

111th CONGRESS  
1st Session  
**H. R. 4213 [Title V Only]**  
**[As Passed by the House of Representatives December 9, 2009]**

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**AN ACT**

To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

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

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

- (a) Short Title- This Act may be cited as the 'Tax Extenders Act of 2009'.
- (b) Amendment of 1986 Code- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.
- (c) Table of Contents- The table of contents for this Act is as follows:
  - Sec. 1. Short title; amendment of 1986 Code; table of contents.

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**TITLE V--FOREIGN ACCOUNT TAX COMPLIANCE**

**Subtitle A--Increased Disclosure of Beneficial Owners**

- Sec. 501. Reporting on certain foreign accounts.
- Sec. 502. Repeal of certain foreign exceptions to registered bond requirements.

**Subtitle B--Under Reporting With Respect to Foreign Assets**

- Sec. 511. Disclosure of information with respect to foreign financial assets.
- Sec. 512. Penalties for underpayments attributable to undisclosed foreign financial assets.
- Sec. 513. Modification of statute of limitations for significant omission of income in connection with foreign assets.

**Subtitle C--Other Disclosure Provisions**

- Sec. 521. Reporting of activities with respect to passive foreign investment companies.

Sec. 522. Secretary permitted to require financial institutions to file certain returns related to withholding on foreign transfers electronically.

### **Subtitle D--Provisions Related to Foreign Trusts**

Sec. 531. Clarifications with respect to foreign trusts which are treated as having a United States beneficiary.

Sec. 532. Presumption that foreign trust has United States beneficiary.

Sec. 533. Uncompensated use of trust property.

Sec. 534. Reporting requirement of United States owners of foreign trusts.

Sec. 535. Minimum penalty with respect to failure to report on certain foreign trusts.

### **Subtitle E--Substitute Dividends and Dividend Equivalent Payments Received by Foreign Persons Treated as Dividends**

Sec. 541. Substitute dividends and dividend equivalent payments received by foreign persons treated as dividends.

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## **TITLE V--FOREIGN ACCOUNT TAX COMPLIANCE**

### **Subtitle A--Increased Disclosure of Beneficial Owners**

#### **SEC. 501. REPORTING ON CERTAIN FOREIGN ACCOUNTS.**

(a) In General- The Internal Revenue Code of 1986 is amended by inserting after chapter 3 the following new chapter:

#### **`CHAPTER 4--TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS**

`Sec. 1471. Withholdable payments to foreign financial institutions.

`Sec. 1472. Withholdable payments to other foreign entities.

`Sec. 1473. Definitions.

`Sec. 1474. Special rules.

#### **`SEC. 1471. WITHHOLDABLE PAYMENTS TO FOREIGN FINANCIAL INSTITUTIONS.**

`(a) In General- In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), the withholding agent with

respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

`(b) Reporting Requirements, etc-

`(1) IN GENERAL- The requirements of this subsection are met with respect to any foreign financial institution if an agreement is in effect between such institution and the Secretary under which such institution agrees--

`(A) to obtain such information regarding each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,

`(B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts,

`(C) in the case of any United States account maintained by such institution, to report on an annual basis the information described in subsection (c) with respect to such account,

`(D) to deduct and withhold a tax equal to 30 percent of--

`(i) any passthru payment which is made by such institution to a recalcitrant account holder or another foreign financial institution which does not meet the requirements of this subsection, and

`(ii) in the case of any passthru payment which is made by such institution to a foreign financial institution which has in effect an election under paragraph (3) with respect to such payment, so much of such payment as is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection,

`(E) to comply with requests by the Secretary for additional information with respect to any United States account maintained by such institution, and

`(F) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c) with respect to any United States account maintained by such institution--

`(i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and

`(ii) if a waiver described in clause (i) is not obtained from each such holder within a reasonable period of time, to close such account.

Any agreement entered into under this subsection may be terminated by the Secretary upon a determination by the Secretary that the foreign financial institution is out of compliance with such agreement.

`(2) FINANCIAL INSTITUTIONS DEEMED TO MEET REQUIREMENTS IN CERTAIN CASES- A foreign financial institution may be treated by the Secretary as meeting the requirements of this subsection if--

`(A) such institution--

`(i) complies with such procedures as the Secretary may prescribe to ensure that such institution does not maintain United States accounts, and

`(ii) meets such other requirements as the Secretary may prescribe with respect to accounts of other foreign financial institutions maintained by such institution, or

`(B) such institution is a member of a class of institutions with respect to which the Secretary has determined that the application of this section is not necessary to carry out the purposes of this section.

