

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2075

To close unjustified corporate tax loopholes, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2012

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

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## A BILL

To close unjustified corporate tax loopholes, 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       “Cut Unjustified Tax Loopholes Act” or “CUT Loopholes  
6       Act”.

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

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

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

Sec. 1. Short title; etc.

#### TITLE I—ENDING OFFSHORE TAX ABUSES

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

- Sec. 101. Authorizing special measures against foreign jurisdictions, financial institutions, and others that impede United States tax enforcement.
- Sec. 102. Strengthening the Foreign Account Tax Compliance Act (FATCA).
- Sec. 103. Treatment of foreign corporations managed and controlled in the United States as domestic corporations.
- Sec. 104. Reporting United States beneficial owners of foreign owned financial accounts.
- Sec. 105. Swap payments made from the United States to persons offshore.
- Sec. 106. Tax on income of controlled foreign corporation deposited in financial account located in the United States.

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

- Sec. 111. Country-by-country reporting.
- Sec. 112. Penalty for failing to disclose offshore holdings.
- Sec. 113. Deadline for anti-money laundering rule for private funds and venture capital funds.
- Sec. 114. Anti-money laundering requirements for formation agents.
- Sec. 115. Strengthening John Doe summons proceedings.
- Sec. 116. Improving enforcement of foreign financial account reporting.

##### Subtitle C—Combating Tax Shelter Promoters

- Sec. 121. Penalty for promoting abusive tax shelters.
- Sec. 122. Penalty for aiding and abetting the understatement of tax liability.
- Sec. 123. Prohibited fee arrangement.
- Sec. 124. Preventing tax shelter activities by financial institutions.
- Sec. 125. Information sharing for enforcement purposes.
- Sec. 126. Disclosure of information to Congress.
- Sec. 127. Tax opinion standards for tax practitioners.

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

- Sec. 131. Allocation of expenses and taxes on basis of repatriation of foreign income.
- Sec. 132. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.
- Sec. 133. Limitations on income shifting through intangible property transfers.
- Sec. 134. Limitation on earnings stripping by expatriated entities.

#### TITLE II—ENDING EXCESSIVE CORPORATE TAX DEDUCTIONS FOR STOCK OPTIONS

Sec. 201. Consistent treatment of stock options by corporations.

Sec. 202. Application of executive pay deduction limit.

1       **TITLE I—ENDING OFFSHORE**  
 2                   **TAX ABUSES**  
 3       **Subtitle A—Deterring the Use of**  
 4                   **Tax Havens for Tax Evasion**

5   **SEC. 101. AUTHORIZING SPECIAL MEASURES AGAINST FOR-**  
 6                   **EIGN JURISDICTIONS, FINANCIAL INSTITU-**  
 7                   **TIONS, AND OTHERS THAT IMPEDE UNITED**  
 8                   **STATES TAX ENFORCEMENT.**

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

11           (1) by striking the section heading and insert-  
 12           ing the following new heading:

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

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

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

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

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

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

9           (5) in subsection (a)(4)—

10           (A) in subparagraph (A)—

11           (i) by inserting “in matters involving  
12 money laundering,” before “shall consult”;

13           and

14           (ii) by striking “and” at the end;

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

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

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

1 parties as the Secretary may find to be appro-  
2 priate; and”;

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

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

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

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

4 **SEC. 102. STRENGTHENING THE FOREIGN ACCOUNT TAX**  
5 **COMPLIANCE ACT (FATCA).**

6 (a) REPORTING ACTIVITIES WITH RESPECT TO PAS-  
7 SIVE FOREIGN INVESTMENT COMPANIES.—Section  
8 1298(f) is amended by inserting “, or who directly or indi-  
9 rectly forms, transfers assets to, is a beneficiary of, has  
10 a beneficial interest in, or receives money or property or  
11 the use thereof from,” after “shareholder of”.

12 (b) WITHHOLDABLE PAYMENTS TO FOREIGN FINAN-  
13 CIAL INSTITUTIONS.—Section 1471(d) is amended—

14 (1) by inserting “or transaction” after “any de-  
15 pository” in paragraph (2)(A), and

16 (2) by striking “or any interest” and all that  
17 follows in paragraph (5)(C) and inserting “deriva-  
18 tives, or any interest (including a futures or forward  
19 contract, swap, or option) in such securities, part-  
20 nership interests, commodities, or derivatives.”.

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

23 (1) by inserting “as a result of any customer  
24 identification, anti-money laundering, anti-corrup-  
25 tion, or similar obligation to identify account hold-



1       ers,” after “reason to know,” in subsection (b)(2),  
2       and

3               (2) by inserting “as posing a low risk of tax  
4       evasion” after “this subsection” in subsection  
5       (c)(1)(G).

6       (d) DEFINITIONS.—Clauses (i) and (ii) of section  
7       1473(2)(A) are each amended by inserting “or as a bene-  
8       ficial owner” after “indirectly”.

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

10               (1) by inserting “, except that information pro-  
11       vided under sections 1471(c) or 1472(b) may be dis-  
12       closed to any Federal law enforcement agency, upon  
13       request or upon the initiation of the Secretary, to in-  
14       vestigate or address a possible violation of United  
15       States law” after “shall apply” in paragraph (1),  
16       and

17               (2) by inserting “, or has had an agreement  
18       terminated under such section,” after “section  
19       1471(b)” in paragraph (2).

20       (f) INFORMATION WITH RESPECT TO FOREIGN FI-  
21       NANCIAL ASSETS.—Section 6038D(a) is amended by in-  
22       serting “ownership or beneficial ownership” after “holds  
23       any”.

1 (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES  
 2 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-  
 3 TIONS.—

4 (1) PRESUMPTIONS FOR TAX PURPOSES.—

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

8 **“Subchapter F—Presumptions for Certain**  
 9 **Legal Proceedings**

“Sec. 7492. Presumptions pertaining to entities and transactions involving non-  
 FATCA institutions.

10 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**  
 11 **TRANSACTIONS INVOLVING NON-FATCA IN-**  
 12 **STITUTIONS.**

13 “(a) CONTROL.—For purposes of any United States  
 14 civil judicial or administrative proceeding to determine or  
 15 collect tax, there shall be a rebuttable presumption that  
 16 a United States person (other than an entity with shares  
 17 regularly traded on an established securities market) who,  
 18 directly or indirectly, formed, transferred assets to, was  
 19 a beneficiary of, had a beneficial interest in, or received  
 20 money or property or the use thereof from an entity, in-  
 21 cluding a trust, corporation, limited liability company,  
 22 partnership, or foundation (other than an entity with  
 23 shares regularly traded on an established securities mar-  
 24 ket), that holds an account, or in any other manner has

1 assets, in a non-FATCA institution, exercised control over  
2 such entity. The presumption of control created by this  
3 subsection shall not be applied to prevent the Secretary  
4 from determining or arguing the absence of control.

