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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;

TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the
"Tax Shelter Transparency Act".

(b) Amendment of 1986 Code.—Except as other-
wise expressly provided, whenever in this Act an amend-
ment or repeal is expressed in terms of an amend-
to, or repeal of, a section or other provision, the reference
shall be considered to be made to a section or other provi-

(c) Table of Contents.—

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

TITLE I—TAXPAYER-RELATED PROVISIONS

Sec. 101. Penalty for failing to disclose reportable transaction.
Sec. 102. Increase in accuracy-related penalties for listed transactions and
other reportable transactions having a tax avoidance purpose.
Sec. 103. Modification of substantial understatement penalty for nonreportable
transactions.
Sec. 104. Tax shelter exception to confidentiality privileges relating to taxpayer
communications.

TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS

Subtitle A—Provisions Relating To Reportable Transactions

Sec. 201. Disclosure of reportable transactions.
Sec. 202. Modifications to penalty for failure to register tax shelters.
Sec. 203. Modification of penalty for failure to maintain lists of investors.
Sec. 204. Modification of actions to enjoin specified conduct related to tax shel-
ters and reportable transactions.

Subtitle B—Other Provisions

Sec. 211. Understatement of taxpayer's liability by income tax return preparer.
Sec. 212. Report on effectiveness of penalty on failure to report interests in for-
eign financial accounts.
Sec. 213. Frivolous tax submissions.
Sec. 214. Regulation of individuals practicing before the Department of Trea-
sury.
Sec. 215. Penalty on promoters of tax shelters.
TITLE I—TAXPAYER-RELATED PROVISIONS

SEC. 101. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) In General.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

"(a) Imposition of Penalty.—Any person who fails to include with any return or statement any information required to be included under subchapter A of chapter 61 with respect to a reportable transaction shall pay a penalty in the amount determined under subsection (b).

"(b) Amount of Penalty.—

"(1) In General.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

"(2) Listed Transaction.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

"(3) Increase in Penalty for Large Entities and High Net Worth Individuals.—
"(A) In General.—In the case of a failure under subsection (a) by—

"(i) a large entity; or

"(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

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

"(C) High Net Worth Individual.—The term 'high net worth individual' means a natural person whose net worth exceeds $2,000,000.

"(e) Definitions.—For purposes of this section—

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

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

"(A) which is the same as, or similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011; or

"(B) which is expected to produce a tax result which is the same as, or similar to, the tax result in a transaction which is so specified.

"(d) PENALTY REPORTED TO SEC.—In the case of a person—

"(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

"(2) which—
"(A) is required to pay a penalty with respect to a listed transaction under this section, or

"(B) is required to pay a penalty under section 6662(a)(2) with respect to any reportable transaction at a rate prescribed under section 6662(i)(3); the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies:

"(e) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under section 6662."

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.
SEC. 102. INCREASE IN ACCURACY-RELATED PENALTIES FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A TAX AVOIDANCE PURPOSE.

(a) INCREASE IN PENALTY.—Subsection (a) of section 6662 (relating to imposition of penalty) is amended to read as follows:

"(a) Imposition of Penalty.—

"(1) In general.—If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

"(2) Understatement of income tax attributable to listed transactions or other reportable transactions having a significant tax avoidance purpose.—If a taxpayer has a reportable transaction income tax understatement (as defined in subsection (i)) for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of the understatement. Except as provided in subsection (i)(4)(B), such understatement shall not be taken into account for purposes of paragraph (1)."

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

"(i) Understatement of Income Tax Attributable to Listed Transactions and Other Reportable Transactions Having a Significant Tax Avoidance Purpose.—

"(1) Reportable transaction income tax understatement.—For purposes of subsection (a)(2), the term ‘reportable transaction income tax understatement’ means the sum of—

"(A) the product of—

"(i) the amount of the increase (if any) in taxable income which results from a difference between the taxpayer’s treatment of items to which this subsection applies (as shown on the taxpayer’s return of tax) and the proper tax treatment of such items; and

"(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation); and

"(B) the amount of the decrease (if any) in the credits allowed against the tax imposed by subtitle A which results from a difference between the taxpayer’s treatment of items to
which this subsection applies (as shown on the
taxpayer’s return of tax) and the proper tax
treatment of such items:

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

(2) Items to which subsection applies.—
This subsection shall apply to any item which is at-
tributable to—

(A) any listed transaction, or

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

(3) Higher penalty for undisclosed
listed and other avoidance transactions.—In
the case of any portion of a reportable transaction
income tax understatement attributable to a trans-
action to which section 6664(c)(1) does not apply by
reason of section 6664(c)(2)(A), the rate of tax
under subsection (a)(2) shall be increased by 5 per-
cent (10 percent in the case of a listed transaction).
(A) Definitions and special rules.—For purposes of this subsection—

(A) Reportable and listed transactions.—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(e).