`(3) ELECTION TO BE WITHHELD UPON RATHER THAN WITHHOLD ON PAYMENTS TO RECALCITRANT ACCOUNT HOLDERS AND NONPARTICIPATING FOREIGN FINANCIAL INSTITUTIONS- In the case of a foreign financial institution which meets the requirements of this subsection and such other requirements as the Secretary may provide and which elects the application of this paragraph--

`(A) the requirements of paragraph (1)(D) shall not apply,

`(B) the withholding tax imposed under subsection (a) shall apply with respect to any withholdable payment to such institution to the extent such payment is allocable to accounts held by recalcitrant account holders or foreign financial institutions which do not meet the requirements of this subsection, and

`(C) the agreement described in paragraph (1) shall--

`(i) require such institution to notify the withholding agent with respect to each such payment of the institution's election under this paragraph and such other information as may be necessary for the withholding agent to determine the appropriate amount to deduct and withhold from such payment, and

`(ii) include a waiver of any right under any treaty of the United States with respect to any amount deducted and withheld pursuant to an election under this paragraph.

To the extent provided by the Secretary, the election under this paragraph may be made with respect to certain classes or types of accounts of the foreign financial institution.

`(c) Information Required To Be Reported on United States Accounts-

`(1) IN GENERAL- The agreement described in subsection (b) shall require the foreign financial institution to report the following with respect to each United States account maintained by such institution:

`(A) The name, address, and TIN of each account holder which is a specified United States person and, in the case of any account holder which is a United States owned foreign entity, the name, address, and TIN of each substantial United States owner of such entity.

`(B) The account number.

`(C) The account balance or value (determined at such time and in such manner as the Secretary may provide).

`(D) The gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

`(2) ELECTION TO BE SUBJECT TO SAME REPORTING AS UNITED STATES FINANCIAL INSTITUTIONS- In the case of a foreign financial institution which elects the application of this paragraph--

`(A) subparagraphs (C) and (D) of paragraph (1) shall not apply, and

`(B) the agreement described in subsection (b) shall require such foreign financial institution to report such information with respect to each United States account maintained by such institution as such institution would be required to report under sections 6041, 6042, 6045, and 6049 if--

`(i) such institution were a United States person, and

`(ii) each holder of such account which is a specified United States person or United States owned foreign entity were a natural person and citizen of the United States.

An election under this paragraph shall be made at such time, in such manner, and subject to such conditions as the Secretary may provide.

`(3) SEPARATE REQUIREMENTS FOR QUALIFIED INTERMEDIARIES- In the case of a foreign financial institution which is treated as a qualified intermediary by the Secretary for purposes of section 1441 and the regulations issued thereunder, the requirements of this section shall be in addition to any reporting or other requirements imposed by the Secretary for purposes of such treatment.

`(d) Definitions- For purposes of this section--

`(1) UNITED STATES ACCOUNT-

`(A) IN GENERAL- The term 'United States account' means any financial account which is held by one or more specified United States persons or United States owned foreign entities.

`(B) EXCEPTION FOR CERTAIN ACCOUNTS HELD BY INDIVIDUALS- Unless the foreign financial institution elects to not have this subparagraph apply, such term shall not include any depository account maintained by such financial institution if--

`(i) each holder of such account is a natural person, and

`(ii) with respect to each holder of such account, the aggregate value of all depository accounts held (in whole or in part) by such holder and maintained by the same financial institution which maintains such account does not exceed \$50,000.

To the extent provided by the Secretary, financial institutions which are members of the same expanded affiliated group shall be treated for purposes of clause (ii) as a single financial institution.

`(C) ELIMINATION OF DUPLICATIVE REPORTING

REQUIREMENTS- Such term shall not include any financial account in a foreign financial institution if--

`(i) such account is held by another financial institution which meets the requirements of subsection (b), or

(ii) the holder of such account is otherwise subject to information reporting requirements which the Secretary determines would make the reporting required by this section with respect to United States accounts duplicative.

(2) FINANCIAL ACCOUNT- The term 'financial account' means, with respect to any financial institution--

- (A) any depository account maintained by such financial institution,
- (B) any custodial account maintained by such financial institution, and
- (C) except as otherwise provided by the Secretary, any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market).

Any equity or debt interest which constitutes a financial account under subparagraph (C) with respect to any financial institution shall be treated for purposes of this section as maintained by such financial institution.

(3) UNITED STATES OWNED FOREIGN ENTITY- The term 'United States owned foreign entity' means any foreign entity which has one or more substantial United States owners.

(4) FOREIGN FINANCIAL INSTITUTION- The term 'foreign financial institution' means any financial institution which is a foreign entity. Except as otherwise provided by the Secretary, such term shall not include a financial institution which is organized under the laws of any possession of the United States.

