

111TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to improve tax compliance  
with respect to offshore transactions, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Internal Revenue Code of 1986 to improve  
tax compliance with respect to offshore transactions, and  
for other purposes.

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

3       **SECTION 1. SHORT TITLE; ETC.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “\_\_\_\_\_ Act of \_\_\_\_\_”.

6       (b) AMENDMENT OF 1986 CODE.—Except as other-  
7       wise expressly provided, whenever in this Act an amend-  
8       ment or repeal is expressed in terms of an amendment  
9       to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
2 sion of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; etc.

Sec. 2. Information reporting regarding certain transfers to offshore accounts.

Sec. 3. Extension of statute of limitations for certain offshore transactions.

Sec. 4. Use of report of foreign bank and financial accounts for tax administra-  
tion purposes.

Sec. 5. Due diligence requirement of tax return preparers with respect to off-  
shore income.

Sec. 6. Modification of penalty for failure to file information with respect to  
certain foreign trusts.

Sec. 7. Treatment of foreign trust transfers of real estate, artwork, or jewelry  
consistently with transfers of securities.

Sec. 8. Doubling of certain penalties, fines, and interest on underpayments re-  
lated to certain offshore financial arrangements.

Sec. 9. Modification of treatment of certain foreign persons as American em-  
ployers.

5 **SEC. 2. INFORMATION REPORTING REGARDING CERTAIN**  
6 **TRANSFERS TO OFFSHORE ACCOUNTS.**

7 (a) IN GENERAL.—Subpart B of part III of sub-  
8 chapter A of chapter 61 is amended by inserting after sec-  
9 tion 6045B the following new sections:

10 **“SEC. 6045C. RETURNS BY FINANCIAL INSTITUTIONS RE-**  
11 **GARDING CERTAIN TRANSFERS TO OFF-**  
12 **SHORE ACCOUNTS.**

13 “(a) REQUIREMENT OF RETURN.—Any financial in-  
14 stitution directly or indirectly transferring more than  
15 \$10,000 to a financial account outside the United States  
16 (in 1 transaction or 2 or more related transactions) at the  
17 direction of, on behalf of, or for the benefit of a customer  
18 who is a United States person (other than an entity the

1 ownership interests in which are regularly traded on an  
2 established securities market) shall make a return accord-  
3 ing to the forms or regulations prescribed by the Sec-  
4 retary.

5 “(b) REQUIRED INFORMATION.—For purposes of  
6 subsection (a) the information required to be included on  
7 the return shall include—

8 “(1) the name, address, and taxpayer identifica-  
9 tion number of such financial institution and such  
10 United States person,

11 “(2) the name and address of the financial in-  
12 stitution at which such financial account is located,  
13 the type of account, the account number, the name  
14 under which the account is identified, and the  
15 amount transferred, and

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

18 “(c) STATEMENTS TO BE FURNISHED TO UNITED  
19 STATES PERSONS WITH RESPECT TO WHOM INFORMA-  
20 TION IS REQUIRED TO BE REPORTED.—A financial insti-  
21 tution required to make a return under subsection (a)  
22 shall furnish to each United States person whose name  
23 is required to be set forth in such return a statement  
24 showing—

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

4 “(2) the information required to be shown on  
5 such return with respect to such United States per-  
6 son.

7 The written statement required under the preceding sen-  
8 tence shall be furnished to such United States person on  
9 or before January 31 of the year following the calendar  
10 year for which the return under subsection (a) was re-  
11 quired to be made.

12 “(d) EXEMPTION.—The Secretary may by regula-  
13 tions exempt any class of United States persons or any  
14 class of accounts or entities from the requirements of this  
15 section if the Secretary determines that applying this sec-  
16 tion to such persons, accounts, or entities is not necessary  
17 to carry out the purposes of this section.”.

18 (b) CLERICAL AMENDMENT.—The table of sections  
19 for such subpart is amended by inserting after the item  
20 relating to section 6045B the following new items:.

“Sec. 6045C. Returns by financial institutions regarding certain transfers to  
offshore accounts.”.

