASURES TO**
15 **COMBAT TAX HAVEN AND TAX**
16 **SHELTER ABUSES**

17 **SEC. 201. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**
18 **HOLDINGS.**

19 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
20 21(d)(3)(B) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78u(d)(3)(B)) is amended by adding at the end
22 the following:

23 “(iv) FOURTH TIER.—Notwithstanding
24 clauses (i), (ii), and (iii), the amount of the
25 penalty for each such violation shall not exceed

1 \$1,000,000 for any person if the violation de-
2 scribed in subparagraph (A) involved a knowing
3 failure to disclose any holding or transaction in-
4 volving equity or debt instruments of an issuer
5 and known by such person to involve a foreign
6 entity, including any trust, corporation, limited
7 liability company, partnership, or foundation
8 that is directly or indirectly controlled by such
9 person, and which would have been otherwise
10 subject to disclosure by such person under this
11 title.”.

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

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

1 and which would have been otherwise subject to
2 disclosure by such person under this title.”.

3 (c) INVESTMENT COMPANY ACT OF 1940.—Section
4 9(d)(2) of the Investment Company Act of 1940 (15
5 U.S.C. 80a–9(d)(2)) is amended by adding at the end the
6 following:

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

20 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
21 203(i)(2) of the Investment Advisers Act of 1940 (15
22 U.S.C. 80b–3(i)(2)) is amended by adding at the end the
23 following:

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

1 penalty for each such violation shall not exceed
2 \$1,000,000 for any person, if the violation de-
3 scribed in paragraph (1) involved a knowing
4 failure to disclose any holding or transaction in-
5 volving equity or debt instruments of an issuer
6 and known by such person to involve a foreign
7 entity, including any trust, corporation, limited
8 liability company, partnership, or foundation,
9 directly or indirectly controlled by such person,
10 and which would have been otherwise subject to
11 disclosure by such person under this title.”.

12 **SEC. 202. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**
13 **FOR HEDGE FUNDS AND PRIVATE EQUITY**
14 **FUNDS.**

15 (a) IN GENERAL.—

16 (1) PROPOSED RULE.—Not later than 90 days
17 after the date of the enactment of this Act, the Sec-
18 retary of the Treasury, in consultation with the
19 Chairman of the Securities and Exchange Commis-
20 sion and the Chairman of the Commodity Futures
21 Trading Commission, shall publish a proposed rule
22 in the Federal Register requiring unregistered in-
23 vestment companies, including hedge funds or pri-
24 vate equity funds, to establish anti-money laundering
25 programs and submit suspicious activity reports

1 under subsections (g) and (h) of section 5318 of title
2 31, United States Code.

3 (2) FINAL RULE.—Not later than 180 days
4 after the date of the enactment of this Act, the Sec-
5 retary of the Treasury shall publish a final rule in
6 the Federal Register on the matter described in
7 paragraph (1).

8 (b) CONTENTS.—The final rule published under this
9 section—

10 (1) shall require, at a minimum, that to safe-
11 guard against terrorist financing and money laun-
12 dering, all unregistered investment companies
13 shall—

14 (A) use risk-based due diligence policies,
15 procedures, and controls that are reasonably de-
16 signed to ascertain the identity of any foreign
17 person (including the nominal and beneficial
18 owner or beneficiary of a foreign corporation,
19 partnership, trust, or other foreign entity) plan-
20 ning to supply or supplying funds to be invested
21 with the advice or assistance of that unregis-
22 tered investment company; and

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

1 (2) may incorporate aspects of the proposed
2 rule for unregistered investment companies pub-
3 lished in the Federal Register on September 26,
4 2002 (67 Fed. Reg. 60617) (relating to anti-money
5 laundering programs).

