

**AMENDMENT TO H.R. 4227**  
**OFFERED BY MR. RANGEL OF NEW YORK**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

2 **TABLE OF CONTENTS.**

3 (a) **SHORT TITLE.**—This Act may be cited as the  
4 “AMT Reform Act of 2004”.

5 (b) **AMENDMENT OF 1986 CODE.**—Except as other-  
6 wise expressly provided, whenever in this Act an amend-  
7 ment or repeal is expressed in terms of an amendment  
8 to, or repeal of, a section or other provision, the reference  
9 shall be considered to be made to a section or other provi-  
10 sion of the Internal Revenue Code of 1986.

11 (c) **TABLE OF CONTENTS.**—

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

Sec. 2. Statement of Congressional findings and purposes.

**TITLE I—TEMPORARY RELIEF FROM THE ALTERNATIVE  
MINIMUM TAX; FRAMEWORK FOR REFORM**

Sec. 101. Temporary relief from the alternative minimum tax.

Sec. 102. Framework for reform.

**TITLE II—RESTRICTIONS ON TAX SHELTERS**

**Subtitle A—Provisions Designed To Curtail Tax Shelters**

Sec. 201. Clarification of economic substance doctrine.

Sec. 202. Penalty for failing to disclose reportable transaction.

Sec. 203. Accuracy-related penalty for listed transactions and other reportable transactions having a significant tax avoidance purpose.

Sec. 204. Penalty for understatements attributable to transactions lacking economic substance, etc.

Sec. 205. Modifications of substantial understatement penalty for nonreportable transactions.

- Sec. 206. Tax shelter exception to confidentiality privileges relating to taxpayer communications.
- Sec. 207. Disclosure of reportable transactions.
- Sec. 208. Modifications to penalty for failure to register tax shelters.
- Sec. 209. Modification of penalty for failure to maintain lists of investors.
- Sec. 210. Penalty on promoters of tax shelters.
- Sec. 211. Increases in penalties for aiding and abetting understatements.

Subtitle B—Enron-Related Tax Shelter Provisions

- Sec. 221. Limitation on transfer or importation of built-in losses.
- Sec. 222. No reduction of basis under section 734 in stock held by partnership in corporate partner.
- Sec. 223. Expanded disallowance of deduction for interest on convertible debt.
- Sec. 224. Expanded authority to disallow tax benefits under section 269.
- Sec. 225. Modification of interaction between subpart F and passive foreign investment company rules.

1 **SEC. 2. STATEMENT OF CONGRESSIONAL FINDINGS AND**  
 2 **PURPOSES.**

3 (a) FINDINGS.—The Congress finds the following:

4 (1) The current alternative minimum tax (here-  
 5 inafter referred to as the “AMT”) was enacted in  
 6 1986 with the stated purpose of ensuring that indi-  
 7 viduals with relatively large incomes would pay some  
 8 minimum amount of Federal income tax, notwith-  
 9 standing the fact that the individuals could have  
 10 used otherwise allowable tax preferences to reduce  
 11 their regular tax to zero.

12 (2) The AMT, when enacted, affected a very  
 13 small percentage of individuals. Approximately 0.1  
 14 percent of all individuals were subject to the AMT  
 15 in 1987.

1           (3) During the 1990's virtually all items that  
2           have been traditionally considered to be tax pref-  
3           erences were removed from the AMT.

4           (4) As a result, virtually all AMT liability now  
5           is attributable to 3 items that few people would con-  
6           sider to be tax preferences: the deduction for per-  
7           sonal exemptions, the deduction for State and local  
8           taxes, and miscellaneous itemized deductions.

9           (5) In 1993, adjustments to minimum tax rates  
10          were made to correspond to adjustments made in  
11          regular income tax rates. The 1993 legislation also  
12          increased the amount of the AMT exemption.

13          (6) The percentage of individuals subject to the  
14          AMT did not increase as a result of the 1993  
15          changes. The percentage in 1992 was 0.3 percent. It  
16          was 0.3 percent in 1994.

17          (7) The first significant increase in the percent-  
18          age of individuals paying the AMT occurred by rea-  
19          son of the Taxpayer Relief Act of 1997. Some of the  
20          benefits of the capital gains tax reduction provided  
21          in the 1997 Act were taken back by the AMT. As  
22          a result of the 1997 Act, the percentage of individ-  
23          uals paying the AMT doubled in less than 2 years.

24          (8) Even after the impact of the 1997 Act, the  
25          number of individuals subject to the AMT was ex-

1       tremely small until the enactment of the tax reduc-  
2       tions by the Economic Growth and Tax Relief Rec-  
3       onciliation Act of 2001. Less than 1 percent of indi-  
4       viduals were subject to the AMT before 2001.

5           (9) The Economic Growth and Tax Relief Rec-  
6       onciliation Act of 2001 contained reductions in the  
7       regular income tax rates but not in the minimum tax  
8       rates. As a result, the number of individuals subject  
9       to the AMT is projected to skyrocket. In the  
10      future—

11           (A) 92 percent of all households with in-  
12      come between \$100,000 and \$500,000 will be  
13      subject to the minimum tax;

14           (B) 73 percent of households with income  
15      between \$75,000 and \$100,000 will be subject  
16      to the minimum tax; and

17           (C) 37 percent of households with income  
18      between \$50,000 and \$75,000 will be subject to  
19      the minimum tax.

20           (10) The AMT has a substantial marriage pen-  
21      alty that has never been addressed by recent “mar-  
22      riage penalty repeal” legislation. Married couples are  
23      20 times more likely to be on the minimum tax than  
24      single individuals.

1           (11) More than one-half of the promised tax re-  
2           ductions in the recent marriage penalty bill passed  
3           by the House of Representatives will be taken back  
4           by the AMT.

5           (12) The AMT disproportionately applies to  
6           families with children. Ninety-seven percent of fami-  
7           lies with children and with incomes between \$75,000  
8           and \$100,000 will be subject to the AMT.

9           (13) The current AMT means that many of the  
10          tax reductions enacted in 2001 and 2003 are essen-  
11          tially temporary regardless of whether Congress  
12          makes them permanent by repealing the sunset con-  
13          tained in the 2001 Act. On average, the AMT will  
14          take back—

15                 (A) 15.3 percent of the benefits of the re-  
16                 cent tax cuts from families with incomes be-  
17                 tween \$50,000 and \$70,000;

18                 (B) 37.2 percent of the benefits from fami-  
19                 lies with incomes between \$75,000 and  
20                 \$100,000;

21                 (C) 65 percent of the benefits from fami-  
22                 lies with incomes between \$100,000 and  
23                 \$200,000; and

1 (D) 71.8 percent of the benefits from fami-  
2 lies with incomes between \$200,000 and  
3 \$500,000.