(5) FINANCIAL INSTITUTION- Except as otherwise provided by the Secretary, the term 'financial institution' means any entity that--

- (A) accepts deposits in the ordinary course of a banking or similar business,
- (B) is engaged in the business of holding financial assets for the account of others, or
- (C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

(6) RECALCITRANT ACCOUNT HOLDER- The term 'recalcitrant account holder' means any account holder which--

- (A) fails to comply with reasonable requests for the information referred to in subsection (b)(1)(A) or (c)(1)(A), or
- (B) fails to provide a waiver described in subsection (b)(1)(F) upon request.

(7) PASSTHRU PAYMENT- The term 'passthru payment' means any withholdable payment or other payment which is attributable to a withholdable payment.

(e) Affiliated Groups-

(1) IN GENERAL- The requirements of subsections (b) and (c)(1) shall apply--

`(A) with respect to United States accounts maintained by the foreign financial institution, and

`(B) except as otherwise provided by the Secretary, with respect to United States accounts maintained by each other foreign financial institution (other than any foreign financial institution which meets the requirements of subsection (b)) which is a member of the same expanded affiliated group as such foreign financial institution.

`(2) EXPANDED AFFILIATED GROUP- For purposes of this section, the term 'expanded affiliated group' means an affiliated group as defined in section 1504(a), determined--

`(A) by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears, and

`(B) without regard to paragraphs (2) and (3) of section 1504(b).

A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence).

`(f) Exception for Certain Payments- Subsection (a) shall not apply to any payment if the beneficial owner of such payment is--

`(1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

`(2) any international organization or any wholly owned agency or instrumentality thereof,

`(3) any foreign central bank of issue, or

`(4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

## **`SEC. 1472. WITHHOLDABLE PAYMENTS TO OTHER FOREIGN ENTITIES.**

`(a) In General- In the case of any withholdable payment to a non-financial foreign entity, if--

`(1) the beneficial owner of such payment is such entity or any other non-financial foreign entity, and

`(2) the requirements of subsection (b) are not met with respect to such beneficial owner,

then the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

`(b) Requirements for Waiver of Withholding- The requirements of this subsection are met with respect to the beneficial owner of a payment if--

`(1) such beneficial owner or the payee provides the withholding agent with either--

`(A) a certification that such beneficial owner does not have any substantial United States owners, or

`(B) the name, address, and TIN of each substantial United States owner of such beneficial owner,



which is taken into account under section 871(b)(1) or 882(a)(1) for the taxable year.

`(C) SPECIAL RULE FOR SOURCING INTEREST PAID BY FOREIGN BRANCHES OF DOMESTIC FINANCIAL INSTITUTIONS- Subparagraph (B) of section 861(a)(1) shall not apply.

`(2) SUBSTANTIAL UNITED STATES OWNER-

`(A) IN GENERAL- The term `substantial United States owner' means--

`(i) with respect to any corporation, any specified United States person which owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value),

`(ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10 percent of the profits interests or capital interests in such partnership, and

`(iii) in the case of a trust--

`(I) any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1, and

`(II) to the extent provided by the Secretary in regulations or other guidance, any specified United States person which holds, directly or indirectly, more than 10 percent of the beneficial interests of such trust.

`(B) SPECIAL RULE FOR INVESTMENT VEHICLES- In the case of any financial institution described in section 1471(d)(5)(C), clauses (i), (ii), and (iii) of subparagraph (A) shall be applied by substituting `0 percent' for `10 percent'.

`(3) SPECIFIED UNITED STATES PERSON- Except as otherwise provided by the Secretary, the term `specified United States person' means any United States person other than--

`(A) any corporation the stock of which is regularly traded on an established securities market,

`(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation the stock of which is regularly traded on an established securities market,

`(C) any organization exempt from taxation under section 501(a) or an individual retirement plan,

`(D) the United States or any wholly owned agency or instrumentality thereof,

`(E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

`(F) any bank (as defined in section 581),

`(G) any real estate investment trust (as defined in section 856),

`(H) any regulated investment company (as defined in section 851),

`(I) any common trust fund (as defined in section 584(a)), and

`(J) any trust which--

`(i) is exempt from tax under section 664(c), or

`(ii) is described in section 4947(a)(1).

`(4) WITHHOLDING AGENT- The term `withholding agent' means all persons, in whatever capacity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment.

`(5) FOREIGN ENTITY- The term `foreign entity' means any entity which is not a United States person.

## **`SEC. 1474. SPECIAL RULES.**

`(a) Liability for Withheld Tax- Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

`(b) Credits and Refunds-

`(1) IN GENERAL- Except as provided in paragraph (2), the determination of whether any tax deducted and withheld under this chapter results in an overpayment by the beneficial owner of the payment to which such tax is attributable shall be made as if such tax had been deducted and withheld under subchapter A of chapter 3.