21 (c) ASSESSABLE PENALTIES.—

22 (1) Subparagraph (B) of section 6724(d)(1) is  
23 amended by redesignating clauses (iv) through (xxii)

1 as clauses (v) through (xxiii), respectively, and by in-  
2 serting after clause (iv) the following new clause:

3 “(v) section 6045C (relating to re-  
4 turns by financial institutions regarding  
5 certain transfers to offshore accounts),”.

6 (2) Paragraph (2) of section 6724(d) is amend-  
7 ed by striking the period at the end of subparagraph  
8 (DD) and inserting “, or” and by inserting after  
9 subparagraph (DD) the following new subparagraph:

10 “(EE) section 6045C (relating to returns  
11 by financial institutions regarding certain trans-  
12 fers to offshore accounts).”.

13 (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall take effect with respect to amounts  
15 transferred after December 31 of the year of the date of  
16 the enactment of this Act.

17 **SEC. 3. EXTENSION OF STATUTE OF LIMITATIONS FOR CER-**  
18 **TAIN OFFSHORE TRANSACTIONS.**

19 (a) IN GENERAL.—Section 6501(c)(8) is amended by  
20 striking “3 years” and inserting “6 years”.

21 (b) ADDITIONAL REPORTS SUBJECT TO EXTENDED  
22 PERIOD.—Section 6501(c)(8) is amended—

23 (1) by inserting “pursuant to an election under  
24 section 1295(b) or” before “under section 6038”,

25 (2) by inserting “6045C,” after “6038B,” and

1 (3) by striking “or 6048” and inserting “6048,  
2 or 6680”.

3 (c) CLARIFICATION OF NEXUS BETWEEN FAILURE  
4 TO NOTIFY SECRETARY OF CERTAIN FOREIGN TRANS-  
5 FERS AND OTHER ITEMS ON TAX RETURN.—Section  
6 6501(c)(8) is amended by striking “event” and inserting  
7 “tax return, event,”.

8 (d) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to—

10 (1) returns filed after the date of the enactment  
11 of this Act; and

12 (2) returns filed on or before such date if the  
13 period specified in section 6501 of the Internal Rev-  
14 enue Code of 1986 (determined without regard to  
15 such amendments) for assessment of such taxes has  
16 not expired as of such date.

17 **SEC. 4. USE OF REPORT OF FOREIGN BANK AND FINANCIAL**  
18 **ACCOUNTS FOR TAX ADMINISTRATION PUR-**  
19 **POSES.**

20 (a) FBAR REQUIRED TO BE FILED WITH INCOME  
21 TAX RETURN.—

22 (1) IN GENERAL.—Part I of subchapter B of  
23 chapter 68 is amended by inserting after section  
24 6679 the following new section:

1 **“SEC. 6680. FAILURE TO INCLUDE REPORT ON FOREIGN FI-**  
2 **NANCIAL AGENCY TRANSACTIONS WITH RE-**  
3 **TURN.**

4 “(a) IN GENERAL.—Any person who is required to  
5 file a report under section 5314 of title 31, United States  
6 Code, for a taxable year and who fails to include a copy  
7 of such report on such person’s return of taxes imposed  
8 by subtitle A for such taxable year shall pay a penalty  
9 in an amount equal to the amount of the penalty that  
10 would be imposed under section 5321 of title 31, United  
11 States Code, if such person had failed to file such report  
12 under section 5314 of such Code.

13 “(b) LIMITATION.—Subsection (a) shall not apply to  
14 any person if the Secretary has imposed a penalty on such  
15 person with respect to such report under section 5321 of  
16 title 31, United States Code.”.

17 (2) CONFORMING AMENDMENT.—The table of  
18 sections for part I of subchapter B of chapter 68 is  
19 amended by inserting after the item relating to sec-  
20 tion 6679 the following new item:

21 (3) EFFECTIVE DATE.—The amendments made  
22 by this subsection shall apply to returns filed after  
23 **\_\_\_\_\_**.

