

112TH CONGRESS
1ST SESSION

H. R. 2669

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

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2011

Mr. DOGGETT (for himself, Mr. LEVIN, Mr. LARSON of Connecticut, Ms. DELAURO, Mr. VAN HOLLEN, Mr. GEORGE MILLER of California, Mr. BLUMENAUER, Mr. McDERMOTT, Mr. LEWIS of Georgia, Ms. BERKLEY, Mr. STARK, Mr. PASCRELL, Mr. WELCH, Ms. SLAUGHTER, Mr. DINGELL, Mr. YARMUTH, Ms. LINDA T. SÁNCHEZ of California, Mr. CONYERS, Ms. SCHAKOWSKY, Mr. DAVIS of Illinois, Mr. MCGOVERN, Mr. FILNER, Mr. GENE GREEN of Texas, Mr. HINCHEY, Mr. GRIJALVA, Ms. HIRONO, Mr. JOHNSON of Georgia, Ms. LEE of California, Ms. MOORE, Mr. TIERNEY, Ms. KAPTUR, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. DEFazio, Mr. TONKO, Mr. SHERMAN, Ms. JACKSON LEE of Texas, Mr. PETERS, Mr. RUSH, Mr. FARR, Mr. MORAN, Ms. BALDWIN, Ms. EDWARDS, Mr. MARKEY, Mr. HOLT, Mr. FATTAH, Mr. CLEAVER, Mr. CUMMINGS, Mr. AL GREEN of Texas, Mr. NADLER, Mr. PAYNE, Ms. BASS of California, Ms. SUTTON, Mr. ELLISON, and Mr. ANDREWS) 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

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

12 (c) **TABLE OF CONTENTS.**—The table of contents of
 13 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.—”;**

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

3 “(c) CONSULTATIONS AND INFORMATION TO BE
4 CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,
5 TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-
6 MARY MONEY LAUNDERING CONCERN OR TO BE IMPED-
7 ING UNITED STATES TAX ENFORCEMENT.—”;

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

11 (5) in subsection (a)(4)—

12 (A) in subparagraph (A)—

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

15 and

16 (ii) by striking “and” at the end;

17 (B) by redesignating subparagraph (B) as
18 subparagraph (C); and

19 (C) by inserting after subparagraph (A)
20 the following new subparagraph:

21 “(B) in matters involving United States
22 tax enforcement, shall consult with the Commis-
23 sioner of the Internal Revenue Service, the Sec-
24 retary of State, the Attorney General of the
25 United States, and in the sole discretion of the

1 Secretary, such other agencies and interested
2 parties as the Secretary may find to be appro-
3 priate; and”;

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

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

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

1 “(A) the opening or maintaining in the
2 United States of a correspondent account or
3 payable-through account; or

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

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

22 (9) in subsection (c)(2)(A)—

23 (A) in clause (ii), by striking “bank secrecy
24 or special regulatory advantages” and inserting

1 “bank, tax, corporate, trust, or financial secrecy
2 or regulatory advantages”;

3 (B) in clause (iii), by striking “supervisory
4 and counter-money” and inserting “supervisory,
5 international tax enforcement, and counter-
6 money”;

7 (C) in clause (v), by striking “banking or
8 secrecy” and inserting “banking, tax, or se-
9 crecy”; and

10 (D) in clause (vi), by inserting “, tax trea-
11 ty, or tax information exchange agreement”
12 after “treaty”;

13 (10) in subsection (c)(2)(B)—

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

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

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

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 102. STRENGTHENING THE FOREIGN ACCOUNT TAX**
5 **COMPLIANCE ACT (FATCA).**

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

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

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

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

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

23 (1) by inserting “as a result of any customer
24 identification, anti-money laundering, anti-corrup-
25 tion, or similar obligation to identify account hold-

1 ers,” after “reason to know,” in subsection (b)(2),
2 and

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

6 (d) DEFINITIONS.—Clauses (i) and (ii) of section
7 1473(2)(A) are each amended by inserting “or as a bene-
8 ficial owner” after “indirectly”.

