

113TH CONGRESS  
1ST SESSION

# H. R. 1554

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2013

Mr. DOGGETT (for himself, Ms. BASS, Mr. BECERRA, Mr. BLUMENAUER, Mr. CAPUANO, Ms. CHU, Mr. CICILLINE, Mr. CONYERS, Mr. CUMMINGS, Mr. DEFAZIO, Ms. DEGETTE, Ms. DELAURO, Mr. DEUTCH, Mr. DINGELL, Ms. EDWARDS, Mr. ELLISON, Mr. FARR, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HIGGINS, Mr. HUFFMAN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JOHNSON of Georgia, Mr. LARSON of Connecticut, Ms. LEE of California, Mr. LOEBSACK, Mr. LYNCH, Mr. MARKEY, Ms. MCCOLLUM, Mr. McDERMOTT, Mr. MCGOVERN, Mr. GEORGE MILLER of California, Ms. MOORE, Mr. MORAN, Mr. PASCRELL, Mr. PETERS of Michigan, Mr. RUSH, Ms. SCHAKOWSKY, Mr. SHERMAN, Ms. SLAUGHTER, Mr. TIERNEY, Mr. TONKO, Ms. TSONGAS, Mr. VAN HOLLEN, Mr. WELCH, Mr. YARMUTH, Mr. LANGEVIN, Mr. HOLT, Mr. LIPINSKI, Mr. GUTIERREZ, Mr. LEWIS, Mr. GARAMENDI, Mr. PAYNE, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

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

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

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

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

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

Sec. 1. Short title; etc.

TITLE I—DETECTING THE USE OF TAX HAVENS FOR TAX  
EVASION

Sec. 101. Authorizing special measures against foreign jurisdictions, financial institutions, and others that significantly impede United States tax enforcement.

Sec. 102. Strengthening the Foreign Account Tax Compliance Act (FATCA).

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

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

Sec. 105. Swap payments made from the United States to persons offshore.

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

Sec. 201. Country-by-country reporting.

Sec. 202. Penalty for failing to disclose offshore holdings.

Sec. 203. Deadline for anti-money laundering rule for investment advisers.

Sec. 204. Anti-money laundering requirements for formation agents.

Sec. 205. Strengthening John Doe summons proceedings.

Sec. 206. 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. Prohibited fee arrangement.

Sec. 304. Preventing tax shelter activities by financial institutions.

Sec. 305. Information sharing for enforcement purposes.

Sec. 306. Disclosure of information to Congress.

Sec. 307. Tax opinion standards for tax practitioners.

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

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

8 Section 5318A of title 31, United States Code, is  
9 amended—

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

12 **“§ 5318A. Special measures for jurisdictions, financial**  
13 **institutions, or international transactions**  
14 **that are of primary money laundering**  
15 **concern or significantly impede United**  
16 **States tax enforcement”;**

17 (2) in subsection (a), by striking the subsection  
18 heading and inserting the following:

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

22 (3) in subsection (c)—

23 (A) by striking the subsection heading and  
24 inserting the following:

1       “(c) CONSULTATIONS AND INFORMATION TO BE  
2 CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,  
3 TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-  
4 MARY MONEY LAUNDERING CONCERN OR TO BE SIGNIFI-  
5 CANTLY IMPEDING UNITED STATES TAX ENFORCE-  
6 MENT.—”; and

7               (B) by inserting at the end of paragraph  
8 (2) thereof the following new subparagraph:

9               “(C) OTHER CONSIDERATIONS.—The fact  
10 that a jurisdiction or financial institution is co-  
11 operating with the United States on imple-  
12 menting the requirements specified in chapter 4  
13 of the Internal Revenue Code of 1986 may be  
14 favorably considered in evaluating whether such  
15 jurisdiction or financial institution is signifi-  
16 cantly impeding United States tax enforce-  
17 ment.”;

