

110TH CONGRESS  
1ST SESSION

# S. 681

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2007

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

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## A BILL

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

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

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

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

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

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—DETECTING THE USE OF TAX HAVENS FOR TAX EVASION

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

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

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

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

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

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

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

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

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

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

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

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

#### TITLE III—COMBATING TAX SHELTER PROMOTERS

Sec. 301. Penalty for promoting abusive tax shelters.

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

Sec. 303. Prohibition on tax shelter patents.

Sec. 304. Prohibited fee arrangement.

Sec. 305. Preventing tax shelter activities by financial institutions.

Sec. 306. Information sharing for enforcement purposes.

Sec. 307. Disclosure of information to Congress.

Sec. 308. Tax opinion standards for tax practitioners.

Sec. 309. Denial of deduction for certain fines, penalties, and other amounts.

#### TITLE IV—REQUIRING ECONOMIC SUBSTANCE

Sec. 401. Clarification of economic substance doctrine.

Sec. 402. Penalty for understatements attributable to transactions lacking eco-  
 nomic substance, etc.

Sec. 403. Denial of deduction for interest on underpayments attributable to  
 noneconomic substance transactions.

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

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

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

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

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

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

14 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**  
 15 **TRANSACTIONS INVOLVING OFFSHORE SE-**  
 16 **CRECY JURISDICTIONS.**

17 “(a) CONTROL.—For purposes of any United States  
 18 civil judicial or administrative proceeding to determine or  
 19 collect tax, there shall be a rebuttable presumption that  
 20 a United States person (other than an entity with shares  
 21 regularly traded on an established securities market) who  
 22 directly or indirectly formed, transferred assets to, was a  
 23 beneficiary of, or received money or property or the use  
 24 thereof from an entity, including a trust, corporation, lim-

1 ited liability company, partnership, or foundation (other  
2 than an entity with shares regularly traded on an estab-  
3 lished securities market), formed, domiciled, or operating  
4 in an offshore secrecy jurisdiction, exercised control over  
5 such entity. The presumption of control created by this  
6 subsection shall not be applied to prevent the Secretary  
7 from determining or arguing the absence of control.

8       “(b) TRANSFERS OF INCOME.—For purposes of any  
9 United States civil judicial or administrative proceeding  
10 to determine or collect tax, there shall be a rebuttable pre-  
11 sumption that any amount or thing of value received by  
12 a United States person (other than an entity with shares  
13 regularly traded on an established securities market) di-  
14 rectly or indirectly from an account or entity in an off-  
15 shore secrecy jurisdiction, constitutes income of such per-  
16 son taxable in the year of receipt, and any amount or thing  
17 of value paid or transferred by or on behalf of a United  
18 States person (other than an entity with shares regularly  
19 traded on an established securities market) directly or in-  
20 directly to an account or entity in any such jurisdiction  
21 represents previously unreported income of such person  
22 taxable in the year of the transfer.

23       “(c) REBUTTING THE PRESUMPTIONS.—The pre-  
24 sumptions established in this section may be rebutted only  
25 by clear and convincing evidence, including detailed docu-

1 mentary, testimonial, and transactional evidence, estab-  
 2 lishing that—

3 “(1) in subsection (a), such taxpayer exercised  
 4 no control, directly or indirectly, over such entity at  
 5 the time in question, and

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

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

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

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

24 “(50) OFFSHORE SECRECY JURISDICTION.—

1           “(A) IN GENERAL.—The term ‘offshore se-  
2           crecy jurisdiction’ means any foreign jurisdic-  
3           tion which is listed by the Secretary as an off-  
4           shore secrecy jurisdiction for purposes of this  
5           title.

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

17          “(C) SECRECY OR CONFIDENTIALITY  
18          RULES AND PRACTICES.—For purposes of sub-  
19          paragraph (B), corporate, business, bank, or  
20          tax secrecy or confidentiality rules and practices  
21          include both formal laws and regulations and  
22          informal government or business practices hav-  
23          ing the effect of inhibiting access of law en-  
24          forcement and tax administration authorities to

1           beneficial ownership and other financial infor-  
2           mation.

