

107TH CONGRESS  
2D SESSION

# S. 2498

To amend the Internal Revenue Code of 1986 to require adequate disclosure of transactions which have a potential for tax avoidance or evasion, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

MAY 9, 2002

Mr. BAUCUS (for himself and Mr. GRASSLEY) 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 adequate disclosure of transactions which have a potential for tax avoidance or evasion, 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; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the  
6 “Tax Shelter Transparency Act”.

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

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

4 (c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 code; table of contents.

TITLE I—TAXPAYER-RELATED PROVISIONS

Sec. 101. Penalty for failing to disclose reportable transaction.

Sec. 102. Increase in accuracy-related penalties for listed transactions and  
 other reportable transactions having a tax avoidance purpose.

Sec. 103. Modifications of substantial understatement penalty for nonreportable  
 transactions.

Sec. 104. Tax shelter exception to confidentiality privileges relating to taxpayer  
 communications.

TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS

Subtitle A—Provisions Relating To Reportable Transactions

Sec. 201. Disclosure of reportable transactions.

Sec. 202. Modifications to penalty for failure to register tax shelters.

Sec. 203. Modification of penalty for failure to maintain lists of investors.

Sec. 204. Modification of actions to enjoin specified conduct related to tax shel-  
 ters and reportable transactions.

Subtitle B—Other Provisions

Sec. 211. Understatement of taxpayer's liability by income tax return preparer.

Sec. 212. Report on effectiveness of penalty on failure to report interests in for-  
 eign financial accounts.

Sec. 213. Frivolous tax submissions.

Sec. 214. Regulation of individuals practicing before the Department of Treas-  
 ury.

Sec. 215. Penalty on promoters of tax shelters.

5 **TITLE I—TAXPAYER-RELATED**  
 6 **PROVISIONS**

7 **SEC. 101. PENALTY FOR FAILING TO DISCLOSE REPORT-**  
 8 **ABLE TRANSACTION.**

9 (a) IN GENERAL.—Part I of subchapter B of chapter  
 10 68 (relating to assessable penalties) is amended by insert-  
 11 ing after section 6707 the following new section:

1 **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**  
 2 **ABLE TRANSACTION INFORMATION WITH RE-**  
 3 **TURN OR STATEMENT.**

4 “(a) IMPOSITION OF PENALTY.—Any person who  
 5 fails to include with any return or statement any informa-  
 6 tion required to be included under subchapter A of chapter  
 7 61 with respect to a reportable transaction shall pay a  
 8 penalty in the amount determined under subsection (b).

9 “(b) AMOUNT OF PENALTY.—

10 “(1) IN GENERAL.—Except as provided in para-  
 11 graphs (2) and (3), the amount of the penalty under  
 12 subsection (a) shall be \$50,000.

13 “(2) LISTED TRANSACTION.—The amount of  
 14 the penalty under subsection (a) with respect to a  
 15 listed transaction shall be \$100,000.

16 “(3) INCREASE IN PENALTY FOR LARGE ENTI-  
 17 TIES AND HIGH NET WORTH INDIVIDUALS.—

18 “(A) IN GENERAL.—In the case of a fail-  
 19 ure under subsection (a) by—

20 “(i) a large entity, or

21 “(ii) a high net worth individual,  
 22 the penalty under paragraph (1) or (2) shall be  
 23 twice the amount determined without regard to  
 24 this paragraph.

25 “(B) LARGE ENTITY.—For purposes of  
 26 subparagraph (A), the term ‘large entity’

means, with respect to any taxable year, a person (other than a natural person) with gross receipts for the taxable year or the preceding taxable year in excess of \$10,000,000. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) HIGH NET WORTH INDIVIDUAL.—The term ‘high net worth individual’ means a natural person whose net worth exceeds \$2,000,000.

“(c) DEFINITIONS.—For purposes of this section—

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect to which information is required under subchapter A of chapter 61 to be included with a taxpayer’s return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction—

1           “(A) which is the same as, or similar to,  
2           a transaction specifically identified by the Sec-  
3           retary as a tax avoidance transaction for pur-  
4           poses of section 6011, or

5           “(B) which is expected to produce a tax re-  
6           sult which is the same as, or similar to, the tax  
7           result in a transaction which is so specified.

8           “(d) PENALTY REPORTED TO SEC.—In the case of  
9           a person—

10           “(1) which is required to file periodic reports  
11           under section 13 or 15(d) of the Securities Ex-  
12           change Act of 1934 or is required to be consolidated  
13           with another person for purposes of such reports,  
14           and

15           “(2) which—

16           “(A) is required to pay a penalty with re-  
17           spect to a listed transaction under this section,  
18           or

19           “(B) is required to pay a penalty under  
20           section 6662(a)(2) with respect to any report-  
21           able transaction at a rate prescribed under sec-  
22           tion 6662(i)(3),

23           the requirement to pay such penalty shall be disclosed in  
24           such reports filed by such person for such periods as the  
25           Secretary shall specify. Failure to make a disclosure in

1 accordance with the preceding sentence shall be treated  
 2 as a failure to which the penalty under subsection (b)(2)  
 3 applies.

