

109TH CONGRESS
1ST SESSION

S. _____

To restrict the use of abusive tax shelters and offshore tax havens 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 fol-
lowing bill; which was read twice and referred to the Committee on

A BILL

To restrict the use of abusive tax shelters and offshore
tax havens 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 “Tax Shelter and Tax Haven Reform Act of 2005”.

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 for
4 this Act is as follows:
Sec. 1. Short title; etc.

TITLE I—STRENGTHENING TAX SHELTER PENALTIES

Sec. 101. Penalty for promoting abusive tax shelters.
Sec. 102. Penalty for aiding and abetting the understatement of tax liability.

TITLE II—PREVENTING ABUSIVE TAX SHELTERS

Sec. 201. Prohibited fee arrangement.
Sec. 202. Preventing tax shelter activities by financial institutions.
Sec. 203. Information sharing for enforcement purposes.
Sec. 204. Disclosure of information to Congress.
Sec. 205. Tax opinion standards for tax practitioners.
Sec. 206. Whistleblower reforms.
Sec. 207. Denial of deduction for certain fines, penalties, and other amounts.
Sec. 208. Sense of the Senate on tax enforcement priorities.

TITLE III—REQUIRING ECONOMIC SUBSTANCE

Sec. 301. Clarification of economic substance doctrine.
Sec. 302. Penalty for understatements attributable to transactions lacking economic substance, etc.
Sec. 303. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions.

TITLE IV—DETERRING UNCOOPERATIVE TAX HAVENS

Sec. 401. Disclosing payments to persons in uncooperative tax havens.
Sec. 402. Deterring uncooperative tax havens by restricting allowable tax benefits.
Sec. 403. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements.
Sec. 404. Treasury regulations on foreign tax credit.

5 **TITLE I—STRENGTHENING TAX** 6 **SHELTER PENALTIES**

7 **SEC. 101. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-** 8 **TERS.**

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

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

3 (2) by striking “a penalty” and all that follows
4 through the period in the first sentence of subsection
5 (a) and inserting “a penalty determined under sub-
6 section (b)”, and

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

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

11 “(1) AMOUNT OF PENALTY.—The amount of
12 the penalty imposed by subsection (a) shall not ex-
13 ceed the greater of—

14 “(A) 150 percent of the gross income de-
15 rived (or to be derived) from such activity by
16 the person or persons subject to such penalty,
17 and

18 “(B) if readily subject to calculation, the
19 total amount of underpayment by the taxpayer
20 (including penalties, interest, and taxes) in con-
21 nection with such activity.

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

1 which income was derived by the person or persons
2 subject to such penalty, and each person who par-
3 ticipated in such an activity.

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

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

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

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

21 **SEC. 102. PENALTY FOR AIDING AND ABETTING THE UN-**
22 **DERSTATEMENT OF TAX LIABILITY.**

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

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

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

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

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

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

15 “(1) AMOUNT OF PENALTY.—The amount of
16 the penalty imposed by subsection (a) shall not ex-
17 ceed the greater of—

18 “(A) 150 percent of the gross income de-
19 rived (or to be derived) from such aid, assist-
20 ance, procurement, or advice provided by the
21 person or persons subject to such penalty, and

22 “(i) if readily subject to calculation,
23 the total amount of underpayment by the
24 taxpayer (including penalties, interest, and

1 taxes) in connection with the understate-
2 ment of the liability for tax.

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

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

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

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

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

4 **TITLE II—PREVENTING ABUSIVE** 5 **TAX SHELTERS**

6 **SEC. 201. PROHIBITED FEE ARRANGEMENT.**

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

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

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

15 (3) by inserting after subsection (e) the fol-
16 lowing new subsection:

17 “(f) PROHIBITED FEE ARRANGEMENT.—

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

24 “(A) tax savings or benefits, or

“(B) losses which can be used to offset
other taxable income,
shall pay a penalty with respect to each such fee ac-
tivity in the amount determined under subsection
(b).