4 (14) Only extremely wealthy taxpayers will re-  
5 tain most of the benefits of the recent tax cuts. Tax-  
6 payers making more than \$1,000,000 will find only  
7 8 percent of their tax reductions taken back by the  
8 AMT.

9 (15) The Bush Administration's Fiscal Year  
10 2005 Budget recommends that the recent tax reduc-  
11 tions be made permanent. Accomplishing that goal  
12 requires a total reform of the AMT.

13 (b) PURPOSE.—It is the purpose of this Act to—

14 (1) provide significant temporary relief from the  
15 alternative minimum tax; and

16 (2) to provide a framework for a total reform  
17 of the alternative minimum tax.

1 **TITLE I—TEMPORARY RELIEF**  
 2 **FROM THE ALTERNATIVE**  
 3 **MINIMUM TAX; FRAMEWORK**  
 4 **FOR REFORM**

5 **SEC. 101. TEMPORARY RELIEF FROM THE ALTERNATIVE**  
 6 **MINIMUM TAX.**

7 (a) IN GENERAL.—Section 55 (relating to alternative  
 8 minimum tax imposed) is amended by adding at the end  
 9 the following new subsection:

10 “(f) EXEMPTION FOR INDIVIDUALS FOR TAXABLE  
 11 YEARS BEGINNING IN 2005.—For any taxable year begin-  
 12 ning in 2005, in the case of an individual—

13 “(1) IN GENERAL.—The tentative minimum tax  
 14 of the taxpayer shall be zero if the adjusted gross  
 15 income of the taxpayer (as determined for purposes  
 16 of the regular tax) is equal to or less than the  
 17 threshold amount.

18 “(2) PHASEIN OF LIABILITY ABOVE EXEMPTION  
 19 LEVEL.—In the case of a taxpayer whose adjusted  
 20 gross income exceeds the threshold amount but does  
 21 not exceed \$145,000 (\$290,000 in the case of a joint  
 22 return), the tax imposed by subsection (a) shall be  
 23 the amount which bears the same ratio to such tax  
 24 (determined without regard to this subsection) as—

25 “(A) the excess of—

1                   “(i) the adjusted gross income of the  
2                   taxpayer (as determined for purposes of  
3                   the regular tax), over

4                   “(ii) the threshold amount, bears to  
5                   “(B) \$20,000 (\$40,000 in the case of a  
6                   joint return).

7                   “(3) THRESHOLD AMOUNT.—For purposes of  
8                   this paragraph, the term ‘threshold amount’ means  
9                   \$125,000 (\$250,000 in the case of a joint return).

10                   “(4) ESTATES AND TRUSTS.—This subsection  
11                   shall not apply to any estate or trust.”.

12                   (b) EFFECTIVE DATE.—The amendment made by  
13                   this section shall apply to taxable years beginning after  
14                   December 31, 2004.

15                   **SEC. 102. FRAMEWORK FOR REFORM.**

16                   (a) RECOMMENDATIONS BY THE SECRETARY OF THE  
17                   TREASURY.—Not later than 30 days after the enactment  
18                   of this Act, the Secretary of the Treasury shall submit  
19                   to the Committee on Ways and Means of the House of  
20                   Representatives and to the Committee on Finance of the  
21                   Senate detailed legislative recommendations designed to  
22                   reform the alternative minimum tax. Unless the Secretary  
23                   determines that it is not feasible, such recommendations  
24                   shall include changes designed to ensure that the percent-  
25                   age of individuals paying the minimum tax would be re-



1 duced to the level in effect before the enactment of the  
2 Economic Growth and Tax Relief Reconciliation Act of  
3 2001 (which is less than 1 percent). The Secretary shall  
4 include with such recommendations estimates of their rev-  
5 enue cost.

6 (b) ACTION BY COMMITTEE ON WAYS AND MEANS.—  
7 Not later than August 1, 2004, the Committee on Ways  
8 and Means of the House of Representatives shall report  
9 legislation providing permanent reform of the alternative  
10 minimum tax. Such legislation shall be designed so that  
11 the percentage of individuals subject to the minimum tax  
12 will be restored to the level in effect before the enactment  
13 of the Economic Growth and Tax Relief Reconciliation Act  
14 of 2001 (which is less than 1 percent).

## 15 **TITLE II—RESTRICTIONS ON TAX** 16 **SHELTERS**

### 17 **Subtitle A—Provisions Designed To** 18 **Curtail Tax Shelters**

#### 19 **SEC. 201. CLARIFICATION OF ECONOMIC SUBSTANCE DOC-** 20 **TRINE.**

21 (a) IN GENERAL.—Section 7701 is amended by re-  
22 designating subsection (n) as subsection (o) and by insert-  
23 ing after subsection (m) the following new subsection:

24 “(n) CLARIFICATION OF ECONOMIC SUBSTANCE  
25 DOCTRINE; ETC.—

1           “(1) GENERAL RULES.—

2                   “(A) IN GENERAL.—In any case in which  
3           a court determines that the economic substance  
4           doctrine is relevant for purposes of this title to  
5           a transaction (or series of transactions), such  
6           transaction (or series of transactions) shall have  
7           economic substance only if the requirements of  
8           this paragraph are met.

9                   “(B) DEFINITION OF ECONOMIC SUB-  
10           STANCE.—For purposes of subparagraph (A)—

11                           “(i) IN GENERAL.—A transaction has  
12                           economic substance only if—

13                                   “(I) the transaction changes in a  
14                                   meaningful way (apart from Federal  
15                                   tax effects) the taxpayer’s economic  
16                                   position, and

17                                   “(II) the taxpayer has a substan-  
18                                   tial nontax purpose for entering into  
19                                   such transaction and the transaction  
20                                   is a reasonable means of accom-  
21                                   plishing such purpose.

22                   In applying subclause (II), a purpose of  
23                   achieving a financial accounting benefit  
24                   shall not be taken into account in deter-  
25                   mining whether a transaction has a sub-

1           stantial nontax purpose if the origin of  
2           such financial accounting benefit is a re-  
3           duction of income tax.

