S. 268

To reduce the deficit and protect important programs by ending tax loopholes.

IN THE SENATE OF THE UNITED STATES

February 11, 2013

Mr. Levin (for himself and Mr. Whitehouse) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To reduce the deficit and protect important programs by ending tax loopholes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) Short Title.—This Act may be cited as the “Cut Unjustified Tax Loopholes Act” or “CUT Loopholes Act”.

(b) Amendment of 1986 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference
shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; etc.

TITLE I—ENDING OFFSHORE TAX ABUSES

Subtitle A—Deterring the Use of Tax Havens for Tax Evasion

Sec. 101. Authorizing special measures against foreign jurisdictions, financial institutions, and others that significantly 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. Swap payments made from the United States to persons offshore.

Subtitle B—Other Measures To Combat Tax Haven and Tax Shelter Abuses

Sec. 111. Country-by-country reporting.
Sec. 112. Penalty for failing to disclose offshore holdings.
Sec. 113. Deadline for anti-money laundering rule for investment advisers.
Sec. 114. Anti-money laundering requirements for formation agents.
Sec. 115. Strengthening John Doe summons proceedings.
Sec. 116. Improving enforcement of foreign financial account reporting.

Subtitle C—Ending Offshore Tax Avoidance

Sec. 121. Allocation of expenses and taxes on basis of repatriation of foreign income.
Sec. 122. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.
Sec. 123. Limitations on income shifting through intangible property transfers.
Sec. 124. Limitation on earnings stripping by expatriated entities.
Sec. 125. Repeal of check-the-box rules for certain foreign entities and CFC look-thru rules.
Sec. 126. Prohibition on offshore loan abuse.

TITLE II—STRENGTHENING TAX ENFORCEMENT

Subtitle A—Combating Tax Shelter Promotion

Sec. 201. Penalty for promoting abusive tax shelters.
Sec. 202. Penalty for aiding and abetting the understatement of tax liability.
Sec. 203. Prohibited fee arrangement.
Sec. 204. Preventing tax shelter activities by financial institutions.
Sec. 205. Information sharing for enforcement purposes.
Sec. 206. Disclosure of information to Congress.
Sec. 207. Tax opinion standards for tax practitioners.
Subtitle B—Simplify Tax Lien Procedure

Sec. 211. Short title.
Sec. 212. Findings and purpose.
Sec. 213. National tax lien filing system.

TITLE III—ENDING EXCESSIVE CORPORATE TAX DEDUCTIONS FOR STOCK OPTIONS

Sec. 301. Consistent treatment of stock options by corporations.
Sec. 302. Application of executive pay deduction limit.

TITLE IV—CLOSING THE DERIVATIVES BLENDED RATE LOOPHOLE

Sec. 401. Short title.
Sec. 402. Modifications to treatment of section 1256 contracts.
Sec. 403. Modifications to treatment of dealers in securities and commodities.

TITLE V—ENDING THE TAR SANDS OIL SPILL LOOPHOLE

Sec. 501. Short title.
Sec. 502. Requirements for contribution to the Oil Spill Liability Trust Fund.
Sec. 503. Extension of Oil Spill Liability Trust Fund financing rate.
Sec. 504. Technical amendment.

TITLE VI—ENDING THE CARRIED INTEREST LOOPHOLE

Sec. 601. Short title; etc.
Sec. 602. Partnership interests transferred in connection with performance of services.
Sec. 603. Special rules for partners providing investment management services to partnerships.

1 TITLE I—ENDING OFFSHORE TAX ABUSES
2 
3 Subtitle A—Deterring the Use of Tax Havens for Tax Evasion
4 SEC. 101. AUTHORIZING SPECIAL MEASURES AGAINST FOREIGN JURISDICTIONS, FINANCIAL INSTITUTIONS, AND OTHERS THAT SIGNIFICANTLY IMPEDE UNITED STATES TAX ENFORCEMENT.

Section 5318A of title 31, United States Code, is amended—
(1) by striking the section heading and inserting the following:

“§ 5318A. Special measures for jurisdictions, financial institutions, or international transactions that are of primary money laundering concern or significantly impede United States tax enforcement”;

(2) in subsection (a), by striking the subsection heading and inserting the following:

“(a) Special Measures To Counter Money Laundering and Efforts To Significantly Impede United States Tax Enforcement.—”;

(3) in subsection (c)—

(A) by striking the subsection heading and inserting the following:

“(c) Consultations and Information To Be Considered in Finding Jurisdictions, Institutions, Types of Accounts, or Transactions To Be of Primary Money Laundering Concern or To Be Significantly Impeding United States Tax Enforcement.—”; and

(B) by inserting at the end of paragraph (2) thereof the following new subparagraph:

“(C) Other Considerations.—The fact that a jurisdiction or financial institution is co-
operating with the United States on implementing the requirements specified in chapter 4 of the Internal Revenue Code of 1986 may be favorably considered in evaluating whether such jurisdiction or financial institution is significantly impeding United States tax enforcement.”;

(4) in subsection (a)(1), by inserting “or is significantly impeding United States tax enforcement” after “primary money laundering concern”;

(5) in subsection (a)(4)—

(A) in subparagraph (A)—

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

and

(ii) by striking “and” at the end;

(B) by redesigning subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

“(B) in matters involving United States tax enforcement, shall consult with the Commissioner of the Internal Revenue, the Secretary of State, the Attorney General of the United States, and in the sole discretion of the Sec-
retary, such other agencies and interested par-
ties as the Secretary may find to be appro-
priate; and”;

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

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

“(5) Prohibitions or Conditions on Open-
ning or Maintaining Certain Correspondent or
Payable-through Accounts or Authorizing
Certain Payment Cards.—If the Secretary finds a
jurisdiction outside of the United States, 1 or more
financial institutions operating outside of the United
States, or 1 or more classes of transactions within
or involving a jurisdiction outside of the United
States to be of primary money laundering concern or
to be significantly impeding United States tax en-
forcement, the Secretary, in consultation with the
Secretary of State, the Attorney General of the
United States, and the Chairman of the Board of
Governors of the Federal Reserve System, may pro-
hibit, or impose conditions upon—
“(A) the opening or maintaining in the United States of a correspondent account or payable-through account; or

“(B) the authorization, approval, or use in the United States of a credit card, charge card, debit card, or similar credit or debit financial instrument by any domestic financial institution, financial agency, or credit card company or association, for or on behalf of a foreign banking institution, if such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument, involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument.”; and

(8) in subsection (c)(1), by inserting “or is significantly impeding United States tax enforcement” after “primary money laundering concern”;

(9) in subsection (c)(2)(A)—

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

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

(C) in clause (v), by striking “banking or secrecy” and inserting “banking, tax, or secrecy”; and 

(D) in clause (vi), by inserting “, tax treaty, or tax information exchange agreement” after “treaty”; 

(10) in subsection (c)(2)(B)— 

(A) in clause (i), by inserting “or tax evasion” after “money laundering”; and 

(B) in clause (iii), by inserting “, tax evasion,” after “money laundering”; and 

(11) in subsection (d), by inserting “involving money laundering, and shall notify, in writing, the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of any such action involving United States tax enforcement” after “such action”.

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

(a) Reporting Activities With Respect to Passive Foreign Investment Companies.—Section 1298(f) is amended by inserting “, or who directly or indirectly forms, transfers assets to, is a beneficiary of, has a beneficial interest in, or receives money or property or the use thereof from,” after “shareholder of”.

(b) Withholdable Payments to Foreign Financial Institutions.—Section 1471(d) is amended—

(1) by inserting “or transaction” after “any depository” in paragraph (2)(A), and

(2) by striking “or any interest” and all that follows in paragraph (5)(C) and inserting “derivatives, or any interest (including a futures or forward contract, swap, or option) in such securities, partnership interests, commodities, or derivatives.”.

(c) Withholdable Payments to Other Foreign Financial Institutions.—Section 1472 is amended—

(1) by inserting “as a result of any customer identification, anti-money laundering, anti-corruption, or similar obligation to identify account holders,” after “reason to know,” in subsection (b)(2), and
(2) by inserting “as posing a low risk of tax evasion” after “this subsection” in subsection (c)(1)(G).

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

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

(1) by inserting “, except that information provided under sections 1471(c) or 1472(b) may be disclosed to any Federal law enforcement agency, upon request or upon the initiation of the Secretary, to investigate or address a possible violation of United States law” after “shall apply” in paragraph (1), and

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

(f) INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.—Section 6038D(a) is amended by inserting “ownership or beneficial ownership” after “holds any”.

(g) ESTABLISHING PRESUMPTIONS FOR ENTITIES AND TRANSACTIONS INVOLVING NON-FATCA INSTITUTIONS.—

(1) PRESUMPTIONS FOR TAX PURPOSES.—
(A) IN GENERAL.—Chapter 76 is amended by inserting after section 7491 the following new subchapter:

“Subchapter F—Presumptions for Certain Legal Proceedings

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

“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND TRANSACTIONS INVOLVING NON-FATCA INSTITUTIONS.

“(a) CONTROL.—For purposes of any United States civil judicial or administrative proceeding to determine or collect tax, there shall be a rebuttable presumption that a United States person (other than an entity with shares regularly traded on an established securities market) who, directly or indirectly, formed, transferred assets to, was a beneficiary of, had a beneficial interest in, or received money or property or the use thereof from an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), that holds an account, or in any other manner has assets, in a non-FATCA institution, exercised control over such entity. The presumption of control created by this subsection shall not be applied to prevent the Secretary from determining or arguing the absence of control.
“(b) Transfers of Income.—For purposes of any United States civil judicial or administrative proceeding to determine or collect tax, there shall be a rebuttable presumption that any amount or thing of value received by a United States person (other than an entity with shares regularly traded on an established securities market) directly or indirectly from an account or from an entity (other than an entity with shares regularly traded on an established securities market) that holds an account, or in any other manner has assets, in a non-FATCA institution, constitutes income of such person taxable in the year of receipt; and any amount or thing of value paid or transferred by or on behalf of a United States person (other than an entity with shares regularly traded on an established securities market) directly or indirectly to an account, or entity (other than an entity with shares regularly traded on an established securities market) that holds an account, or in any other manner has assets, in a non-FATCA institution, represents previously unreported income of such person taxable in the year of the transfer.

“(c) Rebutting the Presumptions.—The presumptions established in this section may be rebutted only by clear and convincing evidence, including detailed documentary, testimonial, and transactional evidence, establishing that—
“(1) in subsection (a), such taxpayer exercised no control, directly or indirectly, over account or entity at the time in question, and

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

Any court having jurisdiction of a civil proceeding in which control of such an offshore account or offshore entity or the income character of such receipts or amounts transferred is an issue shall prohibit the introduction by the taxpayer of any foreign based document that is not authenticated in open court by a person with knowledge of such document, or any other evidence supplied by a person outside the jurisdiction of a United States court, unless such person appears before the court.”.

(B) The table of subchapters for chapter 76 is amended by inserting after the item relating to subchapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

(2) DEFINITION OF NON-FATCA INSTITUTION.—

Section 7701(a) is amended by adding at the end the following new paragraph:

“(51) NON-FATCA INSTITUTION.—The term ‘non-FATCA institution’ means any financial institution that does not meet the reporting requirements of section 1471(b).”.
(3) Presumptions for securities law purposes.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following new subsection:

“(j) Presumptions pertaining to control and beneficial ownership.—

“(1) Control.—For purposes of any civil judicial or administrative proceeding under this title, there shall be a rebuttable presumption that a United States person (other than an entity with shares regularly traded on an established securities market) who, directly or indirectly, formed, transferred assets to, was a beneficiary of, had a beneficial interest in, or received money or property or the use thereof from an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), that holds an account, or in any other manner has assets, in a non-FATCA institution (as defined in section 7701(a)(51) of the Internal Revenue Code of 1986), exercised control over such entity. The presumption of control created by this paragraph shall not be applied to prevent the Commission from determining or arguing the absence of control.
“(2) Beneficial ownership.—For purposes of any civil judicial or administrative proceeding under this title, there shall be a rebuttable presumption that securities that are nominally owned by an entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), and that are held in a non-FATCA institution (as so defined), are beneficially owned by any United States person (other than an entity with shares regularly traded on an established securities market) who directly or indirectly exercised control over such entity. The presumption of beneficial ownership created by this paragraph shall not be applied to prevent the Commission from determining or arguing the absence of beneficial ownership.”.

(4) Presumption for reporting purposes relating to foreign financial accounts.—Section 5314 of title 31, United States Code, is amended by adding at the end the following new subsection:

“(d) Rebuttable presumption.—For purposes of this section, there shall be a rebuttable presumption that any account with a non-FATCA institution (as defined in
section 7701(a)(51) of the Internal Revenue Code of 1986) contains funds in an amount that is at least sufficient to require a report prescribed by regulations under this section.”.

(5) REGULATORY AUTHORITY.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Treasury and the Chairman of the Securities and Exchange Commission shall each adopt regulations or other guidance necessary to implement the amendments made by this subsection. The Secretary and the Chairman may, by regulation or guidance, provide that the presumption of control shall not extend to particular classes of transactions, such as corporate reorganizations or transactions below a specified dollar threshold, if either determines that applying such amendments to such transactions is not necessary to carry out the purposes of such amendments.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 180 days after the date of enactment of this Act, whether or not regulations are issued under subsection (g)(5).
SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MANAGED AND CONTROLLED IN THE UNITED STATES AS DOMESTIC CORPORATIONS.

