To amend the Internal Revenue Code of 1986 to curb tax abuses by disallowing tax benefits claimed to arise from transactions without substantial economic substance, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2007

Mr. Doggett (for himself, Mr. Andrews, Mr. Becerra, Mr. Berman, Ms. Carson, Mr. Cleaver, Mr. Conyers, Mr. Cummings, Mr. Davis of Illinois, Mr. DeFazio, Ms. DeLauro, Mr. Ellison, Mr. Emanuel, Mr. Farr, Mr. Fattah, Mr. Filner, Mr. Frank of Massachusetts, Mr. Gene Green of Texas, Mr. Grijalva, Mr. Hare, Mr. Hinchey, Ms. Jackson-Lee of Texas, Ms. Eddie Bernice Johnson of Texas, Mr. Johnson of Georgia, Ms. Kaptur, Mr. Kucinich, Mr. Larson of Connecticut, Ms. Lee, Mr. Lewis of Georgia, Mrs. Maloney of New York, Mr. Markey, Mr. Mc Dermott, Mr. McGovern, Mr. McNulty, Mr. George Miller of California, Mr. Patrick J. Murphy of Pennsylvania, Mr. Nadler, Mrs. Napolitano, Mr. Neal of Massachusetts, Mr. Payne, Mr. Rush, Ms. Loretta Sanchez of California, Ms. Schakowsky, Ms. Schwartz, Mr. Sherman, Ms. Slaughter, Ms. Solis, Mr. Stark, Ms. Sutton, Mr. Tierney, Mr. Van Hollen, Ms. Waters, and Mr. Waxman) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to curb tax abuses by disallowing tax benefits claimed to arise from transactions without substantial economic substance, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) Short Title.—This Act may be cited as the “Abusive Tax Shelter Shutdown and Taxpayer Account-
ability Act of 2007”.

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

(c) Table of Contents.—The table of contents for
this Act is as follows:

Sec. 1. Short title; etc.
Sec. 2. Findings and purpose.

TITLE I—PROVISONS DESIGNED TO CURTAIL TAX SHELTERS

Sec. 101. Clarification of economic substance doctrine.
Sec. 102. Modification of penalty for failing to disclose reportable transaction.
Sec. 103. Penalty for understatements attributable to transactions lacking eco-
nomic substance, etc.
Sec. 104. Required disclosure by material advisors not subject to claim of con-
fidentiality.
Sec. 105. Understatement of taxpayer's liability by income tax return preparer.
Sec. 106. Frivolous tax submissions.
Sec. 107. Denial of deduction for interest on underpayments attributable to
nondisclosed reportable and noneconomic substance trans-
actions.

TITLE II—OTHER PROVISIONS

Sec. 201. Expanded authority to disallow tax benefits under section 269.
Sec. 202. Modifications of certain rules relating to controlled foreign corpora-
tions.
Sec. 203. Basis for determining loss always reduced by nontaxed portion of
dividends.
SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress hereby finds that:

(1) Many corporate tax shelter transactions are complicated ways of accomplishing nothing aside from claimed tax benefits, and the legal opinions justifying those transactions take an inappropriately narrow and restrictive view of well-developed court doctrines under which—

(A) the taxation of a transaction is determined in accordance with its substance and not merely its form,

(B) transactions which have no significant effect on the taxpayer’s economic or beneficial interests except for tax benefits are treated as sham transactions and disregarded,

(C) transactions involving multiple steps are collapsed when those steps have no substantial economic meaning and are merely designed to create tax benefits,

(D) transactions with no business purpose are not given effect, and

(E) in the absence of a specific congressional authorization, it is presumed that Congress did not intend a transaction to result in a negative tax where the taxpayer’s economic
position or rate of return is better after tax than before tax.

(2) Permitting aggressive and abusive tax shelters not only results in large revenue losses but also undermines voluntary compliance with the Internal Revenue Code of 1986.

(b) PURPOSE.—The purpose of this Act is to eliminate abusive tax shelters by denying tax attributes claimed to arise from transactions that do not meet a heightened economic substance requirement and by repealing the provision that permits legal opinions to be used to avoid penalties on tax underpayments resulting from transactions without significant economic substance or business purpose.

TITLE I—PROVISIONS DESIGNED TO CURTAIL TAX SHELTERS

SEC. 101. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) In General.—Section 7701 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

“(p) Clarification of Economic Substance Doctrine; etc.—

“(1) General rules.—
“(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction has economic substance shall be made as provided in this paragraph.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

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

“(I) the transaction changes in a meaningful way (apart from Federal tax effects and, if there are any Federal tax effects, also apart from any foreign, State, or local tax effects) the taxpayer’s economic position, and

“(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

“(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—
“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

“(C) Treatment of fees and foreign taxes.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

“(2) Special rules for transactions with tax-indifferent parties.—

“(A) Special rules for financing transactions.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present
value of the anticipated economic returns of the
person lending the money or providing the fi-
nancial capital. A public offering shall be treat-
ed as a borrowing, or an acquisition of financial
capital, from a tax-indifferent party if it is rea-
sonably expected that at least 50 percent of the
offering will be placed with tax-indifferent par-
ties.