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

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

14 SEC. 202. PREVENTING TAX SHELTER ACTIVITIES BY FI-
15 NANCIAL INSTITUTIONS.

16 (a) EXAMINATIONS.—

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

1 (2) FREQUENCY.—Not less frequently than
2 once in each 2-year period, each of the Federal
3 banking agencies and the Commission shall imple-
4 ment the examination techniques developed under
5 paragraph (1) with respect to each of the depository
6 institutions, brokers, dealers, or investment advisers
7 subject to their enforcement authority. Such exam-
8 ination shall, to the extent possible, be combined
9 with any examination by such agency otherwise re-
10 quired or authorized by Federal law.

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

19 (c) REPORT TO CONGRESS.—The Federal banking
20 agencies and the Commission shall submit a joint written
21 report to Congress in 2007 and 2010 on their progress
22 in preventing violations of sections 6700 and 6701 of the
23 Internal Revenue Code of 1986, by depository institutions,
24 brokers, dealers, and investment advisers, as appropriate.

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

1 (1) the terms “broker”, “dealer”, and “invest-
2 ment adviser” have the same meanings as in section
3 3 of the Securities Exchange Act of 1934 (15 U.S.C.
4 78c);

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

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

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

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

15 **SEC. 203. INFORMATION SHARING FOR ENFORCEMENT**
16 **PURPOSES.**

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

22 “(7) DISCLOSURE OF RETURNS AND RETURN
23 INFORMATION RELATED TO PROMOTION OF PROHIB-
24 ITED TAX SHELTERS OR TAX AVOIDANCE
25 SCHEMES.—

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

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

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

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

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

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

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

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

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

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

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

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

1 with a potential or actual violation of auditing
2 standards or prohibitions against false or mis-
3 leading statements or omissions in financial
4 statements or reports. Such disclosure shall be
5 solely for use by such officers and employees in
6 such investigation, examination, or proceeding.

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

10 “(i) the nature of the investigation,
11 examination, or proceeding,

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

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

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

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

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

5 **SEC. 204. DISCLOSURE OF INFORMATION TO CONGRESS.**

6 (a) DISCLOSURE BY TAX RETURN PREPARER.—

7 (1) IN GENERAL.—Subparagraph (B) of section
8 7216(b)(1) (relating to disclosures) is amended to
9 read as follows:

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

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

14 “(ii) A subpoena issued by a Federal
15 or State grand jury.

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

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

22 “(II) any State agency, body, or
23 commission charged under the laws of
24 the State or a political subdivision of
25 the State with the licensing, registra-

1 tion, or regulation of tax return pre-
2 parers.”.

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

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

11 “(2) INSPECTION BY CONGRESS.—

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

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

7 “(B) ADDITIONAL INFORMATION.—Section
8 6103(f) shall apply with respect to—

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

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

19 as if such papers constituted returns.”.

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

1 **SEC. 205. TAX OPINION STANDARDS FOR TAX PRACTI-**
2 **TIONERS.**

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

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

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

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

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

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

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

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

1 “(7) Preventing practitioners and firms from
2 aiding or abetting the understatement of tax liability
3 by clients.

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

6 **SEC. 206. WHISTLEBLOWER REFORMS.**

7 (a) IN GENERAL.—Section 7623 (relating to ex-
8 penses of detection of underpayments and fraud, etc.) is
9 amended—

10 (1) by striking “The Secretary” and inserting

11 “(a) **IN GENERAL.**—The Secretary”,

12 (2) by striking “and” at the end of paragraph

13 (1) and inserting “or”,

14 (3) by striking “(other than interest)”, and

15 (4) by adding at the end the following new sub-
16 sections:

17 “(b) **AWARDS TO WHISTLEBLOWERS.**—

18 “(1) IN GENERAL.—If the Secretary proceeds
19 with any administrative or judicial action described
20 in subsection (a) based on information brought to
21 the Secretary’s attention by an individual, such indi-
22 vidual shall, subject to paragraph (2), receive as an
23 award at least 15 percent but not more than 30 per-
24 cent of the collected proceeds (including penalties,
25 interest, additions to tax, and additional amounts)

1 resulting from the action (including any related ac-
2 tions) or from any settlement in response to such ac-
3 tion. The determination of the amount of such
4 award by the Whistleblower Office shall depend upon
5 the extent to which the individual substantially con-
6 tributed to such action, and shall be determined at
7 the sole discretion of the Whistleblower Office.