5       “(b) TRANSFERS OF INCOME.—For purposes of any  
6 United States civil judicial or administrative proceeding  
7 to determine or collect tax, there shall be a rebuttable pre-  
8 sumption that any amount or thing of value received by  
9 a United States person (other than an entity with shares  
10 regularly traded on an established securities market) di-  
11 rectly or indirectly from an account or from an entity  
12 (other than an entity with shares regularly traded on an  
13 established securities market) that holds an account, or  
14 in any other manner has assets, in a non-FATCA institu-  
15 tion, constitutes income of such person taxable in the year  
16 of receipt; and any amount or thing of value paid or trans-  
17 ferred by or on behalf of a United States person (other  
18 than an entity with shares regularly traded on an estab-  
19 lished securities market) directly or indirectly to an ac-  
20 count, or entity (other than an entity with shares regularly  
21 traded on an established securities market) that holds an  
22 account, or in any other manner has assets, in a non-  
23 FATCA institution, represents previously unreported in-  
24 come of such person taxable in the year of the transfer.

1       “(c) REBUTTING THE PRESUMPTIONS.—The pre-  
2       sumptions established in this section may be rebutted only  
3       by clear and convincing evidence, including detailed docu-  
4       mentary, testimonial, and transactional evidence, estab-  
5       lishing that—

6               “(1) in subsection (a), such taxpayer exercised  
7       no control, directly or indirectly, over account or en-  
8       tity at the time in question, and

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

12       Any court having jurisdiction of a civil proceeding in which  
13       control of such an offshore account or offshore entity or  
14       the income character of such receipts or amounts trans-  
15       ferred is an issue shall prohibit the introduction by the  
16       taxpayer of any foreign based document that is not au-  
17       thenticated in open court by a person with knowledge of  
18       such document, or any other evidence supplied by a person  
19       outside the jurisdiction of a United States court, unless  
20       such person appears before the court.”.

21               (B) The table of subchapters for chapter  
22               76 is amended by inserting after the item relat-  
23               ing to subchapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

4           “(51) NON-FATCA INSTITUTION.—The term  
5           ‘non-FATCA institution’ means any financial insti-  
6           tution that does not meet the reporting requirements  
7           of section 1471(b).”.

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

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

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

1 that holds an account, or in any other manner has  
2 assets, in a non-FATCA institution (as defined in  
3 section 7701(a)(51) of the Internal Revenue Code of  
4 1986), exercised control over such entity. The pre-  
5 sumption of control created by this paragraph shall  
6 not be applied to prevent the Commission from de-  
7 termining or arguing the absence of control.

8 “(2) BENEFICIAL OWNERSHIP.—For purposes  
9 of any civil judicial or administrative proceeding  
10 under this title, there shall be a rebuttable presump-  
11 tion that securities that are nominally owned by an  
12 entity, including a trust, corporation, limited liability  
13 company, partnership, or foundation (other than an  
14 entity with shares regularly traded on an established  
15 securities market), and that are held in a non-  
16 FATCA institution (as so defined), are beneficially  
17 owned by any United States person (other than an  
18 entity with shares regularly traded on an established  
19 securities market) who directly or indirectly exer-  
20 cised control over such entity. The presumption of  
21 beneficial ownership created by this paragraph shall  
22 not be applied to prevent the Commission from de-  
23 termining or arguing the absence of beneficial own-  
24 ership.”.

1           (4) PRESUMPTION FOR REPORTING PURPOSES  
2           RELATING TO FOREIGN FINANCIAL ACCOUNTS.—Sec-  
3           tion 5314 of title 31, United States Code, is amend-  
4           ed by adding at the end the following new sub-  
5           section:

6           “(d) REBUTTABLE PRESUMPTION.—For purposes of  
7           this section, there shall be a rebuttable presumption that  
8           any account with a non-FATCA institution (as defined in  
9           section 7701(a)(51) 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          (5) REGULATORY AUTHORITY.—Not later than  
14          180 days after the date of the enactment of this Act,  
15          the Secretary of the Treasury and the Chairman of  
16          the Securities and Exchange Commission shall each  
17          adopt regulations or other guidance necessary to im-  
18          plement the amendments made by this subsection.  
19          The Secretary and the Chairman may by regulation  
20          or guidance provide that the presumption of control  
21          shall not extend to particular classes of transactions,  
22          such as corporate reorganizations or transactions  
23          below a specified dollar threshold, if either deter-  
24          mines that applying such amendments to such trans-

1 actions is not necessary to carry out the purposes of  
2 such amendments.

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

7 **SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MAN-**  
8 **AGED AND CONTROLLED IN THE UNITED**  
9 **STATES AS DOMESTIC CORPORATIONS.**

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

13 “(p) **CERTAIN CORPORATIONS MANAGED AND CON-**  
14 **TROLLED IN THE UNITED STATES TREATED AS DOMES-**  
15 **TIC FOR INCOME TAX.**—

16 “(1) **IN GENERAL.**—Notwithstanding subsection  
17 (a)(4), in the case of a corporation described in  
18 paragraph (2) if—

19 “(A) the corporation would not otherwise  
20 be treated as a domestic corporation for pur-  
21 poses of this title, but

22 “(B) the management and control of the  
23 corporation occurs, directly or indirectly, pri-  
24 marily within the United States,



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

4 “(2) CORPORATION DESCRIBED.—

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

7 “(i) the stock of such corporation is  
8 regularly traded on an established securi-  
9 ties market, or

10 “(ii) the aggregate gross assets of  
11 such corporation (or any predecessor there-  
12 of), including assets under management  
13 for investors, whether held directly or indi-  
14 rectly, at any time during the taxable year  
15 or any preceding taxable year is  
16 \$50,000,000 or more.

17 “(B) GENERAL EXCEPTION.—A corpora-  
18 tion shall not be treated as described in this  
19 paragraph if—

20 “(i) such corporation was treated as a  
21 corporation described in this paragraph in  
22 a preceding taxable year,

23 “(ii) such corporation—

24 “(I) is not regularly traded on an  
25 established securities market, and

1                   “(II) has, and is reasonably ex-  
2                   pected to continue to have, aggregate  
3                   gross assets (including assets under  
4                   management for investors, whether  
5                   held directly or indirectly) of less than  
6                   \$50,000,000, and

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

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

17                         “(i) is a domestic corporation (deter-  
18                         mined without regard to this subsection),  
19                         and

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

25                   “(3) MANAGEMENT AND CONTROL.—

1           “(A) IN GENERAL.—The Secretary shall  
2 prescribe regulations for purposes of deter-  
3 mining cases in which the management and  
4 control of a corporation is to be treated as oc-  
5 ccurring primarily within the United States.

6           “(B) EXECUTIVE OFFICERS AND SENIOR  
7 MANAGEMENT.—Such regulations shall provide  
8 that—

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

19                   “(ii) individuals who are not executive  
20 officers and senior management of the cor-  
21 poration (including individuals who are of-  
22 ficers or employees of other corporations in  
23 the same chain of corporations as the cor-  
24 poration) shall be treated as executive offi-  
25 cers and senior management if such indi-

1           viduals exercise the day-to-day responsibil-  
2           ities of the corporation described in clause  
3           (i).

