

**SEC. 806. STUDIES.**

(a) **TRANSFER PRICING RULES.**—*The Secretary of the Treasury or the Secretary's delegate shall conduct a study regarding the effectiveness of current transfer pricing rules and compliance efforts in ensuring that cross-border transfers and other related-party transactions, particularly transactions involving intangible assets, service contracts, or leases cannot be used improperly to shift income out of the United States. The study shall include a review of the contemporaneous documentation and penalty rules under section 6662 of the Internal Revenue Code of 1986, a review of the regulatory and administrative guidance implementing the principles of section 482 of such Code to transactions involving intangible property and services and to cost-sharing arrangements, and an examination of whether increased disclosure of cross-border transactions should be required. The study shall set forth specific recommendations to address all abuses identified in the study. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.*

(b) **INCOME TAX TREATIES.**—*The Secretary of the Treasury or the Secretary's delegate shall conduct a study of United States income tax treaties to identify any inappropriate reductions in United States withholding tax that provide opportunities for shifting income out of the United States, and to evaluate whether existing anti-abuse mechanisms are operating properly. The study shall include specific recommendations to address all inappropriate uses of tax treaties. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.*

(c) **EFFECTIVENESS OF CORPORATE EXPATRIATION PROVISIONS.**—*The Secretary of the Treasury or the Secretary's delegate shall conduct a study of the effectiveness of the provisions of this title on corporate expatriation. The study shall include such recommendations as such Secretary or delegate may have to improve the effectiveness of such provisions in carrying out the purposes of this title. Not later than December 31, 2006, such Secretary or delegate shall submit to the Congress a report of such study.*

**Subtitle B—Provisions Relating to Tax Shelters****PART I—TAXPAYER-RELATED PROVISIONS****SEC. 811. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTIONS.**

(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.**

“(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 paragraph (2), the amount of the penalty under subsection (a) shall be—*

“(A) \$10,000 in the case of a natural person, and

“(B) \$50,000 in any other case.

“(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be—

“(A) \$100,000 in the case of a natural person, and

“(B) \$200,000 in any other case.

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

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect 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.—The term ‘listed transaction’ means a reportable transaction which is the same as, or substantially 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, and

“(B) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

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

“(3) 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 with respect to the determination, including—

“(A) a statement of the facts and circumstances relating to the violation,

“(B) the reasons for the rescission, and

“(C) the amount of the penalty rescinded.

“(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,

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

“(C) is required to pay a penalty under section 6662(h) with respect to any reportable transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A 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 shall be in addition to any other penalty imposed by this title.”

(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.”.

(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.

(d) **REPORT.**—The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor.

**SEC. 812. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS, OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE, ETC.**

(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 taxpayer’s return of tax) and the proper tax treatment 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 PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘30 percent’ for ‘20 percent’ with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

“(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), and

“(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 OTHER PENALTIES.—

“(A) APPLICATION OF FRAUD PENALTY.—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.

“(C) COORDINATION WITH VALUATION PENALTIES.—

“(i) SECTION 6662(E).—Section 6662(e) shall not apply to any portion of an understatement on which a penalty is imposed under this section.

“(ii) SECTION 6662(H).—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662(h).

“(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—

“(I) is a material advisor (within the meaning of section 6111(b)(1)) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

“(II) is compensated directly or indirectly by a 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 disqualifying 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 AMENDMENTS.**—

(A) Paragraph (1) of section 6664(c) is amended by striking “this part” and inserting “section 6662 or 6663”.

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

(d) **REDUCTION IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX SHELTERS.**—Subparagraph (C) of section 6662(d)(2) (relating to substantial understatement of income tax) is amended to read as follows:

“(C) **REDUCTION NOT TO APPLY TO TAX SHELTERS.**—

“(i) **IN GENERAL.**—Subparagraph (B) shall not apply to any item attributable to a tax shelter.

“(ii) **TAX SHELTER.**—For purposes of clause (i), the term ‘tax shelter’ means—

“(I) a partnership or other entity,

“(II) any investment plan or arrangement, or

“(III) any other plan or arrangement,

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

(e) **CLERICAL AMENDMENTS.**—

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

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

(2) *The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:*

*“Sec. 6662. Imposition of accuracy-related penalty on underpayments.*

*“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”.*

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

**SEC. 813. 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 6662(d)(2)(C)(ii)).”.*

(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.*

**SEC. 814. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.**

(a) **IN GENERAL.**—*Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:*

*“(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—*

*“(A) the date on which the Secretary is furnished the information so required, or*

*“(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.”.*

(b) **EFFECTIVE DATE.**—*The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.*

**SEC. 815. 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 organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and

“(ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) 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) 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, ETC.**

“(a) *IN GENERAL.*—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall (whether or not required to file a return under

section 6111 with respect to such transaction) 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 a material advisor with respect to such transaction, and

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

(3) Section 6112 is amended—

(A) by redesignating subsection (c) as subsection (b),

(B) by inserting “written” before “request” in subsection (b)(1) (as so redesignated), and

(C) by striking “shall prescribe” in subsection (b)(2) (as so redesignated) and inserting “may prescribe”.

(4) 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, etc.”.

(5)(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. 816. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.**

(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 listed 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 intentional failure or act described in subsection (a).

“(c) 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.

“(d) 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).”

(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. 817. 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 upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such 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. 818. 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.

**SEC. 819. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.**

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—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 corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable 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, if greater, \$10,000), or

“(ii) \$10,000,000.”

(b) *SECRETARIAL LIST.*—

(1) *IN GENERAL.*—Section 6662(d) is amended by adding at the end the following new paragraph:

“(3) *SECRETARIAL LIST.*—The Secretary may prescribe a list of positions which the Secretary believes do not meet the 1 or more of the standards specified in paragraph (2)(B)(i), section 6664(d)(2), and section 6694(a)(1). Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.”

(2) *CONFORMING AMENDMENT.*—Paragraph (2) of section 6662(d) is amended by striking subparagraph (D).

(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. 820. 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 failure to take action, which is—

“(1) subject to penalty under section 6700, 6701, 6707, or 6708, or

“(2) in violation of any requirement under regulations issued under section 330 of title 31, United States Code.”

(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 76 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.*

**SEC. 821. 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 \$10,000.*

**“(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) \$100,000, or**

**“(II) 50 percent of the amount 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. 822. 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 of the representative.”

(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.”

**PART II—OTHER PROVISIONS**

**SEC. 831. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.**

(a) *IN GENERAL.*—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) *TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.*—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.”

(b) *CROSS REFERENCE.*—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

“(7) *CROSS REFERENCE.*—

“For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).”