3           “(D) INEFFECTIVE INFORMATION EX-  
4           CHANGE PRACTICES.—For purposes of subpara-  
5           graph (B), a jurisdiction shall be deemed to  
6           have ineffective information exchange practices  
7           unless the Secretary determines, on an annual  
8           basis, that—

9                   “(i) such jurisdiction has in effect a  
10                   treaty or other information exchange  
11                   agreement with the United States that  
12                   provides for the prompt, obligatory, and  
13                   automatic exchange of such information as  
14                   is foreseeably relevant for carrying out the  
15                   provisions of the treaty or agreement or  
16                   the administration or enforcement of this  
17                   title,

18                   “(ii) during the 12-month period pre-  
19                   ceding the annual determination, the ex-  
20                   change of information between the United  
21                   States and such jurisdiction was in prac-  
22                   tice adequate to prevent evasion or avoid-  
23                   ance of United States income tax by  
24                   United States persons and to enable the

1 United States effectively to enforce this  
2 title, and

3 “(iii) during the 12-month period pre-  
4 ceding the annual determination, such ju-  
5 risdiction was not identified by an inter-  
6 governmental group or organization of  
7 which the United States is a member as  
8 uncooperative with international tax en-  
9 forcement or information exchange and the  
10 United States concurs in such identifica-  
11 tion.

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

22 “(i) Anguilla.

23 “(ii) Antigua and Barbuda.

24 “(iii) Aruba.

25 “(iv) Bahamas.



- 1 “(v) Barbados.
- 2 “(vi) Belize.
- 3 “(vii) Bermuda.
- 4 “(viii) British Virgin Islands.
- 5 “(ix) Cayman Islands.
- 6 “(x) Cook Islands.
- 7 “(xi) Costa Rica.
- 8 “(xii) Cyprus.
- 9 “(xiii) Dominica.
- 10 “(xiv) Gibraltar.
- 11 “(xv) Grenada.
- 12 “(xvi) Guernsey/Sark/Alderney.
- 13 “(xvii) Hong Kong.
- 14 “(xviii) Isle of Man.
- 15 “(xix) Jersey.
- 16 “(xx) Latvia.
- 17 “(xxi) Liechtenstein.
- 18 “(xxii) Luxembourg.
- 19 “(xxiii) Malta.
- 20 “(xxiv) Nauru.
- 21 “(xxv) Netherlands Antilles.
- 22 “(xxvi) Panama.
- 23 “(xxvii) Samoa.
- 24 “(xxviii) St. Kitts and Nevis.
- 25 “(xxix) St. Lucia.

1                   “(xxx) St. Vincent and the Grena-  
2                   dines.

3                   “(xxxi) Singapore.

4                   “(xxxii) Switzerland.

5                   “(xxxiii) Turks and Caicos.

6                   “(xxxiv) Vanuatu.

7                   “(F) MODIFICATIONS TO LIST.—The Sec-  
8                   retary—

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

12                  “(ii) may remove from such list only  
13                  those jurisdictions which meet none of the  
14                  requirements of paragraph (B).”.

15                  (c) PRESUMPTIONS FOR SECURITIES LAW PUR-  
16                  POSES.—Section 21 of the Securities Exchange Act of  
17                  1934 (15 U.S.C. 78u) is amended by adding at the end  
18                  the following the following new subsection:

19                  “(j) PRESUMPTIONS PERTAINING TO CONTROL AND  
20                  BENEFICIAL OWNERSHIP.—

21                  “(1) CONTROL.—For purposes of any civil judi-  
22                  cial or administrative proceeding under this title,  
23                  there shall be a rebuttable presumption that a  
24                  United States person (other than an entity with  
25                  shares regularly traded on an established securities

1 market) who directly or indirectly formed, trans-  
2 ferred assets to, was a beneficiary of, or received  
3 money or property or the use thereof from an entity,  
4 including a trust, corporation, limited liability com-  
5 pany, partnership, or foundation (other than an en-  
6 tity with shares regularly traded on an established  
7 securities market), formed, domiciled, or operating  
8 in an offshore secrecy jurisdiction (as defined in sec-  
9 tion 7701(a)(50) of the Internal Revenue Code of  
10 1986), exercised control over such entity. The pre-  
11 sumption of control created by this paragraph shall  
12 not be applied to prevent the Commission from de-  
13 termining or arguing the absence of control.