(a) In General.—Section 7701 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) Certain Corporations Managed and Controlled in the United States Treated as Domestic for Income Tax.—

“(1) In General.—Notwithstanding subsection (a)(4), in the case of a corporation described in paragraph (2) if—

“(A) the corporation would not otherwise be treated as a domestic corporation for purposes of this title, but

“(B) the management and control of the corporation occurs, directly or indirectly, primarily within the United States,

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

“(2) Corporation described.—

“(A) In General.—A corporation is described in this paragraph if—
“(i) the stock of such corporation is regularly traded on an established securities market, or

“(ii) the aggregate gross assets of such corporation (or any predecessor thereof), including assets under management for investors, whether held directly or indirectly, at any time during the taxable year or any preceding taxable year is $50,000,000 or more.

“(B) General exception.—A corporation shall not be treated as described in this paragraph if—

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

“(ii) such corporation—

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

“(II) has, and is reasonably expected to continue to have, aggregate gross assets (including assets under management for investors, whether held directly or indirectly) of less than $50,000,000, and
“(iii) the Secretary grants a waiver to such corporation under this subparagraph.

“(C) Exception from Gross Assets Test.—Subparagraph (A)(ii) shall not apply to a corporation which is a controlled foreign corporation (as defined in section 957) and which is a member of an affiliated group (as defined section 1504, but determined without regard to section 1504(b)(3)) the common parent of which—

“(i) is a domestic corporation (determined without regard to this subsection), and

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

“(3) Management and Control.—

“(A) In General.—The Secretary shall prescribe regulations for purposes of determining cases in which the management and control of a corporation is to be treated as occurring primarily within the United States.
“(B) EXECUTIVE OFFICERS AND SENIOR MANAGEMENT.—Such regulations shall provide that—

“(i) the management and control of a corporation shall be treated as occurring primarily within the United States if substantially all of the executive officers and senior management of the corporation who exercise day-to-day responsibility for making decisions involving strategic, financial, and operational policies of the corporation are located primarily within the United States, and

“(ii) individuals who are not executive officers and senior management of the corporation (including individuals who are officers or employees of other corporations in the same chain of corporations as the corporation) shall be treated as executive officers and senior management if such individuals exercise the day-to-day responsibilities of the corporation described in clause (i).

“(C) CORPORATIONS PRIMARILY HOLDING INVESTMENT ASSETS.—Such regulations shall
also provide that the management and control
of a corporation shall be treated as occurring
primarily within the United States if—

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

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

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

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

(a) In General.—Subpart B of part III of sub-
chapter A of chapter 61 is amended by inserting after sec-
tion 6045B the following new sections:
• 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.

“(a) Requirement of Return.—If—

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

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

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

“(b) Required Information.—For purposes of subsection (a) the information required to be included on the return shall include—
“(1) the name, address, and, if known, the taxpayer identification number of the United States beneficial owner,

“(2) the known facts pertaining to the relationship of such United States beneficial owner to the foreign entity and the account,

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

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

“(c) Statements To Be Furnished to Beneficial Owners With Respect to Whom Information Is Required To Be Reported.—A withholding agent required to make a return under subsection (a) shall furnish to each United States beneficial owner whose name is required to be set forth in such return a statement showing—

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

“(2) the information required to be shown on such return with respect to such United States beneficial owner.
The written statement required under the preceding sentence shall be furnished to the United States beneficial owner on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made. In the event the person filing such return does not have a current address for the United States beneficial owner, such written statement may be mailed to the address of the foreign entity.

"SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS REGARDING ESTABLISHMENT OF ACCOUNTS IN NON-FATCA INSTITUTIONS.

“(a) REQUIREMENT OF RETURN.—Any financial institution directly or indirectly opening a bank, brokerage, or other financial account for or on behalf of an offshore entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), in a non-FATCA institution (as defined in section 7701(a)(51)) at the direction of, on behalf of, or for the benefit of a United States person shall make a return according to the forms or regulations prescribed by the Secretary.

“(b) REQUIRED INFORMATION.—For purposes of subsection (a) the information required to be included on the return shall include—"
“(1) the name, address, and taxpayer identification number of such United States person,

“(2) the name and address of the financial institution at which a financial account is opened, the type of account, the account number, the name under which the account was opened, and the amount of the initial deposit,

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

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

“(c) Statements To Be Furnished to United States Persons With Respect to Whom Information Is Required To Be Reported.—A financial institution required to make a return under subsection (a) shall furnish to each United States person whose name is required to be set forth in such return a statement showing—

“(1) the name, address, and telephone number of the information contact of the person required to make such return, and
“(2) the information required to be shown on such return with respect to such United States person.

The written statement required under the preceding sentence shall be furnished to such United States person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

“(d) EXEMPTION.—The Secretary may by regulations exempt any class of United States persons or any class of accounts or entities from the requirements of this section if the Secretary determines that applying this section to such persons, accounts, or entities is not necessary to carry out the purposes of this section.”.

(b) PENALTIES.—

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

“(xxvi) section 6045C(a) (relating to returns regarding United States beneficial owners of financial accounts located in the United States and held in the name of a foreign entity), or
“(xxvii) section 6045D(a) (relating to returns by financial institutions regarding establishment of accounts at non-FATCA institutions), and”.

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

“(II) section 6045C(c) (relating to returns regarding United States beneficial owners of financial accounts located in the United States and held in the name of a foreign entity),

“(JJ) section 6045D(c) (relating to returns by financial institutions regarding establishment of accounts at non-FATCA institutions).”.

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

(d) ADDITIONAL PENALTIES.—
(1) ADDITIONAL PENALTIES ON BANKS.—Section 5239(b)(1) of the Revised Statutes of the United States (12 U.S.C. 93(b)(1)) is amended by inserting “or any of the provisions of section 6045D of the Internal Revenue Code of 1986,” after “any regulation issued pursuant to,”.


(e) REGULATORY AUTHORITY AND EFFECTIVE DATE.—

(1) REGULATORY AUTHORITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall adopt regulations, forms, or other guidance necessary to implement this section.

(2) EFFECTIVE DATE.—Section 6045C of the Internal Revenue Code of 1986 (as added by this section) and the amendment made by subsection (d)(1) shall take effect with respect to amounts paid into foreign owned accounts located in the United States after December 31 of the year of the date of
the enactment of this Act. Section 6045D of such
Code (as so added) and the amendment made by
subsection (d)(2) shall take effect with respect to ac-
counts opened after December 31 of the year of the
date of the enactment of this Act.

SEC. 105. SWAP PAYMENTS MADE FROM THE UNITED
STATES TO PERSONS OFFSHORE.

(a) Tax on Swap Payments Received by For-

eign Persons.—Section 871(a)(1) is amended—

(1) by inserting “swap payments (as identified
in section 1256(b)(2)(B)),” after “annuities,” in
subparagraph (A), and

(2) by adding at the end the following new sen-
tence: “In the case of swap payments, the source of
a swap payment is determined by reference to the lo-
cation of the payor.”.

(b) Tax on Swap Payments Received by For-

eign Corporations.—Section 881(a) is amended—

(1) by inserting “swap payments (as identified
in section 1256(b)(2)(B)),” after “annuities,” in
paragraph (1), and

(2) by adding at the end the following new sen-
tence: “In the case of swap payments, the source of
a swap payment is determined by reference to the lo-
cation of the payor.”.
Subtitle B—Other Measures To Combat Tax Haven and Tax Shelter Abuses

SEC. 111. COUNTRY-BY-COUNTRY REPORTING.

(a) COUNTRY-BY-COUNTRY REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following new subsection:

“(s) DISCLOSURE OF FINANCIAL PERFORMANCE ON A COUNTRY-BY-COUNTRY BASIS.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘issuer group’ means the issuer, each subsidiary of the issuer, and each entity under the control of the issuer; and

“(B) the term ‘country of operation’ means each country in which a member of the issuer group is incorporated, organized, maintains employees, or conducts significant business activities.

“(2) RULES REQUIRED.—The Commission shall issue rules that require each issuer to include in an annual report filed by the issuer with the Commission information on a country-by-country basis during the covered period, consisting of—
“(A) a list of each country of operation and the name of each entity of the issuer group domiciled in each country of operation;

“(B) the number of employees physically working in each country of operation;

“(C) the total pre-tax gross revenues of each member of the issuer group in each country of operation;

“(D) the total amount of payments made to governments by each member of the issuer group in each country of operation, without exception, including, and set forth according to—

“(i) total Federal, regional, local, and other tax assessed against each member of the issuer group with respect to each country of operation during the covered period; and

“(ii) after any tax deductions, tax credits, tax forgiveness, or other tax benefits or waivers, the total amount of tax paid from the treasury of each member of the issuer group to the government of each country of operation during the covered period; and
“(E) such other financial information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.”.

(b) Rulemaking.—

(1) Deadlines.—The Securities and Exchange Commission (in this section referred to as the “Commission”) shall—

(A) not later than 270 days after the date of enactment of this Act, issue a proposed rule to carry out this section and the amendment made by this section; and

(B) not later than 1 year after the date of enactment of this Act, issue a final rule to carry out this section and the amendment made by this section.

(2) Data Format.—The information required to be provided by this section shall be provided by the issuer in a format prescribed by the Commission, and shall be made available to the public online, in such format as the Commission shall prescribe.

(3) Effective Date.—Subsection (s) of section 13 of the Securities Exchange Act of 1934, as added by this section, shall become effective 1 year
after the date on which the Commission issues a final rule under this section.

SEC. 112. PENALTY FOR FAILING TO DISCLOSE OFFSHORE HOLDINGS.


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(iv) Fourth tier.—Notwithstanding clauses (i), (ii), and (iii), for each violation, the amount of the penalty shall not exceed $1,000,000 for any natural person or $10,000,000 for any other person, if—

(I) such person directly or indirectly controlled any foreign entity, including any trust, corporation, limited liability company, partnership, or foundation through which an issuer purchased, sold, or held equity or debt instruments;

(II) such person knowingly or recklessly failed to disclose any such holding, purchase, or sale by the issuer; and
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“(III) the holding, purchase, or sale would have been otherwise sub-
ject to disclosure by the issuer or such person under this title.”.

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

“(D) Fourth Tier.—Notwithstanding subparagraphs (A), (B), and (C), for each viola-
tion, the amount of the penalty shall not exceed $1,000,000 for any natural person or $10,000,000 for any other person, if—

“(i) such person directly or indirectly controlled any foreign entity, including any trust, corporation, limited liability com-
pany, partnership, or foundation through which an issuer purchased, sold, or held equity or debt instruments;

“(ii) such person knowingly or reck-
lessly failed to disclose any such holding, purchase, or sale by the issuer; and

“(iii) the holding, purchase, or sale would have been otherwise subject to dis-
closure by the issuer or such person under this title.”.
(c) INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended by adding at the end the following:

“(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), for each violation, the amount of the penalty shall not exceed $1,000,000 for any natural person or $10,000,000 for any other person, if—

“(i) such person directly or indirectly controlled any foreign entity, including any trust, corporation, limited liability company, partnership, or foundation through which an issuer purchased, sold, or held equity or debt instruments;

“(ii) such person knowingly or recklessly failed to disclose any such holding, purchase, or sale by the issuer; and

“(iii) the holding, purchase, or sale would have been otherwise subject to disclosure by the issuer or such person under this title.”.
SEC. 113. DEADLINE FOR ANTI-MONEY LAUNDERING RULE FOR INVESTMENT ADVISERS.

(a) Anti-Money Laundering Obligations for Investment Advisers.—Section 5312(a)(2) of title 31, United States Code, is amended—

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

(2) by redesigning subparagraph (Z) as subparagraph (BB); and

(3) by inserting after subparagraph (Y) the following:

“(Z) an investment adviser;”.

(b) Rules Required.—The Secretary of the Treasury shall—

(1) in consultation with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission, not later than 270 days after the date of enactment of this Act, publish a proposed rule in the Federal Register to carry out the amendments made by this section; and

(2) not later than 180 days after the date of enactment of this Act, publish a final rule in the Federal Register on the matter described in paragraph (1).
(e) CONTENTS.—The final rule published under this section shall require, at a minimum, each investment adviser (as defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11))) registered with the Securities and Exchange Commission pursuant to section 203 of that Act (15 U.S.C. 80b–3)—

(1) to submit suspicious activity reports and establish an anti-money laundering program under subsections (g) and (h), respectively, of section 5318 of title 31, United States Code; and

(2) to comply with—

(A) the customer identification program requirements under section 5318(l) of title 31, United States Code; and

(B) the due diligence requirements under section 5318(i) of title 31, United States Code.

SEC. 114. ANTI-MONEY LAUNDERING REQUIREMENTS FOR FORMATION AGENTS.

(a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR FORMATION AGENTS.—Section 5312(a)(2) of title 31, United States Code, as amended by section 113 of this Act, is amended by inserting after subparagraph (Z) the following:

“(AA) any person engaged in the business of forming new corporations, limited liability
companies, partnerships, trusts, or other legal
entities; or”.