24 (b) CLARIFYING THE CONNECTION OF FOREIGN FI-  
25 NANCIAL ACCOUNT REPORTING TO TAX ADMINISTRA-  
26 TION.—Paragraph (4) of section 6103(b) (relating to tax

1 administration) is amended by adding at the end the fol-  
2 lowing new sentence:

3 “For purposes of clause (i), section 5314 of title 31,  
4 United States Code, and sections 5321 and 5322 of  
5 such title (as such sections pertain to such section  
6 5314), shall be considered to be an internal revenue  
7 law.”.

8 **SEC. 5. DUE DILIGENCE REQUIREMENT OF TAX RETURN**  
9 **PREPARERS WITH RESPECT TO OFFSHORE**  
10 **INCOME.**

11 (a) IN GENERAL.—Section 6695 is amended by add-  
12 ing at the end the following new subsection:

13 “(h) FAILURE TO BE DILIGENT WITH RESPECT TO  
14 OFFSHORE INCOME.—Any person who is a tax return pre-  
15 parer who fails to comply with due diligence requirements  
16 imposed by the Secretary by regulations with respect to  
17 income derived from any transaction which is reportable  
18 under section 6045C or under section 5314 of title 31,  
19 United States Code, shall pay a penalty of \$100 for each  
20 such failure.”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to taxable years beginning after  
23 [\_\_\_\_\_].



1 **SEC. 6. MODIFICATION OF PENALTY FOR FAILURE TO FILE**  
2 **INFORMATION WITH RESPECT TO CERTAIN**  
3 **FOREIGN TRUSTS.**

4 (a) IN GENERAL.—Subsection (a) of section 6677 is  
5 amended by striking “35 percent of the gross reportable  
6 amount” and inserting “the greater of \$10,000 or 35 per-  
7 cent of the gross reportable amount (if such amount is  
8 ascertainable)”.

9 (b) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to returns required to be filed after  
11 **【December 31, 2008】**.

12 **SEC. 7. TREATMENT OF FOREIGN TRUST TRANSFERS OF**  
13 **REAL ESTATE, ARTWORK, OR JEWELRY CON-**  
14 **SISTENTLY WITH TRANSFERS OF SECURI-**  
15 **TIES.**

16 (a) IN GENERAL.—Section 643(i)(1) is amended by  
17 striking “or marketable securities” and inserting “or other  
18 property, including real estate, marketable securities, art-  
19 work, jewelry, and other personal property,”.

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

1 **SEC. 8. DOUBLING OF CERTAIN PENALTIES, FINES, AND IN-**  
2 **TEREST ON UNDERPAYMENTS RELATED TO**  
3 **CERTAIN OFFSHORE FINANCIAL ARRANGE-**  
4 **MENTS.**

5 (a) DETERMINATION OF PENALTY.—

6 (1) IN GENERAL.—Notwithstanding any other  
7 provision of law, in the case of an applicable tax-  
8 payer—

9 (A) the determination as to whether any  
10 interest or applicable penalty is to be imposed  
11 with respect to any arrangement described in  
12 paragraph (2), or to any underpayment of Fed-  
13 eral income tax attributable to items arising in  
14 connection with any such arrangement, shall be  
15 made without regard to the rules of subsections  
16 (b), (c), and (d) of section 6664 of the Internal  
17 Revenue Code of 1986, and

18 (B) if any such interest or applicable pen-  
19 alty is imposed, the amount of such interest or  
20 penalty shall be equal to twice that determined  
21 without regard to this section.