(B) Coordination with determinations of whether other understatements are substantial.—Reportable transaction income tax understatements shall be taken into account under subsection (d)(1) in determining whether any understatement (which is not a reportable transaction income tax understatement) is a substantial understatement.

(C) Special rule for amended returns.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction income tax understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary re-
guarding the examination of the return or such other date as is specified by the Secretary."

(c) Reasonable Cause Exception.—Subsection (e) of section 6664 (relating to reasonable cause exception) is amended by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively, and by inserting after paragraph (1) the following new paragraphs:

"(2) Special rules for understatements attributable to listed and certain other tax avoidance transactions.—Paragraph (1) shall not apply to the portion of any reportable transaction income tax understatement attributable to an item referred to in section 6662(i)(2) unless—

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

"(B) there is or was substantial authority for such treatment, and

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

"(3) Rules relating to reasonable belief.—For purposes of paragraph (2)(C) —
"(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

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

"(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

"(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

"(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

"(I) the tax advisor is described in clause (ii), or

"(II) the opinion is described in clause (iii).
(ii) Disqualified tax advisors.—
A tax advisor is described in this clause if the tax advisor is a material advisor (within the meaning of section 6111(b)(1)) who—

(I) is compensated directly or indirectly by another material advisor with respect to the transaction;

(II) has a contingent fee arrangement with respect to the transaction;

(III) has any type of referral agreement or other similar agreement or understanding with another material advisor which relates to the transaction, or

(IV) has any other characteristic which, as determined under regulations prescribed by the Secretary, is indicative of a potential conflict of interest or compromise of independence.

(iii) Disqualified opinions.—An opinion is described in this clause if the opinion—
(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events);

(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person;

(III) does not identify and consider all relevant facts, or

(IV) fails to meet any other requirement as the Secretary may prescribe.

(d) CONFORMING AMENDMENTS.—

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

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

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

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

(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘tax shelter’ means—
“(i) a partnership or other entity,
“(ii) any investment plan or arrange-
ment, or
“(iii) any other plan or arrangement,
if a significant purpose of such partnership, ent-
tity, plan, or arrangement is the avoidance or
evasion of Federal income tax.”

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

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

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

SEC. 103. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-
MENT PENALTY FOR NONREPORTABLE
TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPOR-
ATIONS.—Section 6662(d)(1)(B) (relating to special rule
for corporations) is amended to read as follows:

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

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

“(ii) $10,000,000.”

(b) REDUCTION FOR UNDERSTATEMENT OF TAX-
pAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED
ITEM.—

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

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

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

“(3) SECRETARIAL LIST.—For purposes of this
subsection, section 6664(c)(2), and section
6694(a)(1), the Secretary may prescribe a list of
positions—
(A) for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment, and

(B) which affect a significant number of taxpayers.

Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin."

(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. 104. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

"(b) Section Not To Apply To Communications Regarding Tax Shelters.—The privilege under subsection (a) shall not apply to any written communication which is—

"(1) between a federally authorized tax practitioner and—

"(A) any person;
(B) any director, officer, employee, agent, or representative of the person, or

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

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

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

TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS
Subtitle A—Provisions Relating To Reportable Transactions

SEC. 201. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) In GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) In GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

(1) information identifying and describing the transaction,
"(2) information describing the advice provided
by such advisor, including any potential tax benefits
represented to result from the transaction; and
"(3) such other information as the Secretary
may prescribe.

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

"(b) DEFINITIONS.—For purposes of this section—

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

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

"(B) who directly or indirectly derives
gross income from such advice or assistance.

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

"(c) REGULATIONS.—The Secretary may prescribe
regulations which provide—
(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements;

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

(3) such rules as may be necessary or appropriate to carry out the purposes of this section.

(b) CONFORMING AMENDMENTS.—

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

"Sec. 6111. Disclosure of reportable transactions."

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

"SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

(a) In general.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain (in such manner as the Secretary may by regulations prescribe) a list—

(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and
“(2) containing such other information as the Secretary may by regulations require.”