6 (c) DEFINITIONS.—In this section—

7 (1) the terms “investment company” and
8 “issuer” have the same meanings as in section 2 of
9 the Investment Company Act of 1940 (15 U.S.C.
10 80a–2); and

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

16 **SEC. 203. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**
17 **FORMATION AGENTS.**

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

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

23 (2) by redesignating subparagraph (Z) as sub-
24 paragraph (AA); and

1 (3) by inserting after subparagraph (Y) the fol-
2 lowing:

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

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

20 **SEC. 204. STRENGTHENING SUMMONS IN CASES INVOLVING**
21 **OFFSHORE SECRECY JURISDICTIONS.**

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

24 “(f) **ADDITIONAL REQUIREMENT IN THE CASE OF A**
25 **JOHN DOE SUMMONS.**—

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

6 “(A) the summons relates to the investiga-
7 tion of a particular person or ascertainable
8 group or class of persons,

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

13 “(C) the information sought to be obtained
14 from the examination of the records or testi-
15 mony (and the identity of the person or persons
16 with respect to whose liability the summons is
17 issued) is not readily available from other
18 sources.

19 “(2) EXCEPTION.—Paragraph (1) shall not
20 apply to any summons which specifies that it is lim-
21 ited to information regarding a United States cor-
22 respondent account (as defined in section
23 5318A(e)(1)(B) of title 31, United States Code) or
24 a United States payable-through account (as defined

1 in section 5318A(e)(1)(C) of such title) of a finan-
2 cial institution in an offshore secrecy jurisdiction.

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

13 “(4) PROJECT JOHN DOE SUMMONSES.—

14 “(A) IN GENERAL.—Notwithstanding the
15 requirements of paragraph (1), the Secretary
16 may issue a summons described in paragraph
17 (1) if the summons—

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

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

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

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

5 “(i) any summons issues with respect
6 to the project will be issued to a member
7 of an ascertainable group or class of per-
8 sons, and

9 “(ii) any summons issued with respect
10 to such project will meet the requirements
11 of subparagraphs (A), (B), and (C) of
12 paragraph (1).

13 “(C) EXTENSION.—Upon application of
14 the Secretary, the court may extend the time
15 for issuing such summonses under subpara-
16 graph (A)(i) for additional 3-year periods, but
17 only if the court continues to exercise oversight
18 of such project under subparagraph (D).

19 “(D) ONGOING COURT OVERSIGHT.—Dur-
20 ing any period in which the Secretary is author-
21 ized to issue summonses in relation to a project
22 approved under subparagraph (B) (including
23 during any extension under subparagraph (C)),
24 the Secretary shall report annually to the court
25 on the use of such authority, provide copies of

1 all summonses with such report, and comply
2 with the court’s direction with respect to the
3 issuance of any John Doe summons under such
4 project.”.

5 (b) JURISDICTION OF COURT.—

6 (1) IN GENERAL.—Paragraph (1) of section
7 7609(h) is amended by inserting after the first sen-
8 tence the following new sentence: “Any United
9 States district court in which a member of the group
10 or class to which a summons may be issued resides
11 or is found shall have jurisdiction to hear and deter-
12 mine the approval of a project under subsection
13 (f)(4)(B).”.

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

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

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

1 **SEC. 205. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**
2 **CIAL ACCOUNT REPORTING.**

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

8 “For purposes of clause (i), section 5314 of title 31,
9 United States Code, and sections 5321 and 5322 of
10 such title (as such sections pertain to such section
11 5314), shall be considered to be an internal revenue
12 law.”.

13 (b) SIMPLIFYING THE CALCULATION OF FOREIGN
14 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section
15 5321(a)(5)(D)(ii) of title 31, United States Code, is
16 amended by striking “the balance in the account at the
17 time of the violation” and inserting “the highest balance
18 in the account during the reporting period to which the
19 violation relates”.

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

1 **TITLE III—COMBATING TAX**
2 **SHELTER PROMOTERS**

3 **SEC. 301. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**
4 **TERS.**

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

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

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

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

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

18 “(1) AMOUNT OF PENALTY.—The amount of
19 the penalty imposed by subsection (a) shall not ex-
20 ceed 150 percent of the gross income derived (or to
21 be derived) from such activity by the person or per-
22 sons subject to such penalty.

23 “(2) CALCULATION OF PENALTY.—The penalty
24 amount determined under paragraph (1) shall be
25 calculated with respect to each instance of an activ-

1 ity described in subsection (a), each instance in
2 which income was derived by the person or persons
3 subject to such penalty, and each person who par-
4 ticipated in such an activity.

5 “(3) LIABILITY FOR PENALTY.—If more than 1
6 person is liable under subsection (a) with respect to
7 such activity, all such persons shall be jointly and
8 severally liable for the penalty under such sub-
9 section.