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

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

17 (2) by inserting “, or has had an agreement
18 terminated under such section,” after “section
19 1471(b)” in paragraph (2).

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

1 (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES
 2 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-
 3 TIONS.—

4 (1) PRESUMPTIONS FOR TAX PURPOSES.—

5 (A) IN GENERAL.—Chapter 76 is amended
 6 by inserting after section 7491 the following
 7 new subchapter:

8 **“Subchapter F—Presumptions for Certain**
 9 **Legal Proceedings**

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

10 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**
 11 **TRANSACTIONS INVOLVING NON-FATCA IN-**
 12 **STITUTIONS.**

13 “(a) CONTROL.—For purposes of any United States
 14 civil judicial or administrative proceeding to determine or
 15 collect tax, there shall be a rebuttable presumption that
 16 a United States person (other than an entity with shares
 17 regularly traded on an established securities market) who,
 18 directly or indirectly, formed, transferred assets to, was
 19 a beneficiary of, had a beneficial interest in, or received
 20 money or property or the use thereof from an entity, in-
 21 cluding a trust, corporation, limited liability company,
 22 partnership, or foundation (other than an entity with
 23 shares regularly traded on an established securities mar-
 24 ket), that holds an account, or in any other manner has

1 assets, in a non-FATCA institution, exercised control over
2 such entity. The presumption of control created by this
3 subsection shall not be applied to prevent the Secretary
4 from determining or arguing the absence of control.

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

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

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

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

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

21 (B) The table of subchapters for chapter
22 76 is amended by inserting after the item relat-
23 ing to subchapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

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

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

12 “(j) PRESUMPTIONS PERTAINING TO CONTROL AND
13 BENEFICIAL OWNERSHIP.—

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

1 that holds an account, or in any other manner has
2 assets, in a non-FATCA institution (as defined in
3 section 7701(a)(51) of the Internal Revenue Code of
4 1986), exercised control over such entity. The pre-
5 sumption of control created by this paragraph shall
6 not be applied to prevent the Commission from de-
7 termining or arguing the absence of control.

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

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

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

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

1 actions is not necessary to carry out the purposes of
2 such amendments.

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

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

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

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

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

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

22 “(B) the management and control of the
23 corporation occurs, directly or indirectly, pri-
24 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 accounts at non-FATCA institutions.”.

3 (d) ADDITIONAL PENALTIES.—

4 (1) ADDITIONAL PENALTIES ON BANKS.—Section
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 to,”.

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. CREDIT DEFAULT SWAP PAYMENTS MADE FROM**
13 **THE UNITED STATES TO PERSONS OFF-**
14 **SHORE.**

15 (a) TAX ON CREDIT DEFAULT SWAP PAYMENTS RE-
16 CEIVED BY FOREIGN PERSONS.—Section 871(a)(1) is
17 amended—

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

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

1 (b) TAX ON CREDIT DEFAULT SWAP PAYMENTS RE-
2 CEIVED BY FOREIGN CORPORATIONS.—Section 881(a) is
3 amended—

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

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

10 **SEC. 106. TAX ON INCOME OF CONTROLLED FOREIGN COR-**
11 **PORATION DEPOSITED IN FINANCIAL AC-**
12 **COUNT LOCATED IN THE UNITED STATES.**

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

1 **TITLE II—OTHER MEASURES TO**
2 **COMBAT TAX HAVEN AND TAX**
3 **SHELTER ABUSES**

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

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

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

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

11 “(A) the term ‘issuer group’ shall mean
12 the issuer, each subsidiary of the issuer, and
13 each entity under the control of the issuer;

14 “(B) the term ‘country of operation’ shall
15 mean each country in which a member of the
16 issuer group is incorporated or organized, or
17 maintains employees or conducts business ac-
18 tivities; and

19 “(C) the term ‘world-wide allocation of
20 group members’ shall mean each member of the
21 issuer group listed according to their country of
22 operation.