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

9                   “(i) the assets of such corporation (di-  
10                   rectly or indirectly) consist primarily of as-  
11                   sets being managed on behalf of investors,  
12                   and

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

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

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

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

7 **“SEC. 6045C. RETURNS REGARDING UNITED STATES BENE-**  
8 **FIcial OWNERS OF FINANCIAL ACCOUNTS**  
9 **LOCATED IN THE UNITED STATES AND HELD**  
10 **IN THE NAME OF A FOREIGN ENTITY.**

11 “(a) REQUIREMENT OF RETURN.—If—

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

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

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

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

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

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

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

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

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

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

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

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

15 **“SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS RE-**  
16 **GARDING ESTABLISHMENT OF ACCOUNTS IN**  
17 **NON-FATCA INSTITUTIONS.**

18           “(a) REQUIREMENT OF RETURN.—Any financial in-  
19 stitution directly or indirectly opening a bank, brokerage,  
20 or other financial account for or on behalf of an offshore  
21 entity, including a trust, corporation, limited liability com-  
22 pany, partnership, or foundation (other than an entity  
23 with shares regularly traded on an established securities  
24 market), in a non-FATCA institution (as defined in sec-  
25 tion 7701(a)(51)) at the direction of, on behalf of, or for

1 the benefit of a United States person shall make a return  
2 according to the forms or regulations prescribed by the  
3 Secretary.

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

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

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

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

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

21 “(c) STATEMENTS TO BE FURNISHED TO UNITED  
22 STATES PERSONS WITH RESPECT TO WHOM INFORMA-  
23 TION IS REQUIRED TO BE REPORTED.—A financial insti-  
24 tution required to make a return under subsection (a)  
25 shall furnish to each United States person whose name



1 is required to be set forth in such return a statement  
2 showing—

3           “(1) the name, address, and telephone number  
4           of the information contact of the person required to  
5           make such return, and

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

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

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

20           (b) PENALTIES.—

21           (1) RETURNS.—Section 6724(d)(1)(B) is  
22 amended by striking “or” at the end of clause  
23 (xxiv), by striking “and” at the end of clause (xxv),  
24 and by adding after clause (xxv) the following new  
25 clauses:

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

6 “(xxvii) section 6045D(a) (relating to  
7 returns by financial institutions regarding  
8 establishment of accounts at non-FATCA  
9 institutions), and”.

10 (2) PAYEE STATEMENTS.—Section 6724(d)(2)  
11 is amended by striking “or” at the end of subpara-  
12 graph (GG), by striking the period at the end of  
13 subparagraph (HH), and by inserting after subpara-  
14 graph (HH) the following new subparagraphs:

15 “(II) section 6045C(c) (relating to returns  
16 regarding United States beneficial owners of fi-  
17 nancial accounts located in the United States  
18 and held in the name of a foreign entity),

19 “(JJ) section 6045D(c) (relating to re-  
20 turns by financial institutions regarding estab-  
21 lishment of accounts at non-FATCA institu-  
22 tions).”.

23 (c) CLERICAL AMENDMENT.—The table of sections  
24 for subpart B of part III of subchapter A of chapter 61

1 is amended by inserting after the item relating to section  
2 6045B the following new items:

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

“Sec. 6045D. Returns by financial institutions regarding establishment of ac-  
counts at non-FATCA institutions.”.

3 (d) ADDITIONAL PENALTIES.—

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

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

16 (e) REGULATORY AUTHORITY AND EFFECTIVE  
17 DATE.—

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

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

12 **SEC. 105. SWAP PAYMENTS MADE FROM THE UNITED**  
13 **STATES TO PERSONS OFFSHORE.**

14           (a) TAX ON SWAP PAYMENTS RECEIVED BY FOR-  
15 EIGN PERSONS.—Section 871(a)(1) is amended—

16           (1) by inserting “swap payments (as identified  
17 in section 1256(b)(2)(B)),” after “annuities,” in  
18 subparagraph (A), and

19           (2) by adding at the end the following new sen-  
20 tence: “In the case of swap payments, the source of  
21 a swap payment is determined by reference to the lo-  
22 cation of the payor.”.

23           (b) TAX ON SWAP PAYMENTS RECEIVED BY FOR-  
24 EIGN CORPORATIONS.—Section 881(a) is amended—

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

4           (2) by adding at the end the following new sen-  
5           tence: “In the case of swap payments, the source of  
6           a swap payment is determined by reference to the lo-  
7           cation of the payor.”.

8   **SEC. 106. TAX ON INCOME OF CONTROLLED FOREIGN COR-**  
9                   **PORATION DEPOSITED IN FINANCIAL AC-**  
10                   **COUNT LOCATED IN THE UNITED STATES.**

11          Section 952(a) is amended by adding at the end the  
12          following new sentence: “Notwithstanding section  
13          956(c)(2)(A), any property (as defined in section 317(a))  
14          of such controlled foreign corporation that is deposited  
15          and maintained, directly or indirectly, for or on behalf of  
16          such corporation in a financial account located in the  
17          United States, including in a correspondent account of a  
18          financial institution, is a constructive distribution with re-  
19          spect to the stock which such United States shareholder  
20          owns.”.

1 **Subtitle B—Other Measures to**  
2 **Combat Tax Haven and Tax**  
3 **Shelter Abuses**

4 **SEC. 111. COUNTRY-BY-COUNTRY REPORTING.**

5 (a) IN GENERAL.—Section 13 of the Securities Ex-  
6 change Act of 1934 (15 U.S.C. 78m) is amended by add-  
7 ing at the end the following new subsection:

8 “(r) DISCLOSURE OF FINANCIAL PERFORMANCE ON  
9 A COUNTRY-BY-COUNTRY BASIS.—

10 “(1) DEFINITIONS.—In this subsection—

11 “(A) the term ‘issuer group’ shall mean  
12 the issuer, each subsidiary of the issuer, and  
13 each entity under the control of the issuer;

14 “(B) the term ‘country of operation’ shall  
15 mean each country in which a member of the  
16 issuer group is incorporated or organized, or  
17 maintains employees or conducts business ac-  
18 tivities; and

19 “(C) the term ‘world-wide allocation of  
20 group members’ shall mean each member of the  
21 issuer group listed according to their country of  
22 operation.

23 “(2) COUNTRY-BY-COUNTRY REPORTING.—The  
24 Commission shall issue rules that require each issuer  
25 to include in an annual report filed by the issuer

1 with the Commission information indicative of finan-  
2 cial performance on a country-by-country basis dur-  
3 ing the covered period, including—

4 “(A) a list of each country of operation;

5 “(B) the world-wide allocation of group  
6 members;

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

11 “(i) total number of employees phys-  
12 ically working in the country of operation;

13 “(ii) total sales by the member of the  
14 issuer group to third parties;

15 “(iii) total sales by the member of the  
16 issuer group to other members of the  
17 issuer group and total sales to each such  
18 member;

19 “(iv) total purchases by the member  
20 of the issuer group from third parties;

21 “(v) total purchases by the member of  
22 the issuer group from other members of  
23 the issuer group and total purchases from  
24 each such member;

1           “(vi) total financing payments made  
2           by the member of the issuer group to third  
3           parties;

4           “(vii) total financing payments made  
5           by the member of the issuer group to other  
6           members of the issuer group and total fi-  
7           nancing payments made to each such  
8           member;

9           “(viii) pre-tax gross revenues of the  
10          member of the issuer group;

11          “(ix) pre-tax net revenues of the  
12          member of the issuer group; and

13          “(x) such other financial information  
14          as the Commission may determine is indic-  
15          ative of the financial performance of the  
16          issuer;

17          “(D) the tax paid by each member of the  
18          issuer group in each country of operation, with-  
19          out exception, including, and set forth accord-  
20          ing to—

21                 “(i) total Federal, regional, local, and  
22                 other tax assessed against each member of  
23                 the issuer group with respect to each coun-  
24                 try of operation during the covered period;



1           “(ii) after taking into account any tax  
2           deductions, tax credits, tax forgiveness, or  
3           other tax benefits or waivers, total amount  
4           of tax paid from the treasury of the mem-  
5           ber of the issuer group to the government  
6           of each country of operation during the  
7           covered period; and

8           “(iii) such other financial information  
9           as the Commission may determine is nec-  
10          essary or appropriate to inform the public  
11          of the tax obligations of and payments by  
12          each member of the issuer group; and

13          “(E) such other financial information as  
14          the Commission may determine is necessary or  
15          appropriate in the public interest or for the pro-  
16          tection of investors.”.