(B) Section 6112 is amended by redesignating subsection (e) as subsection (b).

(C) Section 6112(b)(1)(A), as redesignated by subparagraph (B), is amending by inserting “written” before “request”.

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

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

(3)(A) The heading for section 6708 is amended to read as follows:

“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.”

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.
SEC. 202. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) In general.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

"SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

(a) In general.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

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

"(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

(b) Amount of penalty.—

"(1) In general.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

"(2) Listed transactions.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

"(A) $200,000, or

S 2498 RS
(B) 50 percent of the fees paid to such
person with respect to aid, assistance, or advice
which is provided with respect to the reportable
transaction before the date the return is filed
under section 6111.

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

''(c) REPORTABLE AND LISTED TRANSACTIONS.—
The terms ‘reportable transaction’ and ‘listed transaction’
have the respective meanings given to such terms by sec-
tion 6707A(e).’’

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

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

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

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

''(a) IMPOSITION OF PENALTY.—
(1) In general.—If any person who is required to maintain a list under section 6112(a) fails to make such list available to the Secretary in accordance with section 6112(b)(1)(A) within 20 days after the date of the Secretary’s request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

(2) Reasonable cause exception.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.

(b) Effective date.—The amendment made by this section shall apply to failures occurring after the date of the enactment of this Act.

SEC. 204. MODIFICATION OF ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) In general.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

"(a) Authority to seek injunction.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be com-
menced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides; has his principal place of business; or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

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

**(1)** that the person has engaged in any specified conduct, and

**(2)** that injunctive relief is appropriate to prevent recurrence of such conduct,

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

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

**(b) CONFORMING AMENDMENTS.**—

(1) The heading for section 7408 is amended to read as follows:
“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.”

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

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

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

Subtitle B—Other Provisions

SEC. 211. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

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

(2) by striking “or was frivolous” in paragraph (3) and inserting “or there was no reasonable basis for the tax treatment of such position”, and
(3) by striking "UNREALISTIC" in the heading and inserting "IMPROPER".

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

(1) by striking "$250" in subsection (a) and inserting "$1,000", and

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

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

SEC. 212. REPORT ON EFFECTIVENESS OF PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

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

(1) the number of civil and criminal penalties imposed on failures to meet the reporting and recordkeeping requirements of section 5314 of title 31, United States Code, with respect to interests held in foreign financial accounts; and

(2) the average amount of monetary penalties so imposed.
The Secretary shall include with such report an analysis of the effectiveness of such reporting and recordkeeping requirements in preventing the avoidance or evasion of Federal income taxes and any recommendations to improve such requirements and the enforcement of such requirements.

SEC. 213. FRIVOLOUS TAX SUBMISSIONS.

(a) Civil penalties.—Section 6702 is amended to read as follows:

SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

(a) Civil penalty for frivolous tax returns.—A person shall pay a penalty of $5,000 if—

(1) such person files what purports to be a return of a tax imposed by this title but which—

(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

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

(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or
"(B) reflects a desire to delay or impede
the administration of Federal tax laws.

"(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS
SUBMISSIONS.—

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

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

"(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submis-
sion' means a specified submission if any por-
tion of such submission—

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

"(ii) reflects a desire to delay or im-
pede the administration of Federal tax
laws.

"(B) SPECIFIED SUBMISSION.—The term
'specified submission' means—

"(i) a request for a hearing under—
(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien); or

(II) section 6330 (relating to notice and opportunity for hearing before levy), and

(ii) an application under—

(I) section 7811 (relating to taxpayer assistance orders),

(II) section 6159 (relating to agreements for payment of tax liability in installments), or

(III) section 7122 (relating to compromises).

(3) Opportunity to withdraw submission.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission promptly after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

(c) Listing of frivolous positions.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall
not include in such list any position that the Secretary
determines meets the requirement of section

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

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

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

(1) FRIVOLOUS REQUESTS DISREGARDED.—

Section 6330 (relating to notice and opportunity for
hearing before levy) is amended by adding at the end the following new subsection:

"(g) FRIVOLOUS REQUESTS FOR HEARING, ET C.—
Notwithstanding any other provision of this section, if the
Secretary determines that any portion of a request for a
hearing under this section or section 6320 meets the re-
quirement of clause (i) of (ii) of section 6702(b)(2)(A),
then the Secretary may treat such portion as if it were
never submitted and such portion shall not be subject to
any further administrative or judicial review.”
(2) PRECLUSION FROM RAISING FRIVOLOUS
ISSUES AT HEARING.—Section 6330(e)(1) is
amended—

(A) by striking "(A)" and inserting
"(A)(i)";

(B) by striking "(B)" and inserting "(ii)";

(C) by striking the period at the end of the
first sentence and inserting "; or"; and

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

"(B) the issue meets the requirement of
clause (i) or (ii) of section 6702(b)(2)(A)."