`(2) SPECIAL RULE WHERE FOREIGN FINANCIAL INSTITUTION IS BENEFICIAL OWNER OF PAYMENT-

`(A) IN GENERAL- In the case of any tax properly deducted and withheld under section 1471 from a specified financial institution payment--

`(i) if the foreign financial institution referred to in subparagraph (B) with respect to such payment is entitled to a reduced rate of tax with respect to such payment by reason of any treaty obligation of the United States--

`(I) the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate, and

`(II) no interest shall be allowed or paid with respect to such credit or refund, and

`(ii) if such foreign financial institution is not so entitled, no credit or refund shall be allowed or paid with respect to such tax.

`(B) SPECIFIED FINANCIAL INSTITUTION PAYMENT- The term `specified financial institution payment' means any payment if the beneficial owner of such payment is a foreign financial institution.

`(3) REQUIREMENT TO IDENTIFY SUBSTANTIAL UNITED STATES OWNERS- No credit or refund shall be allowed or paid with respect to any tax properly deducted and withheld under this chapter unless the beneficial owner of the payment provides the Secretary such information as the Secretary may require to determine whether such beneficial owner is a United States owned foreign entity (as defined in section 1471(d)(3)) and the identity of any substantial United States owners of such entity.

`(c) Confidentiality of Information-

`(1) IN GENERAL- For purposes of this chapter, rules similar to the rules of section 3406(f) shall apply.

`(2) DISCLOSURE OF LIST OF PARTICIPATING FOREIGN FINANCIAL INSTITUTIONS PERMITTED- The identity of a foreign financial institution which meets the requirements of section 1471(b) shall not be treated as return information for purposes of section 6103.

`(d) Coordination With Other Withholding Provisions- The Secretary shall provide for the coordination of this chapter with other withholding provisions under this title, including providing for the proper crediting of amounts deducted and withheld under this chapter against amounts required to be deducted and withheld under such other provisions.

`(e) Treatment of Withholding Under Agreements- Any tax deducted and withheld pursuant to an agreement described in section 1471(b) shall be treated for purposes of this title as a tax deducted and withheld by a withholding agent under section 1471(a).

`(f) Regulations- The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this chapter.'

(b) Special Rule for Interest on Overpayments- Subsection (e) of section 6611 is amended by adding at the end the following new paragraph:

`(4) CERTAIN WITHHOLDING TAXES- In the case of any overpayment resulting from tax deducted and withheld under chapter 3 or 4, paragraphs (1), (2), and (3) shall be applied by substituting `180 days' for `45 days' each place it appears.'

(c) Conforming Amendments-

(1) Section 6414 is amended by inserting `or 4' after `chapter 3'.

(2) Paragraph (1) of section 6501(b) is amended by inserting `4,' after `chapter 3,'.

(3) Paragraph (2) of section 6501(b) is amended--

(A) by inserting `4,' after `chapter 3,' in the text thereof, and

(B) by striking `TAXES AND TAX IMPOSED BY CHAPTER 3' in the heading thereof and inserting `AND WITHHOLDING TAXES'.

(4) Paragraph (3) of section 6513(b) is amended--

(A) by inserting `or 4' after `chapter 3', and

(B) by inserting `or 1474(b)' after `section 1462'.

(5) Subsection (c) of section 6513 is amended by inserting `4,' after `chapter 3,'.

(6) Paragraph (1) of section 6724(d) is amended by inserting `under chapter 4 or' after `filed with the Secretary' in the last sentence thereof.

(7) Paragraph (2) of section 6724(d) is amended by inserting `or 4' after `chapter 3'.

(8) The table of chapters of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

#### **`Chapter 4. Taxes To Enforce Reporting on Certain Foreign Accounts.'**

(d) Effective Date-

(1) IN GENERAL- Except as otherwise provided in this subsection, the amendments made by this section shall apply to payments made after December 31, 2012.

(2) GRANDFATHERED TREATMENT OF OUTSTANDING OBLIGATIONS- The amendments made by this section shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on the date which is 2 years after the date of the enactment of this Act.

(3) INTEREST ON OVERPAYMENTS- The amendment made by subsection (b) shall apply--

(A) in the case of such amendment's application to paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986, to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act,

(B) in the case of such amendment's application to paragraph (2) of such section, to claims for credit or refund of any overpayment filed after the date of the enactment of this Act (regardless of the taxable period to which such refund relates), and

(C) in the case of such amendment's application to paragraph (3) of such section, to refunds paid after the date of the enactment of this Act (regardless of the taxable period to which such refund relates).

## **SEC. 502. REPEAL OF CERTAIN FOREIGN EXCEPTIONS TO REGISTERED BOND REQUIREMENTS.**

(a) Repeal of Exception to Denial of Deduction for Interest on Non-Registered Bonds-

(1) IN GENERAL- Paragraph (2) of section 163(f) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(2) CONFORMING AMENDMENTS-

(A) Subparagraph (A) of section 163(f)(2) is amended by inserting `or' at the end of clause (ii), by striking `, or' at the end of clause (iii) and inserting a period, and by striking clause (iv).