23 “(2) COUNTRY-BY-COUNTRY REPORTING.—The
24 Commission shall issue rules that require each issuer
25 to include in an annual report filed by the issuer

1 with the Commission information indicative of finan-
2 cial performance on a country-by-country basis dur-
3 ing the covered period, including—

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

5 “(B) the world-wide allocation of group
6 members;

7 “(C) the financial performance of each
8 member of the issuer group in each country of
9 operation, without exception, including, and set
10 forth according to—

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

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

15 “(iii) total sales by the member of the
16 issuer group to other members of the
17 issuer group and total sales to each such
18 member;

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

21 “(v) total purchases by the member of
22 the issuer group from other members of
23 the issuer group and total purchases from
24 each such member;

1 “(vi) total financing payments made
2 by the member of the issuer group to third
3 parties;

4 “(vii) total financing payments made
5 by the member of the issuer group to other
6 members of the issuer group and total fi-
7 nancing payments made to each such
8 member;

9 “(viii) pre-tax gross revenues of the
10 member of the issuer group;

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

13 “(x) such other financial information
14 as the Commission may determine is indic-
15 ative of the financial performance of the
16 issuer;

17 “(D) the tax paid by each member of the
18 issuer group in each country of operation, with-
19 out exception, including, and set forth accord-
20 ing to—

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

1 “(ii) after taking into account any tax
2 deductions, tax credits, tax forgiveness, or
3 other tax benefits or waivers, total amount
4 of tax paid from the treasury of the mem-
5 ber of the issuer group to the government
6 of each country of operation during the
7 covered period; and

8 “(iii) such other financial information
9 as the Commission may determine is nec-
10 essary or appropriate to inform the public
11 of the tax obligations of and payments by
12 each member of the issuer group; and

13 “(E) such other financial information as
14 the Commission may determine is necessary or
15 appropriate in the public interest or for the pro-
16 tection of investors.”.

17 (b) RULEMAKING.—

18 (1) DEADLINES.—Not later than 180 days
19 after the date of the enactment of this Act, the
20 Commission shall issue a proposed rule to carry out
21 this section and, not later than 270 days after the
22 date of the enactment of this Act, shall issue a final
23 rule to carry out this section.

24 (2) CONSULTATION.—In issuing the rules under
25 this section, the Commission shall consult with the

1 Secretary of the Treasury and the Commissioner of
2 Internal Revenue and, to the extent practicable and
3 in furtherance of its obligation to protect investors,
4 shall issue rules that support Federal efforts to re-
5 duce offshore tax evasion and abuses.

6 (3) INTERACTIVE DATA FORMAT.—The rules
7 issued under this section shall require that the infor-
8 mation provided by issuers in their annual reports
9 be submitted in an interactive data format as pro-
10 vided in section 13(q)(2)(D) of the Securities Ex-
11 change Act of 1934 (15 U.S.C. 78m(q)(2)(D)), and
12 to the extent practicable, the Commission shall make
13 available online, to the public, a compilation of such
14 information.

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

24 (5) EFFECTIVE DATE.—Each issuer shall be re-
25 quired to comply with the requirements of section

1 13(r) of the Securities Exchange Act of 1934 (15
2 U.S.C. 78m(r)), as added by this section, not later
3 than the date on which the issuer must file with the
4 Commission its first annual report that is due not
5 later than 1 year after the date on which the Com-
6 mission issues a final rule under this section.

7 **SEC. 202. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**
8 **HOLDINGS.**

9 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
10 21(d)(3)(B) of the Securities Exchange Act of 1934 (15
11 U.S.C. 78u(d)(3)(B)) is amended by adding at the end
12 the following:

13 “(iv) **FOURTH TIER.**—Notwithstanding
14 clauses (i), (ii), and (iii), the amount of the
15 penalty for each such violation shall not exceed
16 \$1,000,000 for any person if the violation de-
17 scribed in subparagraph (A) involved a knowing
18 failure to disclose any holding or transaction in-
19 volving equity or debt instruments of an issuer
20 and known by such person to involve a foreign
21 entity, including any trust, corporation, limited
22 liability company, partnership, or foundation
23 that is directly or indirectly controlled by such
24 person, and which would have been otherwise

1 subject to disclosure by such person under this
2 title.”.