18               (4) in subsection (a)(1), by inserting “or is sig-  
19 nificantly impeding United States tax enforcement”  
20 after “primary money laundering concern”;

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

22                       (A) in subparagraph (A)—

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

25                               and

1 (ii) by striking “and” at the end;

2 (B) by redesignating subparagraph (B) as  
3 subparagraph (C); and

4 (C) by inserting after subparagraph (A)  
5 the following:

6 “(B) in matters involving United States  
7 tax enforcement, shall consult with the Commis-  
8 sioner of the Internal Revenue, the Secretary of  
9 State, the Attorney General of the United  
10 States, and in the sole discretion of the Sec-  
11 retary, such other agencies and interested par-  
12 ties as the Secretary may find to be appro-  
13 priate; and”;

14 (6) in each of paragraphs (1)(A), (2), (3), and  
15 (4) of subsection (b), by inserting “or to be signifi-  
16 cantly impeding United States tax enforcement”  
17 after “primary money laundering concern” each  
18 place that term appears;

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

21 “(5) PROHIBITIONS OR CONDITIONS ON OPEN-  
22 ING OR MAINTAINING CERTAIN CORRESPONDENT OR  
23 PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING  
24 CERTAIN PAYMENT CARDS.—If the Secretary finds a  
25 jurisdiction outside of the United States, 1 or more

1 financial institutions operating outside of the United  
2 States, or 1 or more classes of transactions within  
3 or involving a jurisdiction outside of the United  
4 States to be of primary money laundering concern or  
5 to be significantly impeding United States tax en-  
6 forcement, the Secretary, in consultation with the  
7 Secretary of State, the Attorney General of the  
8 United States, and the Chairman of the Board of  
9 Governors of the Federal Reserve System, may pro-  
10 hibit, or impose conditions upon—

11 “(A) the opening or maintaining in the  
12 United States of a correspondent account or  
13 payable-through account; or

14 “(B) the authorization, approval, or use in  
15 the United States of a credit card, charge card,  
16 debit card, or similar credit or debit financial  
17 instrument by any domestic financial institu-  
18 tion, financial agency, or credit card company  
19 or association, for or on behalf of a foreign  
20 banking institution, if such correspondent ac-  
21 count, payable-through account, credit card,  
22 charge card, debit card, or similar credit or  
23 debit financial instrument, involves any such ju-  
24 risdiction or institution, or if any such trans-  
25 action may be conducted through such cor-

1           respondent account, payable-through account,  
2           credit card, charge card, debit card, or similar  
3           credit or debit financial instrument.”;

4           (8) in subsection (c)(1), by inserting “or is sig-  
5           nificantly impeding United States tax enforcement”  
6           after “primary money laundering concern”;

7           (9) in subsection (c)(2)(A)—

8                 (A) in clause (ii), by striking “bank secrecy  
9                 or special regulatory advantages” and inserting  
10                “bank, tax, corporate, trust, or financial secrecy  
11                or regulatory advantages”;

12               (B) in clause (iii), by striking “supervisory  
13                and counter-money” and inserting “supervisory,  
14                international tax enforcement, and counter-  
15                money”;

16               (C) in clause (v), by striking “banking or  
17                secrecy” and inserting “banking, tax, or se-  
18                crecy”; and

19               (D) in clause (vi), by inserting “, tax trea-  
20                ty, or tax information exchange agreement”  
21                after “treaty”;

22           (10) in subsection (c)(2)(B)—

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

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

3 (11) in subsection (d), by inserting “involving  
4 money laundering, and shall notify, in writing, the  
5 Committee on Finance of the Senate and the Com-  
6 mittee on Ways and Means of the House of Rep-  
7 resentatives of any such action involving United  
8 States tax enforcement” after “such action”.