17          (b) RULEMAKING.—

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

24           (2) CONSULTATION.—In issuing the rules under  
25           this section, the Commission shall consult with the

1 Secretary of the Treasury and the Commissioner of  
2 Internal Revenue and, to the extent practicable and  
3 in furtherance of its obligation to protect investors,  
4 shall issue rules that support Federal efforts to re-  
5 duce offshore tax evasion and abuses.

6 (3) INTERACTIVE DATA FORMAT.—The rules  
7 issued under this section shall require that the infor-  
8 mation provided by issuers in their annual reports  
9 be submitted in an interactive data format as pro-  
10 vided in section 13(q)(2)(D) of the Securities Ex-  
11 change Act of 1934 (15 U.S.C. 78m(q)(2)(D)), and  
12 to the extent practicable, the Commission shall make  
13 available online, to the public, a compilation of such  
14 information.

15 (4) AGGREGATE DATA.—The rules may allow  
16 issuers to provide the financial information required  
17 under section 13(r) of the Securities Exchange Act  
18 of 1934 (15 U.S.C. 78m(r)), as added by this sec-  
19 tion, aggregated at the level of each country of oper-  
20 ation instead of with respect to each member of the  
21 issuer group individually, provided that the Commis-  
22 sion retains the authority, at its discretion, to re-  
23 quire further disaggregation.

24 (5) EFFECTIVE DATE.—Each issuer shall be re-  
25 quired to comply with the requirements of section

1 13(r) of the Securities Exchange Act of 1934 (15  
2 U.S.C. 78m(r)), as added by this section, not later  
3 than the date on which the issuer must file with the  
4 Commission its first annual report that is due not  
5 later than 1 year after the date on which the Com-  
6 mission issues a final rule under this section.

7 **SEC. 112. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**  
8 **HOLDINGS.**

9 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
10 21(d)(3)(B) of the Securities Exchange Act of 1934 (15  
11 U.S.C. 78u(d)(3)(B)) is amended by adding at the end  
12 the following:

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

1           subject to disclosure by such person under this  
2           title.”.

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

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

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

23                   “(D) FOURTH TIER.—Notwithstanding  
24                   subparagraphs (A), (B), and (C), the amount of  
25                   penalty for each such violation shall not exceed

1           \$1,000,000 for any person, if the violation de-  
2           scribed in paragraph (1) 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           directly or indirectly controlled by such person,  
9           and which would have been otherwise subject to  
10          disclosure by such person under this title.”.

11          (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
12 203(i)(2) of the Investment Advisers Act of 1940 (15  
13 U.S.C. 80b-3(i)(2)) is amended by adding at the end the  
14 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 **SEC. 113. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**  
4 **FOR PRIVATE FUNDS AND VENTURE CAPITAL**  
5 **FUNDS.**

6 (a) IN GENERAL.—

7 (1) PROPOSED RULE.—Not later than 90 days  
8 after the date of the enactment of this Act, the Sec-  
9 retary of the Treasury, in consultation with the  
10 Chairman of the Securities and Exchange Commis-  
11 sion and the Chairman of the Commodity Futures  
12 Trading Commission, shall publish a proposed rule  
13 in the Federal Register requiring any private fund  
14 (as defined in paragraph (29) of section 202(a) of  
15 the Investment Advisors Act of 1940 (15 U.S.C.  
16 80b–2(a)) or venture capital fund (within the mean-  
17 ing of subsection (l) of section 203 of such Act (15  
18 U.S.C. 80b–3) to establish anti-money laundering  
19 programs and submit suspicious activity reports  
20 under subsections (g) and (h) of section 5318 of title  
21 31, United States Code.

22 (2) FINAL RULE.—Not later than 180 days  
23 after the date of the enactment of this Act, the Sec-  
24 retary of the Treasury shall publish a final rule in

1 the Federal Register on the matter described in  
2 paragraph (1).

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

7 (1) use risk-based due diligence policies, proce-  
8 dures, and controls that are reasonably designed to  
9 ascertain the identity of any foreign person (includ-  
10 ing the nominal and beneficial owner or beneficiary  
11 of a foreign corporation, partnership, trust, or other  
12 foreign entity) planning to supply or supplying funds  
13 to be invested with the advice or assistance of such  
14 private fund or venture capital fund; and

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

17 **SEC. 114. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**  
18 **FORMATION AGENTS.**

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

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

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

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

3                   “(Z) persons engaged in the business of  
4           forming new corporations, limited liability com-  
5           panies, partnerships, trusts, or other legal enti-  
6           ties; or”.

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

9                   (1) PROPOSED RULE.—Not later than 120 days  
10           after the date of the enactment of this Act, the Sec-  
11           retary of the Treasury, in consultation with the At-  
12           torney General of the United States, the Secretary  
13           of Homeland Security, and the Commissioner of In-  
14           ternal Revenue, shall publish a proposed rule in the  
15           Federal Register requiring persons described in sec-  
16           tion 5312(a)(2)(Z) of title 31, United States Code,  
17           as added by this section, to establish anti-money  
18           laundering programs under subsections (g) and (h)  
19           of section 5318 of that title.

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

24                   (3) EXCLUSIONS.—Any rule promulgated under  
25           this subsection shall exclude from the category of



1 persons engaged in the business of forming new cor-  
2 porations or other entities—

3 (A) any government agency; and

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

8 **SEC. 115. STRENGTHENING JOHN DOE SUMMONS PRO-**  
9 **CEEDINGS.**

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

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

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

19 “(A) the summons relates to the investiga-  
20 tion of a particular person or ascertainable  
21 group or class of persons,

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

1           “(C) the information sought to be obtained  
2           from the examination of the records or testi-  
3           mony (and the identity of the person or persons  
4           with respect to whose liability the summons is  
5           issued) is not readily available from other  
6           sources.

7           “(2) EXCEPTION.—Paragraph (1) shall not  
8           apply to any summons which specifies that it is lim-  
9           ited to information regarding a United States cor-  
10          respondent account (as defined in section  
11          5318A(e)(1)(B) of title 31, United States Code) or  
12          a United States payable-through account (as defined  
13          in section 5318A(e)(1)(C) of such title) of a finan-  
14          cial institution that is held at a non-FATCA institu-  
15          tion (as defined in section 7701(a)(51)).