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

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

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

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

24 (a) IN GENERAL.—Section 6701(a) (relating to impo-
25 sition of penalty) is amended—

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

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

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

10 (b) AMOUNT OF PENALTY.—Subsection (b) of section
11 6701 (relating to penalties for aiding and abetting under-
12 statement of tax liability) is amended to read as follows:

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

15 “(1) AMOUNT OF PENALTY.—The amount of
16 the penalty imposed by subsection (a) shall not ex-
17 ceed 150 percent of the gross income derived (or to
18 be derived) from such aid, assistance, procurement,
19 or advice provided by the person or persons subject
20 to such penalty.

21 “(2) CALCULATION OF PENALTY.—The penalty
22 amount determined under paragraph (1) shall be
23 calculated with respect to each instance of aid, as-
24 sistance, procurement, or advice described in sub-
25 section (a), each instance in which income was de-

1 rived by the person or persons subject to such pen-
2 alty, and each person who made such an understatement
3 of the liability for tax.

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

9 (c) PENALTY NOT DEDUCTIBLE.—Section 6701 is
10 amended by adding at the end the following new sub-
11 section:

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

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

22 **SEC. 303. TAX PLANNING INVENTIONS NOT PATENTABLE.**

23 (a) IN GENERAL.—Section 101 of title 35, United
24 States Code, is amended—

1 (1) by striking “Whoever” and inserting “(A)
2 PATENTABLE INVENTIONS.—Whoever”, and

3 (2) by adding at the end the following:

4 “(b) TAX PLANNING INVENTIONS.—

5 “(1) UNPATENTABLE SUBJECT MATTER.—A
6 patent may not be obtained for a tax planning inven-
7 tion.

8 “(2) DEFINITIONS.—For purposes of paragraph
9 (1)—

10 “(A) the term ‘tax planning invention’
11 means a plan, strategy, technique, scheme,
12 process, or system that is designed to reduce,
13 minimize, determine, avoid, or defer, or has,
14 when implemented, the effect of reducing, mini-
15 mizing, determining, avoiding, or deferring, a
16 taxpayer’s tax liability or is designed to facili-
17 tate compliance with tax laws, but does not in-
18 clude tax preparation software and other tools
19 or systems used solely to prepare tax or infor-
20 mation returns,

21 “(B) the term ‘taxpayer’ means an indi-
22 vidual, entity, or other person (as defined in
23 section 7701 of the Internal Revenue Code of
24 1986),

1 “(C) the terms ‘tax’, ‘tax laws’, ‘tax liabil-
2 ity’, and ‘taxation’ refer to any Federal, State,
3 county, city, municipality, foreign, or other gov-
4 ernmental levy, assessment, or imposition,
5 whether measured by income, value, or other-
6 wise, and

7 “(D) the term ‘State’ means each of the
8 several States, the District of Columbia, and
9 any commonwealth, territory, or possession of
10 the United States.”.

11 (b) APPLICABILITY.—The amendments made by this
12 section—

13 (1) shall take effect on the date of the enact-
14 ment of this Act,

15 (2) shall apply to any application for patent or
16 application for a reissue patent that is—

17 (A) filed on or after the date of the enact-
18 ment of this Act, or

19 (B) filed before that date if a patent or re-
20 issue patent has not been issued pursuant to
21 the application as of that date, and

22 (3) shall not be construed as validating any pat-
23 ent issued before the date of the enactment of this
24 Act for an invention described in section 101(b) of

1 title 35, United States Code, as added by this sec-
2 tion.

3 **SEC. 304. PROHIBITED FEE ARRANGEMENT.**

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

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

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

12 (3) by inserting after subsection (e) the fol-
13 lowing new subsection:

14 “(f) PROHIBITED FEE ARRANGEMENT.—

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

21 “(A) tax savings or benefits, or

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

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

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

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

12 **SEC. 305. PREVENTING TAX SHELTER ACTIVITIES BY FI-**
13 **NANCIAL INSTITUTIONS.**

14 (a) EXAMINATIONS.—

15 (1) DEVELOPMENT OF EXAMINATION TECH-
16 NIQUES.—Each of the Federal banking agencies and
17 the Commission shall, in consultation with the Inter-
18 nal Revenue Service, develop examination techniques
19 to detect potential violations of section 6700 or 6701
20 of the Internal Revenue Code of 1986, by depository
21 institutions, brokers, dealers, and investment advis-
22 ers, as appropriate.