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

(1) PROPOSED RULE.—The Secretary of the
Treasury, in consultation with the Attorney General
of the United States, the Secretary of Homeland Se-
curity, and the Commissioner of Internal Revenue,
shall—

(A) not later than 120 days after the date
of enactment of this Act, publish a proposed
rule in the Federal Register requiring persons
described in section 5312(a)(2)(AA) of title 31,
United States Code, as added by this section, to
establish anti-money laundering programs
under section 5318(h) of that title; and

(B) not later than 270 days after the date
of enactment of this Act, publish a final rule in
the Federal Register on the matter described in
subparagraph (A).

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

(A) any government agency; and
(B) any attorney or law firm that uses a paid formation agent operating within the United States to form such corporations or other entities.

SEC. 115. STRENGTHENING JOHN DOE SUMMONS PROCEEDINGS.

(a) In general.—Subsection (f) of section 7609 is amended to read as follows:

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

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

“(A) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

“(B) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

“(C) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons
with respect to whose liability the summons is
issued) is not readily available from other
sources.

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

“(3) Presumption in cases involving non-
FATCA institutions.—For purposes of this section,
in any case in which the particular person or ascer-
tainable group or class of persons have financial ac-
counts in or transactions related to a non-FATCA
institution (as defined in section 7701(a)(51)), there
shall be a presumption that there is a reasonable
basis for believing that such person or group or class
of persons may fail or may have failed to comply
with provisions of internal revenue law.

“(4) Project John Doe summonses.—

“(A) In general.—Notwithstanding the
requirements of paragraph (1), the Secretary
may issue a summons described in paragraph

(1) if the summons—

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

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

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

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

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

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

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

“(D) ONGOING COURT OVERSIGHT.—During any period in which the Secretary is authorized to issue summonses in relation to a project approved under subparagraph (B) (including during any extension under subparagraph (C)), the Secretary shall report annually to the court on the use of such authority, provide copies of all summonses with such report, and comply with the court’s direction with respect to the issuance of any John Doe summons under such project.”.

(b) JURISDICTION OF COURT.—

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

(2) CONFORMING AMENDMENT.—The first sentence of section 7609(h)(1) is amended by striking “(f)” and inserting “(f)(1)”.
SEC. 116. IMPROVING ENFORCEMENT OF FOREIGN FINANCIAL ACCOUNT REPORTING.

(a) Clarifying the Connection of Foreign Financial Account Reporting to Tax Administration.—Paragraph (4) of section 6103(b) is amended by adding at the end the following new sentence:

“For purposes of subparagraph (A)(i), section 5314 of title 31, United States Code, and sections 5321 and 5322 of such title (as such sections pertain to such section 5314), shall be considered related statutes.”.

(b) Simplifying the Calculation of Foreign Financial Account Reporting Penalties.—Section 5321(a)(5)(D)(ii) of title 31, United States Code, is amended by striking “the balance in the account at the time of the violation” and inserting “the highest balance in the account during the reporting period to which the violation relates”.

(c) Clarifying the Use of Suspicious Activity Reports Under the Bank Secrecy Act for Civil Tax Law Enforcement.—Section 5319 of title 31, United States Code, is amended by inserting “the civil and
criminal enforcement divisions of the Internal Revenue Service,” after “including”.

Subtitle C—Ending Offshore Tax Avoidance

SEC. 121. ALLOCATION OF EXPENSES AND TAXES ON BASIS OF REPATRIATION OF FOREIGN INCOME.

(a) In General.—Part III of subchapter N of chapter 1 is amended by inserting after subpart G the following new subpart:

“Subpart H—Special Rules for Allocation of Foreign-Related Deductions and Foreign Tax Credits

Sec. 975. Deductions allocated to deferred foreign income may not offset United States source income.

Sec. 976. Amount of foreign taxes computed on overall basis.

Sec. 977. Application of subpart.

SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOREIGN INCOME MAY NOT OFFSET UNITED STATES SOURCE INCOME.

“(a) Current Year Deductions.—For purposes of this chapter, foreign-related deductions for any taxable year—

“(1) shall be taken into account for such taxable year only to the extent that such deductions are allocable to currently-taxed foreign income, and

“(2) to the extent not so allowed, shall be taken into account in subsequent taxable years as provided in subsection (b).
Foreign-related deductions shall be allocated to currently taxed foreign income in the same proportion which currently taxed foreign income bears to the sum of currently taxed foreign income and deferred foreign income.

“(b) DEDUCTIONS RELATED TO REPATRIATED DEFERRED FOREIGN INCOME.—

“(1) IN GENERAL.—If there is repatriated foreign income for a taxable year, the portion of the previously deferred deductions allocated to the repatriated foreign income shall be taken into account for the taxable year as a deduction allocated to income from sources outside the United States. Any such amount shall not be included in foreign-related deductions for purposes of applying subsection (a) to such taxable year.

“(2) PORTION OF PREVIOUSLY DEFERRED DEDUCTIONS.—For purposes of paragraph (1), the portion of the previously deferred deductions allocated to repatriated foreign income is—

“(A) the amount which bears the same proportion to such deductions, as

“(B) the repatriated income bears to the previously deferred foreign income.

“(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—
“(1) FOREIGN-RELATED DEDUCTIONS.—The term ‘foreign-related deductions’ means the total amount of deductions and expenses which would be allocated or apportioned to gross income from sources without the United States for the taxable year if both the currently-taxed foreign income and deferred foreign income were taken into account.

“(2) CURRENTLY-TAXED FOREIGN INCOME.—The term ‘currently-taxed foreign income’ means the amount of gross income from sources without the United States for the taxable year (determined without regard to repatriated foreign income for such year).

“(3) DEFERRED FOREIGN INCOME.—The term ‘deferred foreign income’ means the excess of—

“(A) the amount that would be includible in gross income under subpart F of this part for the taxable year if—

“(i) all controlled foreign corporations were treated as one controlled foreign corporation, and

“(ii) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952),

over
“(B) the sum of—

“(i) all dividends received during the taxable year from controlled foreign corporations, plus

“(ii) amounts includible in gross income under section 951(a).

“(4) PREVIOUSLY DEFERRED FOREIGN INCOME.—The term ‘previously deferred foreign income’ means the aggregate amount of deferred foreign income for all prior taxable years to which this part applies, determined as of the beginning of the taxable year, reduced by the repatriated foreign income for all such prior taxable years.

“(5) REPATRIATED FOREIGN INCOME.—The term ‘repatriated foreign income’ means the amount included in gross income on account of distributions out of previously deferred foreign income.

“(6) PREVIOUSLY DEFERRED DEDUCTIONS.—The term ‘previously deferred deductions’ means the aggregate amount of foreign-related deductions not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.
“(7) **Treatment of Certain Foreign Taxes.**—

“(A) **Paid by Controlled Foreign Corporation.**—Section 78 shall not apply for purposes of determining currently-taxed foreign income and deferred foreign income.

“(B) **Paid by Taxpayer.**—For purposes of determining currently-taxed foreign income, gross income from sources without the United States shall be reduced by the aggregate amount of taxes described in the applicable paragraph of section 901(b) which are paid by the taxpayer (without regard to sections 902 and 960) during the taxable year.

“(8) **Coordination with Section 976.**—In determining currently-taxed foreign income and deferred foreign income, the amount of deemed foreign tax credits shall be determined with regard to section 976.

**SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON OVERALL BASIS.**

“(a) **Current Year Allowance.**—For purposes of this chapter, the amount taken into account as foreign income taxes for any taxable year shall be an amount which
bears the same ratio to the total foreign income taxes for
that taxable year as—

“(1) the currently-taxed foreign income for such
taxable year, bears to

“(2) the sum of the currently-taxed foreign in-
come and deferred foreign income for such year.

The portion of the total foreign income taxes for any tax-
able year not taken into account under the preceding sen-
tence for a taxable year shall only be taken into account
as provided in subsection (b) (and shall not be taken into
account for purposes of applying sections 902 and 960).

“(b) ALLOWANCE RELATED TO REPATRIATED DE-
ferred Foreign Income.—

“(1) IN GENERAL.—If there is repatriated for-
eign income for any taxable year, the portion of the
previously deferred foreign income taxes paid or ac-
crued during such taxable year shall be taken into
account for the taxable year as foreign taxes paid or
accrued. Any such taxes so taken into account shall
not be included in foreign income taxes for purposes
of applying subsection (a) to such taxable year.

“(2) PORTION OF PREVIOUSLY DEFERRED FOR-
eign Income Taxes.—For purposes of paragraph
(1), the portion of the previously deferred foreign in-
come taxes allocated to repatriated deferred foreign income is—

“(A) the amount which bears the same proportion to such taxes, as

“(B) the repatriated deferred income bears to the previously deferred foreign income.

“(c) Definitions and Special Rule.—For purposes of this section—

“(1) Previously deferred foreign income taxes.—The term ‘previously deferred foreign income taxes’ means the aggregate amount of total foreign income taxes not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.

“(2) Total foreign income taxes.—The term ‘total foreign income taxes’ means the sum of foreign income taxes paid or accrued during the taxable year (determined without regard to section 904(c)) plus the increase in foreign income taxes that would be paid or accrued during the taxable year under sections 902 and 960 if—
“(A) all controlled foreign corporations were treated as one controlled foreign corpo-
ration, and

“(B) all earnings and profits of all con-
trolled foreign corporations were subpart F in-
come (as defined in section 952).

“(3) FOREIGN INCOME TAXES.—The term ‘for-
gain income taxes’ means any income, war profits, or
excess profits taxes paid by the taxpayer to any for-
gain country or possession of the United States.

“(4) CURRENTLY-TAXED FOREIGN INCOME AND
deferred foreign income.—The terms ‘cur-
rently-taxed foreign income’ and ‘deferred foreign in-
come’ have the meanings given such terms by sec-
tion 975(c)).

“SEC. 977. APPLICATION OF SUBPART.

“This subpart—

“(1) shall be applied before subpart A, and

“(2) shall be applied separately with respect to
the categories of income specified in section
904(d)(1).”.

(b) CLERICAL AMENDMENT.—The table of subparts
for part III of subpart N of chapter 1 is amended by in-
serting after the item relating to subpart G the following
new item:
(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 122. EXCESS INCOME FROM TRANSFERS OF INTANGIBLES TO LOW-TAXED AFFILIATES TREATED AS SUBPART F INCOME.

(a) In General.—Subsection (a) of section 954 is amended by inserting after paragraph (3) the following new paragraph:

“(4) the foreign base company excess intangible income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and”.

(b) Foreign Base Company Excess Intangible Income.—Section 954 is amended by inserting after subsection (e) the following new subsection:

“(f) Foreign Base Company Excess Intangible Income.—For purposes of subsection (a)(4) and this subsection:

“(1) Foreign base company excess intangible income defined.—

“(A) In general.—The term ‘foreign base company excess intangible income’ means,
with respect to any covered intangible, the excess of—

“(i) the sum of—

“(I) gross income from the sale, lease, license, or other disposition of property in which such covered intangible is used directly or indirectly, and

“(II) gross income from the provision of services related to such covered intangible or in connection with property in which such covered intangible is used directly or indirectly,

over

“(ii) 150 percent of the costs properly allocated and apportioned to the gross income taken into account under clause (i) other than expenses for interest and taxes and any expenses which are not directly allocable to such gross income.

“(B) SAME COUNTRY INCOME NOT TAKEN INTO ACCOUNT.—If—

“(i) the sale, lease, license, or other disposition of the property referred to in subparagraph (A)(i)(I) is for use, consumption, or disposition in the country
under the laws of which the controlled foreign corporation is created or organized, or

“(ii) the services referred to in subparagraph (A)(i)(II) are performed in such country,

the gross income from such sale, lease, license, or other disposition, or provision of services, shall not be taken into account under subparagraph (A)(i).

“(2) Exception based on effective foreign income tax rate.—

“(A) In general.—Foreign base company excess intangible income shall not include the applicable percentage of any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country in excess of 5 percent.

“(B) Applicable percentage.—For purposes of subparagraph (A), the term ‘applicable percentage’ means the ratio (expressed as a percentage), not greater than 100 percent, of—
“(i) the number of percentage points
by which the effective rate of income tax
referred to in subparagraph (A) exceeds 5
percentage points, over
“(ii) 10 percentage points.
“(C) TREATMENT OF LOSSES IN DETER-
MINING EFFECTIVE RATE OF FOREIGN INCOME
TAX.—For purposes of determining the effective
rate of income tax imposed by any foreign
country—
“(i) such effective rate shall be deter-
mined without regard to any losses carried
to the relevant taxable year, and
“(ii) to the extent the income with re-
spect to such intangible reduces losses in
the relevant taxable year, such effective
rate shall be treated as being the effective
rate which would have been imposed on
such income without regard to such losses.
“(3) COVERED INTANGIBLE.—The term ‘cov-
ered intangible’ means, with respect to any con-
trolled foreign corporation, any intangible property
(as defined in section 936(h)(3)(B))—
“(A) which is sold, leased, licensed, or oth-
erwise transferred (directly or indirectly) to
such controlled foreign corporation from a related person, or

“(B) with respect to which such controlled foreign corporation and one or more related persons has (directly or indirectly) entered into any shared risk or development agreement (including any cost sharing agreement).

“(4) RELATED PERSON.—The term ‘related person’ has the meaning given such term in subsection (d)(3).”.