8 “(2) AWARD IN CASE OF LESS SUBSTANTIAL
9 CONTRIBUTION.—

10 “(A) IN GENERAL.—In the event the ac-
11 tion described in paragraph (1) is one which the
12 Whistleblower Office determines to be based
13 principally on disclosures of specific allegations
14 (other than information provided by the indi-
15 vidual described in paragraph (1)) resulting
16 from a judicial or administrative hearing, from
17 a governmental report, hearing, audit, or inves-
18 tigation, or from the news media, the Whistle-
19 blower Office may award such sums as it con-
20 siders appropriate, but in no case more than 10
21 percent of the collected proceeds (including pen-
22 alties, interest, additions to tax, and additional
23 amounts) resulting from the action (including
24 any related actions) or from any settlement in
25 response to such action, taking into account the

1 significance of the individual’s information and
2 the role of such individual and any legal rep-
3 resentative of such individual in contributing to
4 such action.

5 “(B) NONAPPLICATION OF PARAGRAPH
6 WHERE INDIVIDUAL IS ORIGINAL SOURCE OF
7 INFORMATION.—Subparagraph (A) shall not
8 apply if the information resulting in the initi-
9 ation of the action described in paragraph (1)
10 was originally provided by the individual de-
11 scribed in paragraph (1).

12 “(3) APPLICATION OF THIS SUBSECTION.—This
13 subsection shall apply with respect to any action—

14 “(A) against any taxpayer, but in the case
15 of any individual, only if such individual’s gross
16 income exceeds \$200,000 for any taxable year
17 subject to such action, and

18 “(B) if the tax, penalties, interest, addi-
19 tions to tax, and additional amounts in dispute
20 exceed \$20,000.

21 “(4) ADDITIONAL RULES.—

22 “(A) NO CONTRACT NECESSARY.—No con-
23 tract with the Internal Revenue Service is nec-
24 essary for any individual to receive an award
25 under this subsection.

1 “(B) REPRESENTATION.—Any individual
2 described in paragraph (1) or (2) may be rep-
3 resented by counsel.

4 “(C) AWARD NOT SUBJECT TO INDIVIDUAL
5 ALTERNATIVE MINIMUM TAX.—No award re-
6 ceived under this subsection shall be included in
7 gross income for purposes of determining alter-
8 native minimum taxable income.

9 “(c) WHISTLEBLOWER OFFICE.—

10 “(1) IN GENERAL.—There is established in the
11 Internal Revenue Service an office to be known as
12 the ‘Whistleblower Office’ which—

13 “(A) shall analyze information received
14 from any individual described in subsection (b)
15 and either investigate the matter itself or assign
16 it to the appropriate Internal Revenue Service
17 office,

18 “(B) shall monitor any action taken with
19 respect to such matter,

20 “(C) shall inform such individual that it
21 has accepted the individual’s information for
22 further review,

23 “(D) may require such individual and any
24 legal representative of such individual to not
25 disclose any information so provided,

1 “(E) may ask for additional assistance
2 from such individual or any legal representative
3 of such individual, and

4 “(F) shall determine the amount to be
5 awarded to such individual under subsection
6 (b).

7 “(2) FUNDING FOR OFFICE.—From the
8 amounts available for expenditure under subsection
9 (a), the Whistleblower Office shall be credited with
10 an amount equal to the awards made under sub-
11 section (b). These funds shall be used to maintain
12 the Whistleblower Office and also to reimburse other
13 Internal Revenue Service offices for related costs,
14 such as costs of investigation and collection.