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

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

19 (c) INVESTMENT COMPANY ACT OF 1940.—Section
20 9(d)(2) of the Investment Company Act of 1940 (15
21 U.S.C. 80a-9(d)(2)) is amended by adding at the end the
22 following:

23 “(D) FOURTH TIER.—Notwithstanding
24 subparagraphs (A), (B), and (C), the amount of
25 penalty for each such violation shall not exceed

1 \$1,000,000 for any person, if the violation de-
2 scribed in paragraph (1) involved a knowing
3 failure to disclose any holding or transaction in-
4 volving equity or debt instruments of an issuer
5 and known by such person to involve a foreign
6 entity, including any trust, corporation, limited
7 liability company, partnership, or foundation,
8 directly or indirectly controlled by such person,
9 and which would have been otherwise subject to
10 disclosure by such person under this title.”.

11 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
12 203(i)(2) of the Investment Advisers Act of 1940 (15
13 U.S.C. 80b-3(i)(2)) is amended by adding at the end the
14 following:

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

1 and which would have been otherwise subject to
2 disclosure by such person under this title.”.

3 **SEC. 203. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**
4 **FOR HEDGE FUNDS AND PRIVATE EQUITY**
5 **FUNDS.**

6 (a) IN GENERAL.—

7 (1) PROPOSED RULE.—Not later than 90 days
8 after the date of the enactment of this Act, the Sec-
9 retary of the Treasury, in consultation with the
10 Chairman of the Securities and Exchange Commis-
11 sion and the Chairman of the Commodity Futures
12 Trading Commission, shall publish a proposed rule
13 in the Federal Register requiring unregistered in-
14 vestment companies, including hedge funds or pri-
15 vate equity funds, to establish anti-money laundering
16 programs and submit suspicious activity reports
17 under subsections (g) and (h) of section 5318 of title
18 31, United States Code.

19 (2) FINAL RULE.—Not later than 180 days
20 after the date of the enactment of this Act, the Sec-
21 retary of the Treasury shall publish a final rule in
22 the Federal Register on the matter described in
23 paragraph (1).

24 (b) CONTENTS.—The final rule published under this
25 section—

1 (1) shall require, at a minimum, that to safe-
2 guard against terrorist financing and money laun-
3 dering, all unregistered investment companies
4 shall—

5 (A) use risk-based due diligence policies,
6 procedures, and controls that are reasonably de-
7 signed to ascertain the identity of any foreign
8 person (including the nominal and beneficial
9 owner or beneficiary of a foreign corporation,
10 partnership, trust, or other foreign entity) plan-
11 ning to supply or supplying funds to be invested
12 with the advice or assistance of that unregis-
13 tered investment company; and

14 (B) be subject to section 5318(k)(2) of
15 title 31, United States Code; and

16 (2) may incorporate aspects of the proposed
17 rule for unregistered investment companies pub-
18 lished in the Federal Register on September 26,
19 2002 (67 Fed. Reg. 60617) (relating to anti-money
20 laundering programs).

21 (c) DEFINITIONS.—In this section—

22 (1) the terms “investment company” and
23 “issuer” have the same meanings as in section 2 of
24 the Investment Company Act of 1940 (15 U.S.C.
25 80a–2); and

1 (2) the term “unregistered investment com-
2 pany” means an issuer that would be an investment
3 company, but for the exclusion under paragraph (1)
4 or (7) of section 3(c) of the Investment Company
5 Act of 1940 (15 U.S.C. 80a–3(c)).

6 **SEC. 204. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**
7 **FORMATION AGENTS.**

8 (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR
9 FORMATION AGENTS.—Section 5312(a)(2) of title 31,
10 United States Code, is amended, by—

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

13 (2) by redesignating subparagraph (Z) as sub-
14 paragraph (AA); and

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

17 “(Z) persons engaged in the business of
18 forming new corporations, limited liability com-
19 panies, partnerships, trusts, or other legal enti-
20 ties; or”.