(c) SEPARATE BASKET FOR FOREIGN TAX CREDIT.—Subsection (d) of section 904 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(6) SEPARATE APPLICATION TO FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—

“(A) IN GENERAL.—Subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to each item of income which is taken into account under section 954(a)(4) as foreign base company excess intangible income.

“(B) REGULATIONS.—The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the pur-
poses of this subsection, including regulations
or other guidance which provides that related
items of income may be aggregated for pur-
poses of this paragraph.”.

(d) CONFORMING AMENDMENTS.—

(1) Paragraph (4) of section 954(b) is amended
by inserting “foreign base company excess intangible
income described in subsection (a)(4) or” before
“foreign base company oil-related income” in the
last sentence thereof.

(2) Subsection (b) of section 954 is amended by
adding at the end the following new paragraph:

“(7) FOREIGN BASE COMPANY EXCESS INTAN-
GIBLE INCOME NOT TREATED AS ANOTHER KIND OF
BASE COMPANY INCOME.—Income of a corporation
which is foreign base company excess intangible in-
come shall not be considered foreign base company
income of such corporation under paragraph (2),
(3), or (5) of subsection (a).”.

(e) EFFECTIVE DATE.—The amendments made by
this section shall apply to taxable years beginning after
the date of the enactment of this Act.
SEC. 123. LIMITATIONS ON INCOME SHIFTING THROUGH INTANGIBLE PROPERTY TRANSFERS.

(a) Clarification of Definition of Intangible Asset.—Clause (vi) of section 936(h)(3)(B) is amended by inserting “(including any section 197 intangible described in subparagraph (A), (B), or (C)(i) of subsection (d)(1) of such section)” after “item”.

(b) Clarification of Allowable Valuation Methods.—

(1) Foreign Corporations.—Paragraph (2) of section 367(d) is amended by adding at the end the following new subparagraph:

“(D) Regulatory authority.—For purposes of the last sentence of subparagraph (A), the Secretary may require—

“(i) the valuation of transfers of intangible property on an aggregate basis, or

“(ii) the valuation of such a transfer on the basis of the realistic alternatives to such a transfer,

in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.”.

(2) Allocation Among Taxpayers.—Section 482 is amended by adding at the end the following:

“For purposes of the preceding sentence, the Sec-
retary may require the valuation of transfers of intangible property on an aggregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer, in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to transfers in taxable years beginning after the date of the enactment of this Act.

(2) NO INference.—Nothing in the amendment made by subsection (a) shall be construed to create any inference with respect to the application of section 936(h)(3) of the Internal Revenue Code of 1986, or the authority of the Secretary of the Treasury to provide regulations for such application, on or before the date of the enactment of such amendment.

SEC. 124. LIMITATION ON EARNINGS STRIPPING BY EXPATRIATED ENTITIES.

(a) IN GENERAL.—Subsection (j) of section 163 is amended—

(1) by redesignating paragraph (9) as paragraph (10), and
(2) by inserting after paragraph (8) the fol-
lowing new paragraph:

“(9) SPECIAL RULES FOR EXPATRIATED ENTI-
ties.—

“(A) IN GENERAL.—In the case of a cor-
poration to which this subsection applies which
is an expatriated entity, this subsection shall
apply to such corporation with the following
modifications:

“(i) Paragraph (2)(A) shall be applied
without regard to clause (ii) thereof.

“(ii) Paragraph (1)(B) shall be ap-
plied—

“(I) without regard to the par-
enthetical, and

“(II) by substituting ‘in the 1st
succeeding taxable year and in the
2nd through 10th succeeding taxable
years to the extent not previously
taken into account under this sub-
paragraph’ for ‘in the succeeding tax-
able year’.

“(iii) Paragraph (2)(B) shall be ap-
plied—
“(I) without regard to clauses (ii) and (iii), and
“(II) by substituting ‘25 percent of the adjusted taxable income of the corporation for such taxable year’ for the matter of clause (i)(II) thereof.
“(B) EXPATRIATED ENTITY.—For purposes of this paragraph—
“(i) IN GENERAL.—With respect to a corporation and a taxable year, the term ‘expatriated entity’ has the meaning given such term by section 7874(a)(2), determined as if such section and the regulations under such section as in effect on the first day of such taxable year applied to all taxable years of the corporation beginning after July 10, 1989.
“(ii) EXCEPTION FOR SURROGATES TREATED AS A DOMESTIC CORPORATION.—
The term ‘expatriated entity’ does not include a surrogate foreign corporation which is treated as a domestic corporation by reason of section 7874(b).”.
(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 125. REPEAL OF CHECK-THE-BOX RULES FOR CERTAIN FOREIGN ENTITIES AND CFC LOOK-THRU RULES.

(a) Check-the-Box Rules.—Paragraph (3) of section 7701(a) is amended—

(1) by striking “and”, and

(2) by inserting after “insurance companies” the following: “, and any foreign business entity that—

“(A) has a single owner that does not have limited liability, or

“(B) has one or more members all of which have limited liability”.

(b) Look-Thru Rule.—Subparagraph (C) of section 954(c)(6) is amended to read as follows:

“(C) TERMINATION.—Subparagraph (A) shall not apply to dividends, interest, rents, and royalties received or accrued after the date of the enactment of the CUT Loopholes Act.”.
SEC. 126. PROHIBITION ON OFFSHORE LOAN ABUSE.

(a) In General.—Subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new section:

"SEC. 966. INCOME INCLUSION FOR LOANS TO UNITED STATES SHAREHOLDERS FROM CONTROLLED FOREIGN CORPORATIONS.

"(a) In General.—In the case of a United States shareholder, there shall be included in income for the taxable year an amount equal to the disqualified CFC loan amount.

"(b) Disqualified CFC Loan Amount.—

"(1) In General.—For purposes of this section, the disqualified CFC loan amount for any taxable year is an amount equal to the lesser of—

"(A) the aggregate amount of obligations of the United States shareholder which originated in such taxable year and are held (directly or indirectly) by controlled foreign corporations, or

"(B) the foreign group earnings amount.

"(2) Exception.—In determining the amount of obligations under subparagraph (A), there shall be excluded any obligation described in section 956(c)(2)(C)."
“(3) Carryforward of certain amounts.—If, for any taxable year, the amount under subparagraph (A) exceeds the amount under subparagraph (B), such excess shall be taken into account as an obligation to which subparagraph (A) applies for the succeeding taxable year.

“(4) Foreign group earnings amount.—For purposes of this section, the term ‘foreign group earnings amount’ means the aggregate earnings and profits of all controlled foreign corporations in the worldwide affiliated group (as defined in section 864(f)(1)(C)) of the United States shareholder, determined—

“(A) as of the last day of the taxable year of the United States shareholder, and

“(B) without regard to any distributions made during such taxable year.

“(c) Denial of interest deduction.—No deduction shall be allowed for interest paid or accrued with respect to obligations taken into account under subsection (b).

“(d) Treatment of income source.—Any amount included in income under subsection (a) shall be treated as income from sources within the United States.”.
(b) Coordination With Section 956.—Paragraph (2) of section 956(e) is amended by striking “and” at the end of subparagraph (K), by striking the period at the end of subparagraph (L)(ii) and inserting “; and”, and by inserting after subparagraph (L) the following new subparagraph:

“(M) any obligation which is taken into account in determining the disqualified CFC loan amount under section 966.”.

(c) Clerical Amendment.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

“Sec. 966. Income inclusion for loans to certain United States shareholders from controlled foreign corporations.”.

(d) Effective Date.—The amendments made by this section shall apply to obligations originated after the date of the enactment of this Act.

Title II—Strengthening Tax Enforcement

Subtitle A—Combating Tax Shelter Promotion

Sec. 201. Penalty for Promoting Abusive Tax Shelters.

(a) Penalty for Promoting Abusive Tax Shelters.—Section 6700 is amended—
(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking “a penalty” and all that follows through the period in the first sentence of subsection (a) and inserting “a penalty determined under subsection (b)”, and

(3) by inserting after subsection (a) the following new subsections:

“(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

“(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 150 percent of the gross income derived (or to be derived) from such activity by the person or persons subject to such penalty.

“(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of an activity described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who participated in such an activity.

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

“(c) Penalty Not Deductible.—The payment of
any penalty imposed under this section or the payment
of any amount to settle or avoid the imposition of such
penalty shall not be considered an ordinary and necessary
expense in carrying on a trade or business for purposes
of this title and shall not be deductible by the person who
is subject to such penalty or who makes such payment.”.

(b) Conforming Amendment.—Section 6700(a) is
amended by striking the last sentence.

c) Effective Date.—The amendments made by
this section shall apply to activities after the date of the
enactment of this Act.

SEC. 202. PENALTY FOR AIDING AND ABETTING THE UN-
DERSTATEMENT OF TAX LIABILITY.

(a) In General.—Section 6701(a) is amended—

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

(2) by inserting “aid, assistance, procurement,
or advice with respect to such” before “portion”
both places it appears in paragraphs (2) and (3),
and
(3) by inserting “instance of aid, assistance, procurement, or advice or each such” before “document” in the matter following paragraph (3).

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

“(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

“(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed 150 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty.

“(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

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

(c) Penalty Not Deductible.—Section 6701 is amended by adding at the end the following new subsection:

“(g) Penalty Not Deductible.—The payment of any penalty imposed under this section or the payment of any amount to settle or avoid the imposition of such penalty shall not be considered an ordinary and necessary expense in carrying on a trade or business for purposes of this title and shall not be deductible by the person who is subject to such penalty or who makes such payment.”.

(d) Effective Date.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 203. PROHIBITED FEE ARRANGEMENT.

(a) In General.—Section 6701, as amended by this Act, is amended—

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

(2) by striking “subsection (a).” in paragraphs (2) and (3) of subsection (g) (as redesignated by paragraph (1)) and inserting “subsection (a) or (f).”, and
(3) by inserting after subsection (e) the following new subsection:

“(f) PROHIBITED FEE ARRANGEMENT.—

“(1) IN GENERAL.—Any person who makes an agreement for, charges, or collects a fee which is for services provided in connection with the internal revenue laws, and the amount of which is calculated according to, or is dependent upon, a projected or actual amount of—

“(A) tax savings or benefits, or

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

shall pay a penalty with respect to each such fee activity in the amount determined under subsection (b).

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to fee agreements, charges, and collections made after the date of the enactment of this Act.
SEC. 204. PREVENTING TAX SHELTER ACTIVITIES BY FINANCIAL INSTITUTIONS.

(a) EXAMINATIONS.—

(1) DEVELOPMENT OF EXAMINATION TECHNIQUES.—Each of the Federal banking agencies and the Commission shall, in consultation with the Internal Revenue Service, develop examination techniques to detect potential violations of section 6700 or 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

(2) IMPLEMENTATION.—Each of the Federal banking agencies and the Commission shall implement the examination techniques developed under paragraph (1) with respect to each of the depository institutions, brokers, dealers, or investment advisers subject to their enforcement authority. Such examination shall, to the extent possible, be combined with any examination by such agency otherwise required or authorized by Federal law.

(b) REPORT TO INTERNAL REVENUE SERVICE.—In any case in which an examination conducted under this section with respect to a financial institution or other entity reveals a potential violation, such agency shall promptly notify the Internal Revenue Service of such potential violation for investigation and enforcement by the Internal Revenue Service.
Revenue Service, in accordance with applicable provisions of law.

(c) REPORT TO CONGRESS.—The Federal banking agencies and the Commission shall submit a joint written report to Congress in 2014 on their progress in preventing violations of sections 6700 and 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

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

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

(2) the term “Commission” means the Securities and Exchange Commission;

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

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

(5) the term “Secretary” means the Secretary of the Treasury.
SEC. 205. INFORMATION SHARING FOR ENFORCEMENT PURPOSES.

(a) Promotion of Prohibited Tax Shelters or Tax Avoidance Schemes.—Section 6103(h) is amended by adding at the end the following new paragraph:

“(7) Disclosure of returns and return information related to promotion of prohibited tax shelters or tax avoidance schemes.—

“(A) Written request.—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission, an appropriate Federal banking agency as defined under section 1813(q) of title 12, United States Code, or the Public Company Accounting Oversight Board, a return or return information shall be disclosed to such requestor’s officers and employees who are personally and directly engaged in an investigation, examination, or proceeding by such requestor to evaluate, determine, penalize, or deter conduct by a financial institution, issuer, or public accounting firm, or associated person, in connection with a potential or actual violation of section 6700 (promotion of abusive
tax shelters), 6701 (aiding and abetting understatement of tax liability), or activities related to promoting or facilitating inappropriate tax avoidance or tax evasion. Such disclosure shall be solely for use by such officers and employees in such investigation, examination, or proceeding. In the discretion of the Secretary, such disclosure may take the form of the participation of Internal Revenue Service employees in a joint investigation, examination, or proceeding with the Securities and Exchange Commission, Federal banking agency, or Public Company Accounting Oversight Board.

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

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

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

“(iii) the name or names of the financial institution, issuer, or public accounting firm to which such return information relates,
“(iv) the taxable period or periods to which such return information relates, and

“(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination or proceeding.