14 “(2) BENEFICIAL OWNERSHIP.—For purposes  
15 of any civil judicial or administrative proceeding  
16 under this title, there shall be a rebuttable presump-  
17 tion that securities that are nominally owned by an  
18 entity, including a trust, corporation, limited liability  
19 company, partnership, or foundation (other than an  
20 entity with shares regularly traded on an established  
21 securities market), formed, domiciled, or operating  
22 in an offshore secrecy jurisdiction (as so defined),  
23 are beneficially owned by any United States person  
24 (other than an entity with shares regularly traded on  
25 an established securities market) who directly or in-

1 directly exercised control over such entity. The pre-  
2 sumption of beneficial ownership created by this  
3 paragraph shall not be applied to prevent the Com-  
4 mission from determining or arguing the absence of  
5 beneficial ownership.”.

6 (d) PRESUMPTION FOR REPORTING PURPOSES RE-  
7 LATING TO FOREIGN FINANCIAL ACCOUNTS.—Section  
8 5314 of title 31, United States Code, is amended by add-  
9 ing at the end the following:

10 “(d) REBUTTABLE PRESUMPTION.—For purposes of  
11 this section, there shall be a rebuttable presumption that  
12 any account with a financial institution formed, domiciled,  
13 or operating in an offshore secrecy jurisdiction (as defined  
14 in section 7701(a)(50) of the Internal Revenue Code of  
15 1986) contains funds in an amount that is at least suffi-  
16 cient to require a report prescribed by regulations under  
17 this section.”.

18 (e) REGULATORY AUTHORITY AND EFFECTIVE  
19 DATE.—

20 (1) REGULATORY AUTHORITY.—Not later than  
21 180 days after the date of the enactment of this Act,  
22 the Secretary of the Treasury and the Chairman of  
23 the Securities and Exchange Commission shall each  
24 adopt regulations or other guidance necessary to im-  
25 plement the amendments made by this section. The

1 Secretary and the Chairman may by regulation or  
2 guidance provide that the presumption of control  
3 shall not extend to particular classes of transactions,  
4 such as corporate reorganizations, if either deter-  
5 mines that applying such amendments to such trans-  
6 actions is not necessary to carry out the purposes of  
7 such amendments.

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

11 **SEC. 102. AUTHORIZING SPECIAL MEASURES AGAINST FOR-**  
12 **EIGN JURISDICTIONS, FINANCIAL INSTITU-**  
13 **TIONS, AND OTHERS THAT IMPEDE UNITED**  
14 **STATES TAX ENFORCEMENT.**

15 Section 5318A of title 31, United States Code, is  
16 amended—

17 (1) by striking the section heading and insert-  
18 ing the following:

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

24 (2) in subsection (a), by striking the subsection  
25 heading and inserting the following:

1       “(a) SPECIAL MEASURES TO COUNTER MONEY  
2 LAUNDERING AND EFFORTS TO IMPEDE UNITED STATES  
3 TAX ENFORCEMENT.—”;

4           (3) in subsection (c), by striking the subsection  
5 heading and inserting the following:

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

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

14           (5) in subsection (a)(4)—

15               (A) in subparagraph (A)—

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

18                   and

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

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

22               (C) by inserting after subparagraph (A)  
23 the following:

24                   “(B) in matters involving United States  
25 tax enforcement, shall consult with the Commis-

1           sioner of the Internal Revenue Service, the Sec-  
2           retary of State, the Attorney General of the  
3           United States, and in the sole discretion of the  
4           Secretary, such other agencies and interested  
5           parties as the Secretary may find to be appro-  
6           priate; and”;

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

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

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

1 and the Chairman of the Board of Governors of the  
2 Federal Reserve System, may prohibit, or impose  
3 conditions upon—

