

110TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

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

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 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 **SEC. 103. ALLOWING MORE TIME FOR INVESTIGATIONS IN-**
2 **VOLVING OFFSHORE SECRECY JURISDIC-**
3 **TIONS.**

4 (a) IN GENERAL.—Section 6501(e) is amended by
5 adding at the end the following new paragraph:

6 “(11) RETURNS INVOLVING OFFSHORE SE-
7 CRECY JURISDICTIONS.—In the case of a return for
8 a year in which the taxpayer directly or indirectly
9 formed, owned, transferred assets to, was a bene-
10 ficiary of, or received money or property or the use
11 thereof from a financial account or an entity, includ-
12 ing a trust, corporation, limited liability company,
13 partnership, or foundation (other than an entity
14 with shares regularly traded on an established secu-
15 rities market) formed, located, domiciled or oper-
16 ating in an offshore secrecy jurisdiction, the tax may
17 be assessed, or a proceeding in court for the collec-
18 tion of such tax may be begun without assessment,
19 at any time within 6 years after the return was
20 filed.”.

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

23 (1) returns filed after the date of the enactment
24 of this Act, and

25 (2) returns filed on or before such date if the
26 period specified in section 6501 of the Internal Rev-

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 “(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 re-
quired 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 ac-
counts and creation of entities in offshore secrecy jurisdic-
tions.”.

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 “(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 FECTED.—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.