23 (2) IMPLEMENTATION.—Each of the Federal
24 banking agencies and the Commission shall imple-
25 ment the examination techniques developed under

1 paragraph (1) with respect to each of the depository
2 institutions, brokers, dealers, or investment advisers
3 subject to their enforcement authority. Such exam-
4 ination shall, to the extent possible, be combined
5 with any examination by such agency otherwise re-
6 quired or authorized by Federal law.

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

15 (c) REPORT TO CONGRESS.—The Federal banking
16 agencies and the Commission shall submit a joint written
17 report to Congress in 2010 and 2013 on their progress
18 in preventing violations of sections 6700 and 6701 of the
19 Internal Revenue Code of 1986, by depository institutions,
20 brokers, dealers, and investment advisers, as appropriate.

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

22 (1) the terms “broker”, “dealer”, and “invest-
23 ment adviser” have the same meanings as in section
24 3 of the Securities Exchange Act of 1934 (15 U.S.C.
25 78c);

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

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

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

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

11 **SEC. 306. INFORMATION SHARING FOR ENFORCEMENT**
12 **PURPOSES.**

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

18 “(7) DISCLOSURE OF RETURNS AND RETURN
19 INFORMATION RELATED TO PROMOTION OF PROHIB-
20 ITED TAX SHELTERS OR TAX AVOIDANCE
21 SCHEMES.—

22 “(A) WRITTEN REQUEST.—Upon receipt
23 by the Secretary of a written request which
24 meets the requirements of subparagraph (B)
25 from the head of the United States Securities

1 and Exchange Commission, an appropriate
2 Federal banking agency as defined under sec-
3 tion 1813(q) of title 12, United States Code, or
4 the Public Company Accounting Oversight
5 Board, a return or return information shall be
6 disclosed to such requestor's officers and em-
7 ployees who are personally and directly engaged
8 in an investigation, examination, or proceeding
9 by such requestor to evaluate, determine, penal-
10 ize, or deter conduct by a financial institution,
11 issuer, or public accounting firm, or associated
12 person, in connection with a potential or actual
13 violation of section 6700 (promotion of abusive
14 tax shelters), 6701 (aiding and abetting under-
15 statement of tax liability), or activities related
16 to promoting or facilitating inappropriate tax
17 avoidance or tax evasion. Such disclosure shall
18 be solely for use by such officers and employees
19 in such investigation, examination, or pro-
20 ceeding. In the discretion of the Secretary, such
21 disclosure may take the form of the participa-
22 tion of Internal Revenue Service employees in a
23 joint investigation, examination, or proceeding
24 with the Securities Exchange Commission, Fed-

1 eral banking agency, or Public Company Ac-
2 counting Oversight Board.

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

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

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

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

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

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

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

1 investment advisor, or other entity subject to
2 regulation or oversight by the United States Se-
3 curities and Exchange Commission or an appro-
4 priate Federal banking agency.”.

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

10 “(9) DISCLOSURE OF RETURNS AND RETURN
11 INFORMATION FOR USE IN FINANCIAL AND AC-
12 COUNTING FRAUD INVESTIGATIONS.—

13 “(A) WRITTEN REQUEST.—Upon receipt
14 by the Secretary of a written request which
15 meets the requirements of subparagraph (B)
16 from the head of the United States Securities
17 and Exchange Commission or the Public Com-
18 pany Accounting Oversight Board, a return or
19 return information shall be disclosed to such re-
20 questor’s officers and employees who are per-
21 sonally and directly engaged in an investigation,
22 examination, or proceeding by such requester to
23 evaluate the accuracy of a financial statement
24 or report, or to determine whether to require a
25 restatement, penalize, or deter conduct by an

1 issuer, investment company, or public account-
2 ing firm, or associated person, in connection
3 with a potential or actual violation of auditing
4 standards or prohibitions against false or mis-
5 leading statements or omissions in financial
6 statements or reports. Such disclosure shall be
7 solely for use by such officers and employees in
8 such investigation, examination, or proceeding.

