

112TH CONGRESS
1ST SESSION

S. 1346

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

IN THE SENATE OF THE UNITED STATES

JULY 12, 2011

Mr. LEVIN (for himself, Mr. CONRAD, Mr. NELSON of Florida, Mr. SANDERS, Mrs. SHAHEEN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

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

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

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

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

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

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

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

Sec. 1. Short title; etc.

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

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

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

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

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

Sec. 105. Credit default swap payments made from the United States to persons offshore.

Sec. 106. Tax on income of controlled foreign corporation deposited in financial account located in the United States.

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 hedge funds and private equity funds.

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 IMPEDE UNITED**
7 **STATES TAX ENFORCEMENT.**

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

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

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

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

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

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

24 **“(c) CONSULTATIONS AND INFORMATION TO BE**
25 **CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,**

1 TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-
2 MARY MONEY LAUNDERING CONCERN OR TO BE IMPED-
3 ING UNITED STATES TAX ENFORCEMENT.—”;

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

7 (5) in subsection (a)(4)—

8 (A) in subparagraph (A)—

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

11 and

12 (ii) by striking “and” at the end;

13 (B) by redesignating subparagraph (B) as
14 subparagraph (C); and

15 (C) by inserting after subparagraph (A)
16 the following new subparagraph:

17 “(B) in matters involving United States
18 tax enforcement, shall consult with the Commis-
19 sioner of the Internal Revenue Service, the Sec-
20 retary of State, the Attorney General of the
21 United States, and in the sole discretion of the
22 Secretary, such other agencies and interested
23 parties as the Secretary may find to be appro-
24 priate; and”;

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

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

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

23 “(A) the opening or maintaining in the
24 United States of a correspondent account or
25 payable-through account; or

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

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

19 (9) in subsection (c)(2)(A)—

20 (A) in clause (ii), by striking “bank secrecy
21 or special regulatory advantages” and inserting
22 “bank, tax, corporate, trust, or financial secrecy
23 or regulatory advantages”;

24 (B) in clause (iii), by striking “supervisory
25 and counter-money” and inserting “supervisory,

1 international tax enforcement, and counter-
2 money”;

3 (C) in clause (v), by striking “banking or
4 secrecy” and inserting “banking, tax, or se-
5 crecy”; and

6 (D) in clause (vi), by inserting “, tax trea-
7 ty, or tax information exchange agreement”
8 after “treaty”;

9 (10) in subsection (c)(2)(B)—

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

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

14 (11) in subsection (d), by inserting “involving
15 money laundering, and shall notify, in writing, the
16 Committee on Finance of the Senate and the Com-
17 mittee on Ways and Means of the House of Rep-
18 resentatives of any such action involving United
19 States tax enforcement” after “such action”.

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

1 **SEC. 102. STRENGTHENING THE FOREIGN ACCOUNT TAX**
2 **COMPLIANCE ACT (FATCA).**

3 (a) **REPORTING ACTIVITIES WITH RESPECT TO PAS-**
4 **SIVE FOREIGN INVESTMENT COMPANIES.**—Section
5 1298(f) is amended by inserting “, or who directly or indi-
6 rectly forms, transfers assets to, is a beneficiary of, has
7 a beneficial interest in, or receives money or property or
8 the use thereof from,” after “shareholder of”.

9 (b) **WITHHOLDABLE PAYMENTS TO FOREIGN FINAN-**
10 **CIAL INSTITUTIONS.**—Section 1471(d) is amended—

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

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

18 (c) **WITHHOLDABLE PAYMENTS TO OTHER FOREIGN**
19 **FINANCIAL INSTITUTIONS.**—Section 1472 is amended—

20 (1) by inserting “as a result of any customer
21 identification, anti-money laundering, anti-corrup-
22 tion, or similar obligation to identify account hold-
23 ers,” after “reason to know,” in subsection (b)(2),
24 and

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

4 (d) DEFINITIONS.—Clauses (i) and (ii) of section
5 1473(2)(A) are each amended by inserting “or as a bene-
6 ficial owner” after “indirectly”.