4           “(ii) SPECIAL RULE WHERE TAX-  
5           PAYER RELIES ON PROFIT POTENTIAL.—A  
6           transaction shall not be treated as having  
7           economic substance by reason of having a  
8           potential for profit unless—

9           “(I) the present value of the rea-  
10           sonably expected pre-tax profit from  
11           the transaction is substantial in rela-  
12           tion to the present value of the ex-  
13           pected net tax benefits that would be  
14           allowed if the transaction were re-  
15           spected, and

16           “(II) the reasonably expected  
17           pre-tax profit from the transaction ex-  
18           ceeds a risk-free rate of return.

19           “(C) TREATMENT OF FEES AND FOREIGN  
20           TAXES.—Fees and other transaction expenses  
21           and foreign taxes shall be taken into account as  
22           expenses in determining pre-tax profit under  
23           subparagraph (B)(ii).

24           “(2) SPECIAL RULES FOR TRANSACTIONS WITH  
25           TAX-INDIFFERENT PARTIES.—

1           “(A) SPECIAL RULES FOR FINANCING  
2           TRANSACTIONS.—The form of a transaction  
3           which is in substance the borrowing of money  
4           or the acquisition of financial capital directly or  
5           indirectly from a tax-indifferent party shall not  
6           be respected if the present value of the deduc-  
7           tions to be claimed with respect to the trans-  
8           action is substantially in excess of the present  
9           value of the anticipated economic returns of the  
10          person lending the money or providing the fi-  
11          nancial capital. A public offering shall be treat-  
12          ed as a borrowing, or an acquisition of financial  
13          capital, from a tax-indifferent party if it is rea-  
14          sonably expected that at least 50 percent of the  
15          offering will be placed with tax-indifferent par-  
16          ties.

17          “(B) ARTIFICIAL INCOME SHIFTING AND  
18          BASIS ADJUSTMENTS.—The form of a trans-  
19          action with a tax-indifferent party shall not be  
20          respected if—

21                 “(i) it results in an allocation of in-  
22                 come or gain to the tax-indifferent party in  
23                 excess of such party’s economic income or  
24                 gain, or

1           “(ii) it results in a basis adjustment  
2           or shifting of basis on account of over-  
3           stating the income or gain of the tax-indif-  
4           ferent party.

5           “(3) DEFINITIONS AND SPECIAL RULES.—For  
6           purposes of this subsection—

7           “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
8           The term ‘economic substance doctrine’ means  
9           the common law doctrine under which tax bene-  
10          fits under subtitle A with respect to a trans-  
11          action are not allowable if the transaction does  
12          not have economic substance or lacks a business  
13          purpose.

14          “(B) TAX-INDIFFERENT PARTY.—The  
15          term ‘tax-indifferent party’ means any person  
16          or entity not subject to tax imposed by subtitle  
17          A. A person shall be treated as a tax-indifferent  
18          party with respect to a transaction if the items  
19          taken into account with respect to the trans-  
20          action have no substantial impact on such per-  
21          son’s liability under subtitle A.

22          “(C) EXCEPTION FOR PERSONAL TRANS-  
23          ACTIONS OF INDIVIDUALS.—In the case of an  
24          individual, this subsection shall apply only to  
25          transactions entered into in connection with a

1 trade or business or an activity engaged in for  
2 the production of income.

3 “(D) TREATMENT OF LESSORS.—In apply-  
4 ing paragraph (1)(B)(ii) to the lessor of tan-  
5 gible property subject to a lease—

6 “(i) the expected net tax benefits with  
7 respect to the leased property shall not in-  
8 clude the benefits of—

9 “(I) depreciation,

10 “(II) any tax credit, or

11 “(III) any other deduction as  
12 provided in guidance by the Secretary,  
13 and

14 “(ii) subclause (II) of paragraph  
15 (1)(B)(ii) shall be disregarded in deter-  
16 mining whether any of such benefits are al-  
17 lowable.

18 “(4) OTHER COMMON LAW DOCTRINES NOT AF-  
19 FECTED.—Except as specifically provided in this  
20 subsection, the provisions of this subsection shall not  
21 be construed as altering or supplanting any other  
22 rule of law, and the requirements of this subsection  
23 shall be construed as being in addition to any such  
24 other rule of law.

1           “(5) REGULATIONS.—The Secretary shall pre-  
2       scribe such regulations as may be necessary or ap-  
3       propriate to carry out the purposes of this sub-  
4       section. Such regulations may include exemptions  
5       from the application of this subsection.”.

6       (b) EFFECTIVE DATE.—The amendments made by  
7       this section shall apply to transactions entered into after  
8       the date of the enactment of this Act.

9       **SEC. 202. PENALTY FOR FAILING TO DISCLOSE REPORT-**  
10                                   **ABLE TRANSACTION.**

11       (a) IN GENERAL.—Part I of subchapter B of chapter  
12       68 (relating to assessable penalties) is amended by insert-  
13       ing after section 6707 the following new section:

14       **“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORT-**  
15                                   **ABLE TRANSACTION INFORMATION WITH RE-**  
16                                   **TURN OR STATEMENT.**

17       “(a) IMPOSITION OF PENALTY.—Any person who  
18       fails to include on any return or statement any informa-  
19       tion with respect to a reportable transaction which is re-  
20       quired under section 6011 to be included with such return  
21       or statement shall pay a penalty in the amount determined  
22       under subsection (b).

23       “(b) AMOUNT OF PENALTY.—

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

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

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

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

11                   “(i) a large entity, or

12                   “(ii) a high net worth individual,

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

16           “(B) LARGE ENTITY.—For purposes of  
17          subparagraph (A), the term ‘large entity’  
18          means, with respect to any taxable year, a per-  
19          son (other than a natural person) with gross re-  
20          ceipts in excess of \$10,000,000 for the taxable  
21          year in which the reportable transaction occurs  
22          or the preceding taxable year. Rules similar to  
23          the rules of paragraph (2) and subparagraphs  
24          (B), (C), and (D) of paragraph (3) of section



1 448(c) shall apply for purposes of this subpara-  
2 graph.

3 “(C) HIGH NET WORTH INDIVIDUAL.—For  
4 purposes of subparagraph (A), the term ‘high  
5 net worth individual’ means, with respect to a  
6 reportable transaction, a natural person whose  
7 net worth exceeds \$2,000,000 immediately be-  
8 fore the transaction.

9 “(c) DEFINITIONS.—For purposes of this section—  
10 “(1) REPORTABLE TRANSACTION.—The term  
11 ‘reportable transaction’ means any transaction with  
12 respect to which information is required to be in-  
13 cluded with a return or statement because, as deter-  
14 mined under regulations prescribed under section  
15 6011, such transaction is of a type which the Sec-  
16 retary determines as having a potential for tax  
17 avoidance or evasion.