21 (b) DEADLINE FOR ANTI-MONEY LAUNDERING
22 RULE FOR FORMATION AGENTS.—

23 (1) PROPOSED RULE.—Not later than 120 days
24 after the date of the enactment of this Act, the Sec-
25 retary of the Treasury, in consultation with the At-

1 torney General of the United States, the Secretary
2 of Homeland Security, and the Commissioner of In-
3 ternal Revenue, shall publish a proposed rule in the
4 Federal Register requiring persons described in sec-
5 tion 5312(a)(2)(Z) of title 31, United States Code,
6 as added by this section, to establish anti-money
7 laundering programs under subsections (g) and (h)
8 of section 5318 of that title.

9 (2) FINAL RULE.—Not later than 270 days
10 after such date of enactment, the Secretary of the
11 Treasury shall publish a final rule in the Federal
12 Register on the matter described in paragraph (1).

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

17 (A) any government agency; and

18 (B) any attorney or law firm that uses a
19 paid formation agent operating within the
20 United States to form such corporations or
21 other entities.

22 **SEC. 205. STRENGTHENING JOHN DOE SUMMONS PRO-**
23 **CEEDINGS.**

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

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

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

8 “(A) the summons relates to the investiga-
9 tion of a particular person or ascertainable
10 group or class of persons,

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

15 “(C) the information sought to be obtained
16 from the examination of the records or testi-
17 mony (and the identity of the person or persons
18 with respect to whose liability the summons is
19 issued) is not readily available from other
20 sources.

21 “(2) EXCEPTION.—Paragraph (1) shall not
22 apply to any summons which specifies that it is lim-
23 ited to information regarding a United States cor-
24 respondent account (as defined in section
25 5318A(e)(1)(B) of title 31, United States Code) or

1 a United States payable-through account (as defined
2 in section 5318A(e)(1)(C) of such title) of a finan-
3 cial institution that is held at a non-FATCA institu-
4 tion (as defined in section 7701(a)(51)).

5 “(3) PRESUMPTION IN CASES INVOLVING NON-
6 FATCA INSTITUTIONS.—For purposes of this section,
7 in any case in which the particular person or ascer-
8 tainable group or class of persons have financial ac-
9 counts in or transactions related to a non-FATCA
10 institution (as defined in section 7701(a)(51)), there
11 shall be a presumption that there is a reasonable
12 basis for believing that such person or group or class
13 of persons may fail or may have failed to comply
14 with provisions of internal revenue law.

15 “(4) PROJECT JOHN DOE SUMMONSES.—

16 “(A) IN GENERAL.—Notwithstanding the
17 requirements of paragraph (1), the Secretary
18 may issue a summons described in paragraph
19 (1) if the summons—

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

22 “(ii) is issued to a person who is a
23 member of the group or class established
24 under subparagraph (B)(i), and

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

4 “(B) APPROVAL OF PROJECTS.—A project
5 may only be approved under this subparagraph
6 after a court proceeding in which the Secretary
7 establishes that—

8 “(i) any summons issues with respect
9 to the project will be issued to a member
10 of an ascertainable group or class of per-
11 sons, and

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

15 “(C) EXTENSION.—Upon application of
16 the Secretary, the court may extend the time
17 for issuing such summonses under subpara-
18 graph (A)(i) for additional 3-year periods, but
19 only if the court continues to exercise oversight
20 of such project under subparagraph (D).

21 “(D) ONGOING COURT OVERSIGHT.—Dur-
22 ing any period in which the Secretary is author-
23 ized to issue summonses in relation to a project
24 approved under subparagraph (B) (including
25 during any extension under subparagraph (C)),

1 the Secretary shall report annually to the court
2 on the use of such authority, provide copies of
3 all summonses with such report, and comply
4 with the court’s direction with respect to the
5 issuance of any John Doe summons under such
6 project.”.

7 (b) JURISDICTION OF COURT.—

8 (1) IN GENERAL.—Paragraph (1) of section
9 7609(h) is amended by inserting after the first sen-
10 tence the following new sentence: “Any United
11 States district court in which a member of the group
12 or class to which a summons may be issued resides
13 or is found shall have jurisdiction to hear and deter-
14 mine the approval of a project under subsection
15 (f)(2)(B).”.