9 **SEC. 102. STRENGTHENING THE FOREIGN ACCOUNT TAX**  
10 **COMPLIANCE ACT (FATCA).**

11 (a) REPORTING ACTIVITIES WITH RESPECT TO PAS-  
12 SIVE FOREIGN INVESTMENT COMPANIES.—Section  
13 1298(f) is amended by inserting “, or who directly or indi-  
14 rectly forms, transfers assets to, is a beneficiary of, has  
15 a beneficial interest in, or receives money or property or  
16 the use thereof from,” after “shareholder of”.

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

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

21 (2) by striking “or any interest” and all that  
22 follows in paragraph (5)(C) and inserting “deriva-  
23 tives, or any interest (including a futures or forward  
24 contract, swap, or option) in such securities, part-  
25 nership interests, commodities, or derivatives.”.



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

3 (1) by inserting “as a result of any customer  
4 identification, anti-money laundering, anti-corrup-  
5 tion, or similar obligation to identify account hold-  
6 ers,” after “reason to know,” in subsection (b)(2),  
7 and

8 (2) by inserting “as posing a low risk of tax  
9 evasion” after “this subsection” in subsection  
10 (c)(1)(G).

11 (d) DEFINITIONS.—Clauses (i) and (ii) of section  
12 1473(2)(A) are each amended by inserting “or as a bene-  
13 ficial owner” after “indirectly”.

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

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

22 (2) by inserting “, or has had an agreement  
23 terminated under such section,” after “section  
24 1471(b)” in paragraph (2).

1 (f) INFORMATION WITH RESPECT TO FOREIGN FI-  
 2 NANCIAL ASSETS.—Section 6038D(a) is amended by in-  
 3 serting “ownership or beneficial ownership” after “holds  
 4 any”.

5 (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES  
 6 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-  
 7 TIONS.—

8 (1) PRESUMPTIONS FOR TAX PURPOSES.—

9 (A) IN GENERAL.—Chapter 76 is amended  
 10 by inserting after section 7491 the following  
 11 new subchapter:

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

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

14 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**  
 15 **TRANSACTIONS INVOLVING NON-FATCA IN-**  
 16 **STITUTIONS.**

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  
 23 a beneficiary of, had a beneficial interest in, or received  
 24 money or property or the use thereof from an entity, in-

1 cluding a trust, corporation, limited liability company,  
2 partnership, or foundation (other than an entity with  
3 shares regularly traded on an established securities mar-  
4 ket), that holds an account, or in any other manner has  
5 assets, in a non-FATCA institution, exercised control over  
6 such entity. The presumption of control created by this  
7 subsection shall not be applied to prevent the Secretary  
8 from determining or arguing the absence of control.

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

1 account, or in any other manner has assets, in a non-  
2 FATCA institution, represents previously unreported in-  
3 come of such person taxable in the year of the transfer.

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

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

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

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

1 (B) The table of subchapters for chapter  
2 76 is amended by inserting after the item relat-  
3 ing to subchapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

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

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

15 “(j) PRESUMPTIONS PERTAINING TO CONTROL AND  
16 BENEFICIAL OWNERSHIP.—

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

1 corporation, limited liability company, partnership,  
2 or foundation (other than an entity with shares reg-  
3 ularly traded on an established securities market),  
4 that holds an account, or in any other manner has  
5 assets, in a non-FATCA institution (as defined in  
6 section 7701(a)(51) of the Internal Revenue Code of  
7 1986), exercised control over such entity. The pre-  
8 sumption of control created by this paragraph shall  
9 not be applied to prevent the Commission from de-  
10 termining or arguing the absence of control.

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

1       termining or arguing the absence of beneficial own-  
2       ership.”.

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

8       “(d) REBUTTABLE PRESUMPTION.—For purposes of  
9       this section, there shall be a rebuttable presumption that  
10      any account with a non-FATCA institution (as defined in  
11      section 7701(a)(51) of the Internal Revenue Code of  
12      1986) contains funds in an amount that is at least suffi-  
13      cient to require a report prescribed by regulations under  
14      this section.”.