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

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

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

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

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

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

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

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

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

8 (a) DISCLOSURE BY TAX RETURN PREPARER.—

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

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

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

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

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

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

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

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

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

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

13 “(2) INSPECTION BY CONGRESS.—

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

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

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

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

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

21 as if such papers constituted returns.”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to disclosures and to information
24 and document requests made after the date of the enact-
25 ment of this Act.

1 **SEC. 308. TAX OPINION STANDARDS FOR TAX PRACTI-**
2 **TIONERS.**

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

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

11 “(1) Independence of the practitioner issuing
12 such written advice from persons promoting, mar-
13 keting, or recommending the subject of the advice.

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

18 “(3) Avoidance of conflicts of interest which
19 would impair auditor independence.

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

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

25 “(6) Appropriateness of the fees charged by the
26 practitioner for the written advice.

1 for damage or harm caused by or which may be
2 caused by the violation of any law or the poten-
3 tial violation of any law, and

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

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

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

18 “(4) CERTAIN NONGOVERNMENTAL REGU-
19 LATORY ENTITIES.—An entity is described in this
20 paragraph if it is—

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

1 “(B) to the extent provided in regulations,
2 a nongovernmental entity which exercises self-
3 regulatory powers (including imposing sanc-
4 tions) as part of performing an essential gov-
5 ernmental function.

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

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

17 **TITLE IV—REQUIRING**
18 **ECONOMIC SUBSTANCE**

19 **SEC. 401. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
20 **TRINE.**

21 (a) IN GENERAL.—Section 7701, as amended by sec-
22 tion 103, is amended by redesignating subsection (p) as
23 subsection (q) and by inserting after subsection (o) the
24 following new subsection:

1 “(p) CLARIFICATION OF ECONOMIC SUBSTANCE
2 DOCTRINE; ETC.—

3 “(1) GENERAL RULES.—

4 “(A) IN GENERAL.—In any case in which
5 a court determines that the economic substance
6 doctrine is relevant for purposes of this title to
7 a transaction (or series of transactions), such
8 transaction (or series of transactions) shall have
9 economic substance only if the requirements of
10 this paragraph are met.

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

13 “(i) IN GENERAL.—A transaction has
14 economic substance only if—

15 “(I) the transaction changes in a
16 meaningful way (apart from Federal
17 tax effects) the taxpayer’s economic
18 position, and

19 “(II) subject to clause (iii), the
20 taxpayer has a substantial purpose
21 (other than a Federal tax purpose) for
22 entering into such transaction.

23 “(ii) SPECIAL RULE WHERE TAX-
24 PAYER RELIES ON PROFIT POTENTIAL.—A
25 transaction shall not be treated as having

1 economic substance solely by reason of
2 having a potential for profit unless the
3 present value of the reasonably expected
4 pre-Federal tax profit from the transaction
5 is substantial in relation to the present
6 value of the expected net Federal tax bene-
7 fits that would be allowed if the trans-
8 action were respected. In determining pre-
9 Federal tax profit, there shall be taken
10 into account fees and other transaction ex-
11 penses and to the extent provided by the
12 Secretary, foreign taxes.

13 “(iii) SPECIAL RULES FOR DETER-
14 MINING WHETHER NON-FEDERAL TAX
15 PURPOSE.—For purposes of clause
16 (i)(II)—

17 “(I) a purpose of achieving a fi-
18 nancial accounting benefit shall not be
19 taken into account in determining
20 whether a transaction has a substan-
21 tial purpose (other than a Federal tax
22 purpose) if the origin of such financial
23 accounting benefit is a reduction of
24 Federal tax, and

1 “(II) the taxpayer shall not be
2 treated as having a substantial pur-
3 pose (other than a Federal tax pur-
4 pose) with respect to a transaction if
5 the only such purpose is the reduction
6 of non-Federal taxes and the trans-
7 action will result in a reduction of
8 Federal taxes substantially equal to,
9 or greater than, the reduction in non-
10 Federal taxes because of similarities
11 between the laws imposing the taxes.

12 “(2) DEFINITIONS AND SPECIAL RULES.—For
13 purposes of this subsection—

14 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
15 The term ‘economic substance doctrine’ means
16 the common law doctrine under which tax bene-
17 fits under subtitle A with respect to a trans-
18 action are not allowable if the transaction does
19 not have economic substance or lacks a business
20 purpose.