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

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

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

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

22 (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES
23 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-
24 TIONS.—

25 (1) PRESUMPTIONS FOR TAX PURPOSES.—

1 (A) IN GENERAL.—Chapter 76 is amended
2 by inserting after section 7491 the following
3 new subchapter:

4 **“Subchapter F—Presumptions for Certain**
5 **Legal Proceedings**

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

6 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**
7 **TRANSACTIONS INVOLVING NON-FATCA IN-**
8 **STITUTIONS.**

9 “(a) CONTROL.—For purposes of any United States
10 civil judicial or administrative proceeding to determine or
11 collect tax, there shall be a rebuttable presumption that
12 a United States person (other than an entity with shares
13 regularly traded on an established securities market) who,
14 directly or indirectly, formed, transferred assets to, was
15 a beneficiary of, had a beneficial interest in, or received
16 money or property or the use thereof from an entity, in-
17 cluding a trust, corporation, limited liability company,
18 partnership, or foundation (other than an entity with
19 shares regularly traded on an established securities mar-
20 ket), that holds an account, or in any other manner has
21 assets, in a non-FATCA institution, exercised control over
22 such entity. The presumption of control created by this
23 subsection shall not be applied to prevent the Secretary
24 from determining or arguing the absence of control.

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

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

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

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

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

16 (B) The table of subchapters for chapter
17 76 is amended by inserting after the item relat-
18 ing to subchapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

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

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

5 “(j) PRESUMPTIONS PERTAINING TO CONTROL AND
6 BENEFICIAL OWNERSHIP.—

7 “(1) CONTROL.—For purposes of any civil judi-
8 cial or administrative proceeding under this title,
9 there shall be a rebuttable presumption that a
10 United States person (other than an entity with
11 shares regularly traded on an established securities
12 market) who, directly or indirectly, formed, trans-
13 ferred assets to, was a beneficiary of, had a bene-
14 ficial interest in, or received money or property or
15 the use thereof from an entity, including a trust,
16 corporation, limited liability company, partnership,
17 or foundation (other than an entity with shares reg-
18 ularly traded on an established securities market),
19 that holds an account, or in any other manner has
20 assets, in a non-FATCA institution (as defined in
21 section 7701(a)(51) of the Internal Revenue Code of
22 1986), exercised control over such entity. The pre-
23 sumption of control created by this paragraph shall
24 not be applied to prevent the Commission from de-
25 termining or arguing the absence of control.

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

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

23 “(d) REBUTTABLE PRESUMPTION.—For purposes of
24 this section, there shall be a rebuttable presumption that
25 any account with a non-FATCA institution (as defined in

1 section 7701(a)(51) of the Internal Revenue Code of
2 1986) contains funds in an amount that is at least suffi-
3 cient to require a report prescribed by regulations under
4 this section.”.

5 (5) REGULATORY AUTHORITY.—Not later than
6 180 days after the date of the enactment of this Act,
7 the Secretary of the Treasury and the Chairman of
8 the Securities and Exchange Commission shall each
9 adopt regulations or other guidance necessary to im-
10 plement the amendments made by this subsection.
11 The Secretary and the Chairman may by regulation
12 or guidance provide that the presumption of control
13 shall not extend to particular classes of transactions,
14 such as corporate reorganizations or transactions
15 below a specified dollar threshold, if either deter-
16 mines that applying such amendments to such trans-
17 actions is not necessary to carry out the purposes of
18 such amendments.

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

1 **SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MAN-**
2 **AGED AND CONTROLLED IN THE UNITED**
3 **STATES AS DOMESTIC CORPORATIONS.**

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

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

10 “(1) IN GENERAL.—Notwithstanding subsection
11 (a)(4), in the case of a corporation described in
12 paragraph (2) if—

13 “(A) the corporation would not otherwise
14 be treated as a domestic corporation for pur-
15 poses of this title, but

16 “(B) the management and control of the
17 corporation occurs, directly or indirectly, pri-
18 marily within the United States,

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

22 “(2) CORPORATION DESCRIBED.—

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

1 “(i) the stock of such corporation is
2 regularly traded on an established securi-
3 ties market, or

4 “(ii) the aggregate gross assets of
5 such corporation (or any predecessor there-
6 of), including assets under management
7 for investors, whether held directly or indi-
8 rectly, at any time during the taxable year
9 or any preceding taxable year is
10 \$50,000,000 or more.