4 “(e) COORDINATION WITH OTHER PENALTIES.—The  
 5 penalty imposed by this section is in addition to any pen-  
 6 alty imposed under section 6662.”

7 (b) CONFORMING AMENDMENT.—The table of sec-  
 8 tions for part I of subchapter B of chapter 68 is amended  
 9 by inserting after the item relating to section 6707 the  
 10 following:

“Sec. 6707A. Penalty for failure to include reportable transaction  
 information with return or statement.”

11 (c) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to transactions entered into after  
 13 the date of the enactment of this Act.

14 **SEC. 102. INCREASE IN ACCURACY-RELATED PENALTIES**  
 15 **FOR LISTED TRANSACTIONS AND OTHER RE-**  
 16 **PORTABLE TRANSACTIONS HAVING A TAX**  
 17 **AVOIDANCE PURPOSE.**

18 (a) INCREASE IN PENALTY.—Subsection (a) of sec-  
 19 tion 6662 (relating to imposition of penalty) is amended  
 20 to read as follows:

21 “(a) IMPOSITION OF PENALTY.—

22 “(1) IN GENERAL.—If this section applies to  
 23 any portion of an underpayment of tax required to  
 24 be shown on a return, there shall be added to the

1 tax an amount equal to 20 percent of the portion of  
 2 the underpayment to which this section applies.

3 “(2) UNDERSTATEMENT OF INCOME TAX AT-  
 4 TRIBUTABLE TO LISTED TRANSACTIONS OR OTHER  
 5 REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT  
 6 TAX AVOIDANCE PURPOSE.—If a taxpayer has a re-  
 7 reportable transaction income tax understatement (as  
 8 defined in subsection (i)) for any taxable year, there  
 9 shall be added to the tax an amount equal to 20 per-  
 10 cent of the amount of the understatement. Except as  
 11 provided in subsection (i)(4)(B), such understate-  
 12 ment shall not be taken into account for purposes of  
 13 paragraph (1).”

14 (b) REPORTABLE TRANSACTION INCOME TAX UN-  
 15 DERSTATEMENT.—Section 6662 (relating to imposition of  
 16 accuracy-related penalty) is amended by adding at the end  
 17 the following new subsection:

18 “(i) UNDERSTATEMENT OF INCOME TAX ATTRIB-  
 19 UTABLE TO LISTED TRANSACTIONS AND OTHER REPORT-  
 20 ABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOID-  
 21 ANCE PURPOSE.—

22 “(1) REPORTABLE TRANSACTION INCOME TAX  
 23 UNDERSTATEMENT.—For purposes of subsection  
 24 (a)(2), the term ‘reportable transaction income tax  
 25 understatement’ means the sum of—

1 “(A) the product of—

2 “(i) the amount of the increase (if  
3 any) in taxable income which results from  
4 a difference between the taxpayer’s treat-  
5 ment of items to which this subsection ap-  
6 plies (as shown on the taxpayer’s return of  
7 tax) and the proper tax treatment of such  
8 items, and

9 “(ii) the highest rate of tax imposed  
10 by section 1 (section 11 in the case of a  
11 taxpayer which is a corporation), and

12 “(B) the amount of the decrease (if any)  
13 in the credits allowed against the tax imposed  
14 by subtitle A which results from a difference  
15 between the taxpayer’s treatment of items to  
16 which this subsection applies (as shown on the  
17 taxpayer’s return of tax) and the proper tax  
18 treatment of such items.

19 For purposes of subparagraph (A), any reduction of  
20 the excess of deductions allowed for the taxable year  
21 over gross income for such year, and any reduction  
22 in the amount of capital losses which would (without  
23 regard to section 1211) be allowed for such year,  
24 shall be treated as an increase in taxable income.



1 “(2) ITEMS TO WHICH SUBSECTION APPLIES.—

2 This subsection shall apply to any item which is at-  
3 tributable to—

4 “(A) any listed transaction, or

5 “(B) any reportable transaction (other  
6 than a listed transaction) if a significant pur-  
7 pose of such transaction is the avoidance or  
8 evasion of Federal income tax.

9 “(3) HIGHER PENALTY FOR NONDISCLOSED  
10 LISTED AND OTHER AVOIDANCE TRANSACTIONS.—In  
11 the case of any portion of a reportable transaction  
12 income tax understatement attributable to a trans-  
13 action to which section 6664(c)(1) does not apply by  
14 reason of section 6664(c)(2)(A), the rate of tax  
15 under subsection (a)(2) shall be increased by 5 per-  
16 cent (10 percent in the case of a listed transaction).

17 “(4) DEFINITIONS AND SPECIAL RULES.—For  
18 purposes of this subsection—

19 “(A) REPORTABLE AND LISTED TRANS-  
20 ACTIONS.—The terms ‘reportable transaction’  
21 and ‘listed transaction’ have the respective  
22 meanings given to such terms by section  
23 6707A(c).

