

109TH CONGRESS
1ST SESSION

S. 1890

To amend the Internal Revenue Code of 1986 to deny a deduction for certain fines, penalties, and other amounts.

IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2005

Mr. BAUCUS (for himself, Mr. GRASSLEY, and Mr. MCCAIN) 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 deny a deduction for certain fines, penalties, and other amounts.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Government Settle-
5 ment Transparency Act of 2005”.

6 **SEC. 2. DENIAL OF DEDUCTION FOR CERTAIN FINES, PEN-**
7 **ALTIES, AND OTHER AMOUNTS.**

8 (a) IN GENERAL.—Subsection (f) of section 162 of
9 the Internal Revenue Code of 1986 (relating to trade or
10 business expenses) is amended to read as follows:

1 “(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

2 “(1) IN GENERAL.—Except as provided in para-
 3 graph (2), no deduction otherwise allowable shall be
 4 allowed under this chapter for any amount paid or
 5 incurred (whether by suit, agreement, or otherwise)
 6 to, or at the direction of, a government or entity de-
 7 scribed in paragraph (4) in relation to the violation
 8 of any law or the investigation or inquiry by such
 9 government or entity into the potential violation of
 10 any law.

11 “(2) EXCEPTION FOR AMOUNTS CONSTITUTING
 12 RESTITUTION OR PAID TO COME INTO COMPLIANCE
 13 WITH LAW.—Paragraph (1) shall not apply to any
 14 amount which—

15 “(A) the taxpayer establishes—

16 “(i) constitutes restitution (including
 17 remediation of property) for damage or
 18 harm caused by or which may be caused by
 19 the violation of any law or the potential
 20 violation of any law, or

21 “(ii) is paid to come into compliance
 22 with any law which was violated or in-
 23 volved in the investigation or inquiry, and

24 “(B) is identified as restitution or as an
 25 amount paid to come into compliance with the

1 law, as the case may be, in the court order or
2 settlement agreement.

3 Identification pursuant to subparagraph (B) alone
4 shall not satisfy the requirement under subpara-
5 graph (A). This paragraph shall not apply to any
6 amount paid or incurred as reimbursement to the
7 government or entity for the costs of any investiga-
8 tion or litigation.

9 “(3) EXCEPTION FOR AMOUNTS PAID OR IN-
10 CURRED AS THE RESULT OF CERTAIN COURT OR-
11 DERS.—Paragraph (1) shall not apply to any
12 amount paid or incurred by order of a court in a
13 suit in which no government or entity described in
14 paragraph (4) is a party.

15 “(4) CERTAIN NONGOVERNMENTAL REGU-
16 LATORY ENTITIES.—An entity is described in this
17 paragraph if it is—

18 “(A) a nongovernmental entity which exer-
19 cises self-regulatory powers (including imposing
20 sanctions) in connection with a qualified board
21 or exchange (as defined in section 1256(g)(7)),
22 or

23 “(B) to the extent provided in regulations,
24 a nongovernmental entity which exercises self-
25 regulatory powers (including imposing sanc-

1 tions) as part of performing an essential gov-
2 ernmental function.

3 “(5) EXCEPTION FOR TAXES DUE.—Paragraph
4 (1) shall not apply to any amount paid or incurred
5 as taxes due.”.

6 (b) REPORTING OF DEDUCTIBLE AMOUNTS.—

7 (1) IN GENERAL.—Subpart B of part III of
8 subchapter A of chapter 61 of the Internal Revenue
9 Code of 1986 is amended by inserting after section
10 6050T the following new section:

11 **“SEC. 6050U. INFORMATION WITH RESPECT TO CERTAIN**
12 **FINES, PENALTIES, AND OTHER AMOUNTS.**

13 “(a) REQUIREMENT OF REPORTING.—

14 “(1) IN GENERAL.—The appropriate official of
15 any government or entity which is described in sec-
16 tion 162(f)(4) which is involved in a suit or agree-
17 ment described in paragraph (2) shall make a return
18 in such form as determined by the Secretary setting
19 forth—

20 “(A) the amount required to be paid as a
21 result of the suit or agreement to which para-
22 graph (1) of section 162(f) applies,

23 “(B) any amount required to be paid as a
24 result of the suit or agreement which con-

stitutes restitution or remediation of property,
and

“(C) any amount required to be paid as a
result of the suit or agreement for the purpose
of coming into compliance with any law which
was violated or involved in the investigation or
inquiry.

“(2) SUIT OR AGREEMENT DESCRIBED.—

“(A) IN GENERAL.—A suit or agreement is
described in this paragraph if—

“(i) it is—

“(I) a suit with respect to a vio-
lation of any law over which the gov-
ernment or entity has authority and
with respect to which there has been
a court order, or

“(II) an agreement which is en-
tered into with respect to a violation
of any law over which the government
or entity has authority, or with re-
spect to an investigation or inquiry by
the government or entity into the po-
tential violation of any law over which
such government or entity has author-
ity, and

1 “(ii) the aggregate amount involved in
 2 all court orders and agreements with re-
 3 spect to the violation, investigation, or in-
 4 quiry is \$600 or more.

5 “(B) ADJUSTMENT OF REPORTING
 6 THRESHOLD.—The Secretary may adjust the
 7 \$600 amount in subparagraph (A)(ii) as nec-
 8 essary in order to ensure the efficient adminis-
 9 tration of the internal revenue laws.

10 “(3) TIME OF FILING.—The return required
 11 under this subsection shall be filed not later than—

12 “(A) 30 days after the date on which a
 13 court order is issued with respect to the suit or
 14 the date the agreement is entered into, as the
 15 case may be, or

16 “(B) the date specified Secretary.

17 “(b) STATEMENTS TO BE FURNISHED TO INDIVID-
 18 UALS INVOLVED IN THE SETTLEMENT.—Every person re-
 19 quired to make a return under subsection (a) shall furnish
 20 to each person who is a party to the suit or agreement
 21 a written statement showing—

22 “(1) the name of the government or entity, and

23 “(2) the information supplied to the Secretary
 24 under subsection (a)(1).

1 The written statement required under the preceding sen-
 2 tence shall be furnished to the person at the same time
 3 the government or entity provides the Secretary with the
 4 information required under subsection (a).

5 “(c) APPROPRIATE OFFICIAL DEFINED.—For pur-
 6 poses of this section, the term ‘appropriate official’ means
 7 the officer or employee having control of the suit, inves-
 8 tigation, or inquiry or the person appropriately designated
 9 for purposes of this section.”.

10 (2) CONFORMING AMENDMENT.—The table of
 11 sections for subpart B of part III of subchapter A
 12 of chapter 61 of the Internal Revenue Code of 1986
 13 is amended by inserting after the item relating to
 14 section 6050T the following new item:

“Sec. 6050U. Information with respect to certain fines, penalties, and
 other amounts.”.

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to amounts paid or incurred on
 17 or after the date of the enactment of this Act, except that
 18 such amendments shall not apply to amounts paid or in-
 19 curred under any binding order or agreement entered into
 20 before such date. Such exception shall not apply to an
 21 order or agreement requiring court approval unless the ap-
 22 proval was obtained before such date.