11 “(B) GENERAL EXCEPTION.—A corpora-
12 tion shall not be treated as described in this
13 paragraph if—

14 “(i) such corporation was treated as a
15 corporation described in this paragraph in
16 a preceding taxable year,

17 “(ii) such corporation—

18 “(I) is not regularly traded on an
19 established securities market, and

20 “(II) has, and is reasonably ex-
21 pected to continue to have, aggregate
22 gross assets (including assets under
23 management for investors, whether
24 held directly or indirectly) of less than
25 \$50,000,000, and

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

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

11 “(i) is a domestic corporation (deter-
12 mined without regard to this subsection),
13 and

14 “(ii) has substantial assets (other
15 than cash and cash equivalents and other
16 than stock of foreign subsidiaries) held for
17 use in the active conduct of a trade or
18 business in the United States.

19 “(3) MANAGEMENT AND CONTROL.—

20 “(A) IN GENERAL.—The Secretary shall
21 prescribe regulations for purposes of deter-
22 mining cases in which the management and
23 control of a corporation is to be treated as oc-
24 curring primarily within the United States.

1 “(B) EXECUTIVE OFFICERS AND SENIOR
2 MANAGEMENT.—Such regulations shall provide
3 that—

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

14 “(ii) individuals who are not executive
15 officers and senior management of the cor-
16 poration (including individuals who are of-
17 ficers or employees of other corporations in
18 the same chain of corporations as the cor-
19 poration) shall be treated as executive offi-
20 cers and senior management if such indi-
21 viduals exercise the day-to-day responsibil-
22 ities of the corporation described in clause
23 (i).

24 “(C) CORPORATIONS PRIMARILY HOLDING
25 INVESTMENT ASSETS.—Such regulations shall

1 also provide that the management and control
2 of a corporation shall be treated as occurring
3 primarily within the United States if—

4 “(i) the assets of such corporation (di-
5 rectly or indirectly) consist primarily of as-
6 sets being managed on behalf of investors,
7 and

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

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

16 **SEC. 104. REPORTING UNITED STATES BENEFICIAL OWN-**
17 **ERS OF FOREIGN OWNED FINANCIAL AC-**
18 **COUNTS.**

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

1 **“SEC. 6045C. RETURNS REGARDING UNITED STATES BENE-**
2 **FICIAL OWNERS OF FINANCIAL ACCOUNTS**
3 **LOCATED IN THE UNITED STATES AND HELD**
4 **IN THE NAME OF A FOREIGN ENTITY.**

5 “(a) REQUIREMENT OF RETURN.—If—

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

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

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

22 “(b) REQUIRED INFORMATION.—For purposes of
23 subsection (a) the information required to be included on
24 the return shall include—

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

4 “(2) the known facts pertaining to the relation-
5 ship of such United States beneficial owner to the
6 foreign entity and the account,

7 “(3) the gross amount of income from sources
8 within the United States (including gross proceeds
9 from brokerage transactions), and

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

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

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

22 “(2) the information required to be shown on
23 such return with respect to such United States bene-
24 ficial owner.

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

9 **“SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS RE-**
10 **GARDING ESTABLISHMENT OF ACCOUNTS IN**
11 **NON-FATCA INSTITUTIONS.**

12 “(a) REQUIREMENT OF RETURN.—Any financial in-
13 stitution directly or indirectly opening a bank, brokerage,
14 or other financial account for or on behalf of an offshore
15 entity, including a trust, corporation, limited liability com-
16 pany, partnership, or foundation (other than an entity
17 with shares regularly traded on an established securities
18 market), in a non-FATCA institution (as defined in sec-
19 tion 7701(a)(51)) at the direction of, on behalf of, or for
20 the benefit of a United States person shall make a return
21 according to the forms or regulations prescribed by the
22 Secretary.

23 “(b) REQUIRED INFORMATION.—For purposes of
24 subsection (a) the information required to be included on
25 the return shall include—

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

3 “(2) the name and address of the financial in-
4 stitution at which a financial account is opened, the
5 type of account, the account number, the name
6 under which the account was opened, and the
7 amount of the initial deposit,

8 “(3) if the account is held in the name of an
9 entity, the name and address of such entity, the type
10 of entity, and the name and address of any company
11 formation agent or other professional employed to
12 form or acquire the entity, and

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

15 “(c) STATEMENTS TO BE FURNISHED TO UNITED
16 STATES PERSONS WITH RESPECT TO WHOM INFORMA-
17 TION IS REQUIRED TO BE REPORTED.—A financial insti-
18 tution required to make a return under subsection (a)
19 shall furnish to each United States person whose name
20 is required to be set forth in such return a statement
21 showing—

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

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

4 The written statement required under the preceding sen-
5 tence shall be furnished to such United States person on
6 or before January 31 of the year following the calendar
7 year for which the return under subsection (a) was re-
8 quired to be made.