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

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

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

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

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

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

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

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

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



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

4 “(2) CORPORATION DESCRIBED.—

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

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

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

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

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

23 “(ii) such corporation—

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

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

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

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

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

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

25                   “(3) MANAGEMENT AND CONTROL.—

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

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

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

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

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

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

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

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

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

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

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

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

11 “(a) REQUIREMENT OF RETURN.—If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

20           (b) PENALTIES.—

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

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

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

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

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

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

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

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

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

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

3 (d) ADDITIONAL PENALTIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

11      **SEC. 201. COUNTRY-BY-COUNTRY REPORTING.**

12           (a) COUNTRY-BY-COUNTRY REPORTING.—Section 13  
13      of the Securities Exchange Act of 1934 (15 U.S.C. 78m)  
14      is amended by adding at the end the following new sub-  
15      section:

16           “(s) DISCLOSURE OF FINANCIAL PERFORMANCE ON  
17      A COUNTRY-BY-COUNTRY BASIS.—

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

19                   “(A) the term ‘issuer group’ means the  
20                   issuer, each subsidiary of the issuer, and each  
21                   entity under the control of the issuer; and

22                   “(B) the term ‘country of operation’ means  
23                   each country in which a member of the issuer  
24                   group is incorporated, organized, maintains em-

1 employees, or conducts significant business activi-  
2 ties.

3 “(2) RULES REQUIRED.—The Commission shall  
4 issue rules that require each issuer to include in an  
5 annual report filed by the issuer with the Commis-  
6 sion information on a country-by-country basis dur-  
7 ing the covered period, consisting of—

8 “(A) a list of each country of operation  
9 and the name of each entity of the issuer group  
10 domiciled in each country of operation;

11 “(B) the number of employees physically  
12 working in each country of operation;

13 “(C) the total pre-tax gross revenues of  
14 each member of the issuer group in each coun-  
15 try of operation;

16 “(D) the total amount of payments made  
17 to governments by each member of the issuer  
18 group in each country of operation, without ex-  
19 ception, including, and set forth according to—

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

1           “(ii) after any tax deductions, tax  
2           credits, tax forgiveness, or other tax bene-  
3           fits or waivers, the total amount of tax  
4           paid from the treasury of each member of  
5           the issuer group to the government of each  
6           country of operation during the covered pe-  
7           riod; and

8           “(E) such other financial information as  
9           the Commission may determine is necessary or  
10          appropriate in the public interest or for the pro-  
11          tection of investors.”.

12          (b) RULEMAKING.—

13           (1) DEADLINES.—The Securities and Exchange  
14          Commission (in this section referred to as the “Com-  
15          mission”) shall—

16           (A) not later than 270 days after the date  
17          of enactment of this Act, issue a proposed rule  
18          to carry out this section and the amendment  
19          made by this section; and

20           (B) not later than 1 year after the date of  
21          enactment of this Act, issue a final rule to  
22          carry out this section and the amendment made  
23          by this section.

24           (2) DATA FORMAT.—The information required  
25          to be provided by this section shall be provided by

1 the issuer in a format prescribed by the Commission,  
2 and shall be made available to the public online, in  
3 such format as the Commission shall prescribe.

4 (3) EFFECTIVE DATE.—Subsection (s) of sec-  
5 tion 13 of the Securities Exchange Act of 1934, as  
6 added by this section, shall become effective 1 year  
7 after the date on which the Commission issues a  
8 final rule under this section.

9 **SEC. 202. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**  
10 **HOLDINGS.**

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

15 “(iv) FOURTH TIER.—Notwith-  
16 standing clauses (i), (ii), and (iii), for each  
17 violation, the amount of the penalty shall  
18 not exceed \$1,000,000 for any natural per-  
19 son or \$10,000,000 for any other person,  
20 if—

21 “(I) such person directly or indi-  
22 rectly controlled any foreign entity, in-  
23 cluding any trust, corporation, limited  
24 liability company, partnership, or  
25 foundation through which an issuer



1 purchased, sold, or held equity or debt  
2 instruments;

3 “(II) such person knowingly or  
4 recklessly failed to disclose any such  
5 holding, purchase, or sale by the  
6 issuer; and

7 “(III) the holding, purchase, or  
8 sale would have been otherwise sub-  
9 ject to disclosure by the issuer or such  
10 person under this title.”.