18 “(2) LISTED TRANSACTION.—Except as pro-  
19 vided in regulations, the term ‘listed transaction’  
20 means a reportable transaction which is the same as,  
21 or substantially similar to, a transaction specifically  
22 identified by the Secretary as a tax avoidance trans-  
23 action for purposes of section 6011.

24 “(d) AUTHORITY TO RESCIND PENALTY.—

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

5                   “(A) the violation is with respect to a re-  
6                   portable transaction other than a listed trans-  
7                   action,

8                   “(B) the person on whom the penalty is  
9                   imposed has a history of complying with the re-  
10                  quirements of this title,

11                  “(C) it is shown that the violation is due  
12                  to an unintentional mistake of fact;

13                  “(D) imposing the penalty would be  
14                  against equity and good conscience, and

15                  “(E) rescinding the penalty would promote  
16                  compliance with the requirements of this title  
17                  and effective tax administration.

18           “(2) DISCRETION.—The exercise of authority  
19           under paragraph (1) shall be at the sole discretion  
20           of the Commissioner and may be delegated only to  
21           the head of the Office of Tax Shelter Analysis. The  
22           Commissioner, in the Commissioner’s sole discretion,  
23           may establish a procedure to determine if a penalty  
24           should be referred to the Commissioner or the head

1 of such Office for a determination under paragraph  
2 (1).

3 “(3) NO APPEAL.—Notwithstanding any other  
4 provision of law, any determination under this sub-  
5 section may not be reviewed in any administrative or  
6 judicial proceeding.

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

13 “(A) the facts and circumstances of the  
14 transaction,

15 “(B) the reasons for the rescission, and

16 “(C) the amount of the penalty rescinded.

17 “(5) REPORT.—The Commissioner shall each  
18 year report to the Committee on Ways and Means  
19 of the House of Representatives and the Committee  
20 on Finance of the Senate—

21 “(A) a summary of the total number and  
22 aggregate amount of penalties imposed, and re-  
23 scinded, under this section, and

1           “(B) a description of each penalty re-  
2           scinded under this subsection and the reasons  
3           therefor.

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

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

11          “(2) which—

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

14           “(B) is required to pay a penalty under  
15           section 6662A with respect to any reportable  
16           transaction at a rate prescribed under section  
17           6662A(c), or

18           “(C) is required to pay a penalty under  
19           section 6662B with respect to any noneconomic  
20           substance transaction,

21 the requirement to pay such penalty shall be disclosed in  
22 such reports filed by such person for such periods as the  
23 Secretary shall specify. Failure to make a disclosure in  
24 accordance with the preceding sentence shall be treated

1 as a failure to which the penalty under subsection (b)(2)  
2 applies.

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

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

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

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

14 **SEC. 203. ACCURACY-RELATED PENALTY FOR LISTED**  
15 **TRANSACTIONS AND OTHER REPORTABLE**  
16 **TRANSACTIONS HAVING A SIGNIFICANT TAX**  
17 **AVOIDANCE PURPOSE.**

18 (a) IN GENERAL.—Subchapter A of chapter 68 is  
19 amended by inserting after section 6662 the following new  
20 section:

1 **“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PEN-**  
2 **ALTY ON UNDERSTATEMENTS WITH RESPECT**  
3 **TO REPORTABLE TRANSACTIONS.**

4 “(a) IMPOSITION OF PENALTY.—If a taxpayer has a  
5 reportable transaction understatement for any taxable  
6 year, there shall be added to the tax an amount equal to  
7 20 percent of the amount of such understatement.

8 “(b) REPORTABLE TRANSACTION UNDERSTATE-  
9 MENT.—For purposes of this section—

10 “(1) IN GENERAL.—The term ‘reportable trans-  
11 action understatement’ means the sum of—

12 “(A) the product of—

13 “(i) the amount of the increase (if  
14 any) in taxable income which results from  
15 a difference between the proper tax treat-  
16 ment of an item to which this section ap-  
17 plies and the taxpayer’s treatment of such  
18 item (as shown on the taxpayer’s return of  
19 tax), and

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

23 “(B) the amount of the decrease (if any)  
24 in the aggregate amount of credits determined  
25 under subtitle A which results from a difference  
26 between the taxpayer’s treatment of an item to

1           which this section applies (as shown on the tax-  
2           payer's return of tax) and the proper tax treat-  
3           ment of such item.

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

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

13                   “(A) any listed transaction, and

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

18           “(c) HIGHER PENALTY FOR NONDISCLOSED LISTED  
19           AND OTHER AVOIDANCE TRANSACTIONS.—

20           “(1) IN GENERAL.—Subsection (a) shall be ap-  
21           plied by substituting ‘30 percent’ for ‘20 percent’  
22           with respect to the portion of any reportable trans-  
23           action understatement with respect to which the re-  
24           quirement of section 6664(d)(2)(A) is not met.

1           “(2) RULES APPLICABLE TO ASSERTION AND  
2           COMPROMISE OF PENALTY.—

3           “(A) IN GENERAL.—Only upon the ap-  
4           proval by the Chief Counsel for the Internal  
5           Revenue Service or the Chief Counsel’s delegate  
6           at the national office of the Internal Revenue  
7           Service may a penalty to which paragraph (1)  
8           applies be included in a 1st letter of proposed  
9           deficiency which allows the taxpayer an oppor-  
10          tunity for administrative review in the Internal  
11          Revenue Service Office of Appeals. If such a  
12          letter is provided to the taxpayer, only the Com-  
13          missioner of Internal Revenue may compromise  
14          all or any portion of such penalty.

15          “(B) APPLICABLE RULES.—The rules of  
16          paragraphs (2), (3), (4), and (5) of section  
17          6707A(d) shall apply for purposes of subpara-  
18          graph (A).

19          “(d) DEFINITIONS OF REPORTABLE AND LISTED  
20          TRANSACTIONS.—For purposes of this section, the terms  
21          ‘reportable transaction’ and ‘listed transaction’ have the  
22          respective meanings given to such terms by section  
23          6707A(c).

