

114TH CONGRESS
2D SESSION

S. 3268

To amend the Internal Revenue Code of 1986 to require all United States entities to have an employer identification number issued by the Secretary of the Treasury, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2016

Mr. CARPER (for himself, Mr. COONS, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to require all United States entities to have an employer identification number issued by the Secretary of the Treasury, 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.**

4 This Act may be cited as the “Closing Loopholes
5 Against Money-Laundering Practices Act” or the
6 “CLAMP Act”.

1 **SEC. 2. REQUIREMENT OF EIN FOR UNITED STATES ENTI-**
2 **TIES.**

3 (a) IN GENERAL.—Section 6109 of the Internal Rev-
4 enue Code of 1986 is amended by inserting after sub-
5 section (d) the following new subsection:

6 “(e) REQUIREMENT OF EIN FOR UNITED STATES
7 ENTITIES.—

8 “(1) IN GENERAL.—Except as otherwise deter-
9 mined by the Secretary, every United States entity
10 shall obtain and have an employer identification
11 number assigned by the Secretary.

12 “(2) DEFINITIONS.—For purposes of this sub-
13 section—

14 “(A) UNITED STATES ENTITY.—Except as
15 may be provided by regulations, the term
16 ‘United States entity’ means any business enti-
17 ty created or organized in the United States or
18 under the law of the United States or of a
19 State, possession, or territory of the United
20 States.

21 “(B) EXCEPTION.—The term ‘United
22 States entity’ does not include any organization
23 which is exempt from taxation under section
24 501(a).

25 “(C) UNITED STATES.—The term ‘United
26 States’ includes the States, the District of Co-

1 lumbia, and the possessions and territories of
2 the United States.

3 “(3) TIME AND MANNER OF APPLICATION.—

4 The Secretary shall set forth the time and manner
5 for a United States entity that does not have an em-
6 ployer identification number to obtain such a num-
7 ber.”.

8 (b) CIVIL PENALTY.—

9 (1) IN GENERAL.—Part I of subchapter B of
10 chapter 68 of the Internal Revenue Code of 1986 is
11 amended by adding at the end the following new sec-
12 tion:

13 **“SEC. 6720D. PENALTY FOR FAILURES RELATING TO EM-**
14 **PLOYER IDENTIFICATION NUMBERS.**

15 “(a) FAILURE TO HAVE AN IDENTIFYING NUM-
16 BER.—

17 “(1) IN GENERAL.—Any United States entity
18 (as defined in section 6109(e)(2)(A)) that fails to
19 obtain an employer identification number in accord-
20 ance with section 6109(e)(1) shall pay a penalty of
21 \$10,000.

22 “(2) JOINT AND SEVERAL LIABILITY.—Not-
23 withstanding section 6671(a), if a United States en-
24 tity does not pay a penalty assessed under para-
25 graph (1) within 60 days after the date of the notice

1 and demand for payment, any person who is treated
2 as a responsible party with respect to such entity at
3 any time during the period beginning on the date
4 the entity was required to obtain such number and
5 ending on the date that is 60 days after the date of
6 the notice and demand for payment shall be jointly
7 and severally liable with the entity for such penalty.

8 “(b) FAILURE TO PROVIDE REQUIRED INFORMA-
9 TION.—

10 “(1) IN GENERAL.—Any person who fails to
11 provide information required by the Secretary under
12 section 6109(c) (including updating previously sub-
13 mitted information as the Secretary may require by
14 regulations) shall pay a penalty of \$100 for each
15 such failure.

16 “(2) INTENTIONAL FAILURES.—In the case of a
17 failure that the Secretary determines to be inten-
18 tional, paragraph (1) shall be applied by substituting
19 ‘\$1,000’ for ‘\$100’. For purposes of the preceding
20 sentence, a pattern of failing to provide or update
21 information shall be treated as intentional failure.

22 “(3) JOINT AND SEVERAL LIABILITY.—Not-
23 withstanding section 6671(a), if any United States
24 entity (as defined in section 6109(e)(2)(A)) does not
25 pay a penalty assessed under paragraph (1) within

1 60 days after the date of the notice and demand for
2 payment, any person who at any time during the pe-
3 riod beginning on the date the entity was required
4 to provide the information under paragraph (1) and
5 ending on the date that is 60 days after the date of
6 the notice and demand for payment is treated as a
7 responsible party with respect to such entity shall be
8 jointly and severally liable with such entity for such
9 penalty.

10 “(4) COORDINATION WITH SUBSECTION (a).—

11 No penalty shall be imposed under this subsection
12 for any taxable year with respect to which a penalty
13 is imposed under subsection (a) on the same entity.

14 “(c) REASONABLE CAUSE.—No penalty shall apply
15 under subsection (a) or (b) if it is shown that the failure
16 to satisfy the requirements of section 6109(e) or 6109(c),
17 as the case may be, is due to reasonable cause and not
18 due to willful neglect.”.

19 (2) CLERICAL AMENDMENT.—The table of sec-
20 tions for part I of subchapter B of chapter 68 of the
21 Internal Revenue Code of 1986 is amended by add-
22 ing at the end the following new item:

“Sec. 6720D. Penalty for failures relating to employer identification numbers.”.