(B) Subparagraph (B) of section 163(f)(2), as redesignated by paragraph (1), is amended--

(i) by striking `, and subparagraph (B),' in the matter preceding clause (i), and

(ii) by amending clause (i) to read as follows:

`(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and'

(C) Sections 165(j)(2)(A) and 1287(b)(1) are each amended by striking `except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply'.

(b) Repeal of Treatment as Portfolio Debt-

(1) IN GENERAL- Paragraph (2) of section 871(h) is amended to read as follows:

`(2) PORTFOLIO INTEREST- For purposes of this subsection, the term `portfolio interest' means any interest (including original issue discount) which--

`(A) would be subject to tax under subsection (a) but for this subsection, and

`(B) is paid on an obligation--

`(i) which is in registered form, and

`(ii) with respect to which--

`(I) the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person, or  
` (II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.'

(2) CONFORMING AMENDMENTS-

(A) Section 871(h)(3)(A) is amended by striking ` subparagraph (A) or (B) of'.

(B) Paragraph (2) of section 881(c) is amended to read as follows:

`(2) PORTFOLIO INTEREST- For purposes of this subsection, the term `portfolio interest' means any interest (including original issue discount) which--

`(A) would be subject to tax under subsection (a) but for this subsection, and

`(B) is paid on an obligation--

`(i) which is in registered form, and

`(ii) with respect to which--

`(I) the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person, or  
` (II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.'

(c) Dematerialized Book Entry Systems Treated as Registered Form- Paragraph (3) of section 163(f) is amended by inserting `, except that a dematerialized book entry system shall be treated as a book entry system described in such section' before the period at the end.

(d) Repeal of Exception to Requirement That Treasury Obligations Be in Registered Form-

(1) IN GENERAL- Subsection (g) of section 3121 of title 31, United States Code, is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) CONFORMING AMENDMENTS- Paragraph (1) of section 3121(g) of such title is amended--

(A) by adding `or' at the end of subparagraph (A),

(B) by striking `; or' at the end of subparagraph (B) and inserting a period, and

(C) by striking subparagraph (C).

(e) Preservation of Exception for Excise Tax Purposes- Paragraph (1) of section 4701(b) is amended to read as follows:

“(1) REGISTRATION-REQUIRED OBLIGATION-

“(A) IN GENERAL- The term ‘registration-required obligation’ has the same meaning as when used in section 163(f), except that such term shall not include any obligation which--

“(i) is required to be registered under section 149(a), or

“(ii) is described in subparagraph (B).

“(B) CERTAIN OBLIGATIONS NOT INCLUDED- An obligation is described in this subparagraph if--

“(i) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person,

“(ii) interest on such obligation is payable only outside the United States and its possessions, and

“(iii) on the face of such obligation there is a statement that any United States person who holds such obligation will be subject to limitations under the United States income tax laws.’.

(f) Effective Date- The amendments made by this section shall apply to obligations issued after the date which is 2 years after the date of the enactment of this Act.

**Subtitle B--Under Reporting With Respect to Foreign Assets**

**SEC. 511. DISCLOSURE OF INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.**

(a) In General- Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6038C the following new section:

**“SEC. 6038D. INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.**

“(a) In General- Any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall attach to such person's return of tax imposed by subtitle A for such taxable year the information described in subsection (c) with respect to each such asset if the aggregate value of all such assets exceeds \$50,000 (or such higher dollar amount as the Secretary may prescribe).

“(b) Specified Foreign Financial Assets- For purposes of this section, the term ‘specified foreign financial asset’ means--

“(1) any financial account (as defined in section 1471(d)(2)) maintained by a foreign financial institution (as defined in section 1471(d)(4)), and

“(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section 1471(d)(5))--

“(A) any stock or security issued by a person other than a United States person,

“(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

“(C) any interest in a foreign entity (as defined in section 1473).

`(c) Required Information- The information described in this subsection with respect to any asset is:

`(1) In the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account.

`(2) In the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part.

`(3) In the case of any other instrument, contract, or interest--

`(A) such information as is necessary to identify such instrument, contract, or interest, and

`(B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest.

`(4) The maximum value of the asset during the taxable year.

`(d) Penalty for Failure To Disclose-

`(1) IN GENERAL- If any individual fails to furnish the information described in subsection (c) with respect to any taxable year at the time and in the manner described in subsection (a), such person shall pay a penalty of \$10,000.

`(2) INCREASE IN PENALTY WHERE FAILURE CONTINUES AFTER NOTIFICATION- If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual shall pay a penalty (in addition to the penalties under paragraph (1)) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The penalty imposed under this paragraph with respect to any failure shall not exceed \$50,000.