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

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

22 (d) GAO REPORT.—Not later than the date which
23 is 5 years after the date of the enactment of this Act,
24 the Comptroller General of the United States shall issue
25 a report on the implementation of section 7609(f)(2) of

1 the Internal Revenue Code of 1986, as added by this sec-
2 tion.

3 **SEC. 206. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**
4 ****CIAL ACCOUNT REPORTING.****

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

9 “For purposes of subparagraph (A)(i), section 5314
10 of title 31, United States Code, and sections 5321
11 and 5322 of such title (as such sections pertain to
12 such section 5314), shall be considered related stat-
13 utes.”.

14 (b) SIMPLIFYING THE CALCULATION OF FOREIGN
15 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section
16 5321(a)(5)(D)(ii) of title 31, United States Code, is
17 amended by striking “the balance in the account at the
18 time of the violation” and inserting “the highest balance
19 in the account during the reporting period to which the
20 violation relates”.

21 (c) CLARIFYING THE USE OF SUSPICIOUS ACTIVITY
22 REPORTS UNDER THE BANK SECRECY ACT FOR CIVIL
23 TAX LAW ENFORCEMENT.—Section 5319 of title 31,
24 United States Code, is amended by inserting “the civil and

1 criminal enforcement divisions of the Internal Revenue
2 Service,” after “including”.

3 **TITLE III—COMBATING TAX**
4 **SHELTER PROMOTERS**

5 **SEC. 301. PENALTY FOR PROMOTING ABUSIVE TAX SHEL-**
6 **TERS.**

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

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

11 (2) by striking “a penalty” and all that follows
12 through the period in the first sentence of subsection
13 (a) and inserting “a penalty determined under sub-
14 section (b)”, and

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

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

19 “(1) AMOUNT OF PENALTY.—The amount of
20 the penalty imposed by subsection (a) shall not ex-
21 ceed 150 percent of the gross income derived (or to
22 be derived) from such activity by the person or per-
23 sons subject to such penalty.

24 “(2) CALCULATION OF PENALTY.—The penalty
25 amount determined under paragraph (1) shall be

1 calculated with respect to each instance of an activ-
2 ity described in subsection (a), each instance in
3 which income was derived by the person or persons
4 subject to such penalty, and each person who par-
5 ticipated in such an activity.

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

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

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

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

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

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

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

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

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

10 (b) AMOUNT OF PENALTY.—Subsection (b) of section
11 6701 is amended to read as follows:

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

14 “(1) AMOUNT OF PENALTY.—The amount of
15 the penalty imposed by subsection (a) shall not ex-
16 ceed 150 percent of the gross income derived (or to
17 be derived) from such aid, assistance, procurement,
18 or advice provided by the person or persons subject
19 to such penalty.

20 “(2) CALCULATION OF PENALTY.—The penalty
21 amount determined under paragraph (1) shall be
22 calculated with respect to each instance of aid, as-
23 sistance, procurement, or advice described in sub-
24 section (a), each instance in which income was de-
25 rived by the person or persons subject to such pen-

1 alty, and each person who made such an understatement of the liability for tax.

2
3 “(3) LIABILITY FOR PENALTY.—If more than 1
4 person is liable under subsection (a) with respect to
5 providing such aid, assistance, procurement, or advice,
6 all such persons shall be jointly and severally
7 liable for the penalty under such subsection.”.

8 (c) PENALTY NOT DEDUCTIBLE.—Section 6701 is
9 amended by adding at the end the following new subsection:
10

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

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

21 **SEC. 303. PROHIBITED FEE ARRANGEMENT.**

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

24 (1) by redesignating subsections (f) and (g) as
25 subsections (g) and (h), respectively,

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

5 (3) by inserting after subsection (e) the fol-
6 lowing new subsection:

7 “(f) PROHIBITED FEE ARRANGEMENT.—

8 “(1) IN GENERAL.—Any person who makes an
9 agreement for, charges, or collects a fee which is for
10 services provided in connection with the internal rev-
11 enue laws, and the amount of which is calculated ac-
12 cording to, or is dependent upon, a projected or ac-
13 tual amount of—

14 “(A) tax savings or benefits, or

15 “(B) losses which can be used to offset
16 other taxable income,

17 shall pay a penalty with respect to each such fee ac-
18 tivity in the amount determined under subsection
19 (b).