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

14 “(D) FOURTH TIER.—Notwithstanding  
15 subparagraphs (A), (B), and (C), for each viola-  
16 tion, the amount of the penalty shall not exceed  
17 \$1,000,000 for any natural person or  
18 \$10,000,000 for any other person, if—

19 “(i) such person directly or indirectly  
20 controlled any foreign entity, including any  
21 trust, corporation, limited liability com-  
22 pany, partnership, or foundation through  
23 which an issuer purchased, sold, or held  
24 equity or debt instruments;

1           “(ii) such person knowingly or reck-  
2           lessly failed to disclose any such holding,  
3           purchase, or sale by the issuer; and

4           “(iii) the holding, purchase, or sale  
5           would have been otherwise subject to dis-  
6           closure by the issuer or such person under  
7           this title.”.

8           (c) INVESTMENT ADVISERS ACT OF 1940.—Section  
9           203(i)(2) of the Investment Advisers Act of 1940 (15  
10           U.S.C. 80b-3(i)(2)) is amended by adding at the end the  
11           following:

12           “(D) FOURTH TIER.—Notwithstanding  
13           subparagraphs (A), (B), and (C), for each viola-  
14           tion, the amount of the penalty shall not exceed  
15           \$1,000,000 for any natural person or  
16           \$10,000,000 for any other person, if—

17           “(i) such person directly or indirectly  
18           controlled any foreign entity, including any  
19           trust, corporation, limited liability com-  
20           pany, partnership, or foundation through  
21           which an issuer purchased, sold, or held  
22           equity or debt instruments;

23           “(ii) such person knowingly or reck-  
24           lessly failed to disclose any such holding,  
25           purchase, or sale by the issuer; and

1                   “(iii) the holding, purchase, or sale  
2                   would have been otherwise subject to dis-  
3                   closure by the issuer or such person under  
4                   this title.”.

5 **SEC. 203. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**  
6 **FOR INVESTMENT ADVISERS.**

7           (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR  
8 INVESTMENT ADVISERS.—Section 5312(a)(2) of title 31,  
9 United States Code, is amended—

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

12           (2) by redesignating subparagraph (Z) as sub-  
13 paragraph (BB); and

14           (3) by inserting after subparagraph (Y) the fol-  
15 lowing:

16                   “(Z) an investment adviser;”.

17           (b) RULES REQUIRED.—The Secretary of the Treas-  
18 ury shall—

19           (1) in consultation with the Chairman of the  
20 Securities and Exchange Commission and the Chair-  
21 man of the Commodity Futures Trading Commis-  
22 sion, not later than 270 days after the date of enact-  
23 ment of this Act, publish a proposed rule in the Fed-  
24 eral Register to carry out the amendments made by  
25 this section; and

1           (2) not later than 180 days after the date of  
2           enactment of this Act, publish a final rule in the  
3           Federal Register on the matter described in para-  
4           graph (1).

5           (c) CONTENTS.—The final rule published under this  
6           section shall require, at a minimum, each investment ad-  
7           viser (as defined in section 202(a)(11) of the Investment  
8           Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11))) reg-  
9           istered with the Securities and Exchange Commission pur-  
10          suant to section 203 of that Act (15 U.S.C. 80b–3)—

11           (1) to submit suspicious activity reports and es-  
12          tablish an anti-money laundering program under  
13          subsections (g) and (h), respectively, of section 5318  
14          of title 31, United States Code; and

15           (2) to comply with—

16           (A) the customer identification program  
17          requirements under section 5318(l) of title 31,  
18          United States Code; and

19           (B) the due diligence requirements under  
20          section 5318(i) of title 31, United States Code.