21 “(B) EXCEPTION FOR PERSONAL TRANS-
22 ACTIONS OF INDIVIDUALS.—In the case of an
23 individual, this subsection shall apply only to
24 transactions entered into in connection with a

1 trade or business or an activity engaged in for
2 the production of income.

3 “(3) OTHER PROVISIONS NOT AFFECTED.—Ex-
4 cept as specifically provided in this subsection, the
5 provisions of this subsection shall not be construed
6 as altering or supplanting any other rule of law or
7 provision of this title, and the requirements of this
8 subsection shall be construed as being in addition to
9 any such other rule of law or provision of this title.

10 “(4) REGULATIONS.—The Secretary shall pre-
11 scribe such regulations as may be necessary or ap-
12 propriate to carry out the purposes of this sub-
13 section. Such regulations may include exemptions
14 from the application of this subsection.”.

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

18 **SEC. 402. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
19 **UTABLE TO TRANSACTIONS LACKING ECO-**
20 **NOMIC SUBSTANCE, ETC.**

21 (a) IN GENERAL.—Subchapter A of chapter 68 is
22 amended by inserting after section 6662A the following
23 new section:

1 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
2 **UTABLE TO TRANSACTIONS LACKING ECO-**
3 **NOMIC SUBSTANCE, ETC.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has an
5 noneconomic substance transaction understatement for
6 any taxable year, there shall be added to the tax an
7 amount equal to 30 percent of the amount of such under-
8 statement.

9 “(b) REDUCTION OF PENALTY FOR DISCLOSED
10 TRANSACTIONS.—Subsection (a) shall be applied by sub-
11 stituting ‘20 percent’ for ‘30 percent’ with respect to the
12 portion of any noneconomic substance transaction under-
13 statement with respect to which the relevant facts affect-
14 ing the tax treatment of the item are adequately disclosed
15 in the return or a statement attached to the return.

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

18 “(1) IN GENERAL.—The term ‘noneconomic
19 substance transaction understatement’ means any
20 amount which would be an understatement under
21 section 6662A(b)(1) if section 6662A were applied
22 by taking into account items attributable to non-
23 economic substance transactions rather than items
24 to which section 6662A would apply without regard
25 to this paragraph.

1 “(2) NONECONOMIC SUBSTANCE TRANS-
2 ACTION.—The term ‘noneconomic substance trans-
3 action’ means any transaction if there is a lack of
4 economic substance (within the meaning of section
5 7701(p)(1)(B)) for the transaction giving rise to the
6 claimed benefit.

7 “(d) RULES APPLICABLE TO ASSERTION, COM-
8 PROMISE, AND COLLECTION OF PENALTY.—

9 “(1) IN GENERAL.—Only the Chief Counsel for
10 the Internal Revenue Service may assert a penalty
11 imposed under this section or may compromise all or
12 any portion of such penalty. The Chief Counsel may
13 delegate the authority under this paragraph only to
14 an individual holding the position of chief of a
15 branch within the Office of the Chief Counsel for the
16 Internal Revenue Service.

17 “(2) SPECIFIC REQUIREMENTS.—

18 “(A) ASSERTION OF PENALTY.—The Chief
19 Counsel for the Internal Revenue Service (or
20 the Chief Counsel’s delegate under paragraph
21 (1)) shall not assert a penalty imposed under
22 this section unless, before the assertion of the
23 penalty, the taxpayer is provided—

24 “(i) a notice of intent to assert the
25 penalty, and

1 “(ii) an opportunity to provide to the
2 Commissioner (or the Chief Counsel’s dele-
3 gate under paragraph (1)) a written re-
4 sponse to the proposed penalty within a
5 reasonable period of time after such notice.

6 “(B) COMPROMISE OF PENALTY.—A com-
7 promise shall not result in a reduction in the
8 penalty imposed by this section in an amount
9 greater than the amount which bears the same
10 ratio to the amount of the penalty determined
11 without regard to the compromise as—

12 “(i) the reduction under the com-
13 promise in the noneconomic substance
14 transaction understatement to which the
15 penalty relates, bears to

16 “(ii) the amount of the noneconomic
17 substance transaction understatement de-
18 termined without regard to the com-
19 promise.