24 “(B) COORDINATION WITH DETERMINA-  
25 TIONS OF WHETHER OTHER UNDERSTATE-

1           MENTS ARE SUBSTANTIAL.—Reportable trans-  
 2           action income tax understatements shall be  
 3           taken into account under subsection (d)(1) in  
 4           determining whether any understatement  
 5           (which is not a reportable transaction income  
 6           tax understatement) is a substantial under-  
 7           statement.

8           “(C) SPECIAL RULE FOR AMENDED RE-  
 9           TURNS.—Except as provided in regulations, in  
 10          no event shall any tax treatment included with  
 11          an amendment or supplement to a return of tax  
 12          be taken into account in determining the  
 13          amount of any reportable transaction income  
 14          tax understatement if the amendment or sup-  
 15          plement is filed after the earlier of the date the  
 16          taxpayer is first contacted by the Secretary re-  
 17          garding the examination of the return or such  
 18          other date as is specified by the Secretary.”

19          (c) REASONABLE CAUSE EXCEPTION.—Subsection  
 20          (c) of section 6664 (relating to reasonable cause excep-  
 21          tion) is amended by redesignating paragraphs (2) and (3)  
 22          as paragraphs (4) and (5), respectively, and by inserting  
 23          after paragraph (1) the following new paragraphs:

24               “(2) SPECIAL RULES FOR UNDERSTATEMENTS  
 25               ATTRIBUTABLE TO LISTED AND CERTAIN OTHER

1 TAX AVOIDANCE TRANSACTIONS.—Paragraph (1)  
2 shall not apply to the portion of any reportable  
3 transaction income tax understatement attributable  
4 to an item referred to in section 6662(i)(2) unless—

5 “(A) the relevant facts affecting the tax  
6 treatment of such item are adequately disclosed  
7 in accordance with the regulations prescribed  
8 under section 6011,

9 “(B) there is or was substantial authority  
10 for such treatment, and

11 “(C) the taxpayer reasonably believed that  
12 such treatment was more likely than not the  
13 proper treatment.

14 “(3) RULES RELATING TO REASONABLE BE-  
15 LIEF.—For purposes of paragraph (2)(C)—

16 “(A) IN GENERAL.—A taxpayer shall be  
17 treated as having a reasonable belief with re-  
18 spect to the tax treatment of an item only if  
19 such belief—

20 “(i) is based on the facts and law that  
21 exist at the time the return of tax which  
22 includes such tax treatment is filed, and

23 “(ii) relates solely to the taxpayer’s  
24 chances of success on the merits of such  
25 treatment and does not take into account

1 the possibility that a return will not be au-  
 2 dited, such treatment will not be raised on  
 3 audit, or such treatment will be resolved  
 4 through settlement if it is raised.

5 “(B) CERTAIN OPINIONS MAY NOT BE RE-  
 6 LIED UPON.—

7 “(i) IN GENERAL.—An opinion of a  
 8 tax advisor may not be relied upon to es-  
 9 tablish the reasonable belief of a taxpayer  
 10 if—

11 “(I) the tax advisor is described  
 12 in clause (ii), or

13 “(II) the opinion is described in  
 14 clause (iii).

15 “(ii) DISQUALIFIED TAX ADVISORS.—  
 16 A tax advisor is described in this clause if  
 17 the tax advisor is a material advisor (with-  
 18 in the meaning of section 6111(b)(1))  
 19 who—

20 “(I) is compensated directly or  
 21 indirectly by another material advisor  
 22 with respect to the transaction,

23 “(II) has a contingent fee ar-  
 24 rangement with respect to the trans-  
 25 action,

1 “(III) has any type of referral  
2 agreement or other similar agreement  
3 or understanding with another mate-  
4 rial advisor which relates to the trans-  
5 action, or

6 “(IV) has any other char-  
7 acteristic which, as determined under  
8 regulations prescribed by the Sec-  
9 retary, is indicative of a potential con-  
10 flict of interest or compromise of inde-  
11 pendence.

12 “(iii) DISQUALIFIED OPINIONS.—An  
13 opinion is described in this clause if the  
14 opinion—

15 “(I) is based on unreasonable  
16 factual or legal assumptions (includ-  
17 ing assumptions as to future events),

18 “(II) unreasonably relies on rep-  
19 resentations, statements, findings, or  
20 agreements of the taxpayer or any  
21 other person,

22 “(III) does not identify and con-  
23 sider all relevant facts, or

1 “(IV) fails to meet any other re-  
 2 quirement as the Secretary may pre-  
 3 scribe.”

4 (d) CONFORMING AMENDMENTS.—

5 (1) Subparagraph (C) of section 461(i)(3) is  
 6 amended by striking “section 6662(d)(2)(C)(iii)”  
 7 and inserting “section 1274(b)(3)(C)”.