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

15 (b) PENALTIES.—

16 (1) RETURNS.—Section 6724(d)(1)(B) is
17 amended by striking “or” at the end of clause
18 (xxiv), by striking “and” at the end of clause (xxv),
19 and by adding after clause (xxv) the following new
20 clauses:

21 “(xxvi) section 6045C(a) (relating to
22 returns regarding United States beneficial
23 owners of financial accounts located in the
24 United States and held in the name of a
25 foreign entity), or

1 “(xxvii) section 6045D(a) (relating to
 2 returns by financial institutions regarding
 3 establishment of accounts at non-FATCA
 4 institutions), and”.

5 (2) PAYEE STATEMENTS.—Section 6724(d)(2)
 6 is amended by striking “or” at the end of subpara-
 7 graph (GG), by striking the period at the end of
 8 subparagraph (HH), and by inserting after subpara-
 9 graph (HH) the following new subparagraphs:

10 “(II) section 6045C(e) (relating to returns
 11 regarding United States beneficial owners of fi-
 12 nancial accounts located in the United States
 13 and held in the name of a foreign entity),

14 “(JJ) section 6045D(c) (relating to re-
 15 turns by financial institutions regarding estab-
 16 lishment of accounts at non-FATCA institu-
 17 tions).”.

18 (c) CLERICAL AMENDMENT.—The table of sections
 19 for subpart B of part III of subchapter A of chapter 61
 20 is amended by inserting after the item relating to section
 21 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.”.

22 (d) ADDITIONAL PENALTIES.—

1 (1) ADDITIONAL PENALTIES ON BANKS.—Sec-
2 tion 5239(b)(1) of the Revised Statutes (12 U.S.C.
3 93(b)(1)) is amended by inserting “or any of the
4 provisions of section 6045D of the Internal Revenue
5 Code of 1986,” after “any regulation issued pursu-
6 ant to,”.

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

13 (e) REGULATORY AUTHORITY AND EFFECTIVE
14 DATE.—

15 (1) REGULATORY AUTHORITY.—Not later than
16 180 days after the date of the enactment of this Act,
17 the Secretary of the Treasury shall adopt regula-
18 tions, forms, or other guidance necessary to imple-
19 ment this section.

20 (2) EFFECTIVE DATE.—Section 6045C of the
21 Internal Revenue Code of 1986 (as added by this
22 section) and the amendment made by subsection
23 (d)(1) shall take effect with respect to amounts paid
24 into foreign owned accounts located in the United
25 States after December 31 of the year of the date of

1 the enactment of this Act. Section 6045D of such
 2 Code (as so added) and the amendment made by
 3 subsection (d)(2) shall take effect with respect to ac-
 4 counts opened after December 31 of the year of the
 5 date of the enactment of this Act.

6 **SEC. 105. CREDIT DEFAULT SWAP PAYMENTS MADE FROM**
 7 **THE UNITED STATES TO PERSONS OFF-**
 8 **SHORE.**

9 (a) TAX ON CREDIT DEFAULT SWAP PAYMENTS RE-
 10 CEIVED BY FOREIGN PERSONS.—Section 871(a)(1) is
 11 amended—

12 (1) by inserting “credit default swap pay-
 13 ments,” after “annuities,” in subparagraph (A), and

14 (2) by adding at the end the following new sen-
 15 tence: “In the case of credit default swap payments,
 16 the source of a credit default swap payment is deter-
 17 mined by reference to the location of the payor.”.

18 (b) TAX ON CREDIT DEFAULT SWAP PAYMENTS RE-
 19 CEIVED BY FOREIGN CORPORATIONS.—Section 881(a) is
 20 amended—

21 (1) by inserting “credit default swap pay-
 22 ments,” after “annuities,” in paragraph (1), and

23 (2) by adding at the end the following new sen-
 24 tence: “In the case of credit default swap payments,

1 the source of a credit default swap payment is deter-
 2 mined by reference to the location of the payor.”.