“(C) FINANCIAL INSTITUTION.—For the purposes of this paragraph, the term ‘financial institution’ means a depository institution, foreign bank, insured institution, industrial loan company, broker, dealer, investment company, investment advisor, or other entity subject to regulation or oversight by the United States Securities and Exchange Commission or an appropriate Federal banking agency.”.

(b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—Section 6103(i) is amended by adding at the end the following new paragraph:

“(9) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—

“(A) WRITTEN REQUEST.—Upon receipt by the Secretary of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities
and Exchange Commission or the Public Company Accounting Oversight Board, a return or return information shall be disclosed to such requester's officers and employees who are personally and directly engaged in an investigation, examination, or proceeding by such requester to evaluate the accuracy of a financial statement or report, or to determine whether to require a restatement, penalize, or deter conduct by an issuer, investment company, or public accounting firm, or associated person, in connection with a potential or actual violation of auditing standards or prohibitions against false or misleading statements or omissions in financial statements or reports. Such disclosure shall be solely for use by such officers and employees in such investigation, examination, or proceeding.

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

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

“(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted,
“(iii) the name or names of the issuer, investment company, or public accounting firm to which such return information relates,

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

“(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination or proceeding.”.

(c) Effective Date.—The amendments made by this section shall apply to disclosures and to information and document requests made after the date of the enactment of this Act.

SEC. 206. DISCLOSURE OF INFORMATION TO CONGRESS.

(a) Disclosure by Tax Return Preparer.—

(1) In general.—Subparagraph (B) of section 7216(b)(1) is amended to read as follows:

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

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

“(ii) A subpoena issued by a Federal or State grand jury.
“(iii) An administrative order, summons, or subpoena which is issued in the performance of its duties by—

“(I) any Federal agency, including Congress or any committee or subcommittee thereof, or

“(II) any State agency, body, or commission charged under the laws of the State or a political subdivision of the State with the licensing, registration, or regulation of tax return preparers.”.

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

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

“(2) INSPECTION BY CONGRESS.—

“(A) In general.—Upon receipt of a written request from a committee or subcommittee of Congress, copies of documents related to a determination by the Secretary to grant, deny, revoke, or restore an organization’s exemption from taxation under section 501
shall be provided to such committee or sub-committee, including any application, notice of status, or supporting information provided by such organization to the Internal Revenue Service; any letter, analysis, or other document produced by or for the Internal Revenue Service evaluating, determining, explaining, or relating to the tax exempt status of such organization (other than returns, unless such returns are available to the public under this section or section 6103 or 6110); and any communication between the Internal Revenue Service and any other party relating to the tax exempt status of such organization.

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

“(i) the application for exemption of any organization described in subsection (c) or (d) of section 501 which is exempt from taxation under section 501(a) for any taxable year and any application referred to in subparagraph (B) of subsection (a)(1) of this section, and
“(ii) any other papers which are in the possession of the Secretary and which relate to such application, as if such papers constituted returns.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures and to information and document requests made after the date of the enactment of this Act.

SEC. 207. TAX OPINION STANDARDS FOR TAX PRACTITIONERS.

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

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

“(1) Independence of the practitioner issuing such written advice from persons promoting, marketing, or recommending the subject of the advice.

“(2) Collaboration among practitioners, or between a practitioner and other party, which could result in such collaborating parties having a joint financial interest in the subject of the advice.
“(3) Avoidance of conflicts of interest which would impair auditor independence.

“(4) For written advice issued by a firm, standards for reviewing the advice and ensuring the consensus support of the firm for positions taken.

“(5) Reliance on reasonable factual representations by the taxpayer and other parties.

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

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

“(8) Banning the promotion of potentially abusive or illegal tax shelters.”.

Subtitle B—Simplify Tax Lien Procedure

SEC. 211. SHORT TITLE.

This subtitle may be cited as the “Tax Lien Simplification Act”.

SEC. 212. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) The present decentralized system for filing Federal tax liens in local property offices, which was established before the advent of modern computers,
the Internet, and e-government programs, is inefficient, burdensome, and expensive.

(2) Current technology permits the creation of a centralized Federal tax lien filing system which can provide for enhanced public notice of and access to accurate tax lien information in a manner that is more efficient, more timely, and less burdensome than the existing tax lien filing system; which would expedite the release of liens; and which would be less expensive for both taxpayers and users.

(b) PURPOSE.—The purpose of this subtitle is to simplify and modernize the process for filing notices of Federal tax liens, to improve public access to tax lien information, and to save taxpayer dollars by establishing a nationwide, Internet accessible, and fully searchable filing system for Federal tax liens which would replace the current system of local tax lien filings.

SEC. 213. NATIONAL TAX LIEN FILING SYSTEM.

(a) FILING OF NOTICE OF LIEN.—Subsection (f) of section 6323 is amended to read as follows:

“(f) FILING OF NOTICE; FORM.—

“(1) FILING OF NOTICE.—The notice referred to in subsection (a) shall be filed in the Federal tax lien registry operated under subsection (k). The filing of a notice of lien, or a certificate of release, dis-
charge, subordination, or nonattachment of lien, or
a notice of withdrawal of a notice of lien, in the Fed-
eral tax lien registry shall be effective for purposes
of determining lien priority regardless of the nature
or location of the property interest to which the lien
attaches.

“(2) FORM.—The form and content of the no-
tice referred to in subsection (a) shall be prescribed
by the Secretary. Such notice shall be valid notwith-
standing any other provision of law regarding the
form or content of a notice of lien.

“(3) OTHER NATIONAL FILING SYSTEMS.—
Once the Federal tax lien registry is operational
under subsection (k), the filing of a notice of lien
shall be governed by this title and shall not be sub-
ject to any other Federal law establishing a place or
places for the filing of liens or encumbrances under
a national filing system.”.

(b) REFILING OF NOTICE.—Paragraph (2) of section
6323(g) is amended to read as follows:

“(2) REFILING.—A notice of lien may be refiled
in the Federal tax lien registry operated under sub-
section (k).”.

(c) RELEASE OF TAX LIENS OR DISCHARGE OF
PROPERTY.—
(1) IN GENERAL.—Section 6325(a) is amended by inserting “, and shall cause the certificate of release to be filed in the Federal tax lien registry operated under section 6323(k),” after “internal revenue tax”.

(2) RELEASE OF TAX LIENS EXPEDITED FROM 30 TO 20 DAYS.—Section 6325(a) is amended by striking “not later than 30 days” and inserting “not later than 20 days”.

(3) DISCHARGE OF PROPERTY FROM LIEN.—

Section 6325(b) is amended—

(A) by inserting “, and shall cause the certificate of discharge to be filed in the Federal tax lien registry operated under section 6323(k),” after “under this chapter” in paragraph (1),

(B) by inserting “, and shall cause the certificate of discharge to be filed in such Federal tax lien registry,” after “property subject to the lien” in paragraph (2),

(C) by inserting “, and shall cause the certificate of discharge to be filed in such Federal tax lien registry,” after “property subject to the lien” in paragraph (3), and
(D) by inserting ‘‘, and shall cause the cer-
tificate of discharge of property to be filed in
such Federal tax lien registry,’’ after ‘‘certifi-
cate of discharge of such property’’ in para-
graph (4).

(4) Discharge of property from estate
or gift tax lien.—Section 6325(c) is amended by
inserting ‘‘, and shall cause the certificate of dis-
charge to be filed in the Federal tax lien registry op-
erated under section 6323(k),’’ after ‘‘imposed by
section 6324’’.

(5) Subordination of lien.—Section
6325(d) is amended by inserting ‘‘, and shall cause
the certificate of subordination to be filed in the
Federal tax lien registry operated under section
6323(k),’’ after ‘‘subject to such lien’’.

(6) Nonattachment of lien.—Section
6325(e) is amended by inserting ‘‘, and shall cause
the certificate of nonattachment to be filed in the
Federal tax lien registry operated under section
6323(k),’’ after ‘‘property of such person’’.

(7) Effect of certificate.—Paragraphs (1)
and (2)(B) of section 6325(f) are each amended by
striking ‘‘in the same office as the notice of lien to
which it relates is filed (if such notice of lien has
been filed)” and inserting “in the Federal tax lien
registry operated under section 6323(k)”.

(8) RELEASE FOLLOWING ADMINISTRATIVE AP-
PEAL.—Section 6326(b) is amended—

(A) by striking “and shall include” and in-
sert “, shall include”, and

(B) by inserting “, and shall cause the cer-
tificate of release to be filed in the Federal tax
lien registry operated under section 6323(k),”
after “erroneous”.

(9) WITHDRAWAL OF NOTICE.—Section
6323(j)(1) is amended by striking “at the same of-
office as the withdrawn notice” and inserting “in the
Federal tax lien registry operated under section
6323(k)”.

(10) CONFORMING AMENDMENTS.—Section
6325 is amended by striking subsection (g) and by
redesignating subsection (h) as subsection (g).

(d) FEDERAL TAX LIEN REGISTRY.—Section 6323
is amended by adding at the end the following new sub-
section:

“(k) FEDERAL TAX LIEN REGISTRY.—

“(1) IN GENERAL.—The Federal tax lien reg-

istry operated under this subsection shall be estab-
lished and maintained by the Secretary and shall be
accessible to and searchable by the public through
the Internet at no cost to access or search. The reg-
istry shall identify the taxpayer to whom the Federal
tax lien applies and reflect the date and time the no-
tice of lien was filed, and shall be made searchable
by, at a minimum, taxpayer name, the State of the
taxpayer’s address as shown on the notice of lien,
the type of tax, and the tax period. The registry
shall also provide for the filing of certificates of re-
lease, discharge, subordination, and nonattachment
of Federal tax liens, as authorized in sections 6325
and 6326, and may provide for publishing such
other documents or information with respect to Fed-
eral tax liens as the Secretary may by regulation
provide under paragraph (2)(C).

“(2) ADMINISTRATIVE ACTION.—

“(A) IN GENERAL.—The Secretary shall
issue regulations or other guidance providing
for the maintenance, reliability, accessibility,
and use of the Federal tax lien registry estab-
lished under paragraph (1). Such regulations or
guidance shall address, among other matters,
issues related to periods during which the reg-
istry may be unavailable for use due to routine
maintenance or other activities.
“(B) Fees.—The Secretary may charge a taxpayer’s account with a reasonable filing fee for each notice of lien and each related certificate, notice, or other filing recorded in the Federal tax lien registry with respect to such taxpayer, in an amount determined by the Secretary to be sufficient to defray the costs of operating the registry. The Secretary may also charge a reasonable fee to any person who requests and receives under section 6323(d)(1) information or a certified copy of a filing in the Federal tax lien registry to defray the costs of providing such information or copies.

“(C) Filing of Other Items on Registry.—The Secretary may, by regulation, provide for the filing of items on the registry other than Federal tax liens, including criminal fine judgments under section 3613 of title 18, United States Code, and civil judgments under section 3201 of such title, if the Secretary determines that it would be useful and appropriate to do so.”.

(e) Certified Copies of Information From Registry.—Section 6323, as amended by subsection (d), is
amended by adding at the end the following new subsection:

“(l) CERTIFIED COPIES OF INFORMATION FROM FEDERAL REGISTRY.—The Secretary shall make available in a certificate that can be admitted into evidence in the courts of the United States without extrinsic evidence of its authenticity the following information to any person that submits a request in a form specified by the Secretary:

“(1) Whether there is on file in the Federal tax lien registry operated under subsection (k) at a date and time specified by the Secretary, but not a date earlier than 3 days before the creation of the certificate, any notice of a lien that—

“(A) designates a particular taxpayer,

“(B) has not been fully satisfied, become legally unenforceable, or been released or withdrawn, and

“(C) if the request so states, has been fully satisfied, become legally unenforceable, or been released or withdrawn, and a record of which is maintained on the registry at the time of filing of the request,

“(2) the date and time of filing of and the information provided in each notice of lien, and
“(3) if the request so states, the date and time of filing of and the information provided in each certificate of release, discharge, subordination, or non-attachment and each notice of withdrawal recorded in the registry with respect to each notice of lien.”.

(f) EFFECTIVE DATE; IMPLEMENTATION OF REGISTRY.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date determined by the Secretary of the Treasury under paragraph (2)(E) and, except as provided in paragraph (2)(F), shall apply to notices of liens filed after such date.

(2) IMPLEMENTATION OF FEDERAL TAX LIEN REGISTRY.—

(A) PILOT PROJECT.—Prior to the implementation of the Federal tax lien registry under section 6323(k)(1) of the Internal Revenue Code of 1986 (as added by this section), the Secretary of the Treasury, or the Secretary’s delegate, shall conduct and shall complete by not later than 2 years after the date of the enactment of this Act 1 or more pilot projects to test the accessibility, reliability, and effective-
ness of the electronic systems designed to operate the registry.

(B) GAO REVIEW.—Within 3 months after the completion of such a pilot project, the Government Accountability Office shall provide a written evaluation of the project results and provide such evaluation to the Secretary of the Treasury, the Commissioner of Internal Revenue, and appropriate committees in Congress. The Secretary and Commissioner shall cooperate with, and provide information requested by, the Government Accountability Office to enable the evaluation to be completed by the date specified.

(C) NATIONALWIDE TEST.—Upon the completion of 1 or more such pilot projects and after making a determination that the electronic systems designed to operate the Federal tax lien registry are sufficiently accessible, reliable, and effective, the Secretary of the Treasury, or the Secretary’s delegate, shall conduct a nationwide test of the Federal tax lien registry to evaluate its capabilities and functionality.