4 “(A) the opening or maintaining in the  
5 United States of a correspondent account or  
6 payable-through account; or

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

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

25 (9) in subsection (c)(2)(A)—



1 (A) in clause (ii), by striking “bank secrecy  
2 or special regulatory advantages” and inserting  
3 “bank, tax, corporate, trust, or financial secrecy  
4 or regulatory advantages”;

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

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

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

15 (10) in subsection (c)(2)(B)—

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

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

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





1 such entity's name (hereafter in this section referred  
2 to as 'United States beneficial owner'),  
3 then the withholding agent shall make a return according  
4 to the forms or regulations prescribed by the Secretary.

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

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

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

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

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

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

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

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

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

22 “(1) opening a bank, brokerage, or other finan-  
23 cial account, or

1           “(2) forming or acquiring an entity, including a  
2           trust, corporation, limited liability company, partner-  
3           ship, or foundation (other than an entity with shares  
4           regularly traded on an established securities mar-  
5           ket),  
6           in an offshore secrecy jurisdiction at the direction of, on  
7           behalf of, or for the benefit of a United States person shall  
8           make a return according to the forms or regulations pre-  
9           scribed by the Secretary.

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

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

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

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

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

3           “(c) STATEMENTS TO BE FURNISHED TO UNITED  
4 STATES PERSONS WITH RESPECT TO WHOM INFORMA-  
5 TION IS REQUIRED TO BE REPORTED.—A financial insti-  
6 tution required to make a return under subsection (a)  
7 shall furnish to each United States person whose name  
8 is required to be set forth in such return a statement  
9 showing—

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

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

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

21           “(d) EXEMPTION.—The Secretary may by regula-  
22 tions exempt any class of United States persons or any  
23 class of accounts or entities from the requirements of this  
24 section if the Secretary determines that applying this sec-

1 tion to such persons, accounts, or entities is not necessary  
 2 to carry out the purposes of this section.

3 “(e) CROSS REFERENCE.—

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

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

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

“Sec. 6045B. Returns by financial institutions regarding establishment of accounts and creation of entities in offshore secrecy jurisdictions.”.

7 (c) ADDITIONAL PENALTIES.—

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

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

20 (d) REGULATORY AUTHORITY AND EFFECTIVE  
 21 DATE.—



1           (1) REGULATORY AUTHORITY.—Not later than  
2           180 days after the date of the enactment of this Act,  
3           the Secretary of the Treasury shall adopt regula-  
4           tions, forms, or other guidance necessary to imple-  
5           ment this section.

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

17 **SEC. 105. PREVENTING MISUSE OF FOREIGN TRUSTS FOR**  
18 **TAX EVASION.**

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

23          “(f) GRANTOR TREATED AS HOLDING ANY POWER  
24 OR INTEREST OF TRUST PROTECTOR OR ENFORCER.—  
25 For purposes of this subpart, a grantor shall be treated

1 as holding any power or interest held by any trust pro-  
2 tector or trust enforcer or similar person appointed to ad-  
3 vise, influence, oversee, or veto the actions of the trustee.”.

4 (b) TREATMENT OF UNITED STATES RECIPIENTS OF  
5 FOREIGN TRUST ASSETS AS TRUST BENEFICIARIES.—

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

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

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

23 (d) TREATMENT OF TRUSTS WITH FUTURE OR CON-  
24 TINGENT UNITED STATES BENEFICIARIES.—Section  
25 679(a)(1) is amended—

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

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

5 **SEC. 106. LIMITATION ON LEGAL OPINION PROTECTION**  
6 **FROM PENALTIES WITH RESPECT TO TRANS-**  
7 **ACTIONS INVOLVING OFFSHORE SECRECY**  
8 **JURISDICTIONS.**

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

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

19 (b) REGULATORY AUTHORITY.—The Secretary of the  
20 Treasury may by regulation or guidance provide that sub-  
21 section (e) of section 6664 of the Internal Revenue Code  
22 of 1986, as added by subsection (a), does not apply to  
23 legal opinions that express a confidence level that substan-  
24 tially exceeds the “more likely than not” confidence level;  
25 or that such subsection does not apply to classes of trans-

1 actions, such as corporate reorganizations, where the Sec-  
2 retary determines that applying such subsection to such  
3 transactions is not necessary to carry out the purposes of  
4 such subsection.