15 “(3) REQUEST FOR ASSISTANCE.—

16 “(A) IN GENERAL.—Any assistance re-
17 quested under paragraph (1)(E) shall be under
18 the direction and control of the Whistleblower
19 Office or the office assigned to investigate the
20 matter under subparagraph (A). To the extent
21 the disclosure of any returns or return informa-
22 tion to the individual or legal representative is
23 required for the performance of such assistance,
24 such disclosure shall be pursuant to a contract
25 entered into between the Secretary and the re-

1 cipients of such disclosure subject to section
2 6103(n).

3 “(B) FUNDING OF ASSISTANCE.—From
4 the funds made available to the Whistleblower
5 Office under paragraph (2), the Whistleblower
6 Office may reimburse the costs incurred by any
7 legal representative in providing assistance de-
8 scribed in subparagraph (A).”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to information provided on or after
11 the date of the enactment of this Act.

12 **SEC. 207. DENIAL OF DEDUCTION FOR CERTAIN FINES,**
13 **PENALTIES, AND OTHER AMOUNTS.**

14 (a) IN GENERAL.—Subsection (f) of section 162 (re-
15 lating to trade or business expenses) is amended to read
16 as follows:

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

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), no deduction otherwise allowable shall be
20 allowed under this chapter for any amount paid or
21 incurred (whether by suit, agreement, or otherwise)
22 to, or at the direction of, a government or entity de-
23 scribed in paragraph (4) in relation to the violation
24 of any law or the investigation or inquiry by such

1 government or entity into the potential violation of
2 any law.

3 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING
4 RESTITUTION.—Paragraph (1) shall not apply to
5 any amount which—

6 “(A) the taxpayer establishes constitutes
7 restitution (including remediation of property)
8 for damage or harm caused by or which may be
9 caused by the violation of any law or the poten-
10 tial violation of any law, and

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

13 Identification pursuant to subparagraph (B) alone
14 shall not satisfy the requirement under subpara-
15 graph (A). This paragraph shall not apply to any
16 amount paid or incurred as reimbursement to the
17 government or entity for the costs of any investiga-
18 tion or litigation.

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

1 “(4) CERTAIN NONGOVERNMENTAL REGU-
2 LATORY ENTITIES.—An entity is described in this
3 paragraph if it is—

4 “(A) a nongovernmental entity which exer-
5 cises self-regulatory powers (including imposing
6 sanctions) in connection with a qualified board
7 or exchange (as defined in section 1256(g)(7)),
8 or

9 “(B) to the extent provided in regulations,
10 a nongovernmental entity which exercises self-
11 regulatory powers (including imposing sanc-
12 tions) as part of performing an essential gov-
13 ernmental function.

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

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to amounts paid or incurred on
19 or after the date of the enactment of this Act, except that
20 such amendment shall not apply to amounts paid or in-
21 curred under any binding order or agreement entered into
22 before such date. Such exception shall not apply to an
23 order or agreement requiring court approval unless the ap-
24 proval was obtained before such date.

1 **SEC. 208. SENSE OF THE SENATE ON TAX ENFORCEMENT**
2 **PRIORITIES.**

3 It is the sense of the Senate that additional funds
4 should be appropriated for Internal Revenue Service en-
5 forcement efforts and that the Internal Revenue Service
6 should devote proportionately more of its enforcement
7 funds—

8 (1) to combat the promotion of abusive tax
9 shelters for corporations and high net worth individ-
10 uals and the aiding and abetting of tax evasion,

11 (2) to stop accounting, law, and financial firms
12 involved in such promotion and aiding and abetting,
13 and

14 (3) to combat the use of offshore financial ac-
15 counts to conceal taxable income.

16 **TITLE III—REQUIRING**
17 **ECONOMIC SUBSTANCE**

18 **SEC. 301. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-**
19 **TRINE.**

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

23 “(o) CLARIFICATION OF ECONOMIC SUBSTANCE
24 DOCTRINE; ETC.—

25 “(1) GENERAL RULES.—

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

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

10 “(i) IN GENERAL.—A transaction has
11 economic substance only if—

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

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

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

1 such financial accounting benefit is a re-
2 duction of income tax.