8 (2) Paragraph (3) of section 1274(b) is  
 9 amended—

10 (A) by striking “(as defined in section  
 11 6662(d)(2)(C)(iii))” in subparagraph (B)(i),  
 12 and

13 (B) by adding at the end the following new  
 14 subparagraph:

15 “(C) TAX SHELTER.—For purposes of sub-  
 16 paragraph (B), the term ‘tax shelter’ means—

17 “(i) a partnership or other entity,

18 “(ii) any investment plan or arrange-  
 19 ment, or

20 “(iii) any other plan or arrangement,  
 21 if a significant purpose of such partnership, en-  
 22 tity, plan, or arrangement is the avoidance or  
 23 evasion of Federal income tax.”

24 (3) Section 6662(d)(2) is amended by striking  
 25 subparagraphs (C) and (D).

1           (4) Subsection (b) of section 7525 is amended  
 2       by striking “section 6662(d)(2)(C)(iii)” and insert-  
 3       ing “section 1274(b)(3)(C)”.

4       (e) EFFECTIVE DATE.—The amendments made by  
 5       this section shall apply to taxable years ending after the  
 6       date of the enactment of this Act.

7       **SEC. 103. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**  
 8                               **MENT PENALTY FOR NONREPORTABLE**  
 9                               **TRANSACTIONS.**

10       (a) SUBSTANTIAL UNDERSTATEMENT OF CORPORA-  
 11       TIONS.—Section 6662(d)(1)(B) (relating to special rule  
 12       for corporations) is amended to read as follows:

13                       “(B) SPECIAL RULE FOR CORPORA-  
 14       TIONS.—In the case of a corporation other than  
 15       an S corporation or a personal holding company  
 16       (as defined in section 542), there is a substan-  
 17       tial understatement of income tax for any tax-  
 18       able year if the amount of the understatement  
 19       for the taxable year exceeds the lesser of—

20                       “(i) 10 percent of the tax required to  
 21       be shown on the return for the taxable  
 22       year, or

23                       “(ii) \$10,000,000.”

1       (b) REDUCTION FOR UNDERSTATEMENT OF TAX-  
 2 PAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED  
 3 ITEM.—

4           (1) IN GENERAL.—Section 6662(d)(2)(B)(i)  
 5 (relating to substantial authority) is amended to  
 6 read as follows:

7                   “(i) the tax treatment of any item by  
 8 the taxpayer if the taxpayer had reason-  
 9 able belief that the tax treatment was more  
 10 likely than not the proper treatment, or”.

11          (2) CONFORMING AMENDMENT.—Section  
 12 6662(d) is amended by adding at the end the fol-  
 13 lowing new paragraph:

14           “(3) SECRETARIAL LIST.—For purposes of this  
 15 subsection, section 6664(c)(2), and section  
 16 6694(a)(1), the Secretary may prescribe a list of  
 17 positions—

18                   “(A) for which the Secretary believes there  
 19 is not substantial authority or there is no rea-  
 20 sonable belief that the tax treatment is more  
 21 likely than not the proper tax treatment, and

22                   “(B) which affect a significant number of  
 23 taxpayers.



1       Such list (and any revisions thereof) shall be pub-  
 2       lished in the Federal Register or the Internal Rev-  
 3       enue Bulletin.”

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

7       **SEC. 104. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**  
 8                               **PRIVILEGES RELATING TO TAXPAYER COM-**  
 9                               **MUNICATIONS.**

10       (a) IN GENERAL.—Section 7525(b) (relating to sec-  
 11       tion not to apply to communications regarding corporate  
 12       tax shelters) is amended to read as follows:

13       “(b) SECTION NOT TO APPLY TO COMMUNICATIONS  
 14       REGARDING TAX SHELTERS.—The privilege under sub-  
 15       section (a) shall not apply to any written communication  
 16       which is—

17               “(1) between a federally authorized tax practi-  
 18       tioner and—

19                       “(A) any person,

20                       “(B) any director, officer, employee, agent,  
 21       or representative of the person, or

22                       “(C) any other person holding a capital or  
 23       profits interest in the person, and

1 “(2) in connection with the promotion of the di-  
 2 rect or indirect participation of the person in any  
 3 tax shelter (as defined in section 1274(b)(3)(C)).”

4 (b) EFFECTIVE DATE.—The amendment made by  
 5 this section shall apply to communications made on or  
 6 after the date of the enactment of this Act.

## 7 **TITLE II—PROMOTER AND PRE-** 8 **PARER RELATED PROVISIONS**

### 9 **Subtitle A—Provisions Relating To** 10 **Reportable Transactions**

#### 11 **SEC. 201. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

12 (a) IN GENERAL.—Section 6111 (relating to registra-  
 13 tion of tax shelters) is amended to read as follows:

#### 14 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

15 “(a) IN GENERAL.—Each material advisor with re-  
 16 spect to any reportable transaction shall make a return  
 17 (in such form as the Secretary may prescribe) setting  
 18 forth—

19 “(1) information identifying and describing the  
 20 transaction,

21 “(2) information describing the advice provided  
 22 by such advisor, including any potential tax benefits  
 23 represented to result from the transaction, and

24 “(3) such other information as the Secretary  
 25 may prescribe.