16          “(3) PRESUMPTION IN CASES INVOLVING NON-  
17          FATCA INSTITUTIONS.—For purposes of this section,  
18          in any case in which the particular person or ascer-  
19          tainable group or class of persons have financial ac-  
20          counts in or transactions related to a non-FATCA  
21          institution (as defined in section 7701(a)(51)), there  
22          shall be a presumption that there is a reasonable  
23          basis for believing that such person or group or class  
24          of persons may fail or may have failed to comply  
25          with provisions of internal revenue law.

1           “(4) PROJECT JOHN DOE SUMMONSES.—

2           “(A) IN GENERAL.—Notwithstanding the  
3 requirements of paragraph (1), the Secretary  
4 may issue a summons described in paragraph  
5 (1) if the summons—

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

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

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

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

18           “(i) any summons issues with respect  
19 to the project will be issued to a member  
20 of an ascertainable group or class of per-  
21 sons, and

22           “(ii) any summons issued with respect  
23 to such project will meet the requirements  
24 of paragraph (1).

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

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

18          (b) JURISDICTION OF COURT.—

19               (1) IN GENERAL.—Paragraph (1) of section  
20               7609(h) is amended by inserting after the first sen-  
21               tence the following new sentence: “Any United  
22               States district court in which a member of the group  
23               or class to which a summons may be issued resides  
24               or is found shall have jurisdiction to hear and deter-

1 mine the approval of a project under subsection  
2 (f)(2)(B).”.

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

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

9 **SEC. 116. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**  
10 **CIAL ACCOUNT REPORTING.**

11 (a) CLARIFYING THE CONNECTION OF FOREIGN FI-  
12 NANCIAL ACCOUNT REPORTING TO TAX ADMINISTRA-  
13 TION.—Paragraph (4) of section 6103(b) is amended by  
14 adding at the end the following new sentence:

15 “For purposes of subparagraph (A)(i), section 5314  
16 of title 31, United States Code, and sections 5321  
17 and 5322 of such title (as such sections pertain to  
18 such section 5314), shall be considered related stat-  
19 utes.”.

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

1 in the account during the reporting period to which the  
2 violation relates”.

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

9 **Subtitle C—Combating Tax Shelter**  
10 **Promoters**

11 **SEC. 121. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**  
12 **TERS.**

13 (a) PENALTY FOR PROMOTING ABUSIVE TAX SHEL-  
14 TERS.—Section 6700 is amended—

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

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

21 (3) by inserting after subsection (a) the fol-  
22 lowing new subsections:

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

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

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

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

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

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

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

6 **SEC. 122. PENALTY FOR AIDING AND ABETTING THE UN-**  
 7 **DERSTATEMENT OF TAX LIABILITY.**

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

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

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

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

18 (b) AMOUNT OF PENALTY.—Subsection (b) of section  
 19 6701 is amended to read as follows:

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

22 “(1) AMOUNT OF PENALTY.—The amount of  
 23 the penalty imposed by subsection (a) shall not ex-  
 24 ceed 150 percent of the gross income derived (or to  
 25 be derived) from such aid, assistance, procurement,



1 or advice provided by the person or persons subject  
2 to such penalty.

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

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

16 (c) PENALTY NOT DEDUCTIBLE.—Section 6701 is  
17 amended by adding at the end the following new sub-  
18 section:

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

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

4 **SEC. 123. PROHIBITED FEE ARRANGEMENT.**

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

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

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

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

15 “(f) PROHIBITED FEE ARRANGEMENT.—

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

22 “(A) tax savings or benefits, or

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

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

4 “(2) 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. 124. 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 2013 on their progress in preventing  
18 violations of sections 6700 and 6701 of the Internal Rev-  
19 enue Code of 1986, by depository institutions, brokers,  
20 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. 125. INFORMATION SHARING FOR ENFORCEMENT**  
12 **PURPOSES.**

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

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

20           “(A) WRITTEN REQUEST.—Upon receipt  
21 by the Secretary of a written request which  
22 meets the requirements of subparagraph (B)  
23 from the head of the United States Securities  
24 and Exchange Commission, an appropriate  
25 Federal banking agency as defined under sec-

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

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

4           “(i) the nature of the investigation,  
5 examination, or proceeding,

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

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

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

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

19           “(C) FINANCIAL INSTITUTION.—For the  
20 purposes of this paragraph, the term ‘financial  
21 institution’ means a depository institution, for-  
22 eign bank, insured institution, industrial loan  
23 company, broker, dealer, investment company,  
24 investment advisor, or other entity subject to  
25 regulation or oversight by the United States Se-

1 securities and Exchange Commission or an appro-  
2 priate Federal banking agency.”.

3 (b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGA-  
4 TIONS.—Section 6103(i) is amended by adding at the end  
5 the following new paragraph:

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

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



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

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

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

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

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

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

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

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

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

3 **SEC. 126. DISCLOSURE OF INFORMATION TO CONGRESS.**

4 (a) DISCLOSURE BY TAX RETURN PREPARER.—

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

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

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

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

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

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

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

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

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

7           “(2) INSPECTION BY CONGRESS.—

8           “(A) IN GENERAL.—Upon receipt of a  
9           written request from a committee or sub-  
10          committee of Congress, copies of documents re-  
11          lated to a determination by the Secretary to  
12          grant, deny, revoke, or restore an organization’s  
13          exemption from taxation under section 501  
14          shall be provided to such committee or sub-  
15          committee, including any application, notice of  
16          status, or supporting information provided by  
17          such organization to the Internal Revenue Serv-  
18          ice; any letter, analysis, or other document pro-  
19          duced by or for the Internal Revenue Service  
20          evaluating, determining, explaining, or relating  
21          to the tax exempt status of such organization  
22          (other than returns, unless such returns are  
23          available to the public under this section or sec-  
24          tion 6103 or 6110); and any communication be-  
25          tween the Internal Revenue Service and any

1 other party relating to the tax exempt status of  
2 such organization.

3 “(B) ADDITIONAL INFORMATION.—Section  
4 6103(f) shall apply with respect to—

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

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

15 as if such papers constituted returns.”.

16 (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to disclosures and to information  
18 and document requests made after the date of the enact-  
19 ment of this Act.

20 **SEC. 127. TAX OPINION STANDARDS FOR TAX PRACTI-**  
21 **TIONERS.**

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

24 “(d) The Secretary of the Treasury shall impose  
25 standards applicable to the rendering of written advice

1 with respect to any listed transaction or any entity, plan,  
2 arrangement, or other transaction which has a potential  
3 for tax avoidance or evasion. Such standards shall ad-  
4 dress, but not be limited to, the following issues:

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

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

12           “(3) Avoidance of conflicts of interest which  
13 would impair auditor independence.

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

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

19           “(6) Appropriateness of the fees charged by the  
20 practitioner for the written advice.

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

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

1       **Subtitle D—Reformation of U.S.**  
 2               **International Tax System**

3       **SEC. 131. ALLOCATION OF EXPENSES AND TAXES ON BASIS**  
 4               **OF REPATRIATION OF FOREIGN INCOME.**

5           (a) IN GENERAL.—Part III of subchapter N of chap-  
 6       ter 1 is amended by inserting after subpart G the following  
 7       new subpart:

8       **“Subpart H—Special Rules for Allocation of Foreign-**  
 9               **Related Deductions and Foreign Tax Credits**

      “Sec. 975. Deductions allocated to deferred foreign income may not offset  
           United States source income.

