

1 **SEC. 1409. CODIFICATION OF ECONOMIC SUBSTANCE DOC-**  
2 **TRINE AND PENALTIES.**

3 (a) IN GENERAL.—Section 7701 of the Internal Rev-  
4 enue Code of 1986 is amended by redesignating subsection  
5 (o) as subsection (p) and by inserting after subsection (n)  
6 the following new subsection:

7 “(o) CLARIFICATION OF ECONOMIC SUBSTANCE  
8 DOCTRINE.—

9 “(1) APPLICATION OF DOCTRINE.—In the case  
10 of any transaction to which the economic substance  
11 doctrine is relevant, such transaction shall be treated  
12 as having economic substance only if—

13 “(A) the transaction changes in a mean-  
14 ingful way (apart from Federal income tax ef-  
15 fects) the taxpayer’s economic position, and

16 “(B) the taxpayer has a substantial pur-  
17 pose (apart from Federal income tax effects)  
18 for entering into such transaction.

19 “(2) SPECIAL RULE WHERE TAXPAYER RELIES  
20 ON PROFIT POTENTIAL.—

21 “(A) IN GENERAL.—The potential for  
22 profit of a transaction shall be taken into ac-  
23 count in determining whether the requirements  
24 of subparagraphs (A) and (B) of paragraph (1)  
25 are met with respect to the transaction only if  
26 the present value of the reasonably expected

1 pre-tax profit from the transaction is substan-  
2 tial in relation to the present value of the ex-  
3 pected net tax benefits that would be allowed if  
4 the transaction were respected.

5 “(B) TREATMENT OF FEES AND FOREIGN  
6 TAXES.—Fees and other transaction expenses  
7 shall be taken into account as expenses in de-  
8 termining pre-tax profit under subparagraph  
9 (A). The Secretary shall issue regulations re-  
10 quiring foreign taxes to be treated as expenses  
11 in determining pre-tax profit in appropriate  
12 cases.

13 “(3) STATE AND LOCAL TAX BENEFITS.—For  
14 purposes of paragraph (1), any State or local income  
15 tax effect which is related to a Federal income tax  
16 effect shall be treated in the same manner as a Fed-  
17 eral income tax effect.

18 “(4) FINANCIAL ACCOUNTING BENEFITS.—For  
19 purposes of paragraph (1)(B), achieving a financial  
20 accounting benefit shall not be taken into account as  
21 a purpose for entering into a transaction if the ori-  
22 gin of such financial accounting benefit is a reduc-  
23 tion of Federal income tax.

24 “(5) DEFINITIONS AND SPECIAL RULES.—For  
25 purposes of this subsection—

1           “(A) ECONOMIC SUBSTANCE DOCTRINE.—  
2           The term ‘economic substance doctrine’ means  
3           the common law doctrine under which tax bene-  
4           fits under subtitle A with respect to a trans-  
5           action are not allowable if the transaction does  
6           not have economic substance or lacks a business  
7           purpose.

8           “(B) EXCEPTION FOR PERSONAL TRANS-  
9           ACTIONS OF INDIVIDUALS.—In the case of an  
10          individual, paragraph (1) shall apply only to  
11          transactions entered into in connection with a  
12          trade or business or an activity engaged in for  
13          the production of income.

14          “(C) DETERMINATION OF APPLICATION OF  
15          DOCTRINE NOT AFFECTED.—The determination  
16          of whether the economic substance doctrine is  
17          relevant to a transaction shall be made in the  
18          same manner as if this subsection had never  
19          been enacted.

20          “(D) TRANSACTION.—The term ‘trans-  
21          action’ includes a series of transactions.”.

22          (b) PENALTY FOR UNDERPAYMENTS ATTRIBUTABLE  
23          TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE.—

1           (1) IN GENERAL.—Subsection (b) of section  
2           6662 is amended by inserting after paragraph (5)  
3           the following new paragraph:

4           “(6) Any disallowance of claimed tax benefits  
5           by reason of a transaction lacking economic sub-  
6           stance (within the meaning of section 7701(o)) or  
7           failing to meet the requirements of any similar rule  
8           of law.”.

9           (2) INCREASED PENALTY FOR NONDISCLOSED  
10          TRANSACTIONS.—Section 6662 is amended by add-  
11          ing at the end the following new subsection:

12          “(i) INCREASE IN PENALTY IN CASE OF NONDIS-  
13          CLOSED NONECONOMIC SUBSTANCE TRANSACTIONS.—

14                 “(1) IN GENERAL.—In the case of any portion  
15                 of an underpayment which is attributable to one or  
16                 more nondisclosed noneconomic substance trans-  
17                 actions, subsection (a) shall be applied with respect  
18                 to such portion by substituting ‘40 percent’ for ‘20  
19                 percent’.