3 **SEC. 106. TAX ON INCOME OF CONTROLLED FOREIGN COR-**
 4 **PORATION DEPOSITED IN FINANCIAL AC-**
 5 **COUNT LOCATED IN THE UNITED STATES.**

6 Section 952(a) is amended by adding at the end the
 7 following new sentence: “Notwithstanding section
 8 956(c)(2)(A), any property (as defined in section 317(a))
 9 of such controlled foreign corporation that is deposited
 10 and maintained, directly or indirectly, for or on behalf of
 11 such corporation in a financial account located in the
 12 United States, including in a correspondent account of a
 13 financial institution, is a constructive distribution with re-
 14 spect to the stock which such United States shareholder
 15 owns.”.

16 **TITLE II—OTHER MEASURES TO**
 17 **COMBAT TAX HAVEN AND TAX**
 18 **SHELTER ABUSES**

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

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

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

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

1 “(A) the term ‘issuer group’ shall mean
2 the issuer, each subsidiary of the issuer, and
3 each entity under the control of the issuer;

4 “(B) the term ‘country of operation’ shall
5 mean each country in which a member of the
6 issuer group is incorporated or organized, or
7 maintains employees or conducts business ac-
8 tivities; and

9 “(C) the term ‘world-wide allocation of
10 group members’ shall mean each member of the
11 issuer group listed according to their country of
12 operation.

13 “(2) COUNTRY-BY-COUNTRY REPORTING.—The
14 Commission shall issue rules that require each issuer
15 to include in an annual report filed by the issuer
16 with the Commission information indicative of finan-
17 cial performance on a country-by-country basis dur-
18 ing the covered period, including—

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

20 “(B) the world-wide allocation of group
21 members;

22 “(C) the financial performance of each
23 member of the issuer group in each country of
24 operation, without exception, including, and set
25 forth according to—

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

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

5 “(iii) total sales by the member of the
6 issuer group to other members of the
7 issuer group and total sales to each such
8 member;

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

11 “(v) total purchases by the member of
12 the issuer group from other members of
13 the issuer group and total purchases from
14 each such member;

15 “(vi) total financing payments made
16 by the member of the issuer group to third
17 parties;

18 “(vii) total financing payments made
19 by the member of the issuer group to other
20 members of the issuer group and total fi-
21 nancing payments made to each such
22 member;

23 “(viii) pre-tax gross revenues of the
24 member of the issuer group;

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

3 “(x) such other financial information
4 as the Commission may determine is indic-
5 ative of the financial performance of the
6 issuer;

7 “(D) the tax paid by each member of the
8 issuer group in each country of operation, with-
9 out exception, including, and set forth accord-
10 ing to—

11 “(i) total Federal, regional, local, and
12 other tax assessed against each member of
13 the issuer group with respect to each coun-
14 try of operation during the covered period;

15 “(ii) after taking into account any tax
16 deductions, tax credits, tax forgiveness, or
17 other tax benefits or waivers, total amount
18 of tax paid from the treasury of the mem-
19 ber of the issuer group to the government
20 of each country of operation during the
21 covered period; and

22 “(iii) such other financial information
23 as the Commission may determine is nec-
24 essary or appropriate to inform the public

1 of the tax obligations of and payments by
2 each member of the issuer group; and

3 “(E) such other financial information as
4 the Commission may determine is necessary or
5 appropriate in the public interest or for the pro-
6 tection of investors.”.

7 (b) RULEMAKING.—

8 (1) DEADLINES.—Not later than 180 days
9 after the date of the enactment of this Act, the
10 Commission shall issue a proposed rule to carry out
11 this section and, not later than 270 days after the
12 date of the enactment of this Act, shall issue a final
13 rule to carry out this section.

14 (2) CONSULTATION.—In issuing the rules under
15 this section, the Commission shall consult with the
16 Secretary of the Treasury and the Commissioner of
17 Internal Revenue and, to the extent practicable and
18 in furtherance of its obligation to protect investors,
19 shall issue rules that support Federal efforts to re-
20 duce offshore tax evasion and abuses.