20 “(3) RULES RELATING TO RELEVANCY RE-
21 QUIREMENT.—

22 “(A) DETERMINATION OF RELEVANCE BY
23 CHIEF COUNSEL.—The Chief Counsel for the
24 Internal Revenue Service (or the Chief Coun-
25 sel’s delegate under paragraph (1)) may assert,

1 compromise, or collect a penalty imposed by
2 this section with respect to a noneconomic sub-
3 stance transaction even if there has not been a
4 court determination that the economic sub-
5 stance doctrine was relevant for purposes of
6 this title to the transaction if the Chief Counsel
7 (or delegate) determines that either was so rel-
8 evant.

9 “(B) FINAL ORDER OF COURT.—If there is
10 a final order of a court that determines that the
11 economic substance doctrine was not relevant
12 for purposes of this title to a transaction (or se-
13 ries of transactions), any penalty imposed under
14 this section with respect to the transaction (or
15 series of transactions) shall be rescinded.

16 “(4) APPLICABLE RULES.—The rules of para-
17 graphs (2) and (3) of section 6707A(d) shall apply
18 to a compromise under paragraph (1).

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

23 “(f) CROSS REFERENCES.—

1 “(1) For coordination of penalty with under-
2 statements under section 6662 and other special
3 rules, see section 6662A(e).

4 “(2) For reporting of penalty imposed under
5 this section to the Securities and Exchange Commis-
6 sion, see section 6707A(e).”.

7 (b) COORDINATION WITH OTHER UNDERSTATE-
8 MENTS AND PENALTIES.—

9 (1) The second sentence of section
10 6662(d)(2)(A) is amended by inserting “and without
11 regard to items with respect to which a penalty is
12 imposed by section 6662B” before the period at the
13 end.

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

16 (A) in paragraph (1), by inserting “and
17 noneconomic substance transaction understatement-
18 s” after “reportable transaction under-
19 statements” both places it appears,

20 (B) in paragraph (2)(A)—

21 (i) by inserting “6662B or” before
22 “6663” in the text, and

23 (ii) by striking “**PENALTY**” in the
24 heading and inserting “**AND ECONOMIC**
25 **SUBSTANCE PENALTIES**”,

1 (C) in paragraph (2)(B)—

2 (i) by inserting “and section 6662B”
3 after “This section”, and

4 (ii) by striking “**PENALTY**” in the
5 heading and inserting “**AND ECONOMIC**
6 **SUBSTANCE PENALTIES**”,

7 (D) in paragraph (3), by inserting “or
8 noneconomic substance transaction understate-
9 ment” after “reportable transaction understate-
10 ment”, and

11 (E) by adding at the end the following new
12 paragraph:

13 “(4) NONECONOMIC SUBSTANCE TRANSACTION
14 UNDERSTATEMENT.—For purposes of this sub-
15 section, the term ‘noneconomic substance trans-
16 action understatement’ has the meaning given such
17 term by section 6662B(c).”.

18 (3) Subsection (e) of section 6707A is amend-
19 ed—

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

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

1 “(C) is required to pay a penalty under
2 section 6662B with respect to any noneconomic
3 substance transaction, or

4 “(D) is required to pay a penalty under
5 section 6662(h) with respect to any transaction
6 and would (but for section 6662A(e)(2)(B))
7 have been subject to penalty under section
8 6662A at a rate prescribed under section
9 6662A(e) or to penalty under section 6662B.”.

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

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

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

17 **SEC. 403. DENIAL OF DEDUCTION FOR INTEREST ON UN-**
18 **DERPAYMENTS ATTRIBUTABLE TO NON-**
19 **ECONOMIC SUBSTANCE TRANSACTIONS.**

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

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

1 “(1) the portion of any reportable transaction
2 understatement (as defined in section 6662A(b))
3 with respect to which the requirement of section
4 6664(d)(2)(A) is not met, or

5 “(2) any noneconomic substance transaction
6 understatement (as defined in section 6662B(c)).”,
7 and

8 (2) by inserting “**AND NONECONOMIC SUB-**
9 **STANCE TRANSACTIONS**” in the heading thereof
10 after “**TRANSACTIONS**”.

11 (b) **EFFECTIVE DATE.**—The amendments made by
12 this section shall apply to transactions after the date of
13 the enactment of this Act in taxable years ending after
14 such date.

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