      “Sec. 976. Amount of foreign taxes computed on overall basis.

      “Sec. 977. Application of subpart.

10       **“SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOR-**  
 11               **EIGN INCOME MAY NOT OFFSET UNITED**  
 12               **STATES SOURCE INCOME.**

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

16               “(1) shall be taken into account for such tax-  
 17       able year only to the extent that such deductions are  
 18       allocable to currently-taxed foreign income, and

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

22       Foreign-related deductions shall be allocated to currently  
 23       taxed foreign income in the same proportion which cur-

1 rently taxed foreign income bears to the sum of currently  
2 taxed foreign income and deferred foreign income.

3 “(b) DEDUCTIONS RELATED TO REPATRIATED DE-  
4 FERRED FOREIGN INCOME.—

5 “(1) IN GENERAL.—If there is repatriated for-  
6 eign income for a taxable year, the portion of the  
7 previously deferred deductions allocated to the repa-  
8 triated foreign income shall be taken into account  
9 for the taxable year as a deduction allocated to in-  
10 come from sources outside the United States. Any  
11 such amount shall not be included in foreign-related  
12 deductions for purposes of applying subsection (a) to  
13 such taxable year.

14 “(2) PORTION OF PREVIOUSLY DEFERRED DE-  
15 Ductions.—For purposes of paragraph (1), the por-  
16 tion of the previously deferred deductions allocated  
17 to repatriated foreign income is—

18 “(A) the amount which bears the same  
19 proportion to such deductions, as

20 “(B) the repatriated income bears to the  
21 previously deferred foreign income.

22 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-  
23 poses of this section—

24 “(1) FOREIGN-RELATED DEDUCTIONS.—The  
25 term ‘foreign-related deductions’ means the total

1 amount of deductions and expenses which would be  
2 allocated or apportioned to gross income from  
3 sources without the United States for the taxable  
4 year if both the currently-taxed foreign income and  
5 deferred foreign income were taken into account.

6 “(2) CURRENTLY-TAXED FOREIGN INCOME.—  
7 The term ‘currently-taxed foreign income’ means the  
8 amount of gross income from sources without the  
9 United States for the taxable year (determined with-  
10 out regard to repatriated foreign income for such  
11 year).

12 “(3) DEFERRED FOREIGN INCOME.—The term  
13 ‘deferred foreign income’ means the excess of—

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

17 “(i) all controlled foreign corporations  
18 were treated as one controlled foreign cor-  
19 poration, and

20 “(ii) all earnings and profits of all  
21 controlled foreign corporations were sub-  
22 part F income (as defined in section 952),  
23 over

24 “(B) the sum of—



1                   “(i) all dividends received during the  
2                   taxable year from controlled foreign cor-  
3                   porations, plus

4                   “(ii) amounts includible in gross in-  
5                   come under section 951(a).

6                   “(4) PREVIOUSLY DEFERRED FOREIGN IN-  
7                   COME.—The term ‘previously deferred foreign in-  
8                   come’ means the aggregate amount of deferred for-  
9                   eign income for all prior taxable years to which this  
10                  part applies, determined as of the beginning of the  
11                  taxable year, reduced by the repatriated foreign in-  
12                  come for all such prior taxable years.

13                  “(5) REPATRIATED FOREIGN INCOME.—The  
14                  term ‘repatriated foreign income’ means the amount  
15                  included in gross income on account of distributions  
16                  out of previously deferred foreign income.

17                  “(6) PREVIOUSLY DEFERRED DEDUCTIONS.—  
18                  The term ‘previously deferred deductions’ means the  
19                  aggregate amount of foreign-related deductions not  
20                  taken into account under subsection (a) for all prior  
21                  taxable years (determined as of the beginning of the  
22                  taxable year), reduced by any amounts taken into  
23                  account under subsection (b) for such prior taxable  
24                  years.

1           “(7) TREATMENT OF CERTAIN FOREIGN  
2 TAXES.—

3           “(A) PAID BY CONTROLLED FOREIGN COR-  
4 PORATION.—Section 78 shall not apply for pur-  
5 poses of determining currently-taxed foreign in-  
6 come and deferred foreign income.

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

15           “(8) COORDINATION WITH SECTION 976.—In  
16 determining currently-taxed foreign income and de-  
17 ferred foreign income, the amount of deemed foreign  
18 tax credits shall be determined with regard to sec-  
19 tion 976.

20 **“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON**  
21 **OVERALL BASIS.**

22           “(a) CURRENT YEAR ALLOWANCE.—For purposes of  
23 this chapter, the amount taken into account as foreign in-  
24 come taxes for any taxable year shall be an amount which

1 bears the same ratio to the total foreign income taxes for  
2 that taxable year as—

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

5           “(2) the sum of the currently-taxed foreign in-  
6 come and deferred foreign income for such year.

7 The portion of the total foreign income taxes for any tax-  
8 able year not taken into account under the preceding sen-  
9 tence for a taxable year shall only be taken into account  
10 as provided in subsection (b) (and shall not be taken into  
11 account for purposes of applying sections 902 and 960).

12           “(b) ALLOWANCE RELATED TO REPATRIATED DE-  
13 FERRED FOREIGN INCOME.—

14           “(1) IN GENERAL.—If there is repatriated for-  
15 eign income for any taxable year, the portion of the  
16 previously deferred foreign income taxes paid or ac-  
17 crued during such taxable year shall be taken into  
18 account for the taxable year as foreign taxes paid or  
19 accrued. Any such taxes so taken into account shall  
20 not be included in foreign income taxes for purposes  
21 of applying subsection (a) to such taxable year.

22           “(2) PORTION OF PREVIOUSLY DEFERRED FOR-  
23 EIGN INCOME TAXES.—For purposes of paragraph  
24 (1), the portion of the previously deferred foreign in-

1       come taxes allocated to repatriated deferred foreign  
2       income is—

3               “(A) the amount which bears the same  
4               proportion to such taxes, as

5               “(B) the repatriated deferred income bears  
6               to the previously deferred foreign income.

7       “(c) DEFINITIONS AND SPECIAL RULE.—For pur-  
8       poses of this section—

9               “(1) PREVIOUSLY DEFERRED FOREIGN INCOME  
10       TAXES.—The term ‘previously deferred foreign in-  
11       come taxes’ means the aggregate amount of total  
12       foreign income taxes not taken into account under  
13       subsection (a) for all prior taxable years (determined  
14       as of the beginning of the taxable year), reduced by  
15       any amounts taken into account under subsection  
16       (b) for such prior taxable years.

17              “(2) TOTAL FOREIGN INCOME TAXES.—The  
18       term ‘total foreign income taxes’ means the sum of  
19       foreign income taxes paid or accrued during the tax-  
20       able year (determined without regard to section  
21       904(c)) plus the increase in foreign income taxes  
22       that would be paid or accrued during the taxable  
23       year under sections 902 and 960 if—

1           “(A) all controlled foreign corporations  
2           were treated as one controlled foreign corpora-  
3           tion, and

4           “(B) all earnings and profits of all con-  
5           trolled foreign corporations were subpart F in-  
6           come (as defined in section 952).