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

24 (b) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to fee agreements, charges, and

1 collections made after the date of the enactment of this
2 Act.

3 **SEC. 304. PREVENTING TAX SHELTER ACTIVITIES BY FI-**
4 **NANCIAL INSTITUTIONS.**

5 (a) EXAMINATIONS.—

6 (1) DEVELOPMENT OF EXAMINATION TECH-
7 NIQUES.—Each of the Federal banking agencies and
8 the Commission shall, in consultation with the Inter-
9 nal Revenue Service, develop examination techniques
10 to detect potential violations of section 6700 or 6701
11 of the Internal Revenue Code of 1986, by depository
12 institutions, brokers, dealers, and investment advis-
13 ers, as appropriate.

14 (2) IMPLEMENTATION.—Each of the Federal
15 banking agencies and the Commission shall imple-
16 ment the examination techniques developed under
17 paragraph (1) with respect to each of the depository
18 institutions, brokers, dealers, or investment advisers
19 subject to their enforcement authority. Such exam-
20 ination shall, to the extent possible, be combined
21 with any examination by such agency otherwise re-
22 quired or authorized by Federal law.

23 (b) REPORT TO INTERNAL REVENUE SERVICE.—In
24 any case in which an examination conducted under this
25 section with respect to a financial institution or other enti-

1 ty reveals a potential violation, such agency shall promptly
2 notify the Internal Revenue Service of such potential viola-
3 tion for investigation and enforcement by the Internal
4 Revenue Service, in accordance with applicable provisions
5 of law.

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

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

13 (1) the terms “broker”, “dealer”, and “invest-
14 ment adviser” have the same meanings as in section
15 3 of the Securities Exchange Act of 1934 (15 U.S.C.
16 78c);

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

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

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

1 (5) the term “Secretary” means the Secretary
2 of the Treasury.

3 **SEC. 305. INFORMATION SHARING FOR ENFORCEMENT**
4 **PURPOSES.**

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

8 “(7) DISCLOSURE OF RETURNS AND RETURN
9 INFORMATION RELATED TO PROMOTION OF PROHIB-
10 ITED TAX SHELTERS OR TAX AVOIDANCE
11 SCHEMES.—

12 “(A) WRITTEN REQUEST.—Upon receipt
13 by the Secretary of a written request which
14 meets the requirements of subparagraph (B)
15 from the head of the United States Securities
16 and Exchange Commission, an appropriate
17 Federal banking agency as defined under sec-
18 tion 1813(q) of title 12, United States Code, or
19 the Public Company Accounting Oversight
20 Board, a return or return information shall be
21 disclosed to such requestor’s officers and em-
22 ployees who are personally and directly engaged
23 in an investigation, examination, or proceeding
24 by such requestor to evaluate, determine, penal-
25 ize, or deter conduct by a financial institution,

1 issuer, or public accounting firm, or associated
2 person, in connection with a potential or actual
3 violation of section 6700 (promotion of abusive
4 tax shelters), 6701 (aiding and abetting under-
5 statement of tax liability), or activities related
6 to promoting or facilitating inappropriate tax
7 avoidance or tax evasion. Such disclosure shall
8 be solely for use by such officers and employees
9 in such investigation, examination, or pro-
10 ceeding. In the discretion of the Secretary, such
11 disclosure may take the form of the participa-
12 tion of Internal Revenue Service employees in a
13 joint investigation, examination, or proceeding
14 with the Securities Exchange Commission, Fed-
15 eral banking agency, or Public Company Ac-
16 counting Oversight Board.