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

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

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

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

23 “(2) SPECIAL RULES FOR TRANSACTIONS WITH
24 TAX-INDIFFERENT PARTIES.—

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

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

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

1 “(ii) it results in a basis adjustment
2 or shifting of basis on account of over-
3 stating the income or gain of the tax-indif-
4 ferent party.

5 “(3) DEFINITIONS AND SPECIAL RULES.—For
6 purposes of this subsection—

7 “(A) ECONOMIC SUBSTANCE DOCTRINE.—
8 The term ‘economic substance doctrine’ means
9 the common law doctrine under which tax bene-
10 fits under subtitle A with respect to a trans-
11 action are not allowable if the transaction does
12 not have economic substance or lacks a business
13 purpose.

14 “(B) TAX-INDIFFERENT PARTY.—The
15 term ‘tax-indifferent party’ means any person
16 or entity not subject to tax imposed by subtitle
17 A. A person shall be treated as a tax-indifferent
18 party with respect to a transaction if the items
19 taken into account with respect to the trans-
20 action have no substantial impact on such per-
21 son’s liability under subtitle A.

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

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

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

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

9 “(I) depreciation,

10 “(II) any tax credit, or

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

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

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

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

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

9 **SEC. 302. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
10 **UTABLE TO TRANSACTIONS LACKING ECO-**
11 **NOMIC SUBSTANCE, ETC.**

12 (a) IN GENERAL.—Subchapter A of chapter 68 is
13 amended by inserting after section 6662A the following
14 new section:

15 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**
16 **UTABLE TO TRANSACTIONS LACKING ECO-**
17 **NOMIC SUBSTANCE, ETC.**

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

23 “(b) REDUCTION OF PENALTY FOR DISCLOSED
24 TRANSACTIONS.—Subsection (a) shall be applied by sub-
25 stituting ‘20 percent’ for ‘40 percent’ with respect to the

1 portion of any noneconomic substance transaction under-
2 statement with respect to which the relevant facts affect-
3 ing the tax treatment of the item are adequately disclosed
4 in the return or a statement attached to the return.

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

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

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

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

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

1 “(d) RULES APPLICABLE TO COMPROMISE OF PEN-
2 ALTY.—

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

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

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

17 “(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).”.

18 (b) COORDINATION WITH OTHER UNDERSTATE-
19 MENTS AND PENALTIES.—

20 (1) The second sentence of section
21 6662(d)(2)(A) is amended by inserting “and without
22 regard to items with respect to which a penalty is

1 imposed by section 6662B” before the period at the
2 end.

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

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

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

13 (C) in paragraph (2)(B), by inserting
14 “6662B or” before “6663”,

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

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

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

24 (G) by adding at the end the following new
25 paragraph:

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

6 (3) Subsection (e) of section 6707A is amend-
7 ed—

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

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

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

15 “(D) is required to pay a penalty under
16 section 6662(h) with respect to any transaction
17 and would (but for section 6662A(e)(2)(C))
18 have been subject to penalty under section
19 6662A at a rate prescribed under section
20 6662A(c) or under section 6662B,”.

21 (c) CLERICAL AMENDMENT.—The table of sections
22 for part II of subchapter A of chapter 68 is amended by
23 inserting after the item relating to section 6662A the fol-
24 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. 303. 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 “**TRANS-**
21 **ACTIONS**”.

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

1 **TITLE IV—DETERRING**
2 **UNCOOPERATIVE TAX HAVENS**
3 **SEC. 401. DISCLOSING PAYMENTS TO PERSONS IN UNCO-**
4 **OPERATIVE TAX HAVENS.**

5 (a) IN GENERAL.—Subpart A of part III of sub-
6 chapter A of chapter 61 is amended by inserting after sec-
7 tion 6038C the following new section:

8 **“SEC. 6038D. DETERRING UNCOOPERATIVE TAX HAVENS**
9 **THROUGH LISTING AND REPORTING RE-**
10 **QUIREMENTS.**

11 “(a) IN GENERAL.—Each United States person who
12 transfers money or other property directly or indirectly to
13 any uncooperative tax haven, to any financial institution
14 licensed by or operating in any uncooperative tax haven,
15 or to any person who is a resident of any uncooperative
16 tax haven shall furnish to the Secretary, at such time and
17 in such manner as the Secretary shall by regulation pre-
18 scribe, such information with respect to such transfer as
19 the Secretary may require.