"(B) Artificial income shifting and
basis adjustments.—The form of a trans-
action with a tax-indifferent party shall not be
respected if—

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

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

"(3) Definitions and special rules.—For
purposes of this subsection—

"(A) Economic substance doctrine.—
The term ‘economic substance doctrine’ means
the common law doctrine under which tax bene-
fits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) Tax-indifferent party.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person’s liability under subtitle A.

“(C) Substantial nontax purpose.—In applying subclause (II) of paragraph (1)(B)(i), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

“(D) Exception for personal transactions of individuals.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.
“(E) Treatment of Lessors.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) Other Common Law Doctrines Not Affected.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.”.

(b) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.
SEC. 102. MODIFICATION OF PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

(1) IN GENERAL.—Subsection (b) of section 6707A is amended to read as follows:

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) shall be—

“(A) $10,000 in the case of a natural person who is not a high net worth individual,

“(B) $100,000 in the case of a large entity or a high net worth individual, and

“(C) $50,000 in any other case.

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

“(A) $100,000 in the case of a natural person who is not a high net worth individual, and

“(B) $200,000 in any other case.”.

(2) LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS DEFINED.—Subsection (e) of section 6707A is amended by adding at the end the following new paragraphs:
“(3) LARGE ENTITY.—The term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(4) HIGH NET WORTH INDIVIDUAL.—The term ‘high net worth individual’ means, with respect to a reportable transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.”.

(b) RESTRICTION OF AUTHORITY TO RESCIND PENALTY.—Paragraph (1) of section 6707A(d) is amended by striking “and” at the end of subparagraph (A), by redesignating subparagraph (B) as subparagraph (E), and by inserting after subparagraph (A) the following new subparagraphs:

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

“(C) it is shown that the violation is due to an unintentional mistake of fact,
“(D) imposing the penalty would be against equity and good conscience, and”.

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

SEC. 103. **Penalty for Understatements Attributable to Transactions Lacking Economic Substance, etc.**

(a) **In General.**—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

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“SEC. 6662B. **Penalty for Understatements Attributable to Transactions Lacking Economic Substance, etc.**

“(a) **Imposition of Penalty.**—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

“(b) **Reduction of Penalty for Disclosed Transactions.**—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affect-
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ing the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

“(c) **NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.**—For purposes of this section—

“(1) **IN GENERAL.**—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) **NONECONOMIC SUBSTANCE TRANSACTION.**—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(p)(1)) for the transaction giving rise to the claimed tax benefit or the transaction was not respected under section 7701(p)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) **RULES APPLICABLE TO COMPROMISE OF PENALTY.**—
“(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(2) APPLICABLE RULES.—The rules of paragraphs (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) CROSS REFERENCES.—

“(1) For coordination of penalty with understatements 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).”.

(b) COORDINATION WITH OTHER UNDERSTATEMENTS AND PENALTIES.—

(1) Subparagraph (A) of section 6662(d)(2) is amended by inserting “and without regard to items
with respect to which a penalty is imposed by section 6662B” before the period at the end.

(2) Subsection (e) of section 6662A is amended—

(A) in paragraph (1), by inserting “and noneconomic substance transaction understatements” after “reportable transaction understatements” each place it appears,

(B) in paragraph (2)(A) and (3), by inserting “and noneconomic substance transaction understatement” after “reportable transaction understatement”,

(C) in paragraph (2)(B), by inserting “6662B or” before “6663”,

(D) in paragraph (2)(C)(i), by inserting “or section 6662B” before the period at the end, and

(E) in paragraph (2)(C)(ii), by inserting “and section 6662B” after “This section”, and

(F) by adding at the end the following new paragraph:

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

(c) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act. Sections 6662(d)(2)(A) and 6662A(e) of the Internal Revenue Code of 1986 shall apply to such transactions to the extent such sections relate to such amendments.

SEC. 104. REQUIRED DISCLOSURE BY MATERIAL ADVISORS NOT SUBJECT TO CLAIM OF CONFIDENTIALITY.

(a) IN GENERAL.—Paragraph (1) of section 6112(b) is amended by adding at the end the following new flush sentence:

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

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.
SEC. 105. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY
INCOME TAX RETURN PREPARER.

(a) Standards Conformed to Taxpayer Standards.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

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

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

(3) by striking “Unrealistic” in the heading and inserting “Improper”.

(b) Amount of Penalty.—Section 6694 is amended—

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

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

(c) Effective Date.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.
SEC. 106. FRIVOLOUS TAX SUBMISSIONS.