23 (c) CRIMINAL PENALTY.—

24 (1) IN GENERAL.—Part I of subchapter A of
25 chapter 75 of the Internal Revenue Code of 1986 is

1 amended by adding at the end the following new sec-
2 tion:

3 **“SEC. 7218. WILLFUL FAILURE TO OBTAIN AN EMPLOYER**
4 **IDENTIFICATION NUMBER.**

5 “Any person who willfully attempts in any manner
6 to evade or defeat the employer identification number re-
7 quirement of section 6109(e) or any regulations there-
8 under for the purpose of hiding the existence of an entity
9 or the identity of its responsible party shall, in addition
10 to any other penalties provided by law, be guilty of a fel-
11 ony and, upon conviction thereof, shall be fined not more
12 than \$100,000 (\$500,000 in the case of a corporation),
13 or imprisoned not more than 5 years, or both, together
14 with the costs of prosecution.”.

15 (2) CLERICAL AMENDMENT.—The table of sec-
16 tions for part I of subchapter A of chapter 75 of the
17 Internal Revenue Code of 1986 is amended by add-
18 ing at the end the following new item:

“Sec. 7218. Willful failure to obtain an employer identification number.”.

19 (d) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendment made by subsection (a)
22 shall apply to United States entities (as defined in
23 section 6109(e)(2)(A) of the Internal Revenue Code
24 of 1986) formed on or after the date that is 180
25 days after the date of the enactment of this Act.

1 (2) APPLICATION TO EXISTING UNITED STATES
2 ENTITIES.—With respect to United States entities
3 (as so defined) in existence on the day before the
4 date specified in paragraph (1), the amendment
5 made by subsection (a) shall take effect on the date
6 that is 3 years after the date of the enactment of
7 this Act.

8 (3) ISSUANCE OF IDENTIFYING NUMBERS WITH
9 RESPECT TO EXISTING ENTITIES.—Not later than
10 the date that is 3 years after the date of the enact-
11 ment of this Act, the Secretary of the Treasury shall
12 provide a method for all United States entities (as
13 so defined) to whom paragraph (1) does not apply
14 to obtain an identifying number under section
15 6109(e) of such Code, and shall assign such an iden-
16 tifying number to each such entity.

17 (4) PENALTIES.—With respect to a United
18 States entity (as so defined), the amendments made
19 by subsections (b) and (c) shall apply to failures
20 after the date described in paragraph (1) or (2),
21 whichever is applicable.

1 **SEC. 3. DISCLOSURE OF RESPONSIBLE PARTY IDENTITY**
2 **FOR USE IN ANTI-MONEY LAUNDERING AND**
3 **COUNTERTERRORISM INVESTIGATIONS AND**
4 **PROSECUTIONS.**

5 (a) IN GENERAL.—Subsection (i) of section 6103 of
6 the Internal Revenue Code of 1986 is amended by adding
7 at the end the following new paragraph:

8 “(9) DISCLOSURE UPON REQUEST OF RESPON-
9 SIBLE PARTY IDENTITY FOR USE IN ANTI-MONEY
10 LAUNDERING AND COUNTERTERRORISM INVESTIGA-
11 TIONS AND PROSECUTIONS.—

12 “(A) IN GENERAL.—Except as provided in
13 paragraph (6), after taking into consideration
14 the factors described in subparagraph (B), the
15 Secretary may disclose, upon written request, to
16 the individuals described in subparagraph (C)
17 taxpayer identity information consisting of—

18 “(i) the name and employer identifica-
19 tion number of the specific entity to whom
20 the request relates,

21 “(ii) the name and identifying num-
22 ber, and any available contact information,
23 of the responsible party and any third-
24 party designee reflected on the entity’s ap-
25 plication for an employer identification
26 number, and

1 “(iii) any trade name, other address-
2 es, entity type, or principal activity of the
3 business reflected on such application,
4 but only to the extent such information was in-
5 cluded on the entity’s application for an em-
6 ployer identification number pursuant to the re-
7 quirements of section 6109(e) or any prede-
8 cessor provision or program, and to the extent
9 the Secretary determines such disclosure would
10 not seriously impair Federal tax administration.

11 “(B) FACTORS FOR CONSIDERATION.—The
12 factors described in this subparagraph are
13 whether the information requested in such writ-
14 ten request—

15 “(i) is being sought exclusively for use
16 in a Federal criminal investigation or pro-
17 ceeding pertaining to offenses described in
18 clause (i) or (ii) of subparagraph (C),

19 “(ii) is or may be relevant to a matter
20 relating to such an offense, and

21 “(iii) cannot be reasonably obtained,
22 taking into account all relevant cir-
23 cumstances, from any other source.

24 “(C) INDIVIDUALS DESCRIBED.—For pur-
25 poses of subparagraph (A), the individuals de-

1 scribed in this paragraph are officers and em-
2 ployees of any Federal law enforcement agency
3 who are personally and directly engaged in the
4 investigation, response, or analysis, or in any
5 judicial, administrative, or grand jury pro-
6 ceedings, pertaining to offenses under—

7 “(i) section 1956, 1957, 1960, 2339A,
8 2339B, or 2339C of title 18, United States
9 Code, or

10 “(ii) subchapter II of chapter 53 of
11 title 31, United States Code.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Paragraph (6) of section 6103 (i) of the In-
14 ternal Revenue Code of 1986 is amended by striking
15 “or (8)” and inserting “(8), or (9)”.

16 (2) Paragraph (4) of section 6103(p) of such
17 Code is amended—

18 (A) by striking “(5), or (7)” and inserting
19 “(5), (7), or (9)”, and

20 (B) by striking “(5) or (7)” and inserting
21 “(5), (7), or (9)”.

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to disclosures made after the date
24 of the enactment of this Act.

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