21 (3) INTERACTIVE DATA FORMAT.—The rules
22 issued under this section shall require that the infor-
23 mation provided by issuers in their annual reports
24 be submitted in an interactive data format as pro-
25 vided in section 13(q)(2)(D) of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78m(q)(2)(D)), and
2 to the extent practicable, the Commission shall make
3 available online, to the public, a compilation of such
4 information.

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

14 (5) EFFECTIVE DATE.—Each issuer shall be re-
15 quired to comply with the requirements of section
16 13(r) of the Securities Exchange Act of 1934 (15
17 U.S.C. 78m(r)), as added by this section, not later
18 than the date on which the issuer must file with the
19 Commission its first annual report that is due not
20 later than 1 year after the date on which the Com-
21 mission issues a final rule under this section.

22 **SEC. 202. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**
23 **HOLDINGS.**

24 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
25 21(d)(3)(B) of the Securities Exchange Act of 1934 (15

1 U.S.C. 78u(d)(3)(B)) is amended by adding at the end
2 the following:

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

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

20 “(D) FOURTH TIER.—Notwithstanding
21 subparagraphs (A), (B), and (C), the amount of
22 penalty for each such violation shall not exceed
23 \$1,000,000 for any person, if the violation de-
24 scribed in paragraph (1) involved a knowing
25 failure to disclose any holding or transaction in-

1 volving equity or debt instruments of an issuer
2 and known by such person to involve a foreign
3 entity, including any trust, corporation, limited
4 liability company, partnership, or foundation,
5 directly or indirectly controlled by such person,
6 and which would have been otherwise subject to
7 disclosure by such person under this title.”.

8 (c) INVESTMENT COMPANY ACT OF 1940.—Section
9 9(d)(2) of the Investment Company Act of 1940 (15
10 U.S.C. 80a–9(d)(2)) is amended by adding at the end the
11 following:

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

1 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
2 203(i)(2) of the Investment Advisers Act of 1940 (15
3 U.S.C. 80b–3(i)(2)) is amended by adding at the end the
4 following:

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

18 **SEC. 203. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**
19 **FOR HEDGE FUNDS AND PRIVATE EQUITY**
20 **FUNDS.**

21 (a) IN GENERAL.—

22 (1) PROPOSED RULE.—Not later than 90 days
23 after the date of the enactment of this Act, the Sec-
24 retary of the Treasury, in consultation with the
25 Chairman of the Securities and Exchange Commis-

1 sion and the Chairman of the Commodity Futures
2 Trading Commission, shall publish a proposed rule
3 in the Federal Register requiring unregistered in-
4 vestment companies, including hedge funds or pri-
5 vate equity funds, to establish anti-money laundering
6 programs and submit suspicious activity reports
7 under subsections (g) and (h) of section 5318 of title
8 31, United States Code.

9 (2) FINAL RULE.—Not later than 180 days
10 after the date of the enactment of this Act, the Sec-
11 retary of the Treasury shall publish a final rule in
12 the Federal Register on the matter described in
13 paragraph (1).

14 (b) CONTENTS.—The final rule published under this
15 section—

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

20 (A) use risk-based due diligence policies,
21 procedures, and controls that are reasonably de-
22 signed to ascertain the identity of any foreign
23 person (including the nominal and beneficial
24 owner or beneficiary of a foreign corporation,
25 partnership, trust, or other foreign entity) plan-

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

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

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

7 “(Z) persons engaged in the business of
8 forming new corporations, limited liability com-
9 panies, partnerships, trusts, or other legal enti-
10 ties; or”.

11 (b) DEADLINE FOR ANTI-MONEY LAUNDERING
12 RULE FOR FORMATION AGENTS.—

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

24 (2) FINAL RULE.—Not later than 270 days
25 after such date of enactment, the Secretary of the

1 Treasury shall publish a final rule in the Federal
2 Register on the matter described in paragraph (1).

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

7 (A) any government agency; and

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

12 **SEC. 205. STRENGTHENING JOHN DOE SUMMONS PRO-**
13 **CEEDINGS.**

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

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

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

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

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

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

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

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

1 shall be a presumption that there is a reasonable
2 basis for believing that such person or group or class
3 of persons may fail or may have failed to comply
4 with provisions of internal revenue law.