24          “(e) SPECIAL RULES.—



1           “(1) COORDINATION WITH PENALTIES, ETC.,  
2           ON OTHER UNDERSTATEMENTS.—In the case of an  
3           understatement (as defined in section 6662(d)(2))—

4                   “(A) the amount of such understatement  
5                   (determined without regard to this paragraph)  
6                   shall be increased by the aggregate amount of  
7                   reportable transaction understatements and  
8                   noneconomic substance transaction understate-  
9                   ments for purposes of determining whether  
10                  such understatement is a substantial under-  
11                  statement under section 6662(d)(1), and

12                   “(B) the addition to tax under section  
13                   6662(a) shall apply only to the excess of the  
14                   amount of the substantial understatement (if  
15                   any) after the application of subparagraph (A)  
16                   over the aggregate amount of reportable trans-  
17                   action understatements and noneconomic sub-  
18                   stance transaction understatements.

19           “(2) COORDINATION WITH OTHER PEN-  
20           ALTIES.—

21                   “(A) APPLICATION OF FRAUD PENALTY.—  
22                   References to an underpayment in section 6663  
23                   shall be treated as including references to a re-  
24                   portable transaction understatement and a non-  
25                   economic substance transaction understatement.

1           “(B) NO DOUBLE PENALTY.—This section  
2           shall not apply to any portion of an understatement  
3           on which a penalty is imposed under section  
4           6662B or 6663.

5           “(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no  
6           event shall any tax treatment included with an  
7           amendment or supplement to a return of tax be  
8           taken into account in determining the amount of any  
9           reportable transaction understatement or non-  
10          economic substance transaction understatement if  
11          the amendment or supplement is filed after the earlier  
12          of the date the taxpayer is first contacted by the  
13          Secretary regarding the examination of the return or  
14          such other date as is specified by the Secretary.

16          “(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of  
17          this subsection, the term ‘noneconomic substance transaction understatement’ has the  
18          meaning given such term by section 6662B(c).

21          “(5) CROSS REFERENCE.—

**“For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).”.**

22          (b) DETERMINATION OF OTHER UNDERSTATE-  
23          MENTS.—Subparagraph (A) of section 6662(d)(2) is

1 amended by adding at the end the following flush sen-  
2 tence:

3 “The excess under the preceding sentence shall  
4 be determined without regard to items to which  
5 section 6662A applies and without regard to  
6 items with respect to which a penalty is im-  
7 posed by section 6662B.”.

8 (c) REASONABLE CAUSE EXCEPTION.—

9 (1) IN GENERAL.—Section 6664 is amended by  
10 adding at the end the following new subsection:

11 “(d) REASONABLE CAUSE EXCEPTION FOR REPORT-  
12 ABLE TRANSACTION UNDERSTATEMENTS.—

13 “(1) IN GENERAL.—No penalty shall be im-  
14 posed under section 6662A with respect to any por-  
15 tion of a reportable transaction understatement if it  
16 is shown that there was a reasonable cause for such  
17 portion and that the taxpayer acted in good faith  
18 with respect to such portion.

19 “(2) SPECIAL RULES.—Paragraph (1) shall not  
20 apply to any reportable transaction understatement  
21 unless—

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

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

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

6           A taxpayer failing to adequately disclose in accord-  
7           ance with section 6011 shall be treated as meeting  
8           the requirements of subparagraph (A) if the penalty  
9           for such failure was rescinded under section  
10          6707A(d).

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

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

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

20                         “(ii) relates solely to the taxpayer’s  
21                         chances of success on the merits of such  
22                         treatment and does not take into account  
23                         the possibility that a return will not be au-  
24                         dited, such treatment will not be raised on

1           audit, or such treatment will be resolved  
2           through settlement if it is raised.

3           “(B) CERTAIN OPINIONS MAY NOT BE RE-  
4           LIED UPON.—

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

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

11                           “(II) the opinion is described in  
12           clause (iii).

13                   “(ii) DISQUALIFIED TAX ADVISORS.—  
14           A tax advisor is described in this clause if  
15           the tax advisor—

16                           “(I) is a material advisor (within  
17           the meaning of section 6111(b)(1))  
18           who participates in the organization,  
19           management, promotion, or sale of  
20           the transaction or who is related  
21           (within the meaning of section 267(b)  
22           or 707(b)(1)) to any person who so  
23           participates,

1                   “(II) is compensated directly or  
2 indirectly by a material advisor with  
3 respect to the transaction,

4                   “(III) has a fee arrangement  
5 with respect to the transaction which  
6 is contingent on all or part of the in-  
7 tended tax benefits from the trans-  
8 action being sustained,

9                   “(IV) has an arrangement with  
10 respect to the transaction which pro-  
11 vides that contractual disputes be-  
12 tween the taxpayer and the advisor  
13 are to be settled by arbitration or  
14 which limits damages by reference to  
15 fees paid to the advisor for such  
16 transaction, or

17                   “(V) as determined under regula-  
18 tions prescribed by the Secretary, has  
19 a disqualifying financial interest with  
20 respect to the transaction.

21                   “(iii) DISQUALIFIED OPINIONS.—For  
22 purposes of clause (i), an opinion is dis-  
23 qualified if the opinion—

1                   “(I) is based on unreasonable  
2                   factual or legal assumptions (includ-  
3                   ing assumptions as to future events),

4                   “(II) unreasonably relies on rep-  
5                   resentations, statements, findings, or  
6                   agreements of the taxpayer or any  
7                   other person,

8                   “(III) does not identify and con-  
9                   sider all relevant facts,

10                   “(IV) is not signed by all individ-  
11                   uals who are principal authors of the  
12                   opinion, or

13                   “(V) fails to meet any other re-  
14                   quirement as the Secretary may pre-  
15                   scribe.”.

16                   (2) CONFORMING AMENDMENT.—The heading  
17                   for subsection (c) of section 6664 is amended by in-  
18                   serting “FOR UNDERPAYMENTS” after “EXCEP-  
19                   TION”.

20                   (d) CONFORMING AMENDMENTS.—

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

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

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

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

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

8 “(i) a partnership or other entity,

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

11 “(iii) any other plan or arrangement,  
12 if a significant purpose of such partnership, en-  
13 tity, plan, or arrangement is the avoidance or  
14 evasion of Federal income tax.”.

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

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

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

22 (6)(A) The heading for section 6662 is amend-  
23 ed to read as follows:



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

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

“Sec. 6662. Imposition of accuracy-related penalty on underpay-  
ments.

“Sec. 6662A. Imposition of accuracy-related penalty on under-  
statements with respect to reportable trans-  
actions.”.