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

(e) TREATMENT OF FRIVOLOUS REQUESTS FOR
HEARINGS UPON FILING OF NOTICE OF LIEN.—Section
6320 is amended—

(1) in subsection (b)(1), by striking "under sub-
section (a)(3)(B)" and inserting "in writing under
subsection (a)(3)(B) and states the grounds for the
requested hearing"; and
(2) in subsection (e), by striking “and (e)” and
inserting “(e), and (g)”.

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

“(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Sec-
retary determines that any portion of an application for
an offer-in-compromise or installment agreement sub-
mitted under this section or section 6159 meets the re-
quirement of clause (i) or (ii) of section 6702(b)(2)(A),
then the Secretary may treat such portion as if it were
never submitted and such portion shall not be subject to
any further administrative or judicial review.”

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

“Sec. 6702. Frivolous tax submissions.”

(f) EFFECTIVE DATE.—The amendments made by
this section shall apply to submissions made and issues
raised after the date on which the Secretary first pre-
scribes a list under section 6702(e) of the Internal Rev-
venue Code of 1986, as amended by subsection (a).
SEC. 214. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) Censure; Imposition of Penalty.—

(1) In general.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting “, or censure,” after “Department,”;

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

“The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure.”

(2) Effective date.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) Tax Shelter Opinions, etc.—Section 330 of such title 31 is amended by adding at the end the following new subsection:
“(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.”

SEC. 215. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) Penalty on Promoting Abusive Tax Shelters.—Section 6700(a) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.”

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

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

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

Section 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—TAX SHELTER TRANSPARENCY REQUIREMENTS

Sec. 101. Penalty for failing to disclose reportable transaction.
Sec. 102. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.
Sec. 103. Modifications of substantial understatement penalty for nonreportable transactions.
Sec. 104. Tax shelter exception to confidentiality privileges relating to taxpayer communications.

TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS

SUBTITLE A—PROVISIONS RELATING TO REPORTABLE TRANSACTIONS

Sec. 201. Disclosure of reportable transactions.
Sec. 202. Modifications to penalty for failure to register tax shelters.
Sec. 203. Modification of penalty for failure to maintain lists of investors.
Sec. 204. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions.

SUBTITLE B—OTHER PROMOTER AND PREPARER PROVISIONS

Sec. 211. Understatement of taxpayer's liability by income tax return preparer.
Sec. 212. Penalty on failure to report interests in foreign financial accounts.
Sec. 213. Frivolous tax submissions.
Sec. 214. Regulation of individuals practicing before the Department of Treasury.
Sec. 215. Penalty on promoters of tax shelters.

TITLE III—OTHER PROVISIONS

Sec. 301. Affirmation of consolidated return regulation authority.
TITLE I—TAX SHELTER

TRANSPARENCY REQUIREMENTS

SEC. 101. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) In General.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

“(a) Imposition of Penalty.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

“(b) Amount of Penalty.—

“(1) In General.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

“(2) Listed Transaction.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

“(3) Increase in Penalty for Large Entities and High Net Worth Individuals.—
“(A) In general.—In the case of a failure under subsection (a) by—

“(i) a large entity, or

“(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

“(B) Large entity.—For purposes of subparagraph (A), the term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) High net worth individual.—The term ‘high net worth individual’ means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

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

“(1) Reportable transaction.—The term ‘reportable transaction’ means any transaction with re-
spect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction which is the same as, or similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

“(d) AUTHORITY TO RESCIND PENALTY.—

“(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

“(A) the violation is with respect to a reportable transaction other than a listed transaction,

“(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

“(C) it is shown that the violation is due to an unintentional mistake of fact;
“(D) imposing the penalty would be against equity and good conscience, and
“(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

“(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in his sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

“(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

“(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

“(A) the reasons for the rescission, and
“(B) the amount of the penalty rescinded.
“(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

“(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

“(B) a description of each penalty rescinded under this subsection and the reasons therefor.