5 “(4) PROJECT JOHN DOE SUMMONSES.—

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

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

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

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

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

22 “(i) any summons issues with respect
23 to the project will be issued to a member
24 of an ascertainable group or class of per-
25 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 (d) GAO REPORT.—Not later than the date which
12 is 5 years after the date of the enactment of this Act,
13 the Comptroller General of the United States shall issue
14 a report on the implementation of section 7609(f)(2) of
15 the Internal Revenue Code of 1986, as added by this sec-
16 tion.

17 **SEC. 206. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**
18 **CIAL ACCOUNT REPORTING.**

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

23 “For purposes of subparagraph (A)(i), section 5314
24 of title 31, United States Code, and sections 5321
25 and 5322 of such title (as such sections pertain to

1 such section 5314), shall be considered related stat-
 2 utes.”.

3 (b) SIMPLIFYING THE CALCULATION OF FOREIGN
 4 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section
 5 5321(a)(5)(D)(ii) of title 31, United States Code, is
 6 amended by striking “the balance in the account at the
 7 time of the violation” and inserting “the highest balance
 8 in the account during the reporting period to which the
 9 violation relates”.

10 (c) CLARIFYING THE USE OF SUSPICIOUS ACTIVITY
 11 REPORTS UNDER THE BANK SECRECY ACT FOR CIVIL
 12 TAX LAW ENFORCEMENT.—Section 5319 of title 31,
 13 United States Code, is amended by inserting “the civil and
 14 criminal enforcement divisions of the Internal Revenue
 15 Service,” after “including”.

16 **TITLE III—COMBATING TAX**
 17 **SHELTER PROMOTERS**

18 **SEC. 301. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**
 19 **TERS.**

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

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

24 (2) by striking “a penalty” and all that follows
 25 through the period in the first sentence of subsection

1 (a) and inserting “a penalty determined under sub-
2 section (b)”, and

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

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

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

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

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

24 “(c) PENALTY NOT DEDUCTIBLE.—The payment of
25 any penalty imposed under this section or the payment

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

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

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

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

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

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

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

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

23 (b) AMOUNT OF PENALTY.—Subsection (b) of section
24 6701 is amended to read as follows:

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

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

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

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

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

1 “(g) PENALTY NOT DEDUCTIBLE.—The payment of
 2 any penalty imposed under this section or the payment
 3 of any amount to settle or avoid the imposition of such
 4 penalty shall not be considered an ordinary and necessary
 5 expense in carrying on a trade or business for purposes
 6 of this title and shall not be deductible by the person who
 7 is subject to such penalty or who makes such payment.”.

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

11 **SEC. 303. PROHIBITED FEE ARRANGEMENT.**

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

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

16 (2) by striking “subsection (a).” in paragraphs
 17 (2) and (3) of subsection (g) (as redesignated by
 18 paragraph (1)) and inserting “subsection (a) or
 19 (f).”, and

20 (3) by inserting after subsection (e) the fol-
 21 lowing new subsection:

22 “(f) PROHIBITED FEE ARRANGEMENT.—

23 “(1) IN GENERAL.—Any person who makes an
 24 agreement for, charges, or collects a fee which is for
 25 services provided in connection with the internal rev-

1 enue laws, and the amount of which is calculated ac-
2 cording to, or is dependent upon, a projected or ac-
3 tual amount of—

4 “(A) tax savings or benefits, or

5 “(B) losses which can be used to offset
6 other taxable income,

7 shall pay a penalty with respect to each such fee ac-
8 tivity in the amount determined under subsection
9 (b).

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

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

18 **SEC. 304. PREVENTING TAX SHELTER ACTIVITIES BY FI-**
19 **NANCIAL INSTITUTIONS.**

20 (a) EXAMINATIONS.—

21 (1) DEVELOPMENT OF EXAMINATION TECH-
22 NIQUES.—Each of the Federal banking agencies and
23 the Commission shall, in consultation with the Inter-
24 nal Revenue Service, develop examination techniques
25 to detect potential violations of section 6700 or 6701

1 of the Internal Revenue Code of 1986, by depository
2 institutions, brokers, dealers, and investment advis-
3 ers, as appropriate.

4 (2) IMPLEMENTATION.—Each of the Federal
5 banking agencies and the Commission shall imple-
6 ment the examination techniques developed under
7 paragraph (1) with respect to each of the depository
8 institutions, brokers, dealers, or investment advisers
9 subject to their enforcement authority. Such exam-
10 ination shall, to the extent possible, be combined
11 with any examination by such agency otherwise re-
12 quired or authorized by Federal law.