7           “(3) FOREIGN INCOME TAXES.—The term ‘for-  
8           eign income taxes’ means any income, war profits, or  
9           excess profits taxes paid by the taxpayer to any for-  
10          eign country or possession of the United States.

11          “(4) CURRENTLY-TAXED FOREIGN INCOME AND  
12          DEFERRED FOREIGN INCOME.—The terms ‘cur-  
13          rently-taxed foreign income’ and ‘deferred foreign in-  
14          come’ have the meanings given such terms by sec-  
15          tion 975(e).

16   **“SEC. 977. APPLICATION OF SUBPART.**

17          “‘This subpart—

18               “(1) shall be applied before subpart A, and

19               “(2) shall be applied separately with respect to  
20          the categories of income specified in section  
21          904(d)(1).”.

22          (b) CLERICAL AMENDMENT.—The table of subparts  
23          for part III of subpart N of chapter 1 is amended by in-  
24          serting after the item relating to subpart G the following  
25          new item:

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

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

4 **SEC. 132. EXCESS INCOME FROM TRANSFERS OF INTANGI-**  
5 **BLES TO LOW-TAXED AFFILIATES TREATED**  
6 **AS SUBPART F INCOME.**

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

10 “(4) the foreign base company excess intangible  
11 income for the taxable year (determined under sub-  
12 section (f) and reduced as provided in subsection  
13 (b)(5)), and”.

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

17 “(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE  
18 INCOME.—For purposes of subsection (a)(4) and this sub-  
19 section:

20 “(1) FOREIGN BASE COMPANY EXCESS INTAN-  
21 GIBLE INCOME DEFINED.—

22 “(A) IN GENERAL.—The term ‘foreign  
23 base company excess intangible income’ means,

1 with respect to any covered intangible, the ex-  
2 cess of—

3 “(i) the sum of—

4 “(I) gross income from the sale,  
5 lease, license, or other disposition of  
6 property in which such covered intan-  
7 gible is used directly or indirectly, and

8 “(II) gross income from the pro-  
9 vision of services related to such cov-  
10 ered intangible or in connection with  
11 property in which such covered intan-  
12 gible is used directly or indirectly,  
13 over

14 “(ii) 150 percent of the costs properly  
15 allocated and apportioned to the gross in-  
16 come taken into account under clause (i)  
17 other than expenses for interest and taxes  
18 and any expenses which are not directly al-  
19 locable to such gross income.

20 “(B) SAME COUNTRY INCOME NOT TAKEN  
21 INTO ACCOUNT.—If—

22 “(i) the sale, lease, license, or other  
23 disposition of the property referred to in  
24 subparagraph (A)(i)(I) is for use, con-  
25 sumption, or disposition in the country

1 under the laws of which the controlled for-  
2 eign corporation is created or organized, or

3 “(ii) the services referred to in sub-  
4 paragraph (A)(i)(II) are performed in such  
5 country,

6 the gross income from such sale, lease, license,  
7 or other disposition, or provision of services,  
8 shall not be taken into account under subpara-  
9 graph (A)(i).

10 “(2) EXCEPTION BASED ON EFFECTIVE FOR-  
11 EIGN INCOME TAX RATE.—

12 “(A) IN GENERAL.—Foreign base company  
13 excess intangible income shall not include the  
14 applicable percentage of any item of income re-  
15 ceived by a controlled foreign corporation if the  
16 taxpayer establishes to the satisfaction of the  
17 Secretary that such income was subject to an  
18 effective rate of income tax imposed by a for-  
19 eign country in excess of 5 percent.

20 “(B) APPLICABLE PERCENTAGE.—For  
21 purposes of subparagraph (A), the term ‘appli-  
22 cable percentage’ means the ratio (expressed as  
23 a percentage), not greater than 100 percent,  
24 of—



1           “(i) the number of percentage points  
2           by which the effective rate of income tax  
3           referred to in subparagraph (A) exceeds 5  
4           percentage points, over

5           “(ii) 10 percentage points.

6           “(C) TREATMENT OF LOSSES IN DETER-  
7           MINING EFFECTIVE RATE OF FOREIGN INCOME  
8           TAX.—For purposes of determining the effective  
9           rate of income tax imposed by any foreign  
10          country—

11          “(i) such effective rate shall be deter-  
12          mined without regard to any losses carried  
13          to the relevant taxable year, and

14          “(ii) to the extent the income with re-  
15          spect to such intangible reduces losses in  
16          the relevant taxable year, such effective  
17          rate shall be treated as being the effective  
18          rate which would have been imposed on  
19          such income without regard to such losses.

20          “(3) COVERED INTANGIBLE.—The term ‘cov-  
21          ered intangible’ means, with respect to any con-  
22          trolled foreign corporation, any intangible property  
23          (as defined in section 936(h)(3)(B))—

24          “(A) which is sold, leased, licensed, or oth-  
25          erwise transferred (directly or indirectly) to

1 such controlled foreign corporation from a re-  
2 lated person, or

3 “(B) with respect to which such controlled  
4 foreign corporation and one or more related  
5 persons has (directly or indirectly) entered into  
6 any shared risk or development agreement (in-  
7 cluding any cost sharing agreement).

8 “(4) RELATED PERSON.—The term ‘related  
9 person’ has the meaning given such term in sub-  
10 section (d)(3).”

11 (c) SEPARATE BASKET FOR FOREIGN TAX CRED-  
12 IT.—Subsection (d) of section 904 is amended by redesignig-  
13 nating paragraph (7) as paragraph (8) and by inserting  
14 after paragraph (6) the following new paragraph:

15 “(6) SEPARATE APPLICATION TO FOREIGN  
16 BASE COMPANY EXCESS INTANGIBLE INCOME.—

17 “(A) IN GENERAL.—Subsections (a), (b),  
18 and (c) of this section and sections 902, 907,  
19 and 960 shall be applied separately with respect  
20 to each item of income which is taken into ac-  
21 count under section 954(a)(4) as foreign base  
22 company excess intangible income.

23 “(B) REGULATIONS.—The Secretary may  
24 issue such regulations or other guidance as is  
25 necessary or appropriate to carry out the pur-

1           poses of this subsection, including regulations  
2           or other guidance which provides that related  
3           items of income may be aggregated for pur-  
4           poses of this paragraph.”.

5           (d) CONFORMING AMENDMENTS.—

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

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

13                 “(7) FOREIGN BASE COMPANY EXCESS INTAN-  
14                 GIBLE INCOME NOT TREATED AS ANOTHER KIND OF  
15                 BASE COMPANY INCOME.—Income of a corporation  
16                 which is foreign base company excess intangible in-  
17                 come shall not be considered foreign base company  
18                 income of such corporation under paragraph (2),  
19                 (3), or (5) of subsection (a).”.

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

1 **SEC. 133. LIMITATIONS ON INCOME SHIFTING THROUGH IN-**  
2 **TANGIBLE PROPERTY TRANSFERS.**

3 (a) CLARIFICATION OF DEFINITION OF INTANGIBLE  
4 ASSET.—Clause (vi) of section 936(h)(3)(B) is amended  
5 by inserting “(including any section 197 intangible de-  
6 scribed in subparagraph (A), (B), or (C)(i) of subsection  
7 (d)(1) of such section)” after “item”.