`(e) Presumption That Value of Specified Foreign Financial Assets Exceeds Dollar Threshold- If--

`(1) the Secretary determines that an individual has an interest in one or more specified foreign financial assets, and

`(2) such individual does not provide sufficient information to demonstrate the aggregate value of such assets,

then the aggregate value of such assets shall be treated as being in excess of \$50,000 (or such higher dollar amount as the Secretary prescribes for purposes of subsection (a)) for purposes of assessing the penalties imposed under this section.

`(f) Application to Certain Entities- To the extent provided by the Secretary in regulations or other guidance, the provisions of this section shall apply to any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

`(g) Reasonable Cause Exception- No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

`(h) Regulations- The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide appropriate exceptions from the application of this section in the case of--

- (1) classes of assets identified by the Secretary, including any assets with respect to which the Secretary determines that disclosure under this section would be duplicative of other disclosures,
  - (2) nonresident aliens, and
  - (3) bona fide residents of any possession of the United States.'
- (b) Clerical Amendment- The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6038C the following new item:
- Sec. 6038D. Information with respect to foreign financial assets.'
- (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. 512. PENALTIES FOR UNDERPAYMENTS ATTRIBUTABLE TO UNDISCLOSED FOREIGN FINANCIAL ASSETS.**

- (a) In General- Section 6662 is amended--
- (1) in subsection (b), by inserting after paragraph (5) the following new paragraph:
    - (6) Any undisclosed foreign financial asset understatement.', and
  - (2) by adding at the end the following new subsection:
    - (i) Undisclosed Foreign Financial Asset Understatement-
      - (1) IN GENERAL- For purposes of this section, the term 'undisclosed foreign financial asset understatement' means, for any taxable year, the portion of the understatement for such taxable year which is attributable to any transaction involving an undisclosed foreign financial asset.
      - (2) UNDISCLOSED FOREIGN FINANCIAL ASSET- For purposes of this subsection, the term 'undisclosed foreign financial asset' means, with respect to any taxable year, any asset with respect to which information was required to be provided under section 6038, 6038B, 6038D, 6046A, or 6048 for such taxable year but was not provided by the taxpayer as required under the provisions of those sections.
      - (3) INCREASE IN PENALTY FOR UNDISCLOSED FOREIGN FINANCIAL ASSET UNDERSTATEMENTS- In the case of any portion of an underpayment which is attributable to any undisclosed foreign financial asset understatement, subsection (a) shall be applied with respect to such portion by substituting '40 percent' for '20 percent'.'
- (b) Effective Date- The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

## **SEC. 513. MODIFICATION OF STATUTE OF LIMITATIONS FOR SIGNIFICANT OMISSION OF INCOME IN CONNECTION WITH FOREIGN ASSETS.**

- (a) Extension of Statute of Limitations-
- (1) IN GENERAL- Paragraph (1) of section 6501(e) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by

inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

`(A) GENERAL RULE- If the taxpayer omits from gross income an amount properly includible therein and--

`(i) such amount is in excess of 25 percent of the amount of gross income stated in the return, or

`(ii) such amount--

`(I) is attributable to one or more assets with respect to which information is required to be reported under section 6038D (or would be so required if such section were applied without regard to the dollar threshold specified in subsection (a) thereof and without regard to any exceptions provided pursuant to subsection (h)(1) thereof), and

`(II) is in excess of \$5,000,

the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.'

(2) CONFORMING AMENDMENTS-

(A) Subparagraph (B) of section 6501(e)(1), as redesignated by paragraph (1), is amended by striking all that precedes clause (i) and inserting the following:

`(B) DETERMINATION OF GROSS INCOME- For purposes of subparagraph (A)--'

(B) Paragraph (2) of section 6229(c) is amended by striking `which is in excess of 25 percent of the amount of gross income stated in its return' and inserting `and such amount is described in clause (i) or (ii) of section 6501(e)(1)(A).'

(b) Additional Reports Subject to Extended Period- Paragraph (8) of section 6501(c) is amended--

(1) by inserting `pursuant to an election under section 1295(b) or' before `under section 6038',

(2) by inserting `1298(f),' before `6038', and

(3) by inserting `6038D,' after `6038B,'.

(c) Clarifications Related to Failure To Disclose Foreign Transfers- Paragraph (8) of section 6501(c) is amended by striking `event' and inserting `tax return, event,'.

(d) Effective Date- The amendments made by this section shall apply to--

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

(2) returns filed on or before such date if the period specified in section 6501 of the Internal Revenue Code of 1986 (determined without regard to such amendments) for assessment of such taxes has not expired as of such date.