21 **SEC. 204. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**  
22 **FORMATION AGENTS.**

23           (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR  
24 **FORMATION AGENTS.**—Section 5312(a)(2) of title 31,  
25 United States Code, as amended by section 113 of this

1 Act, is amended by inserting after subparagraph (Z) the  
2 following:

3 “(AA) any person engaged in the business  
4 of forming new corporations, limited liability  
5 companies, partnerships, trusts, or other legal  
6 entities; or”.

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

9 (1) PROPOSED RULE.—The Secretary of the  
10 Treasury, in consultation with the Attorney General  
11 of the United States, the Secretary of Homeland Se-  
12 curity, and the Commissioner of Internal Revenue,  
13 shall—

14 (A) not later than 120 days after the date  
15 of enactment of this Act, publish a proposed  
16 rule in the Federal Register requiring persons  
17 described in section 5312(a)(2)(AA) of title 31,  
18 United States Code, as added by this section, to  
19 establish anti-money laundering programs  
20 under section 5318(h) of that title; and

21 (B) not later than 270 days after the date  
22 of enactment of this Act, publish a final rule in  
23 the Federal Register on the matter described in  
24 subparagraph (A).

1           (2) EXCLUSIONS.—The rule promulgated under  
2 this subsection shall exclude from the category of  
3 persons engaged in the business of forming new cor-  
4 porations or other entities—

5                   (A) any government agency; and

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

10 **SEC. 205. STRENGTHENING JOHN DOE SUMMONS PRO-**  
11 **CEEDINGS.**

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

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

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

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

24                           “(B) there is a reasonable basis for believ-  
25 ing that such person or group or class of per-

1           sons may fail or may have failed to comply with  
2           any provision of any internal revenue law, and

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

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

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

1 of persons may fail or may have failed to comply  
2 with provisions of internal revenue law.

3 “(4) PROJECT JOHN DOE SUMMONSES.—

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

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

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

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

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

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



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

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

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

21                  (b) JURISDICTION OF COURT.—

22                  (1) IN GENERAL.—Paragraph (1) of section  
23                  7609(h) is amended by inserting after the first sen-  
24                  tence the following new sentence: “Any United  
25                  States district court in which a member of the group

1 or class to which a summons may be issued resides  
2 or is found shall have jurisdiction to hear and deter-  
3 mine the approval of a project under subsection  
4 (f)(2)(B).”.

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

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

11 **SEC. 206. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**  
12 **CIAL ACCOUNT REPORTING.**

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

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

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 is amended—

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

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

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

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 activity by the person or per-  
5           sons subject to such penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **SEC. 303. PROHIBITED FEE ARRANGEMENT.**

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

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

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

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

15 “(f) PROHIBITED FEE ARRANGEMENT.—

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

22 “(A) tax savings or benefits, or

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

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

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

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

12 **SEC. 304. PREVENTING TAX SHELTER ACTIVITIES BY FI-**  
13 **NANCIAL INSTITUTIONS.**

14 (a) EXAMINATIONS.—

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

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



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

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

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

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

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

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

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

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

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

11 **SEC. 305. INFORMATION SHARING FOR ENFORCEMENT**  
12 **PURPOSES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **SEC. 306. DISCLOSURE OF INFORMATION TO CONGRESS.**

4 (a) DISCLOSURE BY TAX RETURN PREPARER.—

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

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

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

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

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

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

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

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

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

7           “(2) INSPECTION BY CONGRESS.—

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



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

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

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

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

15 as if such papers constituted returns.”.

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

20 **SEC. 307. TAX OPINION STANDARDS FOR TAX PRACTI-**  
21 **TIONERS.**

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

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

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

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

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

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

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

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

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

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

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

○