8 (b) CLARIFICATION OF ALLOWABLE VALUATION  
9 METHODS.—

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

13 “(D) REGULATORY AUTHORITY.—For pur-  
14 poses of the last sentence of subparagraph (A),  
15 the Secretary may require—

16 “(i) the valuation of transfers of in-  
17 tangible property on an aggregate basis, or

18 “(ii) the valuation of such a transfer  
19 on the basis of the realistic alternatives to  
20 such a transfer,

21 in any case in which the Secretary determines  
22 that such basis is the most reliable means of  
23 valuation of such transfers.”.

24 (2) ALLOCATION AMONG TAXPAYERS.—Section  
25 482 is amended by adding at the end the following:  
26 “For purposes of the preceding sentence, the Sec-

1       retary may require the valuation of transfers of in-  
2       tangible property on an aggregate basis or the valu-  
3       ation of such a transfer on the basis of the realistic  
4       alternatives to such a transfer, in any case in which  
5       the Secretary determines that such basis is the most  
6       reliable means of valuation of such transfers.”.

7       (c) EFFECTIVE DATE.—

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

12            (2) NO INFERENCE.—Nothing in the amend-  
13      ment made by subsection (a) shall be construed to  
14      create any inference with respect to the application  
15      of section 936(h)(3) of the Internal Revenue Code of  
16      1986, or the authority of the Secretary of the Treas-  
17      ury to provide regulations for such application, on or  
18      before the date of the enactment of such amend-  
19      ment.

20   **SEC. 134. LIMITATION ON EARNINGS STRIPPING BY EXPA-**  
21                           **TRIATED ENTITIES.**

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

24             (1) by redesignating paragraph (9) as para-  
25      graph (10), and

1           (2) by inserting after paragraph (8) the fol-  
2           lowing new paragraph:

3           “(9) SPECIAL RULES FOR EXPATRIATED ENTI-  
4           TIES.—

5           “(A) IN GENERAL.—In the case of a cor-  
6           poration to which this subsection applies which  
7           is an expatriated entity, this subsection shall  
8           apply to such corporation with the following  
9           modifications:

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

12           “(ii) Paragraph (1)(B) shall be ap-  
13           plied—

14           “(I) without regard to the par-  
15           enthetical, and

16           “(II) by substituting ‘in the 1st  
17           succeeding taxable year and in the  
18           2nd through 10th succeeding taxable  
19           years to the extent not previously  
20           taken into account under this sub-  
21           paragraph’ for ‘in the succeeding tax-  
22           able year’.

23           “(iii) Paragraph (2)(B) shall be ap-  
24           plied—

1                   “(I) without regard to clauses (ii)  
2                   and (iii), and

3                   “(II) by substituting ‘25 percent  
4                   of the adjusted taxable income of the  
5                   corporation for such taxable year’ for  
6                   the matter of clause (i)(II) thereof.

7                   “(B) EXPATRIATED ENTITY.—For pur-  
8                   poses of this paragraph—

9                   “(i) IN GENERAL.—With respect to a  
10                  corporation and a taxable year, the term  
11                  ‘expatriated entity’ has the meaning given  
12                  such term by section 7874(a)(2), deter-  
13                  mined as if such section and the regula-  
14                  tions under such section as in effect on the  
15                  first day of such taxable year applied to all  
16                  taxable years of the corporation beginning  
17                  after July 10, 1989.

18                  “(ii) EXCEPTION FOR SURROGATES  
19                  TREATED AS A DOMESTIC CORPORATION.—  
20                  The term ‘expatriated entity’ does not in-  
21                  clude a surrogate foreign corporation  
22                  which is treated as a domestic corporation  
23                  by reason of section 7874(b).”.

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

4 **TITLE II—ENDING EXCESSIVE**  
 5 **CORPORATE TAX DEDUC-**  
 6 **TIONS FOR STOCK OPTIONS**

7 **SEC. 201. CONSISTENT TREATMENT OF STOCK OPTIONS BY**  
 8 **CORPORATIONS.**

9 (a) CONSISTENT TREATMENT FOR WAGE DEDUC-  
 10 TION.—

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

12 (A) by striking “In the case of” and in-  
 13 sserting:

14 “(1) IN GENERAL.—In the case of”, and

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

17 “(2) STOCK OPTIONS.—In the case of property  
 18 transferred to a person in connection with a stock  
 19 option, any deduction related to such stock option  
 20 shall be allowed only under section 162(q) and para-  
 21 graph (1) shall not apply.”.

22 (2) TREATMENT OF COMPENSATION PAID WITH  
 23 STOCK OPTIONS.—Section 162 is amended by redес-  
 24 ignating subsection (q) as subsection (r) and by in-



1       serting after subsection (p) the following new sub-  
2       section:

3       “(q) TREATMENT OF COMPENSATION PAID WITH  
4 STOCK OPTIONS.—

5           “(1) IN GENERAL.—In the case of compensa-  
6       tion for personal services that is paid with stock op-  
7       tions, the deduction under subsection (a)(1) shall  
8       not exceed the amount the taxpayer has treated as  
9       compensation cost with respect to such stock options  
10      for the purpose of ascertaining income, profit, or  
11      loss in a report or statement to shareholders, part-  
12      ners, or other proprietors (or to beneficiaries), and  
13      shall be taken into account in the same period that  
14      such compensation cost is recognized for such pur-  
15      pose.

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

20           “(A) a parent or subsidiary corporation  
21           (within the meaning of section 424) of the tax-  
22           payer, or

23           “(B) another corporation.”.

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

4 “(iv) SPECIAL RULE FOR STOCK OP-  
5 TIONS.—The amount which may be treated  
6 as wages for any taxable year in connec-  
7 tion with the issuance of a stock option  
8 shall not exceed the amount allowed for  
9 such taxable year as a compensation de-  
10 duction under section 162(q) with respect  
11 to such stock option.”.

12 (c) APPLICATION OF AMENDMENTS.—The amend-  
13 ments made by this section shall apply to stock options  
14 exercised after the date of the enactment of this Act, ex-  
15 cept that—

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

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

1 the first taxable period of the taxpayer that ends  
2 after such date of enactment,

3 (3) for public entities reporting as small busi-  
4 ness issuers and for non-public entities required to  
5 file public reports of financial condition, paragraphs  
6 (1) and (2) shall be applied by substituting “Decem-  
7 ber 15, 2005” for “June 15, 2005”, and

8 (4) no deduction shall be allowed under section  
9 83(h) or section 162(q) of such Code with respect to  
10 any stock option the vesting date of which is  
11 changed to accelerate the time at which the option  
12 may be exercised in order to avoid the applicability  
13 of such amendments.

14 **SEC. 202. APPLICATION OF EXECUTIVE PAY DEDUCTION**  
15 **LIMIT.**

16 (a) IN GENERAL.—Subparagraph (D) of section  
17 162(m)(4) is amended to read as follows:

18 “(D) STOCK OPTION COMPENSATION.—  
19 The term ‘applicable employee remuneration’  
20 shall include any compensation deducted under  
21 subsection (q), and such compensation shall not  
22 qualify as performance-based compensation  
23 under subparagraph (C).”.

1       (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to stock options exercised or grant-  
3 ed after the date of the enactment of this Act.

○