**Subtitle C--Other Disclosure Provisions**

**SEC. 521. REPORTING OF ACTIVITIES WITH RESPECT TO PASSIVE FOREIGN INVESTMENT COMPANIES.**

- (a) In General- Section 1298 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:  
`f) Reporting Requirement- Except as otherwise provided by the Secretary, each United States person who is a shareholder of a passive foreign investment company shall file an annual report containing such information as the Secretary may require.'
- (b) Conforming Amendment- Subsection (e) of section 1291 is amended by striking ` , (d), and (f)' and inserting `and (d)'.  
(c) Effective Date- The amendments made by this section take effect on the date of the enactment of this Act.

## **SEC. 522. SECRETARY PERMITTED TO REQUIRE FINANCIAL INSTITUTIONS TO FILE CERTAIN RETURNS RELATED TO WITHHOLDING ON FOREIGN TRANSFERS ELECTRONICALLY.**

- (a) In General- Subsection (e) of section 6011 is amended by adding at the end the following new paragraph:  
`3) SPECIAL RULE FOR RETURNS FILED BY FINANCIAL INSTITUTIONS WITH RESPECT TO WITHHOLDING ON FOREIGN TRANSFERS- Paragraph (2)(A) shall not apply to any return filed by a financial institution (as defined in section 1471(d)(5)) with respect to tax for which such institution is made liable under section 1461 or 1474(a).'
- (b) Conforming Amendment- Subsection (c) of section 6724 is amended by inserting `or with respect to a return described in section 6011(e)(3)'.  
(c) Effective Date- The amendment made by this section shall apply to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

### **Subtitle D--Provisions Related to Foreign Trusts**

## **SEC. 531. CLARIFICATIONS WITH RESPECT TO FOREIGN TRUSTS WHICH ARE TREATED AS HAVING A UNITED STATES BENEFICIARY.**

- (a) In General- Paragraph (1) of section 679(c) is amended by adding at the end the following:  
`For purposes of subparagraph (A), an amount shall be treated as accumulated for the benefit of a United States person even if the United States person's interest in the trust is contingent on a future event.'
- (b) Clarification Regarding Discretion To Identify Beneficiaries- Subsection (c) of section 679 is amended by adding at the end the following new paragraph:  
`4) SPECIAL RULE IN CASE OF DISCRETION TO IDENTIFY BENEFICIARIES- For purposes of paragraph (1)(A), if any person has the discretion (by authority given in the trust agreement, by power of appointment, or otherwise) of making a distribution from the trust to, or for the benefit of, any person, such trust shall be treated as having a beneficiary who is a United States person unless--

- `(A) the terms of the trust specifically identify the class of persons to whom such distributions may be made, and
- `(B) none of those persons are United States persons during the taxable year.'

(c) Clarification That Certain Agreements and Understandings Are Terms of the Trust- Subsection (c) of section 679, as amended by subsection (b), is amended by adding at the end the following new paragraph:

- `(5) CERTAIN AGREEMENTS AND UNDERSTANDINGS TREATED AS TERMS OF THE TRUST- For purposes of paragraph (1)(A), if any United States person who directly or indirectly transfers property to the trust is directly or indirectly involved in any agreement or understanding (whether written, oral, or otherwise) that may result in the income or corpus of the trust being paid or accumulated to or for the benefit of a United States person, such agreement or understanding shall be treated as a term of the trust.'

## **SEC. 532. PRESUMPTION THAT FOREIGN TRUST HAS UNITED STATES BENEFICIARY.**

(a) In General- Section 679 is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

`(d) Presumption That Foreign Trust Has United States Beneficiary- If a United States person directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)), the Secretary may treat such trust as having a United States beneficiary for purposes of applying this section to such transfer unless such person--

- `(1) submits such information to the Secretary as the Secretary may require with respect to such transfer, and
- `(2) demonstrates to the satisfaction of the Secretary that such trust satisfies the requirements of subparagraphs (A) and (B) of subsection (c)(1).'

(b) Effective Date- The amendments made by this section shall apply to transfers of property after the date of the enactment of this Act.

## **SEC. 533. UNCOMPENSATED USE OF TRUST PROPERTY.**

(a) In General- Paragraph (1) of section 643(i) is amended--

- (1) by striking 'directly or indirectly to' and inserting '(or permits the use of any other trust property) directly or indirectly to or by', and
- (2) by inserting '(or the fair market value of the use of such property)' after 'the amount of such loan'.

(b) Exception for Compensated Use- Paragraph (2) of section 643(i) is amended by adding at the end the following new subparagraph:

- `(E) EXCEPTION FOR COMPENSATED USE OF PROPERTY- In the case of the use of any trust property other than a loan of cash or marketable securities, paragraph (1) shall not apply to the extent that the trust is paid the fair market value of such use within a reasonable period of time of such use.'