“(e) PENALTY REPORTED TO SEC.—In the case of a person—

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

“(2) which—

“(A) is required to pay a penalty under this section with respect to a listed transaction, or

“(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c),

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the
Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

“(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under section 6662.”

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 102. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:
SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

(a) Imposition of Penalty.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

(b) Reportable Transaction Understatement.—For purposes of this section—

(1) In General.—The term 'reportable transaction understatement' means the sum of—

(A) the product of—

(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer’s treatment of such item (as shown on the taxpayer’s return of tax), and

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

(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer’s treatment of an item to which this section applies (as shown on the tax-
payer’s return of tax) and the proper tax treat-
ment of such item.

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

“(2) ITEMS TO WHICH SECTION APPLIES.—This
section shall apply to any item which is attributable
to—

“(A) any listed transaction, and

“(B) any reportable transaction (other than
a listed transaction) if a significant purpose of
such transaction is the avoidance or evasion of
Federal income tax.

“(c) HIGHER PENALTIES FOR NONDISCLOSED LISTED
AND OTHER AVOIDANCE TRANSACTIONS.—If the require-
ment of section 6664(d)(2)(A) is not met with respect to
any portion of any reportable transaction understatement,
then subsection (a) shall be applied by substituting—

“(1) ‘30 percent’ for ‘20 percent’ if such under-
statement is attributable to a listed transaction, and

“(2) ‘25 percent’ for ‘20 percent’ in the case of
any other understatement.
“(d) Definitions of Reportable and Listed Transactions.—For purposes of this section, the terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(e) Special Rules.—

“(1) Coordination with Penalties, etc., on Other Understatements.—In the case of an understatement (as defined in section 6662(d)(2))—

“(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), but

“(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

“(2) Coordination with Fraud Penalty.—

“(A) In general.—References to an underpayment in section 6663 shall be treated as
including references to a reportable transaction understatement.

“(B) No double penalty.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

“(3) Special rule for amended returns.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.”

(b) Determination of Other Understatements.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

“The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.”

(c) Reasonable Cause Exception.—

(1) In general.—Section 6664 is amended by adding at the end the following new subsection:
“(d) Reasonable Cause Exception for Reportable Transaction Understatements.—

“(1) In general.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

“(2) Special rules.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

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

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

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

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).
“(3) Rules relating to reasonable belief.—For purposes of paragraph (2)(C)—

“(A) In general.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

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

“(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

“(B) Certain opinions may not be relied upon.—

“(i) In general.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

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

“(II) the opinion is described in clause (iii).
“(ii) **DISQUALIFIED TAX ADVISORS**.—A tax advisor is described in this clause if the tax advisor is a material advisor (within the meaning of section 6111(b)(1)) who—

“(I) participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267 or 707) to any person who so participates,

“(II) is compensated by another material advisor with respect to the transaction,

“(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

“(IV) as determined under regulations prescribed by the Secretary, has a continuing financial interest with respect to the transaction.

“(iii) **DISQUALIFIED OPINIONS**.—For purposes of clause (i), an opinion is disqualified if the opinion—
“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts, or

“(IV) fails to meet any other requirement as the Secretary may prescribe.”

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting “FOR UNDERPAYMENTS” after “EXCEPTION”.

(d) CONFORMING AMENDMENTS.—

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

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

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

(B) by adding at the end the following new subparagraph:
“(C) TAX SHELTER.—For purposes of sub-
paragraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

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

“(iii) any other plan or arrangement,

if a significant purpose of such partnership, en-
tity, plan, or arrangement is the avoidance or
evasion of Federal income tax.”

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

(4) Section 6664(c)(1) is amended by striking
“part” and inserting “section 6662 or 6663”.

(5) Subsection (b) of section 7525 is amended by
striking “section 6662(d)(2)(C)(iii)” and inserting
“section 1274(b)(3)(C)”.

(6)(A) The heading for section 6662 is amended
to read as follows:

“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY
ON UNDERPAYMENTS.”

(B) The table of sections for part II of sub-
chapter A of chapter 68 is amended by striking the
item relating to section 6662 and inserting the fol-
lowing new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpay-
ments.
“Sec. 6662A. Imposition of accuracy-related penalty on understate-
ments with respect to reportable transactions.”