20 “(b) EXCEPTIONS.—Subsection (a) shall not apply to
21 a transfer by a United States person if the amount of
22 money (and the fair market value of property) transferred
23 is less than \$10,000. Related transfers shall be treated
24 as 1 transfer for purposes of this subsection.

1 “(c) UNCOOPERATIVE TAX HAVEN.—For purposes of
2 this section—

3 “(1) IN GENERAL.—The term ‘uncooperative
4 tax haven’ means any foreign jurisdiction which is
5 identified on a list maintained by the Secretary
6 under paragraph (2) as being a jurisdiction—

7 “(A) which imposes no or nominal taxation
8 either generally or on specified classes of in-
9 come, and

10 “(B) has corporate, business, bank, or tax
11 secrecy or confidentiality rules and practices, or
12 has ineffective information exchange practices
13 which, in the judgment of the Secretary, effec-
14 tively limit or restrict the ability of the United
15 States to obtain information relevant to the en-
16 forcement of this title.

17 “(2) MAINTENANCE OF LIST.—Not later than
18 November 1 of each calendar year, the Secretary
19 shall issue a list of foreign jurisdictions which the
20 Secretary determines qualify as uncooperative tax
21 havens under paragraph (1).

22 “(3) INEFFECTIVE INFORMATION EXCHANGE
23 PRACTICES.—For purposes of paragraph (1), a juris-
24 diction shall be deemed to have ineffective informa-
25 tion exchange practices if the Secretary determines

1 that during any taxable year ending in the 12-month
2 period preceding the issuance of the list under para-
3 graph (2)—

4 “(A) the exchange of information between
5 the United States and such jurisdiction was in-
6 adequate to prevent evasion or avoidance of
7 United States income tax by United States per-
8 sons or to enable the United States effectively
9 to enforce this title, or

10 “(B) such jurisdiction was identified by an
11 intergovernmental group or organization of
12 which the United States is a member as unco-
13 operative with international tax enforcement or
14 information exchange and the United States
15 concurs in the determination.

16 “(d) PENALTY FOR FAILURE TO FILE INFORMA-
17 TION.—If a United States person fails to furnish the infor-
18 mation required by subsection (a) with respect to any
19 transfer within the time prescribed therefor (including ex-
20 tensions), such United States person shall pay (upon no-
21 tice and demand by the Secretary and in the same manner
22 as tax) an amount equal to 20 percent of the amount of
23 such transfer.

24 “(e) SIMPLIFIED REPORTING.—The Secretary may
25 by regulations provide for simplified reporting under this

1 section for United States persons making large volumes
2 of similar payments.

3 “(f) REGULATIONS.—The Secretary shall prescribe
4 such regulations as may be necessary or appropriate to
5 carry out the purposes of this section.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
7 for such subpart A is amended by inserting after the item
8 relating to section 6038C the following new item:

“Sec. 6038D. Deterring uncooperative tax havens through listing and reporting requirements.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to transfers after the date which
11 is 180 days after the date of the enactment of this Act.

12 **SEC. 402. DETERRING UNCOOPERATIVE TAX HAVENS BY**
13 **RESTRICTING ALLOWABLE TAX BENEFITS.**

14 (a) LIMITATION ON DEFERRAL.—

15 (1) IN GENERAL.—Subsection (a) of section
16 952 (defining subpart F income) is amended by
17 striking “and” at the end of paragraph (4), by strik-
18 ing the period at the end of paragraph (5) and in-
19 serting “, and”, and by inserting after paragraph
20 (5) the following new paragraph:

21 “(6) an amount equal to the applicable fraction
22 (as defined in subsection (e)) of the income of such
23 corporation other than income which—

1 “(A) is attributable to earnings and profits
2 of the foreign corporation included in the gross
3 income of a United States person under section
4 951 (other than by reason of this paragraph or
5 paragraph (3)(A)(i)), or

6 “(B) is described in subsection (b).”.