(D) DATA PROTECTION.—Prior to the implementation of such registry, the Secretary of
the Treasury, or the Secretary’s delegate, shall take appropriate steps to—

(i) secure and prevent tampering with the data recorded in the registry,

(ii) review the information currently provided in public lien filings and determine whether any such information should be excluded or protected from public viewing in such registry, and

(iii) develop a system, after consultation with the States, industry, and other interested parties, and after consideration of search criteria developed for other public filing systems including Article 9 of the Uniform Commercial Code, that will enable users of the registry, when examining tax lien information for a taxpayer with a common name, to identify through reasonable efforts the specific person to whom such tax lien relates.

(E) DECLARATION OF REGISTRY EFFECTIVE DATE.—Upon the successful completion of a nationwide test of the Federal tax lien registry system, the Secretary of the Treasury shall determine and announce publicly a date

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upon which the registry shall take effect and become operational.

(F) ORDERLY TRANSITION.—In order to permit an orderly transition to the Federal tax lien registry, the Secretary of the Treasury may by regulation prescribe for the continued filing of notices of Federal tax liens in the offices of the States, counties, and other governmental subdivisions after the determination of an effective date under subparagraph (E) under the provisions of section 6323(f) as in effect before such effective date, for an appropriate period not to exceed 2 years after such effective date.

TITLE III—ENDING EXCESSIVE CORPORATE TAX DEDUCTIONS FOR STOCK OPTIONS

SEC. 301. CONSISTENT TREATMENT OF STOCK OPTIONS BY CORPORATIONS.

(a) CONSISTENT TREATMENT FOR WAGE DEDUCTION.—

(1) IN GENERAL.—Section 83(h) is amended—

(A) by striking “In the case of” and inserting:

“(1) IN GENERAL.—In the case of”, and
(B) by adding at the end the following new paragraph:

“(2) Stock options.—In the case of property transferred to a person in connection with a stock option, any deduction related to such stock option shall be allowed only under section 162(q) and paragraph (1) shall not apply.”.

(2) Treatment of Compensation Paid with Stock Options.—Section 162 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

“(q) Treatment of Compensation Paid with Stock Options.—

“(1) In general.—In the case of compensation for personal services that is paid with stock options, the deduction under subsection (a)(1) shall not exceed the amount the taxpayer has treated as compensation cost with respect to such stock options for the purpose of ascertaining income, profit, or loss in a report or statement to shareholders, partners, or other proprietors (or to beneficiaries), and shall be taken into account in the same period that such compensation cost is recognized for such purpose.
“(2) **SPECIAL RULES FOR CONTROLLED GROUPS.**—The Secretary may prescribe rules for the application of paragraph (1) in cases where the stock option is granted by—

“(A) a parent or subsidiary corporation (within the meaning of section 424) of the taxpayer, or

“(B) another corporation.”.

(b) **CONSISTENT TREATMENT FOR RESEARCH TAX CREDIT.**—Section 41(b)(2)(D) is amended by inserting at the end the following new clause:

“(iv) **SPECIAL RULE FOR STOCK OPTIONS.**—The amount which may be treated as wages for any taxable year in connection with the issuance of a stock option shall not exceed the amount allowed for such taxable year as a compensation deduction under section 162(q) with respect to such stock option.”.

(c) **APPLICATION OF AMENDMENTS.**—The amendments made by this section shall apply to stock options exercised after the date of the enactment of this Act, except that—

(1) such amendments shall not apply to stock options that were granted before such date and that
vested in taxable periods beginning on or before
June 15, 2005,

(2) for stock options that were granted before
such date of enactment and vested during taxable
periods beginning after June 15, 2005, and ending
before such date of enactment, a deduction under
section 162(q) of the Internal Revenue Code of 1986
(as added by subsection (a)(2)) shall be allowed in
the first taxable period of the taxpayer that ends
after such date of enactment,

(3) for public entities reporting as small busi-
ness issuers and for non-public entities required to
file public reports of financial condition, paragraphs
(1) and (2) shall be applied by substituting “Decem-
ber 15, 2005” for “June 15, 2005”, and

(4) no deduction shall be allowed under section
83(h) or section 162(q) of such Code with respect to
any stock option the vesting date of which is
changed to accelerate the time at which the option
may be exercised in order to avoid the applicability
of such amendments.

**SEC. 302. APPLICATION OF EXECUTIVE PAY DEDUCTION LIMIT.**

(a) In General.—Subparagraph (D) of section
162(m)(4) is amended to read as follows:
“(D) Stock option compensation.—The term ‘applicable employee remuneration’ shall include any compensation deducted under subsection (q), and such compensation shall not qualify as performance-based compensation under subparagraph (C).”.

(b) Effective Date.—The amendment made by this section shall apply to stock options exercised or granted after the date of the enactment of this Act.

TITLE IV—CLOSING THE DERIVATIVES BLENDED RATE LOOPHOLE

SEC. 401. SHORT TITLE.

This title may be cited as the “Closing the Derivatives Blended Rate Loophole Act”.

SEC. 402. MODIFICATIONS TO TREATMENT OF SECTION 1256 CONTRACTS.

(a) Elimination of Blended Capital Gain or Loss Treatment in Favor of Short-Term Capital Gain or Loss.—

(1) In general.—Paragraph (3) of section 1256(a) is amended to read as follows:

“(3) any gain or loss with respect to a section 1256 contract shall be treated as short-term capital gain or loss, and”.

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(2) CONFORMING AMENDMENTS.—Subsection (f) of section 1256 is amended by striking paragraphs (2), (3), and (4) and by redesignating paragraph (5) as paragraph (2).

(b) CONFORMING AMENDMENTS.—

(1) Clause (iv) of section 988(c)(1)(E) is amended to read as follows:

“(iv) TREATMENT OF CERTAIN CURRENCY CONTRACTS.—Except as provided in regulations, in the case of a qualified fund, any bank forward contract, any foreign currency futures contract traded on a foreign exchange, or to the extent provided in regulations any similar instrument, which is not otherwise a section 1256 contract shall be treated as a section 1256 contract for purposes of section 1256.”.

(2) Subparagraph (A) of section 1212(c)(1) is amended by striking “preceding taxable year” and all that follows and inserting “preceding taxable year, the amount so allowed shall be treated as short-term capital loss from section 1256 contracts.”.

(3) Subparagraph (A) of section 1212(c)(6) is amended by striking “preceding taxable year” and
all that follows and inserting “preceding taxable
year, the amount allowed as a carryback shall be
treated as short-term gain for the loss year.”.

(4) Subparagraph (B) of section 1212(c)(6) is
amended by striking “or long-term”.

(5) Subsection (f) of section 1256 is amended
by striking paragraphs (3) and (4) and by redesign-
nating paragraph (5) as paragraph (3).

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in para-
graph (2), the amendments made by this section
shall apply to taxable years beginning after the date
of the enactment of this Act.

(2) CONFORMING AMENDMENTS.—The amend-
ments made by paragraphs (2), (3), and (4) of sub-
section (b) shall apply to losses for taxable years be-
ginning after the date of the enactment of this Act.

SEC. 403. MODIFICATIONS TO TREATMENT OF DEALERS IN
SECURITIES AND COMMODITIES.

(a) MODIFICATION OF DEFINITION OF SECURITY.—
Paragraph (2) of section 475(c) is amended by striking
the second sentence.

(b) REQUIRED MARK TO MARKET FOR DEALERS IN
COMMODITIES.—Subsection (e) of section 475 is amend-
ed—
(1) by striking “In the case of a dealer in com-
modities who elects the application of this sub-
section, this section shall apply to commodities held
by such dealer” in paragraph (1) and inserting
“This section shall apply to commodities held by a
dealer in commodities”, and

(2) by striking paragraph (3).

(e) COMMODITIES DERIVATIVES DEALERS.—Clause
(i) of section 1221(b)(1)(B) is amended by striking “a
note, bond, or other evidence of indebtedness, or a section
1256 contract (as defined in section 1256(b))” and insert-
ing “or a note, bond, or other evidence of indebtedness)”.

(d) TECHNICAL AMENDMENT.—Paragraph (1) of
section 1402(i) is amended by striking “subsection
(a)(3)(A)” and inserting “subsection (a)(3)”.

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

TITLE V—ENDING THE TAR
SANDS OIL SPILL LOOPHOLE

SEC. 501. SHORT TITLE.

This title may be cited as the “Closing the Oil Spill
Cleanup Loophole Act”.

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SEC. 502. REQUIREMENTS FOR CONTRIBUTION TO THE OIL SPILL LIABILITY TRUST FUND.

(a) In General.—Paragraph (1) of section 4612(a) is amended to read as follows:

“(1) CRUDE OIL.—The term ‘crude oil’ includes crude oil condensates, natural gasoline, shale oil, any bitumen or bituminous mixture, any oil derived from a bitumen or bituminous mixture, and any oil derived from kerogen-bearing sources.”.

(b) Regulatory Authority To Address Other Types of Crude Oil and Petroleum Products.—Subsection (a) of section 4612 is amended by adding at the end the following new paragraph:

“(10) Regulatory authority to address other types of crude oil and petroleum products.—Under such regulations as the Secretary may prescribe, after consultation with the Administrator of the Environmental Protection Agency, the Secretary may include as crude oil or as a petroleum product subject to tax under section 4611, any fuel feedstock or finished fuel product customarily transported by pipeline, vessel, railcar, or tanker truck if the Secretary determines that—

“(A) the classification of such fuel feed-
stock or finished fuel product is consistent with
the definition of oil under the Oil Pollution Act of 1990, and

“(B) such fuel feedstock or finished fuel product is produced in sufficient commercial quantities as to pose a significant risk of hazard in the event of a discharge.”.

(e) Removing Restrictions Relating to Oil Wells and Extraction Methods.—Paragraph (2) of section 4612(a) is amended by striking “from a well located”.

(d) Effective Date.—The amendments made by this section shall apply to oil and petroleum products received or entered during calendar quarters beginning more than 60 days after the date of the enactment of this Act, regardless of whether the Secretary of the Treasury has promulgated regulations implementing such amendments.

SEC. 503. EXTENSION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.

Section 4611 is amended by striking subsection (f).

SEC. 504. TECHNICAL AMENDMENT.

Subclause (I) of section 4612(e)(2)(B)(ii) is amended by striking “transferred” and inserting “ transfers”. 
TITLE VI—ENDING THE CARRIED INTEREST LOOPHOLE

SEC. 601. SHORT TITLE; ETC.
This title may be cited as the “Carried Interest Fairness Act of 2012”.

SEC. 602. PARTNERSHIP INTERESTS TRANSFERRED IN CONNECTION WITH PERFORMANCE OF SERVICES.

(a) Modification to Election To Include Partnership Interest in Gross Income in Year of Transfer.—Subsection (c) of section 83 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

“(4) Partnership interests.—Except as provided by the Secretary—

“(A) In general.—In the case of any transfer of an interest in a partnership in connection with the provision of services to (or for the benefit of) such partnership—

“(i) the fair market value of such interest shall be treated for purposes of this section as being equal to the amount of the distribution which the partner would receive if the partnership sold (at the time of the transfer) all of its assets at fair market
value and distributed the proceeds of such
sale (reduced by the liabilities of the part-
nership) to its partners in liquidation of
the partnership, and

“(ii) the person receiving such interest
shall be treated as having made the elec-
tion under subsection (b)(1) unless such
person makes an election under this para-
graph to have such subsection not apply.

“(B) ELECTION.—The election under sub-
paragraph (A)(ii) shall be made under rules
similar to the rules of subsection (b)(2).”.

(b) EFFECTIVE DATE.—The amendments made by
this section shall apply to interests in partnerships trans-
ferred after the date of the enactment of this Act.

SEC. 603. SPECIAL RULES FOR PARTNERS PROVIDING IN-
VESTMENT MANAGEMENT SERVICES TO
PARTNERSHIPS.

(a) IN GENERAL.—Part I of subchapter K of chapter
1 is amended by adding at the end the following new sec-
tion:
“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING INVESTMENT MANAGEMENT SERVICES TO PARTNERSHIPS.

“(a) Treatment of Distributive Share of Partnership Items.—For purposes of this title, in the case of an investment services partnership interest—

“(1) In general.—Notwithstanding section 702(b)—

“(A) an amount equal to the net capital gain with respect to such interest for any partnership taxable year shall be treated as ordinary income, and

“(B) subject to the limitation of paragraph (2), an amount equal to the net capital loss with respect to such interest for any partnership taxable year shall be treated as an ordinary loss.

“(2) Reclassification of losses limited to recharacterized gains.—The amount treated as ordinary loss under paragraph (1)(B) for any taxable year shall not exceed the excess (if any) of—

“(A) the aggregate amount treated as ordinary income under paragraph (1)(A) with respect to the investment services partnership in-
terest for all preceding partnership taxable years to which this section applies, over

“(B) the aggregate amount treated as ordinary loss under paragraph (1)(B) with respect to such interest for all preceding partnership taxable years to which this section applies.

“(3) Allocation to items of gain and loss.—

“(A) Net capital gain.—The amount treated as ordinary income under paragraph (1)(A) shall be allocated ratably among the items of long-term capital gain taken into account in determining such net capital gain.