1 Such return shall be filed on the first business day fol-  
 2 lowing the earliest date on which such advisor provides  
 3 any material aid, assistance, or advice with respect to or-  
 4 ganizing, promoting, selling, implementing, or carrying  
 5 out the transaction (or such later date as the Secretary  
 6 may prescribe).

7 “(b) DEFINITIONS.—For purposes of this section—

8 “(1) MATERIAL ADVISOR.—The term ‘material  
 9 advisor’ means any person—

10 “(A) who provides any material aid, assist-  
 11 ance, or advice with respect to organizing, pro-  
 12 moting, selling, implementing, or carrying out  
 13 any reportable transaction, and

14 “(B) who directly or indirectly derives  
 15 gross income from such advice or assistance.

16 “(2) REPORTABLE TRANSACTION.—The term  
 17 ‘reportable transaction’ has the meaning given to  
 18 such term by section 6707A(c).

19 “(c) REGULATIONS.—The Secretary may prescribe  
 20 regulations which provide—

21 “(1) that only 1 person shall be required to  
 22 meet the requirements of subsection (a) in cases in  
 23 which 2 or more persons would otherwise be re-  
 24 quired to meet such requirements,

1 “(2) exemptions from the requirements of this  
2 section, and

3 “(3) such rules as may be necessary or appro-  
4 priate to carry out the purposes of this section.”

5 (b) CONFORMING AMENDMENTS.—

6 (1) The item relating to section 6111 in the  
7 table of sections for subchapter B of chapter 61 is  
8 amended to read as follows:

“Sec. 6111. Disclosure of reportable transactions.”

9 (2)(A) So much of section 6112 as precedes  
10 subsection (c) thereof is amended to read as follows:

11 **“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANS-**  
12 **ACTIONS MUST KEEP LISTS OF ADVISEES.**

13 “(a) IN GENERAL.—Each material advisor (as de-  
14 fined in section 6111) with respect to any reportable  
15 transaction (as defined in section 6707A(c)) shall main-  
16 tain (in such manner as the Secretary may by regulations  
17 prescribe) a list—

18 “(1) identifying each person with respect to  
19 whom such advisor acted as such a material advisor  
20 with respect to such transaction, and

21 “(2) containing such other information as the  
22 Secretary may by regulations require.”

23 (B) Section 6112 is amended by redesignating  
24 subsection (c) as subsection (b).

1 (C) Section 6112(b)(1)(A), as redesignated by  
 2 subparagraph (B), is amending by inserting “writ-  
 3 ten” before “request”.

4 (D) The item relating to section 6112 in the  
 5 table of sections for subchapter B of chapter 61 is  
 6 amended to read as follows:

“Sec. 6112. Material advisors of reportable transactions must  
 keep lists of advisees.”

7 (3)(A) The heading for section 6708 is amend-  
 8 ed to read as follows:

9 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**  
 10 **WITH RESPECT TO REPORTABLE TRANS-**  
 11 **ACTIONS.”**

12 (B) The item relating to section 6708 in the  
 13 table of sections for part I of subchapter B of chap-  
 14 ter 68 is amended to read as follows:

“Sec. 6708. Failure to maintain lists of advisees with respect to  
 reportable transactions.”

15 (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply to transactions entered into after  
 17 the date of the enactment of this Act.

18 **SEC. 202. MODIFICATIONS TO PENALTY FOR FAILURE TO**  
 19 **REGISTER TAX SHELTERS.**

20 (a) IN GENERAL.—Section 6707 (relating to failure  
 21 to furnish information regarding tax shelters) is amended  
 22 to read as follows:

1 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**  
2 **ING REPORTABLE TRANSACTIONS.**

3 “(a) IN GENERAL.—If a person who is required to  
4 file a return under section 6111(a) with respect to any  
5 reportable transaction—

6 “(1) fails to file such return on or before the  
7 date prescribed therefor, or

8 “(2) files false or incomplete information with  
9 the Secretary with respect to such transaction,  
10 such person shall pay a penalty with respect to such return  
11 in the amount determined under subsection (b).

12 “(b) AMOUNT OF PENALTY.—

13 “(1) IN GENERAL.—Except as provided in para-  
14 graph (2), the penalty imposed under subsection (a)  
15 with respect to any failure shall be \$50,000.

16 “(2) LISTED TRANSACTIONS.—The penalty im-  
17 posed under subsection (a) with respect to any listed  
18 transaction shall be an amount equal to the greater  
19 of—

20 “(A) \$200,000, or

21 “(B) 50 percent of the fees paid to such  
22 person with respect to aid, assistance, or advice  
23 which is provided with respect to the reportable  
24 transaction before the date the return is filed  
25 under section 6111.

1 Subparagraph (B) shall be applied by substituting  
 2 ‘75 percent’ for ‘50 percent’ in the case of an inten-  
 3 tional failure or act described in subsection (a).

4 “(c) REPORTABLE AND LISTED TRANSACTIONS.—  
 5 The terms ‘reportable transaction’ and ‘listed transaction’  
 6 have the respective meanings given to such terms by sec-  
 7 tion 6707A(c).”