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

SEC. 103. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-
MENT PENALTY FOR NONREPORTABLE
TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPOR-
ATIONS.—Section 6662(d)(1)(B) (relating to special rule for
corporations) is amended to read as follows:

“(B) SPECIAL RULE FOR CORPORATIONS.—

In the case of a corporation other than an S cor-
poration or a personal holding company (as de-
defined in section 542), there is a substantial un-
derstatement of income tax for any taxable year
if the amount of the understatement for the tax-
able year exceeds the lesser of—

“(i) 10 percent of the tax required to
be shown on the return for the taxable year
(or, if greater, $10,000), or

“(ii) $10,000,000.”

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER
DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—
(1) **IN GENERAL.**—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

“(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or”.

(2) **CONFORMING AMENDMENT.**—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) **SECRETARIAL LIST.**—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”

(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. 104. TAX SHELTER EXCEPTION TO CONFIDENTIALITY

PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) In General.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

“(b) Section Not To Apply To Communications Regarding Tax Shelters.—The privilege under subsection (a) shall not apply to any written communication which is—

“(1) between a federally authorized tax practitioner and—

“(A) any person,

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

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

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

(b) Effective Date.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.
TITLE II—PROMOTER AND PREPARER RELATED PROVISIONS
Subtitle A—Provisions Relating to Reportable Transactions

SEC. 201. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) In General.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

"SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

"(a) In General.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

"(1) information identifying and describing the transaction,

"(2) information describing any potential tax benefits expected to result from the transaction, and

"(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

"(b) Definitions.—For purposes of this section—

"(1) Material advisor.—

"(A) In General.—The term ‘material advisor’ means any person—

"(i) who provides any material aid, assistance, or advice with respect to orga-
nizing, promoting, selling, implementing, or carrying out any reportable transaction, and

“(ii) who directly or indirectly derives gross income in excess of the threshold amount for such advice or assistance.

“(B) Threshold Amount.—For purposes of subparagraph (A), the threshold amount is—

“(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

“(ii) $250,000 in any other case.

“(2) Reportable Transaction.—The term ‘reportable transaction’ has the meaning given to such term by section 6707A(c).

“(c) Regulations.—The Secretary may prescribe regulations which provide—

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

“(2) exemptions from the requirements of this section, and
“(3) such rules as may be necessary or appropriate to carry out the purposes of this section.”

(b) CONFORMING AMENDMENTS.—

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

“Sec. 6111. Disclosure of reportable transactions.”

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

“SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.

“(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

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

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

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with regard to such transaction.”

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).
(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting “written” before “request” in paragraph (1)(A), and

(ii) by striking “shall prescribe” in paragraph (2) and inserting “may prescribe”.

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

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

(3)(A) The heading for section 6708 is amended to read as follows:

“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.”

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.
SEC. 202. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.

(a) In General.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

“(a) In General.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

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

“(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

“(b) Amount of Penalty.—

“(1) In General.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

“(2) Listed Transactions.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

“(A) $200,000, or
“(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the reportable transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting ‘75 percent’ for ‘50 percent’ in the case of an intentional failure or act described in subsection (a).

“(c) REPORTABLE AND LISTED TRANSACTIONS.—The terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(d) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.”

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking “tax shelters” and inserting “reportable transactions”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.
SEC. 203. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) In General.—Subsection (a) of section 6708 is amended to read as follows:

“(a) IMPOSITION OF PENALTY.—

“(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary’s request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

“(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.”

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

SEC. 204. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) In General.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by
striking subsections (a) and (b) and inserting the following new subsections:

“(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

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

“(1) that the person has engaged in any specified conduct, and

“(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

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

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

(b) CONFORMING AMENDMENTS.—

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

“SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.”

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

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

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

Subtitle B—Other Promoter and Preparer Provisions

SEC. 211. UNDERSTATEMENT OF TAXPAYER’S LIABILITY BY INCOME TAX RETURN PREPARER.

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

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

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

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

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

(1) by striking “$250” in subsection (a) and inserting “$1,000”, and

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

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

SEC. 212. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

“(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

“(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money
penalty on any person who violates, or causes any violation of, any provision of section 5314.

“(B) AMOUNT OF PENALTY.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

“(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

“(I) such violation was due to reasonable cause, and

“(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

“(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

“(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

“(I) $25,000, or
“(II) the amount (not exceeding $100,000) determined under subparagraph (D), and
“(ii) subparagraph (B)(ii) shall not apply.
“(D) AMOUNT.—The amount determined under this subparagraph is—
“(i) in the case of a violation involving a transaction, the amount of the transaction, or
“(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.”