“(B) Net capital loss.—The amount treated as ordinary loss under paragraph (1)(B) shall be allocated ratably among the items of long-term capital loss and short-term capital loss taken into account in determining such net capital loss.

“(4) Terms relating to capital gains and losses.—For purposes of this section—

“(A) In general.—Net capital gain, long-term capital gain, and long-term capital loss, with respect to any investment services partnership interest for any taxable year, shall be de-
terminated under section 1222, except that such
section shall be applied—

“(i) without regard to the recharacter-
ization of any item as ordinary income or
ordinary loss under this section,
“(ii) by only taking into account items
of gain and loss taken into account by the
holder of such interest under section 702
with respect to such interest for such taxable year, and
“(iii) by treating property which is
taken into account in determining gains
and losses to which section 1231 applies as
capital assets held for more than 1 year.

“(B) NET CAPITAL LOSS.—The term ‘net
capital loss’ means the excess of the losses from
sales or exchanges of capital assets over the
gains from such sales or exchanges. Rules simi-
lar to the rules of clauses (i) through (iii) of
subparagraph (A) shall apply for purposes of
the preceding sentence.

“(5) SPECIAL RULES FOR DIVIDENDS.—

“(A) INDIVIDUALS.—Any dividend allo-
cated to any investment services partnership in-
terest shall not be treated as qualified dividend income for purposes of section 1(h).

“(B) CORPORATIONS.—No deduction shall be allowed under section 243 or 245 with re-
spect to any dividend allocated to any invest-
ment services partnership interest.

“(6) SPECIAL RULE FOR QUALIFIED SMALL
BUSINESS STOCK.—Section 1202 shall not apply to any gain from the sale or exchange of qualified small business stock (as defined in section 1202(c)) allo-
cated with respect to any investment services part-
nership interest.

“(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

“(1) GAIN.—

“(A) IN GENERAL.—Any gain on the dis-
position of an investment services partnership interest shall be—

“(i) treated as ordinary income, and

“(ii) recognized notwithstanding any other provision of this subtitle.

“(B) GIFT AND TRANSFERS AT DEATH.—
In the case of a disposition of an investment services partnership interest by gift or by rea-
son of death of the taxpayer—

“(i) subparagraph (A) shall not apply,
“(ii) such interest shall be treated as an investment services partnership interest in the hands of the person acquiring such interest, and

“(iii) any amount that would have been treated as ordinary income under this subsection had the decedent sold such interest immediately before death shall be treated as an item of income in respect of a decedent under section 691.

“(2) Loss.—Any loss on the disposition of an investment services partnership interest shall be treated as an ordinary loss to the extent of the excess (if any) of—

“(A) the aggregate amount treated as ordinary income under subsection (a) with respect to such interest for all partnership taxable years to which this section applies, over

“(B) the aggregate amount treated as ordinary loss under subsection (a) with respect to such interest for all partnership taxable years to which this section applies.

“(3) Election with respect to certain exchanges.—Paragraph (1)(A)(ii) shall not apply to the contribution of an investment services partner-
ship interest to a partnership in exchange for an interest in such partnership if—

“(A) the taxpayer makes an irrevocable election to treat the partnership interest received in the exchange as an investment services partnership interest, and

“(B) the taxpayer agrees to comply with such reporting and recordkeeping requirements as the Secretary may prescribe.

“(4) DISTRIBUTIONS OF PARTNERSHIP PROPERTY.—

“(A) IN GENERAL.—In the case of any distribution of property by a partnership with respect to any investment services partnership interest held by a partner, the partner receiving such property shall recognize gain equal to the excess (if any) of—

“(i) the fair market value of such property at the time of such distribution, over

“(ii) the adjusted basis of such property in the hands of such partner (determined without regard to subparagraph (C)).
“(B) TREATMENT OF GAIN AS ORDINARY INCOME.—Any gain recognized by such partner under subparagraph (A) shall be treated as ordinary income to the same extent and in the same manner as the increase in such partner’s distributive share of the taxable income of the partnership would be treated under subsection (a) if, immediately prior to the distribution, the partnership had sold the distributed property at fair market value and all of the gain from such disposition were allocated to such partner. For purposes of applying subsection (a)(2), any gain treated as ordinary income under this subparagraph shall be treated as an amount treated as ordinary income under subsection (a)(1)(A).

“(C) ADJUSTMENT OF BASIS.—In the case a distribution to which subparagraph (A) applies, the basis of the distributed property in the hands of the distributee partner shall be the fair market value of such property.

“(D) SPECIAL RULES WITH RESPECT TO MERGERS, DIVISIONS, AND TECHNICAL TERMINATIONS.—In the case of a taxpayer which satisfies requirements similar to the requirements of subparagraphs (A) and (B) of paragraph (3),
this paragraph and paragraph (1)(A)(ii) shall not apply to the distribution of a partnership interest if such distribution is in connection with a contribution (or deemed contribution) of any property of the partnership to which section 721 applies pursuant to a transaction described in paragraph (1)(B) or (2) of section 708(b).

“(e) INVESTMENT SERVICES PARTNERSHIP INTEREST.—For purposes of this section—

“(1) IN GENERAL.—The term ‘investment services partnership interest’ means any interest in an investment partnership acquired or held by any person in connection with the conduct of a trade or business described in paragraph (2) by such person (or any person related to such person). An interest in an investment partnership held by any person—

“(A) shall not be treated as an investment services partnership interest for any period before the first date on which it is so held in connection with such a trade or business,

“(B) shall not cease to be an investment services partnership interest merely because such person holds such interest other than in connection with such a trade or business, and
“(C) shall be treated as an investment services partnership interest if acquired from a related person in whose hands such interest was an investment services partnership interest.

“(2) Businesses to which this section applies.—A trade or business is described in this paragraph if such trade or business primarily involves the performance of any of the following services with respect to assets held (directly or indirectly) by the investment partnership referred to in paragraph (1):

“(A) Advising as to the advisability of investing in, purchasing, or selling any specified asset.

“(B) Managing, acquiring, or disposing of any specified asset.

“(C) Arranging financing with respect to acquiring specified assets.

“(D) Any activity in support of any service described in subparagraphs (A) through (C).

“(3) Investment partnership.—

“(A) In general.—The term ‘investment partnership’ means any partnership if, at the end of any calendar quarter ending after the date of enactment of this section—
“(i) substantially all of the assets of the partnership are specified assets (determined without regard to any section 197 intangible within the meaning of section 197(d)), and

“(ii) more than half of the capital of the partnership is attributable to qualified capital interests which (in the hands of the owners of such interests) constitute property not held in connection with a trade or business.

“(B) SPECIAL RULES FOR DETERMINING IF PROPERTY NOT HELD IN CONNECTION WITH TRADE OR BUSINESS.—Except as otherwise provided by the Secretary, for purposes of determining whether any interest in a partnership constitutes property not held in connection with a trade or business under subparagraph (A)(ii)—

“(i) any election under subsection (e) or (f) of section 475 shall be disregarded, and

“(ii) paragraph (5)(B) shall not apply.

“(C) ANTIABUSE RULES.—The Secretary may issue regulations or other guidance which
prevent the avoidance of the purposes of subparagraph (A), including regulations or other guidance which treat convertible and contingent debt (and other debt having the attributes of equity) as a capital interest in the partnership.

“(D) CONTROLLED GROUPS OF ENTITIES.—

“(i) IN GENERAL.—In the case of a controlled group of entities, if an interest in the partnership received in exchange for a contribution to the capital of the partnership by any member of such controlled group would (in the hands of such member) constitute property held in connection with a trade or business, then any interest in such partnership held by any member of such group shall be treated for purposes of subparagraph (A) as constituting (in the hands of such member) property held in connection with a trade or business.

“(ii) CONTROLLED GROUP OF ENTITIES.—For purposes of clause (i), the term ‘controlled group of entities’ means a controlled group of corporations as defined in section 1563(a)(1), applied without regard
to subsections (a)(4) and (b)(2) of section 1563. A partnership or any other entity (other than a corporation) shall be treated as a member of a controlled group of entities if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

“(E) SPECIAL RULE FOR CORPORATIONS.—For purposes of this paragraph, in the case of a corporation, the determination of whether property is held in connection with a trade or business shall be determined as if the taxpayer were an individual.

“(4) SPECIFIED ASSET.—The term ‘specified asset’ means securities (as defined in section 475(e)(2) without regard to the last sentence thereof), real estate held for rental or investment, interests in partnerships, commodities (as defined in section 475(e)(2)), cash or cash equivalents, or options or derivative contracts with respect to any of the foregoing.

“(5) RELATED PERSONS.—
"(A) IN GENERAL.—A person shall be treated as related to another person if the relationship between such persons is described in section 267(b) or 707(b).

"(B) ATTRIBUTION OF PARTNER SERVICES.—Any service described in paragraph (2) which is provided by a partner of a partnership shall be treated as also provided by such partnership.

"(d) EXCEPTION FOR CERTAIN CAPITAL INTERESTS.—

"(1) IN GENERAL.—In the case of any portion of an investment services partnership interest which is a qualified capital interest, all items of gain and loss (and any dividends) which are allocated to such qualified capital interest shall not be taken into account under subsection (a) if—

"(A) allocations of items are made by the partnership to such qualified capital interest in the same manner as such allocations are made to other qualified capital interests held by partners who do not provide any services described in subsection (e)(2) and who are not related to the partner holding the qualified capital interest, and
“(B) the allocations made to such other interests are significant compared to the allocations made to such qualified capital interest.

“(2) Authority to provide exceptions to allocation requirements.—To the extent provided by the Secretary in regulations or other guidance—

“(A) Allocations to portion of qualified capital interest.—Paragraph (1) may be applied separately with respect to a portion of a qualified capital interest.

“(B) No or insignificant allocations to nonservice providers.—In any case in which the requirements of paragraph (1)(B) are not satisfied, items of gain and loss (and any dividends) shall not be taken into account under subsection (a) to the extent that such items are properly allocable under such regulations or other guidance to qualified capital interests.

“(C) Allocations to service providers’ qualified capital interests which are less than other allocations.—Allocations shall not be treated as failing to meet the requirement of paragraph (1)(A) merely because the allocations to the qualified capital in-
terest represent a lower return than the allocations made to the other qualified capital interests referred to in such paragraph.

“(3) Special rule for changes in services and capital contributions.—In the case of an interest in a partnership which was not an investment services partnership interest and which, by reason of a change in the services with respect to assets held (directly or indirectly) by the partnership or by reason of a change in the capital contributions to such partnership, becomes an investment services partnership interest, the qualified capital interest of the holder of such partnership interest immediately after such change shall not, for purposes of this subsection, be less than the fair market value of such interest (determined immediately before such change).

“(4) Special rule for tiered partnerships.—Except as otherwise provided by the Secretary, in the case of tiered partnerships, all items which are allocated in a manner which meets the requirements of paragraph (1) to qualified capital interests in a lower-tier partnership shall retain such character to the extent allocated on the basis of
qualified capital interests in any upper-tier partnership.

“(5) Exception for no-self-charged carry and management fee provisions.—Except as otherwise provided by the Secretary, an interest shall not fail to be treated as satisfying the requirement of paragraph (1)(A) merely because the allocations made by the partnership to such interest do not reflect the cost of services described in subsection (c)(2) which are provided (directly or indirectly) to the partnership by the holder of such interest (or a related person).

“(6) Special rule for dispositions.—In the case of any investment services partnership interest any portion of which is a qualified capital interest, subsection (b) shall not apply to so much of any gain or loss as bears the same proportion to the entire amount of such gain or loss as—

“(A) the distributive share of gain or loss that would have been allocated to the qualified capital interest (consistent with the requirements of paragraph (1)) if the partnership had sold all of its assets at fair market value immediately before the disposition, bears to
“(B) the distributive share of gain or loss that would have been so allocated to the investment services partnership interest of which such qualified capital interest is a part.

“(7) QUALIFIED CAPITAL INTEREST.—For purposes of this section—

“(A) IN GENERAL.—The term ‘qualified capital interest’ means so much of a partner’s interest in the capital of the partnership as is attributable to—

“(i) the fair market value of any money or other property contributed to the partnership in exchange for such interest (determined without regard to section 752(a)),

“(ii) any amounts which have been included in gross income under section 83 with respect to the transfer of such interest, and

“(iii) the excess (if any) of—

“(I) any items of income and gain taken into account under section 702 with respect to such interest, over

“(II) any items of deduction and loss so taken into account.
“(B) Adjustment to qualified capital interest.—

“(i) Distributions and losses.—
The qualified capital interest shall be reduced by distributions from the partnership with respect to such interest and by the excess (if any) of the amount described in subparagraph (A)(iii)(II) over the amount described in subparagraph (A)(iii)(I).

“(ii) Special rule for contributions of property.—In the case of any contribution of property described in subparagraph (A)(i) with respect to which the fair market value of such property is not equal to the adjusted basis of such property immediately before such contribution, proper adjustments shall be made to the qualified capital interest to take into account such difference consistent with such regulations or other guidance as the Secretary may provide.

“(C) Technical terminations, etc., disregarded.—No increase or decrease in the qualified capital interest of any partner shall re-
result from a termination, merger, consolidation,
or division described in section 708, or any
similar transaction.