8 (b) CLERICAL AMENDMENT.—The item relating to  
 9 section 6707 in the table of sections for part I of sub-  
 10 chapter B of chapter 68 is amended by striking “tax shel-  
 11 ters” and inserting “reportable transactions”.

12 (c) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to failures occurring after the date  
 14 of the enactment of this Act.

15 **SEC. 203. MODIFICATION OF PENALTY FOR FAILURE TO**  
 16 **MAINTAIN LISTS OF INVESTORS.**

17 (a) IN GENERAL.—Subsection (a) of section 6708 is  
 18 amended to read as follows:

19 “(a) IMPOSITION OF PENALTY.—

20 “(1) IN GENERAL.—If any person who is re-  
 21 quired to maintain a list under section 6112(a) fails  
 22 to make such list available to the Secretary in ac-  
 23 cordance with section 6112(b)(1)(A) within 20 days  
 24 after the date of the Secretary’s request, such per-

1 son shall pay a penalty of \$10,000 for each day of  
 2 such failure after such 20th day.

3 “(2) REASONABLE CAUSE EXCEPTION.—No  
 4 penalty shall be imposed by paragraph (1) with re-  
 5 spect to the failure on any day if such failure is due  
 6 to reasonable cause.”

7 (b) EFFECTIVE DATE.—The amendment made by  
 8 this section shall apply to failures occurring after the date  
 9 of the enactment of this Act.

10 **SEC. 204. MODIFICATION OF ACTIONS TO ENJOIN SPECI-**  
 11 **FIED CONDUCT RELATED TO TAX SHELTERS**  
 12 **AND REPORTABLE TRANSACTIONS.**

13 (a) IN GENERAL.—Section 7408 (relating to action  
 14 to enjoin promoters of abusive tax shelters, etc.) is amend-  
 15 ed by redesignating subsection (c) as subsection (d) and  
 16 by striking subsections (a) and (b) and inserting the fol-  
 17 lowing new subsections:

18 “(a) AUTHORITY TO SEEK INJUNCTION.—A civil ac-  
 19 tion in the name of the United States to enjoin any person  
 20 from further engaging in specified conduct may be com-  
 21 menced at the request of the Secretary. Any action under  
 22 this section shall be brought in the district court of the  
 23 United States for the district in which such person resides,  
 24 has his principal place of business, or has engaged in spec-  
 25 ified conduct. The court may exercise its jurisdiction over



1 such action (as provided in section 7402(a)) separate and  
 2 apart from any other action brought by the United States  
 3 against such person.

4 “(b) ADJUDICATION AND DECREE.—In any action  
 5 under subsection (a), if the court finds—

6 “(1) that the person has engaged in any speci-  
 7 fied conduct, and

8 “(2) that injunctive relief is appropriate to pre-  
 9 vent recurrence of such conduct,

10 the court may enjoin such person from engaging in such  
 11 conduct or in any other activity subject to penalty under  
 12 this title.

13 “(c) SPECIFIED CONDUCT.—For purposes of this  
 14 section, the term ‘specified conduct’ means any action, or  
 15 failure to take action, subject to penalty under section  
 16 6700, 6701, 6707, or 6708.”

17 (b) CONFORMING AMENDMENTS.—

18 (1) The heading for section 7408 is amended to  
 19 read as follows:

20 **“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RE-**  
 21 **LATED TO TAX SHELTERS AND REPORTABLE**  
 22 **TRANSACTIONS.”**

23 (2) The table of sections for subchapter A of  
 24 chapter 67 is amended by striking the item relating  
 25 to section 7408 and inserting the following new

1 item:

“Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.”

2 (c) EFFECTIVE DATE.—The amendment made by  
3 this section shall take effect on the day after the date of  
4 the enactment of this Act.

## 5 **Subtitle B—Other Provisions**

### 6 **SEC. 211. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY** 7 **INCOME TAX RETURN PREPARER.**

8 (a) STANDARDS CONFORMED TO TAXPAYER STAND-  
9 ARDS.—Section 6694(a) (relating to understatements due  
10 to unrealistic positions) is amended—

11 (1) by striking “realistic possibility of being  
12 sustained on its merits” in paragraph (1) and in-  
13 serting “reasonable belief that the tax treatment in  
14 such position was more likely than not the proper  
15 treatment”,

16 (2) by striking “or was frivolous” in paragraph  
17 (3) and inserting “or there was no reasonable basis  
18 for the tax treatment of such position”, and

19 (3) by striking “UNREALISTIC” in the heading  
20 and inserting “IMPROPER”.

21 (b) AMOUNT OF PENALTY.—Section 6694 is  
22 amended—

23 (1) by striking “\$250” in subsection (a) and in-  
24 serting “\$1,000”, and

1           (2) by striking “\$1,000” in subsection (b) and  
 2           inserting “\$5,000”.