(c) Application to Grantor Trusts- Subsection (c) of section 679, as amended by section 531, is amended by adding at the end the following new paragraph:

“(6) UNCOMPENSATED USE OF TRUST PROPERTY TREATED AS A PAYMENT- For purposes of this subsection, a loan of cash or marketable securities (or the use of any other trust property) directly or indirectly to or by any United States person (whether or not a beneficiary under the terms of the trust) shall be treated as paid or accumulated for the benefit of a United States person. The preceding sentence shall not apply to the extent that the United States person repays the loan at a market rate of interest (or pays the fair market value of the use of such property) within a reasonable period of time.’

(d) Conforming Amendments- Paragraph (3) of section 643(i) is amended--

(1) by inserting ‘(or use of property)’ after ‘If any loan’,

(2) by inserting ‘or the return of such property’ before ‘shall be disregarded’, and

(3) by striking ‘REGARDING LOAN PRINCIPAL’ in the heading thereof.

(e) Effective Date- The amendments made by this section shall apply to loans made, and uses of property, after the date of the enactment of this Act.

## **SEC. 534. REPORTING REQUIREMENT OF UNITED STATES OWNERS OF FOREIGN TRUSTS.**

(a) In General- Paragraph (1) of section 6048(b) is amended by inserting ‘shall submit such information as the Secretary may prescribe with respect to such trust for such year and’ before ‘shall be responsible to ensure’.

(b) Effective Date- The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

## **SEC. 535. MINIMUM PENALTY WITH RESPECT TO FAILURE TO REPORT ON CERTAIN FOREIGN TRUSTS.**

(a) In General- Subsection (a) of section 6677 is amended--

(1) by inserting ‘the greater of \$10,000 or’ before ‘35 percent’, and

(2) by striking the last sentence and inserting the following: ‘At such time as the gross reportable amount with respect to any failure can be determined by the Secretary, any subsequent penalty imposed under this subsection with respect to such failure shall be reduced as necessary to assure that the aggregate amount of such penalties do not exceed the gross reportable amount (and to the extent that such aggregate amount already exceeds the gross reportable amount the Secretary shall refund such excess to the taxpayer).’

(b) Effective Date- The amendments made by this section shall apply to notices and returns required to be filed after December 31, 2009.

## **Subtitle E--Substitute Dividends and Dividend Equivalent Payments Received by Foreign Persons Treated as Dividends**

## **SEC. 541. SUBSTITUTE DIVIDENDS AND DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS.**

(a) In General- Section 871 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

`(l) Treatment of Dividend Equivalent Payments-

`(1) IN GENERAL- For purposes of this section, sections 881 and 4948(a), and chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States.

`(2) DIVIDEND EQUIVALENT- For purposes of this subsection, the term `dividend equivalent' means--

`(A) any substitute dividend,

`(B) any payment made pursuant to a specified notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States, and

`(C) any other payment determined by the Secretary to be substantially similar to a payment described in subparagraph (A) or (B).

`(3) SPECIFIED NOTIONAL PRINCIPAL CONTRACT- For purposes of this subsection, the term `specified notional principal contract' means--

`(A) any notional principal contract if--

`(i) in connection with entering into such contract, any long party transfers the underlying security,

`(ii) in connection with the termination of such contract, any short party transfers the underlying security to any long party,

`(iii) the underlying security is not readily tradable on an established securities market,

`(iv) in connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract, or

`(v) such contract is identified by the Secretary as a specified notional principal contract,

`(B) in the case of payments made after the date which is 2 years after the date of the enactment of this subsection, any notional principal contract unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

`(4) DEFINITIONS- For purposes of paragraph (3)(A)--

`(A) LONG PARTY- The term `long party' means, with respect to any underlying security of any notional principal contract, any party to the contract which is entitled to receive any payment pursuant to such contract which is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States with respect to such underlying security.

`(B) SHORT PARTY- The term `short party' means, with respect to any underlying security of any notional principal contract, any party to the contract which is not a long party with respect to such underlying security.

`(C) UNDERLYING SECURITY- The term `underlying security' means, with respect to any notional principal contract, the security with respect to which the dividend referred to in paragraph (2)(B) is paid. For purposes of this paragraph, any index or fixed basket of securities shall be treated as a single security.

`(5) PAYMENTS DETERMINED ON GROSS BASIS- For purposes of this subsection, the term `payment' includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

`(6) PREVENTION OF OVER-WITHHOLDING- In the case of any chain of dividend equivalents one or more of which is subject to tax under this section or section 881, the Secretary may reduce such tax, but only to the extent that the taxpayer can establish that such tax has been paid with respect to another dividend equivalent in such chain. For purposes of this paragraph, a dividend shall be treated as a dividend equivalent.

`(7) COORDINATION WITH CHAPTERS 3 AND 4- For purposes of chapters 3 and 4, each person that is a party to any contract or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.'

(b) Effective Date- The amendments made by this section shall apply to payments made on or after the date that is 90 days after the date of the enactment of this Act.

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