22 (2) APPLICABLE TAXPAYER.—For purposes of  
23 this subsection—

24 (A) IN GENERAL.—The term “applicable  
25 taxpayer” means a taxpayer which—

1 (i) has underreported its United  
2 States income tax liability with respect to  
3 any item which directly or indirectly in-  
4 volves—

5 (I) any financial arrangement  
6 which in any manner relies on the use  
7 of offshore payment mechanisms (in-  
8 cluding credit, debit, or charge cards)  
9 issued by banks or other entities in  
10 foreign jurisdictions, or

11 (II) any offshore financial ar-  
12 rangement (including any arrange-  
13 ment with foreign banks, financial in-  
14 stitutions, corporations, partnerships,  
15 trusts, or other entities), and

16 (ii) has neither signed a closing agree-  
17 ment pursuant to the Voluntary Offshore  
18 Compliance Initiative established by the  
19 Department of the Treasury under Rev-  
20 enue Procedure 2003–11 nor voluntarily  
21 disclosed its participation in such arrange-  
22 ment by notifying the Internal Revenue  
23 Service of such arrangement prior to the  
24 issue being raised by the Internal Revenue  
25 Service during an examination.

1 (B) AUTHORITY TO WAIVE.—The Sec-  
2 retary of the Treasury or the Secretary’s dele-  
3 gate may waive the application of paragraph (1)  
4 to any taxpayer if the Secretary or the Sec-  
5 retary’s delegate determines that the use of  
6 such offshore payment mechanisms is incidental  
7 to the transaction and, in addition, in the case  
8 of a trade or business, such use is conducted in  
9 the ordinary course of the type of trade or busi-  
10 ness of the taxpayer.

11 (C) ISSUES RAISED.—For purposes of sub-  
12 paragraph (A)(ii), an item shall be treated as  
13 an issue raised during an examination if the in-  
14 dividual examining the return—

15 (i) communicates to the taxpayer  
16 knowledge about the specific item, or

17 (ii) has made a request to the tax-  
18 payer for information and the taxpayer  
19 could not make a complete response to  
20 that request without giving the examiner  
21 knowledge of the specific item.

22 (b) APPLICABLE PENALTY.—For purposes of this  
23 section, the term “applicable penalty” means any penalty,  
24 addition to tax, or fine imposed under chapter 68 of the  
25 Internal Revenue Code of 1986.

1 (c) EFFECTIVE DATE.—The provisions of this section  
2 shall apply to interest, penalties, additions to tax, and  
3 fines with respect to any taxable year if, as of the date  
4 of the enactment of this Act, the assessment of any tax,  
5 penalty, or interest with respect to such taxable year is  
6 not prevented by the operation of any law or rule of law.

7 **SEC. 9. MODIFICATION OF TREATMENT OF CERTAIN FOR-**  
8 **EIGN PERSONS AS AMERICAN EMPLOYERS.**

9 (a) IN GENERAL.—Paragraph (1) of section 3121(z)  
10 is amended to read as follows:

11 “(1) IN GENERAL.—If any employee of a for-  
12 eign person, or any individual who normally per-  
13 forms at least 100 hours of services per month for  
14 such foreign person, is performing services in con-  
15 nection with a contract between the United States  
16 Government (or any instrumentality thereof) and  
17 any member of any domestically controlled group of  
18 entities which includes such foreign person, then for  
19 purposes of this chapter—

20 “(A) such individual (unless the individual  
21 is otherwise an employee under subsection (d))  
22 shall be treated as an employee of such foreign  
23 person, and

24 “(B) such foreign person shall be treated  
25 as an American employer,

1 with respect to services performed by such employee  
2 or individual.”.

3 (b) CONFORMING AMENDMENT.—So much of para-  
4 graph (2) of section 210(e) of the Social Security Act (42  
5 U.S.C. 410(e)) as precedes subparagraph (B) thereof is  
6 amended to read as follows:

7 “(1)(A) If any employee of a foreign person, or  
8 any individual who normally performs at least 100  
9 hours of services per month for such foreign person,  
10 is performing services in connection with a contract  
11 between the United States Government (or any in-  
12 strumentality thereof) and any member of any do-  
13 mestically controlled group of entities which includes  
14 such foreign person, then—

15 “(i) such individual (unless the individual  
16 is otherwise an employee under subsection (j))  
17 shall be treated as an employee of such foreign  
18 person, and

19 “(ii) such foreign person shall be treated  
20 as an American employer,  
21 with respect to services performed by such em-  
22 ployee or individual.”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to services performed in calendar

1 months beginning more than 30 days after the date of the  
2 enactment of this Act.