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

6 **SEC. 212. REPORT ON EFFECTIVENESS OF PENALTY ON**  
 7 **FAILURE TO REPORT INTERESTS IN FOREIGN**  
 8 **FINANCIAL ACCOUNTS.**

9           The Secretary of the Treasury or his delegate shall  
 10 report each year to the Committee on Ways and Means  
 11 of the House of Representatives and the Committee on  
 12 Finance of the Senate on—

13           (1) the number of civil and criminal penalties  
 14 imposed on failures to meet the reporting and rec-  
 15 ordkeeping requirements of section 5314 of title 31,  
 16 United States Code, with respect to interests held in  
 17 foreign financial accounts, and

18           (2) the average amount of monetary penalties  
 19 so imposed.

20 The Secretary shall include with such report an analysis  
 21 of the effectiveness of such reporting and recordkeeping  
 22 requirements in preventing the avoidance or evasion of  
 23 Federal income taxes and any recommendations to im-  
 24 prove such requirements and the enforcement of such re-  
 25 quirements.

1 **SEC. 213. FRIVOLOUS TAX SUBMISSIONS.**

2 (a) CIVIL PENALTIES.—Section 6702 is amended to  
3 read as follows:

4 **“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

5 “(a) CIVIL PENALTY FOR FRIVOLOUS TAX RE-  
6 TURNS.—A person shall pay a penalty of \$5,000 if—

7 “(1) such person files what purports to be a re-  
8 turn of a tax imposed by this title but which—

9 “(A) does not contain information on  
10 which the substantial correctness of the self-as-  
11 sessment may be judged, or

12 “(B) contains information that on its face  
13 indicates that the self-assessment is substan-  
14 tially incorrect; and

15 “(2) the conduct referred to in paragraph (1)—

16 “(A) is based on a position which the Sec-  
17 retary has identified as frivolous under sub-  
18 section (c), or

19 “(B) reflects a desire to delay or impede  
20 the administration of Federal tax laws.

21 “(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS  
22 SUBMISSIONS.—

23 “(1) IMPOSITION OF PENALTY.—Except as pro-  
24 vided in paragraph (3), any person who submits a  
25 specified frivolous submission shall pay a penalty of  
26 \$5,000.

1           “(2) SPECIFIED FRIVOLOUS SUBMISSION.—For  
2 purposes of this section—

3           “(A) SPECIFIED FRIVOLOUS SUBMIS-  
4 SION.—The term ‘specified frivolous submis-  
5 sion’ means a specified submission if any por-  
6 tion of such submission—

7           “(i) is based on a position which the  
8 Secretary has identified as frivolous under  
9 subsection (c), or

10           “(ii) reflects a desire to delay or im-  
11 pede the administration of Federal tax  
12 laws.

13           “(B) SPECIFIED SUBMISSION.—The term  
14 ‘specified submission’ means—

15           “(i) a request for a hearing under—

16           “(I) section 6320 (relating to no-  
17 tice and opportunity for hearing upon  
18 filing of notice of lien), or

19           “(II) section 6330 (relating to  
20 notice and opportunity for hearing be-  
21 fore levy), and

22           “(ii) an application under—

23           “(I) section 7811 (relating to  
24 taxpayer assistance orders),

1 “(II) section 6159 (relating to  
2 agreements for payment of tax liabil-  
3 ity in installments), or

4 “(III) section 7122 (relating to  
5 compromises).

6 “(3) OPPORTUNITY TO WITHDRAW SUBMIS-  
7 SION.—If the Secretary provides a person with no-  
8 tice that a submission is a specified frivolous sub-  
9 mission and such person withdraws such submission  
10 promptly after such notice, the penalty imposed  
11 under paragraph (1) shall not apply with respect to  
12 such submission.

13 “(c) LISTING OF FRIVOLOUS POSITIONS.—The Sec-  
14 retary shall prescribe (and periodically revise) a list of po-  
15 sitions which the Secretary has identified as being frivo-  
16 lous for purposes of this subsection. The Secretary shall  
17 not include in such list any position that the Secretary  
18 determines meets the requirement of section  
19 6662(d)(2)(B)(ii)(II).

20 “(d) REDUCTION OF PENALTY.—The Secretary may  
21 reduce the amount of any penalty imposed under this sec-  
22 tion if the Secretary determines that such reduction would  
23 promote compliance with and administration of the Fed-  
24 eral tax laws.

1       “(e) PENALTIES IN ADDITION TO OTHER PEN-  
 2 ALTIES.—The penalties imposed by this section shall be  
 3 in addition to any other penalty provided by law.”

4       (b) TREATMENT OF FRIVOLOUS REQUESTS FOR  
 5 HEARINGS BEFORE LEVY.—

6           (1) FRIVOLOUS REQUESTS DISREGARDED.—  
 7       Section 6330 (relating to notice and opportunity for  
 8 hearing before levy) is amended by adding at the  
 9 end the following new subsection:

10       “(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—  
 11 Notwithstanding any other provision of this section, if the  
 12 Secretary determines that any portion of a request for a  
 13 hearing under this section or section 6320 meets the re-  
 14 quirement of clause (i) or (ii) of section 6702(b)(2)(A),  
 15 then the Secretary may treat such portion as if it were  
 16 never submitted and such portion shall not be subject to  
 17 any further administrative or judicial review.”