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

10 **SEC. 204. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
11 **UTABLE TO TRANSACTIONS LACKING ECO-**  
12 **NOMIC SUBSTANCE, ETC.**

13 (a) **IN GENERAL.**—Subchapter A of chapter 68 is  
14 amended by inserting after section 6662A the following  
15 new section:

16 **“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIB-**  
17 **UTABLE TO TRANSACTIONS LACKING ECO-**  
18 **NOMIC SUBSTANCE, ETC.**

19 “(a) **IMPOSITION OF PENALTY.**—If a taxpayer has an  
20 noneconomic substance transaction understatement for  
21 any taxable year, there shall be added to the tax an  
22 amount equal to 40 percent of the amount of such under-  
23 statement.

1       “(b) REDUCTION OF PENALTY FOR DISCLOSED  
2 TRANSACTIONS.—Subsection (a) shall be applied by sub-  
3 stituting ‘20 percent’ for ‘40 percent’ with respect to the  
4 portion of any noneconomic substance transaction under-  
5 statement with respect to which the relevant facts affect-  
6 ing the tax treatment of the item are adequately disclosed  
7 in the return or a statement attached to the return.

8       “(c) NONECONOMIC SUBSTANCE TRANSACTION UN-  
9 DERSTATEMENT.—For purposes of this section—

10           “(1) IN GENERAL.—The term ‘noneconomic  
11 substance transaction understatement’ means any  
12 amount which would be an understatement under  
13 section 6662A(b)(1) if section 6662A were applied  
14 by taking into account items attributable to non-  
15 economic substance transactions rather than items  
16 to which section 6662A would apply without regard  
17 to this paragraph.

18           “(2) NONECONOMIC SUBSTANCE TRANS-  
19 ACTION.—The term ‘noneconomic substance trans-  
20 action’ means any transaction if—

21                   “(A) there is a lack of economic substance  
22                   (within the meaning of section 7701(n)(1)) for  
23                   the transaction giving rise to the claimed ben-  
24                   efit or the transaction was not respected under  
25                   section 7701(n)(2), or

1                   “(B) the transaction fails to meet the re-  
2                   quirements of any similar rule of law.

3                   “(d) RULES APPLICABLE TO COMPROMISE OF PEN-  
4                   ALTY.—

5                   “(1) IN GENERAL.—If the 1st letter of pro-  
6                   posed deficiency which allows the taxpayer an oppor-  
7                   tunity for administrative review in the Internal Rev-  
8                   enue Service Office of Appeals has been sent with  
9                   respect to a penalty to which this section applies,  
10                  only the Commissioner of Internal Revenue may  
11                  compromise all or any portion of such penalty.

12                  “(2) APPLICABLE RULES.—The rules of para-  
13                  graphs (2), (3), (4), and (5) of section 6707A(d)  
14                  shall apply for purposes of paragraph (1).

15                  “(e) COORDINATION WITH OTHER PENALTIES.—Ex-  
16                  cept as otherwise provided in this part, the penalty im-  
17                  posed by this section shall be in addition to any other pen-  
18                  alty imposed by this title.

19                  “(f) CROSS REFERENCES.—

**“(1) For coordination of penalty with understatement  
                  under section 6662 and other special rules,  
                  see section 6662A(e).**

**“(2) For reporting of penalty imposed under this  
                  section to the Securities and Exchange Commission,  
                  see section 6707A(e).”.**

20                  (b) CLERICAL AMENDMENT.—The table of sections  
21                  for part II of subchapter A of chapter 68 is amended by

1 inserting after the item relating to section 6662A the fol-  
2 lowing new item:

“Sec. 6662B. Penalty for understatements attributable to trans-  
actions lacking economic substance, etc.”.

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

6 **SEC. 205. MODIFICATIONS OF SUBSTANTIAL UNDERSTATE-**  
7 **MENT PENALTY FOR NONREPORTABLE**  
8 **TRANSACTIONS.**

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

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

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

22 “(ii) \$10,000,000.”.

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

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

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

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

14 “(3) SECRETARIAL LIST.—For purposes of this  
15 subsection, section 6664(d)(2), and section  
16 6694(a)(1), the Secretary may prescribe a list of po-  
17 sitions for which the Secretary believes there is not  
18 substantial authority or there is no reasonable belief  
19 that the tax treatment is more likely than not the  
20 proper tax treatment. Such list (and any revisions  
21 thereof) shall be published in the Federal Register  
22 or the Internal Revenue Bulletin.”.

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

1 **SEC. 206. TAX SHELTER EXCEPTION TO CONFIDENTIALITY**  
2 **PRIVILEGES RELATING TO TAXPAYER COM-**  
3 **MUNICATIONS.**

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

7 “(b) SECTION NOT TO APPLY TO COMMUNICATIONS  
8 REGARDING TAX SHELTERS.—The privilege under sub-  
9 section (a) shall not apply to any written communication  
10 which is—

11 “(1) between a federally authorized tax practi-  
12 tioner and—

13 “(A) any person,

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

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

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

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

24 **SEC. 207. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

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

1 **“SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

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

6               “(1) information identifying and describing the  
7 transaction,

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

10              “(3) such other information as the Secretary  
11 may prescribe.

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

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

15               “(1) MATERIAL ADVISOR.—

16                       “(A) IN GENERAL.—The term ‘material  
17 advisor’ means any person—

18                               “(i) who provides any material aid,  
19 assistance, or advice with respect to orga-  
20 nizing, managing, promoting, selling, im-  
21 plementing, or carrying out any reportable  
22 transaction, and

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

1           “(B) THRESHOLD AMOUNT.—For purposes  
2           of subparagraph (A), the threshold amount is—

3                   “(i) \$50,000 in the case of a report-  
4                   able transaction substantially all of the tax  
5                   benefits from which are provided to nat-  
6                   ural persons, and

7                   “(ii) \$250,000 in any other case.

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

11          “(c) REGULATIONS.—The Secretary may prescribe  
12          regulations which provide—

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

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

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

21          (b) CONFORMING AMENDMENTS.—

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

                  “Sec. 6111. Disclosure of reportable transactions.”.



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

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

5           “(a) IN GENERAL.—Each material advisor (as de-  
6           fined in section 6111) with respect to any reportable  
7           transaction (as defined in section 6707A(c)) shall main-  
8           tain, in such manner as the Secretary may by regulations  
9           prescribe, a list—

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

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

15           This section shall apply without regard to whether a mate-  
16           rial advisor is required to file a return under section 6111  
17           with respect to such transaction.”.

18           (B) Section 6112 is amended by redesignating  
19           subsection (c) as subsection (b).

20           (C) Section 6112(b), as redesignated by sub-  
21           paragraph (B), is amended—

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

24                   (ii) by striking “shall prescribe” in para-  
25           graph (2) and inserting “may prescribe”.