17 “(B) REQUIREMENTS.—A request meets
18 the requirements of this subparagraph if it sets
19 forth—

20 “(i) the nature of the investigation,
21 examination, or proceeding,

22 “(ii) the statutory authority under
23 which such investigation, examination, or
24 proceeding is being conducted,

1 “(iii) the name or names of the finan-
2 cial institution, issuer, or public accounting
3 firm to which such return information re-
4 lates,

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

7 “(v) the specific reason or reasons
8 why such disclosure is, or may be, relevant
9 to such investigation, examination or pro-
10 ceeding.

11 “(C) FINANCIAL INSTITUTION.—For the
12 purposes of this paragraph, the term ‘financial
13 institution’ means a depository institution, for-
14 eign bank, insured institution, industrial loan
15 company, broker, dealer, investment company,
16 investment advisor, or other entity subject to
17 regulation or oversight by the United States Se-
18 curities and Exchange Commission or an appro-
19 priate Federal banking agency.”.

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

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

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

22 “(B) REQUIREMENTS.—A request meets
23 the requirements of this subparagraph if it sets
24 forth—

1 “(i) the nature of the investigation,
2 examination, or proceeding,

3 “(ii) the statutory authority under
4 which such investigation, examination, or
5 proceeding is being conducted,

6 “(iii) the name or names of the issuer,
7 investment company, or public accounting
8 firm to which such return information re-
9 lates,

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

12 “(v) the specific reason or reasons
13 why such disclosure is, or may be, relevant
14 to such investigation, examination or pro-
15 ceeding.”.

16 (c) 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. 306. DISCLOSURE OF INFORMATION TO CONGRESS.**

21 (a) DISCLOSURE BY TAX RETURN PREPARER.—

22 (1) IN GENERAL.—Subparagraph (B) of section
23 7216(b)(1) is amended to read as follows:

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

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

3 “(ii) A subpoena issued by a Federal
4 or State grand jury.

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

8 “(I) any Federal agency, includ-
9 ing Congress or any committee or
10 subcommittee thereof, or

11 “(II) any State agency, body, or
12 commission charged under the laws of
13 the State or a political subdivision of
14 the State with the licensing, registra-
15 tion, or regulation of tax return pre-
16 parers.”.

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

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

23 “(2) INSPECTION BY CONGRESS.—

24 “(A) IN GENERAL.—Upon receipt of a
25 written request from a committee or sub-

1 committee of Congress, copies of documents re-
2 lated to a determination by the Secretary to
3 grant, deny, revoke, or restore an organization's
4 exemption from taxation under section 501
5 shall be provided to such committee or sub-
6 committee, including any application, notice of
7 status, or supporting information provided by
8 such organization to the Internal Revenue Serv-
9 ice; any letter, analysis, or other document pro-
10 duced by or for the Internal Revenue Service
11 evaluating, determining, explaining, or relating
12 to the tax exempt status of such organization
13 (other than returns, unless such returns are
14 available to the public under this section or sec-
15 tion 6103 or 6110); and any communication be-
16 tween the Internal Revenue Service and any
17 other party relating to the tax exempt status of
18 such organization.

19 “(B) ADDITIONAL INFORMATION.—Section
20 6103(f) shall apply with respect to—

21 “(i) the application for exemption of
22 any organization described in subsection
23 (c) or (d) of section 501 which is exempt
24 from taxation under section 501(a) for any
25 taxable year and any application referred

1 to in subparagraph (B) of subsection
2 (a)(1) of this section, and

3 “(ii) any other papers which are in
4 the possession of the Secretary and which
5 relate to such application,

6 as if such papers constituted returns.”.

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

11 **SEC. 307. TAX OPINION STANDARDS FOR TAX PRACTI-**
12 **TIONERS.**

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

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

21 “(1) Independence of the practitioner issuing
22 such written advice from persons promoting, mar-
23 keting, or recommending the subject of the advice.

24 “(2) Collaboration among practitioners, or be-
25 tween a practitioner and other party, which could re-

1 sult in such collaborating parties having a joint fi-
2 nancial interest in the subject of the advice.

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

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

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

10 “(6) Appropriateness of the fees charged by the
11 practitioner for the written advice.

12 “(7) Preventing practitioners and firms from
13 aiding or abetting the understatement of tax liability
14 by clients.

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

○