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

SEC. 213. FRIVOLOUS TAX SUBMISSIONS.

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

“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.
“(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—
“(1) such person files what purports to be a return of a tax imposed by this title but which—

“(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

“(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

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

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

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

“(b) Civil Penalty for Specified Frivolous Submissions.—

“(1) Imposition of Penalty.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

“(2) Specified Frivolous Submission.—For purposes of this section—

“(A) Specified Frivolous Submission.—

The term ‘specified frivolous submission’ means
a specified submission if any portion of such submission—

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

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

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

“(i) a request for a hearing under—

“(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

“(II) section 6330 (relating to notice and opportunity for hearing before levy), and

“(ii) an application under—

“(I) section 6159 (relating to agreements for payment of tax liability in installments),

“(II) section 7122 (relating to compromises), or

“(III) section 7811 (relating to taxpayer assistance orders).
“(3) Opportunity to withdraw submission.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

“(c) Listing of frivolous positions.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

“(d) Reduction of penalty.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

“(e) Penalties in addition to other penalties.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”

(b) Treatment of frivolous requests for hearings before levy.—
(1) **Frivolous requests disregarded.**—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

“(g) **Frivolous requests for hearing, etc.**—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”

(2) **Preclusion from raising frivolous issues at hearing.**—Section 6330(c)(4) is amended—

(A) by striking “(A)” and inserting “(A)(i)”;

(B) by striking “(B)” and inserting “(ii)”;

(C) by striking the period at the end of the first sentence and inserting “; or”; and

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

“(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).”
(3) **STATEMENT OF GROUNDS.**—Section 6330(b)(1) is amended by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”.

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

(1) in subsection (b)(1), by striking “under subsection (a)(3)(B)” and inserting “in writing under subsection (a)(3)(B) and states the grounds for the requested hearing”, and

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

(d) **TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.**—Section 7122 is amended by adding at the end the following new subsection:

“(e) **FRIVOLOUS SUBMISSIONS, ETC.**—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such
portion shall not be subject to any further administrative
or judicial review.”

(e) Clerical Amendment.—The table of sections for
part I of subchapter B of chapter 68 is amended by striking
the item relating to section 6702 and inserting the following
new item:

“Sec. 6702. Frivolous tax submissions.”

(f) Effective Date.—The amendments made by this
section shall apply to submissions made and issues raised
after the date on which the Secretary first prescribes a list
under section 6702(c) of the Internal Revenue Code of 1986,
as amended by subsection (a).

SEC. 214. Regulation of Individuals Practicing Before the Department of Treasury.

(a) Censure; Imposition of Penalty.—

(1) In General.—Section 330(b) of title 31,
United States Code, is amended—

(A) by inserting “, or censure,” after “Department”, and

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

“The Secretary may impose a monetary penalty on any
representative described in the preceding sentence. If the
representative was acting on behalf of an employer or any
firm or other entity in connection with the conduct giving
rise to such penalty, the Secretary may impose a monetary
penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure.”

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

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

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

SEC. 215. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: “Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described
in paragraph (2)(A), the amount of the penalty shall be
equal to 50 percent of the gross income derived (or to be
derived) from such activity by the person on which the pen-
alty is imposed.”

(b) EFFECTIVE DATE.—The amendment made by this
section shall apply to activities after the date of the enact-
ment of this Act.

TITLE III—OTHER PROVISIONS

SEC. 301. AFFIRMATION OF CONSOLIDATED RETURN REGU-
LATION AUTHORITY.

(a) IN GENERAL.—Section 1502 (relating to consoli-
dated return regulations) is amended by adding at the end
the following new sentence: “In prescribing such regula-
tions, the Secretary may prescribe rules applicable to cor-
porations filing consolidated returns under section 1501
that are different from other provisions of this title that
would apply if such corporations filed separate returns.”

(b) RESULT NOT OVERTURNED.—Notwithstanding
subsection (a), the Internal Revenue Code of 1986 shall be
construed by treating Treasury regulation §1.1502–
20(c)(1)(iii) (as in effect on January 1, 2001) as being in-
applicable to the type of factual situation in Rite Aid Cor-
poration v. United States, 255 F.3d 1357 (Fed. Cir. 2001).
(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.
A BILL

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

JUNE 28, 2002

Reported with an amendment