7 (2) APPLICABLE FRACTION.—Section 952 is
8 amended by adding at the end the following new
9 subsection:

10 “(e) IDENTIFIED TAX HAVEN INCOME WHICH IS
11 SUBPART F INCOME.—

12 “(1) IN GENERAL.—For purposes of subsection
13 (a)(6), the term ‘applicable fraction’ means the frac-
14 tion—

15 “(A) the numerator of which is the aggre-
16 gate identified tax haven income for the taxable
17 year, and

18 “(B) the denominator of which is the ag-
19 gregate income for the taxable year which is
20 from sources outside the United States.

21 “(2) IDENTIFIED TAX HAVEN INCOME.—For
22 purposes of paragraph (1), the term ‘identified tax
23 haven income’ means income for the taxable year
24 which is attributable to a foreign jurisdiction for any
25 period during which such jurisdiction has been iden-

1 tified as an uncooperative tax haven under section
2 6038D(c).

3 “(3) REGULATIONS.—The Secretary shall pre-
4 scribe regulations similar to the regulations issued
5 under section 999(c) to carry out the purposes of
6 this subsection.”.

7 (b) DENIAL OF FOREIGN TAX CREDIT.—Section 901
8 (relating to taxes of foreign countries and of possessions
9 of United States) is amended by redesignating subsection
10 (m) as subsection (n) and by inserting after subsection
11 (l) the following new subsection:

12 “(m) REDUCTION OF FOREIGN TAX CREDIT, ETC.,
13 FOR IDENTIFIED TAX HAVEN INCOME.—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of this part—

16 “(A) no credit shall be allowed under sub-
17 section (a) for any income, war profits, or ex-
18 cess profits taxes paid or accrued (or deemed
19 paid under section 902 or 960) to any foreign
20 jurisdiction if such taxes are with respect to in-
21 come attributable to a period during which such
22 jurisdiction has been identified as an unco-
23 operative tax haven under section 6038D(c),
24 and

1 “(B) subsections (a), (b), (c), and (d) of
2 section 904 and sections 902 and 960 shall be
3 applied separately with respect to all income of
4 a taxpayer attributable to periods described in
5 subparagraph (A) with respect to all such juris-
6 dictions.

7 “(2) TAXES ALLOWED AS A DEDUCTION, ETC.—
8 Sections 275 and 78 shall not apply to any tax
9 which is not allowable as a credit under subsection
10 (a) by reason of this subsection.

11 “(3) REGULATIONS.—The Secretary shall pre-
12 scribe such regulations as may be necessary or ap-
13 propriate to carry out the purposes of this sub-
14 section, including regulations which treat income
15 paid through 1 or more entities as derived from a
16 foreign jurisdiction to which this subsection applies
17 if such income was, without regard to such entities,
18 derived from such jurisdiction.”.

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

1 **SEC. 403. DOUBLING OF CERTAIN PENALTIES, FINES, AND**
2 **INTEREST ON UNDERPAYMENTS RELATED TO**
3 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**
4 **MENTS.**

5 (a) DETERMINATION OF PENALTY.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of law, in the case of an applicable tax-
8 payer—

9 (A) the determination as to whether any
10 interest or applicable penalty is to be imposed
11 with respect to any arrangement described in
12 paragraph (2), or to any underpayment of Fed-
13 eral income tax attributable to items arising in
14 connection with any such arrangement, shall be
15 made without regard to the rules of subsections
16 (b), (c), and (d) of section 6664 of the Internal
17 Revenue Code of 1986, and

18 (B) if any such interest or applicable pen-
19 alty is imposed, the amount of such interest or
20 penalty shall be equal to twice that determined
21 without regard to this section.