“(8) Treatment of certain loans.—

“(A) Proceeds of partnership loans
not treated as qualified capital interest
of service providing partners.—For
purposes of this subsection, an investment serv-
dices partnership interest shall not be treated as
a qualified capital interest to the extent that
such interest is acquired in connection with the
proceeds of any loan or other advance made or
guaranteed, directly or indirectly, by any other
partner or the partnership (or any person re-
lated to any such other partner or the partner-
ship). The preceding sentence shall not apply to
the extent the loan or other advance is repaid
before the date of the enactment of this section
unless such repayment is made with the pro-
ceeds of a loan or other advance described in
the preceding sentence.

“(B) Reduction in allocations to
qualified capital interests for loans
from nonservice-providing partners to
the partnership.—For purposes of this sub-
section, any loan or other advance to the partnership made or guaranteed, directly or indirectly, by a partner not providing services described in subsection (c)(2) to the partnership (or any person related to such partner) shall be taken into account in determining the qualified capital interests of the partners in the partnership.

“(e) Other Income and Gain in Connection with Investment Management Services.—

“(1) In General.—If—

“(A) a person performs (directly or indirectly) investment management services for any investment entity,

“(B) such person holds (directly or indirectly) a disqualified interest with respect to such entity, and

“(C) the value of such interest (or payments thereunder) is substantially related to the amount of income or gain (whether or not realized) from the assets with respect to which the investment management services are performed,

any income or gain with respect to such interest shall be treated as ordinary income. Rules similar to
the rules of subsections (a)(5) and (d) shall apply
for purposes of this subsection.

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

“(A) DISQUALIFIED INTEREST.—

“(i) IN GENERAL.—The term ‘dis-
qualified interest’ means, with respect to
any investment entity—

“(I) any interest in such entity
other than indebtedness,

“(II) convertible or contingent
debt of such entity,

“(III) any option or other right
to acquire property described in sub-
clause (I) or (II), and

“(IV) any derivative instrument
entered into (directly or indirectly)
with such entity or any investor in
such entity.

“(ii) EXCEPTIONS.—Such term shall
not include—

“(I) a partnership interest,

“(II) except as provided by the
Secretary, any interest in a taxable
corporation, and
“(III) except as provided by the
Secretary, stock in an S corporation.

“(B) TAXABLE CORPORATION.—The term
‘taxable corporation’ means—

“(i) a domestic C corporation, or

“(ii) a foreign corporation substan-
tially all of the income of which is—

“(I) effectively connected with
the conduct of a trade or business in
the United States, or

“(II) subject to a comprehensive
foreign income tax (as defined in sec-
tion 457A(d)(2)).

“(C) INVESTMENT MANAGEMENT SERV-
ICES.—The term ‘investment management serv-
ices’ means a substantial quantity of any of the
services described in subsection (c)(2).

“(D) INVESTMENT ENTITY.—The term ‘in-
vestment entity’ means any entity which, if it
were a partnership, would be an investment
partnership.

“(f) REGULATIONS.—The Secretary shall prescribe
such regulations or other guidance as is necessary or ap-
propriate to carry out the purposes of this section, includ-
ing regulations or other guidance to—
“(1) provide modifications to the application of this section (including treating related persons as not related to one another) to the extent such modification is consistent with the purposes of this section,

“(2) prevent the avoidance of the purposes of this section, and

“(3) coordinate this section with the other provisions of this title.

“(g) Cross-Reference.—For 40 percent penalty on certain underpayments due to the avoidance of this section, see section 6662.”.

(b) Application of Section 751 to Indirect Dispositions of Investment Services Partnership Interests.—

(1) In general.—Subsection (a) of section 751 is amended by striking “or” at the end of paragraph (1), by inserting “or” at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

“(3) investment services partnership interests held by the partnership,”.

(2) Certain distributions treated as sales or exchanges.—Subparagraph (A) of section 751(b)(1) is amended by striking “or” at the
end of clause (i), by inserting “or” at the end of clause (ii), and by inserting after clause (ii) the following new clause:

“(iii) investment services partnership interests held by the partnership,”.

(3) APPLICATION OF SPECIAL RULES IN THE CASE OF TIERED PARTNERSHIPS.—Subsection (f) of section 751 is amended—

(A) by striking “or” at the end of paragraph (1), by inserting “or” at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

“(3) an investment services partnership interest held by the partnership,”, and

(B) by striking “partner.” and inserting “partner (other than a partnership in which it holds an investment services partnership interest).”.

(4) INVESTMENT SERVICES PARTNERSHIP INTERESTS; QUALIFIED CAPITAL INTERESTS.—Section 751 is amended by adding at the end the following new subsection:

“(g) INVESTMENT SERVICES PARTNERSHIP INTERESTS.—For purposes of this section—
“(1) IN GENERAL.—The term ‘investment services partnership interest’ has the meaning given such term by section 710(c).

“(2) ADJUSTMENTS FOR QUALIFIED CAPITAL INTERESTS.—The amount to which subsection (a) applies by reason of paragraph (3) thereof shall not include so much of such amount as is attributable to any portion of the investment services partnership interest which is a qualified capital interest (determined under rules similar to the rules of section 710(d)).

“(3) EXCEPTION FOR PUBLICLY TRADED PARTNERSHIPS.—In the case of an exchange of an interest in a publicly traded partnership (as defined in section 7704) to which subsection (a) applies—

“(A) this section shall be applied without regard to subsections (a)(3), (b)(1)(A)(iii), and (f)(3), and

“(B) such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner.

“(4) RECOGNITION OF GAINS.—Any gain with respect to which subsection (a) applies by reason of
paragraph (3) thereof shall be recognized notwithstanding any other provision of this title.

“(5) Coordination with inventory items.—An investment services partnership interest held by the partnership shall not be treated as an inventory item of the partnership.

“(6) Prevention of double counting.—Under regulations or other guidance prescribed by the Secretary, subsection (a)(3) shall not apply with respect to any amount to which section 710 applies.

“(7) Valuation methods.—The Secretary shall prescribe regulations or other guidance which provide the acceptable methods for valuing investment services partnership interests for purposes of this section.”.

(e) Treatment for Purposes of Section 7704.—Subsection (d) of section 7704 is amended by adding at the end the following new paragraph:

“(6) Income from certain carried interests not qualified.—

“(A) In general.—Specified carried interest income shall not be treated as qualifying income.

“(B) Specified carried interest income.—For purposes of this paragraph—
“(i) In general.—The term ‘specified carried interest income’ means—

“(I) any item of income or gain allocated to an investment services partnership interest (as defined in section 710(c)) held by the partnership,

“(II) any gain on the disposition of an investment services partnership interest (as so defined) or a partnership interest to which (in the hands of the partnership) section 751 applies, and

“(III) any income or gain taken into account by the partnership under subsection (b)(4) or (e) of section 710.

“(ii) Exception for qualified capital interests.—A rule similar to the rule of section 710(d) shall apply for purposes of clause (i).

“(C) Coordination with other provisions.—Subparagraph (A) shall not apply to any item described in paragraph (1)(E) (or so
much of paragraph (1)(F) as relates to paragraph (1)(E)).

“(D) SPECIAL RULES FOR CERTAIN PARTNERSHIPS.—

“(i) CERTAIN PARTNERSHIPS OWNED BY REAL ESTATE INVESTMENT TRUSTS.—

Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

“(I) Such partnership is treated as publicly traded under this section solely by reason of interests in such partnership being convertible into interests in a real estate investment trust which is publicly traded.

“(II) Fifty percent or more of the capital and profits interests of such partnership are owned, directly or indirectly, at all times during the taxable year by such real estate investment trust (determined with the application of section 267(c)).

“(III) Such partnership meets the requirements of paragraphs (2), (3), and (4) of section 856(c).
“(ii) Certain partnerships owning other publicly traded partnerships.—Subparagraph (A) shall not apply in the case of a partnership which meets each of the following requirements:

“(I) Substantially all of the assets of such partnership consist of interests in one or more publicly traded partnerships (determined without regard to subsection (b)(2)).

“(II) Substantially all of the income of such partnership is ordinary income or section 1231 gain (as defined in section 1231(a)(3)).

“(E) Transitional rule.—Subparagraph (A) shall not apply to any taxable year of the partnership beginning before the date which is 10 years after the date of the enactment of this paragraph.”.

(d) Imposition of penalty on underpayments.—

(1) In general.—Subsection (b) of section 6662 is amended by inserting after paragraph (7) the following new paragraph:
“(8) The application of section 710(e) or the regulations or other guidance prescribed under section 710(f) to prevent the avoidance of the purposes of section 710.”.

(2) AMOUNT OF PENALTY.—

(A) IN GENERAL.—Section 6662 is amended by adding at the end the following new subsection:

“(k) INCREASE IN PENALTY IN CASE OF PROPERTY TRANSFERRED FOR INVESTMENT MANAGEMENT SERVICES.—In the case of any portion of an underpayment to which this section applies by reason of subsection (b)(8), subsection (a) shall be applied with respect to such portion by substituting ‘40 percent’ for ‘20 percent’.”.

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 6662A(c)(2) is amended by striking “or (i)” and inserting “, (i), or (k)”.

(3) SPECIAL RULES FOR APPLICATION OF REASONABLE CAUSE EXCEPTION.—Subsection (c) of section 6664 is amended—

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively;

(B) by striking “paragraph (3)” in paragraph (5)(A), as so redesignated, and inserting “paragraph (4)”;

and
(C) by inserting after paragraph (2) the following new paragraph:

“(3) Special rule for underpayments attributable to investment management services.—

“(A) In general.—Paragraph (1) shall not apply to any portion of an underpayment to which section 6662 applies by reason of subsection (b)(8) unless—

“(i) the relevant facts affecting the tax treatment of the item are adequately disclosed,

“(ii) there is or was substantial authority for such treatment, and

“(iii) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

“(B) Rules relating to reasonable belief.—Rules similar to the rules of subsection (d)(3) shall apply for purposes of subparagraph (A)(iii).”.

(e) Income and Loss From Investment Services Partnership Interests Taken Into Account in Determining Net Earnings From Self-Employment.—

(1) Internal revenue code.—
(A) IN GENERAL.—Section 1402(a) is amended by striking “and” at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting “; and”, and by inserting after paragraph (17) the following new paragraph:

“(18) notwithstanding the preceding provisions of this subsection, in the case of any individual engaged in the trade or business of providing services described in section 710(c)(2) with respect to any entity, investment services partnership income or loss (as defined in subsection (m)) of such individual with respect to such entity shall be taken into account in determining the net earnings from self-employment of such individual.”.

(B) INVESTMENT SERVICES PARTNERSHIP INCOME OR LOSS.—Section 1402 is amended by adding at the end the following new subsection:

“(m) INVESTMENT SERVICES PARTNERSHIP INCOME OR LOSS.—For purposes of subsection (a)—

“(1) IN GENERAL.—The term ‘investment services partnership income or loss’ means, with respect to any investment services partnership interest (as defined in section 710(c)) or disqualified interest (as defined in section 710(e)), the net of—
“(A) the amounts treated as ordinary income or ordinary loss under subsections (b) and (e) of section 710 with respect to such interest,

“(B) all items of income, gain, loss, and deduction allocated to such interest, and

“(C) the amounts treated as realized from the sale or exchange of property other than a capital asset under section 751 with respect to such interest.

“(2) Exception for qualified capital interests.—A rule similar to the rule of section 710(d) shall apply for purposes of applying paragraph (1)(B).”.

(2) Social Security Act.—Section 211(a) of the Social Security Act is amended by striking “and” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “; and”, and by inserting after paragraph (16) the following new paragraph:

“(17) Notwithstanding the preceding provisions of this subsection, in the case of any individual engaged in the trade or business of providing services described in section 710(e)(2) of the Internal Revenue Code of 1986 with respect to any entity, investment services partnership income or loss (as defined
in section 1402(m) of such Code) shall be taken into account in determining the net earnings from self-employment of such individual.”.

(f) Conforming Amendments.—

(1) Subsection (d) of section 731 is amended by inserting “section 710(b)(4) (relating to distributions of partnership property),” after “to the extent otherwise provided by”.

(2) Section 741 is amended by inserting “or section 710 (relating to special rules for partners providing investment management services to partnerships)” before the period at the end.

(3) The table of sections for part I of subchapter K of chapter 1 is amended by adding at the end the following new item:

“Sec. 710. Special rules for partners providing investment management services to partnerships.”.

(g) Effective Date.—

(1) In General.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) Partnership Taxable Years Which Include Effective Date.—In applying section 710(a) of the Internal Revenue Code of 1986 (as added by this section) in the case of any partnership
taxable year which includes the date of the enactment of this Act, the amount of the net capital gain referred to in such section shall be treated as being the lesser of the net capital gain for the entire partnership taxable year or the net capital gain determined by only taking into account items attributable to the portion of the partnership taxable year which is after such date.

(3) Dispositions of Partnership Interests.—

(A) In General.—Section 710(b) of such Code (as added by this section) shall apply to dispositions and distributions after the date of the enactment of this Act.

(B) Indirect Dispositions.—The amendments made by subsection (b) shall apply to transactions after the date of the enactment of this Act.

(4) Other Income and Gain in Connection with Investment Management Services.—Section 710(e) of such Code (as added by this section) shall take effect on the date of the enactment of this Act.