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

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

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

6 **“SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES**  
7 **WITH RESPECT TO REPORTABLE TRANS-**  
8 **ACTIONS.”.**

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

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

12 (c) **REQUIRED DISCLOSURE NOT SUBJECT TO CLAIM**  
13 **OF CONFIDENTIALITY.**—Subparagraph (A) of section  
14 6112(b)(1), as redesignated by subsection (b)(2)(B), is  
15 amended by adding at the end the following new flush sen-  
16 tence:

17 “For purposes of this section, the identity of any  
18 person on such list shall not be privileged.”.

19 (d) **EFFECTIVE DATE.**—The amendments made by  
20 this section shall apply to transactions with respect to  
21 which material aid, assistance, or advice referred to in sec-  
22 tion 6111(b)(1)(A)(i) of the Internal Revenue Code of

1 1986 (as added by this section) is provided after the date  
2 of the enactment of this Act.

3 **SEC. 208. MODIFICATIONS TO PENALTY FOR FAILURE TO**  
4 **REGISTER TAX SHELTERS.**

5 (a) IN GENERAL.—Section 6707 (relating to failure  
6 to furnish information regarding tax shelters) is amended  
7 to read as follows:

8 **“SEC. 6707. FAILURE TO FURNISH INFORMATION REGARD-**  
9 **ING REPORTABLE TRANSACTIONS.**

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

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

15 “(2) files false or incomplete information with  
16 the Secretary with respect to such transaction,  
17 such person shall pay a penalty with respect to such return  
18 in the amount determined under subsection (b).

19 “(b) AMOUNT OF PENALTY.—

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

23 “(2) LISTED TRANSACTIONS.—The penalty im-  
24 posed under subsection (a) with respect to any listed

1 transaction shall be an amount equal to the greater  
2 of—

3 “(A) \$200,000, or

4 “(B) 50 percent of the gross income de-  
5 rived by such person with respect to aid, assist-  
6 ance, or advice which is provided with respect  
7 to the listed transaction before the date the re-  
8 turn, including the transaction is filed under  
9 section 6111.

10 Subparagraph (B) shall be applied by substituting  
11 ‘75 percent’ for ‘50 percent’ in the case of an inten-  
12 tional failure or act described in subsection (a).

13 “(c) CERTAIN RULES TO APPLY.—The provisions of  
14 section 6707A(d) shall apply to any penalty imposed under  
15 this section.

16 “(d) REPORTABLE AND LISTED TRANSACTIONS.—  
17 The terms ‘reportable transaction’ and ‘listed transaction’  
18 have the respective meanings given to such terms by sec-  
19 tion 6707A(c).”.

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

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

4 **SEC. 209. MODIFICATION OF PENALTY FOR FAILURE TO**  
5 **MAINTAIN LISTS OF INVESTORS.**

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

8 “(a) IMPOSITION OF PENALTY.—

9 “(1) IN GENERAL.—If any person who is re-  
10 quired to maintain a list under section 6112(a) fails  
11 to make such list available upon written request to  
12 the Secretary in accordance with section  
13 6112(b)(1)(A) within 20 business days after the  
14 date of the Secretary’s request, such person shall  
15 pay a penalty of \$10,000 for each day of such fail-  
16 ure after such 20th day.

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

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

1 **SEC. 210. PENALTY ON PROMOTERS OF TAX SHELTERS.**

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

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

14 **SEC. 211. INCREASES IN PENALTIES FOR AIDING AND ABET-**  
15 **TING UNDERSTATEMENTS.**

16 (a) **IN GENERAL.**—Section 6701(b) is amended to  
17 read as follows:

18 “(b) **AMOUNT OF PENALTY.**—

19 “(1) **IN GENERAL.**—The amount of the penalty  
20 imposed by subsection (a) shall be the greater of—

21 “(A) \$2,000, or

22 “(B) 50 percent of the gross income de-  
23 rived (or to be derived) from the activity giving  
24 rise to the penalty.

25 “(2) **CORPORATIONS.**—If the return, affidavit,  
26 claim, or other document relates to the tax liability

1 of a corporation, paragraph (1)(A) shall be applied  
2 by substituting '\$20,000' for '\$2,000'."

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

6 **Subtitle B—Enron-Related Tax**  
7 **Shelter Provisions**

8 **SEC. 221. LIMITATION ON TRANSFER OR IMPORTATION OF**  
9 **BUILT-IN LOSSES.**

10 (a) IN GENERAL.—Section 362 (relating to basis to  
11 corporations) is amended by adding at the end the fol-  
12 lowing new subsection:

13 “(e) LIMITATIONS ON BUILT-IN LOSSES.—

14 “(1) LIMITATION ON IMPORTATION OF BUILT-  
15 IN LOSSES.—

16 “(A) IN GENERAL.—If in any transaction  
17 described in subsection (a) or (b) there would  
18 (but for this subsection) be an importation of a  
19 net built-in loss, the basis of each property de-  
20 scribed in subparagraph (B) which is acquired  
21 in such transaction shall (notwithstanding sub-  
22 sections (a) and (b)) be its fair market value  
23 immediately after such transaction.

1           “(B) PROPERTY DESCRIBED.—For pur-  
2           poses of subparagraph (A), property is de-  
3           scribed in this subparagraph if—

4                   “(i) gain or loss with respect to such  
5                   property is not subject to tax under this  
6                   subtitle in the hands of the transferor im-  
7                   mediately before the transfer, and

8                   “(ii) gain or loss with respect to such  
9                   property is subject to such tax in the  
10                  hands of the transferee immediately after  
11                  such transfer.

12           In any case in which the transferor is a part-  
13           nership, the preceding sentence shall be applied  
14           by treating each partner in such partnership as  
15           holding such partner’s proportionate share of  
16           the property of such partnership.

17           “(C) IMPORTATION OF NET BUILT-IN  
18           LOSS.—For purposes of subparagraph (A),  
19           there is an importation of a net built-in loss in  
20           a transaction if the transferee’s aggregate ad-  
21           justed bases of property described in subpara-  
22           graph (B) which is transferred in such trans-  
23           action would (but for this paragraph) exceed  
24           the fair market value of such property imme-  
25           diately after such transaction.