22 (2) APPLICABLE TAXPAYER.—For purposes of
23 this subsection—

24 (A) IN GENERAL.—The term “applicable
25 taxpayer” means a taxpayer which—

1 (i) has underreported its United
2 States income tax liability with respect to
3 any item which directly or indirectly in-
4 volves—

5 (I) any financial arrangement
6 which in any manner relies on the use
7 of an offshore payment mechanism
8 (including credit, debit, or charge
9 cards) issued by a bank or other enti-
10 ty in a foreign jurisdiction, or

11 (II) any offshore financial ar-
12 rangement (including any arrange-
13 ment with foreign banks, financial in-
14 stitutions, corporations, partnerships,
15 trusts, or other entities), and

16 (ii) has not signed a closing agree-
17 ment pursuant to the Voluntary Offshore
18 Compliance Initiative established by the
19 Department of the Treasury under Rev-
20 enue Procedure 2003-11 or voluntarily dis-
21 closed its participation in such arrange-
22 ment by notifying the Internal Revenue
23 Service of such arrangement prior to the
24 issue being raised by the Internal Revenue
25 Service during an examination.

1 (B) AUTHORITY TO WAIVE.—The Sec-
2 retary of the Treasury or the Secretary’s dele-
3 gate may waive the application of paragraph (1)
4 for any taxpayer if the Secretary or the Sec-
5 retary’s delegate determines that—

6 (i) the use of such offshore payment
7 mechanism or financial arrangement was
8 incidental to the transaction,

9 (ii) in the case of a trade or business,
10 such use took place in the ordinary course
11 of the trade or business of the taxpayer,
12 and

13 (iii) such waiver would serve the pub-
14 lic interest.

15 (C) ISSUES RAISED.—For purposes of sub-
16 paragraph (A)(ii), an item shall be treated as
17 an issue raised during an examination if the in-
18 dividual examining the return—

19 (i) communicates to the taxpayer
20 knowledge about the specific item, or

21 (ii) has made a request to the tax-
22 payer for information and the taxpayer
23 could not make a complete response to
24 that request without giving the examiner
25 knowledge of the specific item.

1 (b) DEFINITIONS AND RULES.—For purposes of this
2 section—

3 (1) APPLICABLE PENALTY.—The term “appli-
4 cable penalty” means any penalty, addition to tax,
5 or fine imposed under chapter 68 of the Internal
6 Revenue Code of 1986.

7 (2) FEES AND EXPENSES.—The Secretary of
8 the Treasury may retain and use an amount not in
9 excess of 25 percent of all additional interest, pen-
10 alties, additions to tax, and fines collected under this
11 section to be used for enforcement and collection ac-
12 tivities of the Internal Revenue Service. The Sec-
13 retary shall keep adequate records regarding
14 amounts so retained and used. The amount credited
15 as paid by any taxpayer shall be determined without
16 regard to this paragraph.

17 (c) REPORT BY SECRETARY.—The Secretary shall
18 each year conduct a study and report to Congress on the
19 implementation of this section during the preceding year,
20 including statistics on the number of taxpayers affected
21 by such implementation and the amount of interest and
22 applicable penalties asserted, waived, and assessed during
23 such preceding year.

24 (d) EFFECTIVE DATE.—The provisions of this sec-
25 tion shall apply to interest, penalties, additions to tax, and

1 fines with respect to any taxable year if, as of the date
2 of the enactment of this Act, the assessment of any tax,
3 penalty, or interest with respect to such taxable year is
4 not prevented by the operation of any law or rule of law.

5 **SEC. 404. TREASURY REGULATIONS ON FOREIGN TAX**
6 **CREDIT.**

7 (a) IN GENERAL.—Section 901 (relating to taxes of
8 foreign countries and of possessions of United States), as
9 amended by section 402, is amended by redesignating sub-
10 section (n) as subsection (o) and by inserting after sub-
11 section (m) the following new subsection:

12 “(n) REGULATIONS.—The Secretary may prescribe
13 regulations disallowing a credit under subsection (a) for
14 all or a portion of any foreign tax, or allocating a foreign
15 tax among 2 or more persons, in cases where the foreign
16 tax is imposed on any person in respect of income of an-
17 other person or in other cases involving the inappropriate
18 separation of the foreign tax from the related foreign in-
19 come.”.

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