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

“SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.

“(a) Civil Penalty for Frivolous Tax Returns.—A person shall pay a penalty of $5,000 if—

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

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

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

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

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

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

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

“(1) Imposition of Penalty.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.
“(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

“(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term ‘specified frivolous submission’ means a specified submission if any portion of such submission—

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

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

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

“(i) a request for a hearing under—

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

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

“(ii) an application under—

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

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

“(III) section 7811 (relating to taxpayer assistance orders).

“(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

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

“(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.
“(e) Penalties in Addition to Other Penalties.—The penalties imposed by this section shall be in addition to any other penalty provided by law.”.

(b) Treatment of Frivolous Requests for Hearings Before Levy.—

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

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

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

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

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

(C) by striking the period at the end of the first sentence and inserting “; or”; and
(D) by inserting after subparagraph (A)(ii)

(as so redesignated) the following:

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

(3) Statement of grounds.—Section
6330(b)(1) is amended by striking “under sub-
section (a)(3)(B)” and inserting “in writing under
subsection (a)(3)(B) and states the grounds for the
requested hearing”.

(c) Treatment of frivolous requests for
hearings upon filing of notice of lien.—Section
6320 is amended—

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

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

(d) Treatment of frivolous applications for
offers-in-compromise and installment agree-
ments.—Section 7122 is amended by adding at the end
the following new subsection:

“(f) Frivolous submissions, etc.—Notwith-
standing any other provision of this section, if the Sec-
retary determines that any portion of an application for

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an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.”.

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

“Sec. 6702. Frivolous tax submissions.”.

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

SEC. 107. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) In General.—Subsection (m) of section 163 is amended to read as follows:

“(m) Interest on Unpaid Taxes Attributable to Nondisclosed Reportable Transactions and Noneconomic Substance Transactions.—No deduction shall be allowed under this chapter for any interest
paid or accrued under section 6601 on any underpayment
of tax which is attributable to—

“(1) the portion of any reportable transaction
understatement (as defined in section 6662A(b))
with respect to which the requirement of section
6664(d)(2)(A) is not met, or

“(2) any noneconomic substance transaction
understatement (as defined in section 6662B(c)).”

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

TITLE II—OTHER PROVISIONS

SEC. 201. EXPANDED AUTHORITY TO DISALLOW TAX BENEFITS UNDER SECTION 269.

(a) IN GENERAL.—Subsection (a) of section 269 (re-"
poration, is determined by reference to the basis in
the hands of the transferor corporation, and

“(2) the principal purpose for which such acqui-
sition was made is evasion or avoidance of Federal
income tax by securing the benefit of a deduction,
credit, or other allowance,
then the Secretary may disallow such deduction, credit,
or other allowance.”.

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

SEC. 202. MODIFICATIONS OF CERTAIN RULES RELATING
TO CONTROLLED FOREIGN CORPORATIONS.

(a) LIMITATION ON EXCEPTION FROM PFIC RULES
FOR UNITED STATES SHAREHOLDERS OF CONTROLLED
FOREIGN CORPORATIONS.—Paragraph (2) of section
1297(e) (relating to passive investment company) is
amended by adding at the end the following flush sen-
tence:

“Such term shall not include any period if there is
only a remote likelihood of an inclusion in gross in-
come under section 951(a)(1)(A)(i) of subpart F in-
come of such corporation for such period.”.

(b) DETERMINATION OF PRO RATA SHARE OF SUB-
PART F INCOME.—Subsection (a) of section 951 (relating
to amounts included in gross income of United States shareholders) is amended by adding at the end the following new paragraph:

“(4) SPECIAL RULES FOR DETERMINING PRO RATA SHARE OF SUBPART F INCOME.—The pro rata share under paragraph (2) shall be determined by disregarding—

“(A) any rights lacking substantial economic effect, and

“(B) stock owned by a shareholder who is a tax-indifferent party (as defined in section 7701(m)(3)) if the amount which would (but for this paragraph) be allocated to such shareholder does not reflect such shareholder’s economic share of the earnings and profits of the corporation.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years on controlled foreign corporation beginning after the date of the enactment of this Act and to taxable years of United States shareholder in which or with which such taxable years of controlled foreign corporations end.
SEC. 203. BASIS FOR DETERMINING LOSS ALWAYS REDUCED BY NONTAXED PORTION OF DIVIDENDS.

(a) In General.—Section 1059 (relating to corporate shareholder’s basis in stock reduced by nontaxed portion of extraordinary dividends) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

“(g) Basis for Determining Loss Always Reduced by Nontaxed Portion of Dividends.—The basis of stock in a corporation (for purposes of determining loss) shall be reduced by the nontaxed portion of any dividend received with respect to such stock if this section does not otherwise apply to such dividend.”.

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