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

8 **SEC. 201. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**  
9 **HOLDINGS.**

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

14 “(iv) **FOURTH TIER.**—Notwithstanding  
15 clauses (i), (ii), and (iii), the amount of the  
16 penalty for each such violation shall not exceed  
17 \$1,000,000 for any person if the violation de-  
18 scribed in subparagraph (A) involved a knowing  
19 failure to disclose any holding or transaction in-  
20 volving equity or debt instruments of an issuer  
21 and known by such person to involve a foreign  
22 entity, including any trust, corporation, limited  
23 liability company, partnership, or foundation  
24 that is directly or indirectly controlled by such  
25 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. 202. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**  
4                   **FOR HEDGE FUNDS AND PRIVATE EQUITY**  
5                   **FUNDS.**

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

16           (b) **CONTENTS.**—The final rule published under this  
17 section—

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

22                           (A) use due diligence to identify and evalu-  
23 ate any foreign person (including the nominal  
24 and beneficial owner or beneficiary of a foreign  
25 corporation, partnership, trust, or other foreign





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17              “(4) PROJECT JOHN DOE SUMMONSES.—

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

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

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

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

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

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

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

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

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

12          (b) JURISDICTION OF COURT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9           “(f) PROHIBITED FEE ARRANGEMENT.—

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

16                   “(A) tax savings or benefits, or

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

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

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

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

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

7 (a) EXAMINATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

17                           “(A) WRITTEN REQUEST.—Upon receipt  
18                           by the Secretary of a written request which  
19                           meets the requirements of subparagraph (B)  
20                           from the head of the United States Securities  
21                           and Exchange Commission, an appropriate  
22                           Federal banking agency as defined under sec-  
23                           tion 1813(q) of title 12, United States Code, or  
24                           the Public Company Accounting Oversight  
25                           Board, a return or return information shall be

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

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



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

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

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

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

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

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

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

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

9 “(A) WRITTEN REQUEST.—Upon receipt  
10 by the Secretary of a written request which  
11 meets the requirements of subparagraph (B)  
12 from the head of the United States Securities  
13 and Exchange Commission or the Public Com-  
14 pany Accounting Oversight Board, a return or  
15 return information shall be disclosed to such re-  
16 questor’s officers and employees who are per-  
17 sonally and directly engaged in an investigation,  
18 examination, or proceeding by such 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. 307. DISCLOSURE OF INFORMATION TO CONGRESS.**

4 (a) DISCLOSURE BY TAX RETURN PREPARER.—

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

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

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

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

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

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

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

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

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

9           “(2) INSPECTION BY CONGRESS.—

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

1           tion 6103 or 6110); and any communication be-  
2           tween the Internal Revenue Service and any  
3           other party relating to the tax exempt status of  
4           such organization.

5           “(B) ADDITIONAL INFORMATION.—Section  
6           6103(f) shall apply with respect to—

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

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

17           as if such papers constituted returns.”.

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

22 **SEC. 308. TAX OPINION STANDARDS FOR TAX PRACTI-**  
23 **TIONERS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

23                           “(1) GENERAL RULES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3           “(A) ECONOMIC SUBSTANCE DOCTRINE.—

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

10          “(B) TAX-INDIFFERENT PARTY.—The

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

18          “(C) EXCEPTION FOR PERSONAL TRANS-

19 ACTIONS OF INDIVIDUALS.—In the case of an  
20 individual, this subsection shall apply only to  
21 transactions entered into in connection with a  
22 trade or business or an activity engaged in for  
23 the production of income.

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

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

7                           “(I) depreciation,

8                           “(II) any tax credit, or

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

15          “(f) CROSS REFERENCES.—

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

          “(2) For reporting of penalty imposed under this section  
 to the Securities and Exchange Commission, see section  
 6707A(e).”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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