1           “(2) LIMITATION ON TRANSFER OF BUILT-IN  
2           LOSSES IN SECTION 351 TRANSACTIONS.—

3                   “(A) IN GENERAL.—If—

4                           “(i) property is transferred by a  
5                           transferor in any transaction which is de-  
6                           scribed in subsection (a) and which is not  
7                           described in paragraph (1) of this sub-  
8                           section, and

9                                   “(ii) the transferee’s aggregate ad-  
10                                   justed bases of such property so trans-  
11                                   ferred would (but for this paragraph) ex-  
12                                   ceed the fair market value of such property  
13                                   immediately after such transaction,

14                                   then, notwithstanding subsection (a), the trans-  
15                                   feree’s aggregate adjusted bases of the property  
16                                   so transferred shall not exceed the fair market  
17                                   value of such property immediately after such  
18                                   transaction.

19                                   “(B) ALLOCATION OF BASIS REDUC-  
20                                   TION.—The aggregate reduction in basis by  
21                                   reason of subparagraph (A) shall be allocated  
22                                   among the property so transferred in proportion  
23                                   to their respective built-in losses immediately  
24                                   before the transaction.

1           “(C) EXCEPTION FOR TRANSFERS WITHIN  
2           AFFILIATED GROUP.—Subparagraph (A) shall  
3           not apply to any transaction if the transferor  
4           owns stock in the transferee meeting the re-  
5           quirements of section 1504(a)(2). In the case of  
6           property to which subparagraph (A) does not  
7           apply by reason of the preceding sentence, the  
8           transferor’s basis in the stock received for such  
9           property shall not exceed its fair market value  
10          immediately after the transfer.”.

11          (b) COMPARABLE TREATMENT WHERE LIQUIDA-  
12          TION.—Paragraph (1) of section 334(b) (relating to liq-  
13          uidation of subsidiary) is amended to read as follows:

14                 “(1) IN GENERAL.—If property is received by a  
15                 corporate distributee in a distribution in a complete  
16                 liquidation to which section 332 applies (or in a  
17                 transfer described in section 337(b)(1)), the basis of  
18                 such property in the hands of such distributee shall  
19                 be the same as it would be in the hands of the trans-  
20                 feror; except that the basis of such property in the  
21                 hands of such distributee shall be the fair market  
22                 value of the property at the time of the  
23                 distribution—



1       “(c) NO ALLOCATION OF BASIS DECREASE TO  
2 STOCK OF CORPORATE PARTNER.—In making an alloca-  
3 tion under subsection (a) of any decrease in the adjusted  
4 basis of partnership property under section 734(b)—

5               “(1) no allocation may be made to stock in a  
6 corporation (or any person which is related (within  
7 the meaning of section 267(b) or 707(b)(1)) to such  
8 corporation) which is a partner in the partnership,  
9 and

10              “(2) any amount not allocable to stock by rea-  
11 son of paragraph (1) shall be allocated under sub-  
12 section (a) to other partnership property in such  
13 manner as the Secretary may prescribe.

14 Gain shall be recognized to the partnership to the extent  
15 that the amount required to be allocated under paragraph  
16 (2) to other partnership property exceeds the aggregate  
17 adjusted basis of such other property immediately before  
18 the allocation required by paragraph (2).”.

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

22 **SEC. 223. EXPANDED DISALLOWANCE OF DEDUCTION FOR**  
23 **INTEREST ON CONVERTIBLE DEBT.**

24       (a) IN GENERAL.—Paragraph (2) of section 163(l)  
25 is amended by inserting “or equity held by the issuer (or

1 any related party) in any other person” after “or a related  
2 party”.

3 (b) CAPITALIZATION ALLOWED WITH RESPECT TO  
4 EQUITY OF PERSONS OTHER THAN ISSUER AND RE-  
5 LATED PARTIES.—Section 163(l) is amended by redesi-  
6 gating paragraphs (4) and (5) as paragraphs (5) and (6)  
7 and by inserting after paragraph (3) the following new  
8 paragraph:

9 “(4) CAPITALIZATION ALLOWED WITH RESPECT  
10 TO EQUITY OF PERSONS OTHER THAN ISSUER AND  
11 RELATED PARTIES.—If the disqualified debt instru-  
12 ment of a corporation is payable in equity held by  
13 the issuer (or any related party) in any other person  
14 (other than a related party), the basis of such equity  
15 shall be increased by the amount not allowed as a  
16 deduction by reason of paragraph (1) with respect to  
17 the instrument.”.

18 (c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED  
19 BY DEALERS IN SECURITIES.—Section 163(l), as amend-  
20 ed by subsection (b), is amended by redesignating para-  
21 graphs (5) and (6) as paragraphs (6) and (7) and by in-  
22 serting after paragraph (4) the following new paragraph:

23 “(5) EXCEPTION FOR CERTAIN INSTRUMENTS  
24 ISSUED BY DEALERS IN SECURITIES.—For purposes  
25 of this subsection, the term ‘disqualified debt instru-

1 ment' does not include indebtedness issued by a  
2 dealer in securities (or a related party) which is pay-  
3 able in, or by reference to, equity (other than equity  
4 of the issuer or a related party) held by such dealer  
5 in its capacity as a dealer in securities. For purposes  
6 of this paragraph, the term 'dealer in securities' has  
7 the meaning given such term by section 475."

8 (c) CONFORMING AMENDMENTS.—Paragraph (3) of  
9 section 163(l) is amended—

10 (1) by striking "or a related party" in the ma-  
11 terial preceding subparagraph (A) and inserting "or  
12 any other person", and

13 (2) by striking "or interest" each place it ap-  
14 pears.

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to debt instruments issued after  
17 the date of the enactment of this Act.

18 **SEC. 224. EXPANDED AUTHORITY TO DISALLOW TAX BENE-**  
19 **FITS UNDER SECTION 269.**

20 (a) IN GENERAL.—Subsection (a) of section 269 (re-  
21 lating to acquisitions made to evade or avoid income tax)  
22 is amended to read as follows:

23 "(a) IN GENERAL.—If—

24 "(1)(A) any person or persons acquire, directly  
25 or indirectly, control of a corporation, or



1 is amended by adding at the end the following flush sen-  
2 tence:

3           “Such term shall not include any period if the  
4           earning of subpart F income by such corpora-  
5           tion during such period would result in only a  
6           remote likelihood of an inclusion in gross in-  
7           come under section 951(a)(1)(A)(i).”.

8           (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to taxable years of controlled for-  
10 eign corporations beginning after the date of the enact-  
11 ment of this Act, and to taxable years of United States  
12 shareholders with or within which such taxable years of  
13 controlled foreign corporations end.

Amend the title so as to read: “A bill to provide for significant temporary relief from the alternative minimum tax and for a framework for a total reform of the alternative minimum tax.”.