18           (2) PRECLUSION FROM RAISING FRIVOLOUS  
 19 ISSUES AT HEARING.—Section 6330(c)(4) is  
 20 amended—

21           (A) by striking “(A)” and inserting  
 22           “(A)(i)”;  
 23           (B) by striking “(B)” and inserting “(ii)”;  
 24           (C) by striking the period at the end of the  
 25 first sentence and inserting “; or”; and

1 (D) by inserting after subparagraph (A)(ii)  
 2 (as so redesignated) the following:

3 “(B) the issue meets the requirement of  
 4 clause (i) or (ii) of section 6702(b)(2)(A).”

5 (3) STATEMENT OF GROUNDS.—Section  
 6 6330(b)(1) is amended by striking “under sub-  
 7 section (a)(3)(B)” and inserting “in writing under  
 8 subsection (a)(3)(B) and states the grounds for the  
 9 requested hearing”.

10 (c) TREATMENT OF FRIVOLOUS REQUESTS FOR  
 11 HEARINGS UPON FILING OF NOTICE OF LIEN.—Section  
 12 6320 is amended—

13 (1) in subsection (b)(1), by striking “under sub-  
 14 section (a)(3)(B)” and inserting “in writing under  
 15 subsection (a)(3)(B) and states the grounds for the  
 16 requested hearing”, and

17 (2) in subsection (c), by striking “and (e)” and  
 18 inserting “(e), and (g)”.

19 (d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR  
 20 OFFERS-IN-COMPROMISE AND INSTALLMENT AGREE-  
 21 MENTS.—Section 7122 is amended by adding at the end  
 22 the following new subsection:

23 “(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwith-  
 24 standing any other provision of this section, if the Sec-  
 25 retary determines that any portion of an application for



1 an offer-in-compromise or installment agreement sub-  
 2 mitted under this section or section 6159 meets the re-  
 3 quirement of clause (i) or (ii) of section 6702(b)(2)(A),  
 4 then the Secretary may treat such portion as if it were  
 5 never submitted and such portion shall not be subject to  
 6 any further administrative or judicial review.”

7 (e) CLERICAL AMENDMENT.—The table of sections  
 8 for part I of subchapter B of chapter 68 is amended by  
 9 striking the item relating to section 6702 and inserting  
 10 the following new item:

“Sec. 6702. Frivolous tax submissions.”

11 (f) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to submissions made and issues  
 13 raised after the date on which the Secretary first pre-  
 14 scribes a list under section 6702(c) of the Internal Rev-  
 15 enue Code of 1986, as amended by subsection (a).

16 **SEC. 214. REGULATION OF INDIVIDUALS PRACTICING BE-**  
 17 **FORE THE DEPARTMENT OF TREASURY.**

18 (a) CENSURE; IMPOSITION OF PENALTY.—

19 (1) IN GENERAL.—Section 330(b) of title 31,  
 20 United States Code, is amended—

21 (A) by inserting “, or censure,” after “De-  
 22 partment”, and

23 (B) by adding at the end the following new  
 24 flush sentence:

1 “The Secretary may impose a monetary penalty on any  
 2 representative described in the preceding sentence. If the  
 3 representative was acting on behalf of an employer or any  
 4 firm or other entity in connection with the conduct giving  
 5 rise to such penalty, the Secretary may impose a monetary  
 6 penalty on such employer, firm, or entity if it knew, or  
 7 reasonably should have known, of such conduct. Such pen-  
 8 alty shall not exceed the gross income derived (or to be  
 9 derived) from the conduct giving rise to the penalty and  
 10 may be in addition to, or in lieu of, any suspension, disbar-  
 11 ment, or censure.”

12 (2) EFFECTIVE DATE.—The amendments made  
 13 by this subsection shall apply to actions taken after  
 14 the date of the enactment of this Act.

15 (b) TAX SHELTER OPINIONS, ETC.—Section 330 of  
 16 such title 31 is amended by adding at the end the fol-  
 17 lowing new subsection:

18 “(d) Nothing in this section or in any other provision  
 19 of law shall be construed to limit the authority of the Sec-  
 20 retary of the Treasury to impose standards applicable to  
 21 the rendering of written advice with respect to any entity,  
 22 transaction plan or arrangement, or other plan or arrange-  
 23 ment, which is of a type which the Secretary determines  
 24 as having a potential for tax avoidance or evasion.”

1 **SEC. 215. PENALTY ON PROMOTERS OF TAX SHELTERS.**

2 (a) PENALTY ON PROMOTING ABUSIVE TAX SHEL-  
3 TERS.—Section 6700(a) is amended by adding at the end  
4 the following new sentence: “Notwithstanding the first  
5 sentence, if an activity with respect to which a penalty  
6 imposed under this subsection involves a statement de-  
7 scribed in paragraph (2)(A), the amount of the penalty  
8 shall be equal to 50 percent of the gross income derived  
9 (or to be derived) from such activity by the person on  
10 which the penalty is imposed.”

11 (b) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to activities after the date of the  
13 enactment of this Act.

○