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

21 (c) REPORT TO CONGRESS.—The Federal banking
22 agencies and the Commission shall submit a joint written
23 report to Congress in 2013 on their progress in preventing
24 violations of sections 6700 and 6701 of the Internal Rev-

1 enue Code of 1986, by depository institutions, brokers,
2 dealers, and investment advisers, as appropriate.

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

4 (1) the terms “broker”, “dealer”, and “invest-
5 ment adviser” have the same meanings as in section
6 3 of the Securities Exchange Act of 1934 (15 U.S.C.
7 78c);

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

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

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

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

18 **SEC. 305. INFORMATION SHARING FOR ENFORCEMENT**

19 **PURPOSES.**

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

23 “(7) DISCLOSURE OF RETURNS AND RETURN
24 INFORMATION RELATED TO PROMOTION OF PROHIB-

1 ITED TAX SHELTERS OR TAX AVOIDANCE
2 SCHEMES.—

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

1 ceeding. In the discretion of the Secretary, such
2 disclosure may take the form of the participa-
3 tion of Internal Revenue Service employees in a
4 joint investigation, examination, or proceeding
5 with the Securities Exchange Commission, Fed-
6 eral banking agency, or Public Company Ac-
7 counting Oversight Board.

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

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

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

16 “(iii) the name or names of the finan-
17 cial institution, issuer, or public accounting
18 firm to which such return information re-
19 lates,

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

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

1 “(C) FINANCIAL INSTITUTION.—For the
2 purposes of this paragraph, the term ‘financial
3 institution’ means a depository institution, for-
4 eign bank, insured institution, industrial loan
5 company, broker, dealer, investment company,
6 investment advisor, or other entity subject to
7 regulation or oversight by the United States Se-
8 curities and Exchange Commission or an appro-
9 priate Federal banking agency.”.

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

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

16 “(A) WRITTEN REQUEST.—Upon receipt
17 by the Secretary of a written request which
18 meets the requirements of subparagraph (B)
19 from the head of the United States Securities
20 and Exchange Commission or the Public Com-
21 pany Accounting Oversight Board, a return or
22 return information shall be disclosed to such re-
23 questor’s officers and employees who are per-
24 sonally and directly engaged in an investigation,
25 examination, or proceeding by such requester to

1 evaluate the accuracy of a financial statement
2 or report, or to determine whether to require a
3 restatement, penalize, or deter conduct by an
4 issuer, investment company, or public account-
5 ing firm, or associated person, in connection
6 with a potential or actual violation of auditing
7 standards or prohibitions against false or mis-
8 leading statements or omissions in financial
9 statements or reports. Such disclosure shall be
10 solely for use by such officers and employees in
11 such investigation, examination, or proceeding.

12 “(B) REQUIREMENTS.—A request meets
13 the requirements of this subparagraph if it sets
14 forth—

15 “(i) the nature of the investigation,
16 examination, or proceeding,

17 “(ii) the statutory authority under
18 which such investigation, examination, or
19 proceeding is being conducted,

20 “(iii) the name or names of the issuer,
21 investment company, or public accounting
22 firm to which such return information re-
23 lates,

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

1 “(v) the specific reason or reasons
2 why such disclosure is, or may be, relevant
3 to such investigation, examination or pro-
4 ceeding.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to disclosures and to information
7 and document requests made after the date of the enact-
8 ment of this Act.

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

10 (a) DISCLOSURE BY TAX RETURN PREPARER.—

11 (1) IN GENERAL.—Subparagraph (B) of section
12 7216(b)(1) is amended to read as follows:

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

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

17 “(ii) A subpoena issued by a Federal
18 or State grand jury.

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

22 “(I) any Federal agency, includ-
23 ing Congress or any committee or
24 subcommittee thereof, or

1 “(II) any State agency, body, or
2 commission charged under the laws of
3 the State or a political subdivision of
4 the State with the licensing, registra-
5 tion, or regulation of tax return pre-
6 parers.”.

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

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

13 “(2) INSPECTION BY CONGRESS.—

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

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

9 “(B) ADDITIONAL INFORMATION.—Section
10 6103(f) shall apply with respect to—

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

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

21 as if such papers constituted returns.”.

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

1 **SEC. 307. 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.”.

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