20                 “(2) NONDISCLOSED NONECONOMIC SUB-  
21                 STANCE TRANSACTIONS.—For purposes of this sub-  
22                 section, the term ‘nondisclosed noneconomic sub-  
23                 stance transaction’ means any portion of a trans-  
24                 action described in subsection (b)(6) with respect to  
25                 which the relevant facts affecting the tax treatment

1 are not adequately disclosed in the return nor in a  
2 statement attached to the return.

3 “(3) SPECIAL RULE FOR AMENDED RE-  
4 TURNS.—In no event shall any amendment or sup-  
5 plement to a return of tax be taken into account for  
6 purposes of this subsection if the amendment or sup-  
7 plement is filed after the earlier of the date the tax-  
8 payer is first contacted by the Secretary regarding  
9 the examination of the return or such other date as  
10 is specified by the Secretary.”.

11 (3) CONFORMING AMENDMENT.—Subparagraph  
12 (B) of section 6662A(e)(2) is amended—

13 (A) by striking “section 6662(h)” and in-  
14 serting “subsections (h) or (i) of section 6662”;  
15 and

16 (B) by striking “GROSS VALUATION  
17 MISSTATEMENT PENALTY” in the heading and  
18 inserting “CERTAIN INCREASED UNDER-  
19 PAYMENT PENALTIES”.

20 (c) REASONABLE CAUSE EXCEPTION NOT APPLICA-  
21 BLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.—

22 (1) REASONABLE CAUSE EXCEPTION FOR UN-  
23 DERPAYMENTS.—Subsection (c) of section 6664 is  
24 amended—

1 (A) by redesignating paragraphs (2) and  
2 (3) as paragraphs (3) and (4), respectively;

3 (B) by striking “paragraph (2)” in para-  
4 graph (4)(A), as so redesignated, and inserting  
5 “paragraph (3)”;

6 (C) by inserting after paragraph (1) the  
7 following new paragraph:

8 “(2) EXCEPTION.—Paragraph (1) shall not  
9 apply to any portion of an underpayment which is  
10 attributable to one or more transactions described in  
11 section 6662(b)(6).”.

12 (2) REASONABLE CAUSE EXCEPTION FOR RE-  
13 PORTABLE TRANSACTION UNDERSTATEMENTS.—  
14 Subsection (d) of section 6664 is amended—

15 (A) by redesignating paragraphs (2) and  
16 (3) as paragraphs (3) and (4), respectively;

17 (B) by striking “paragraph (2)(C)” in  
18 paragraph (4), as so redesignated, and inserting  
19 “paragraph (3)(C)”;

20 (C) by inserting after paragraph (1) the  
21 following new paragraph:

22 “(2) EXCEPTION.—Paragraph (1) shall not  
23 apply to any portion of a reportable transaction un-  
24 derstatement which is attributable to one or more  
25 transactions described in section 6662(b)(6).”.

1 (d) APPLICATION OF PENALTY FOR ERRONEOUS  
2 CLAIM FOR REFUND OR CREDIT TO NONECONOMIC SUB-  
3 STANCE TRANSACTIONS.—Section 6676 is amended by re-  
4 designating subsection (c) as subsection (d) and inserting  
5 after subsection (b) the following new subsection:

6 “(c) NONECONOMIC SUBSTANCE TRANSACTIONS  
7 TREATED AS LACKING REASONABLE BASIS.—For pur-  
8 poses of this section, any excessive amount which is attrib-  
9 utable to any transaction described in section 6662(b)(6)  
10 shall not be treated as having a reasonable basis.”.

11 (e) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as otherwise pro-  
13 vided in this subsection, the amendments made by  
14 this section shall apply to transactions entered into  
15 after the date of the enactment of this Act.

16 (2) UNDERPAYMENTS.—The amendments made  
17 by subsections (b) and (c)(1) shall apply to under-  
18 payments attributable to transactions entered into  
19 after the date of the enactment of this Act.

20 (3) UNDERSTATEMENTS.—The amendments  
21 made by subsection (c)(2) shall apply to understate-  
22 ments attributable to transactions entered into after  
23 the date of the enactment of this Act.

24 (4) REFUNDS AND CREDITS.—The amendment  
25 made by subsection (d) shall apply to refunds and

1 credits attributable to transactions entered into after  
2 the date of the enactment of this Act.

3 **SEC. 1410. TIME FOR PAYMENT OF CORPORATE ESTIMATED**  
4 **TAXES.**

5 The percentage under paragraph (1) of section  
6 202(b) of the Corporate Estimated Tax Shift Act of 2009  
7 in effect on the date of the enactment of this Act is in-  
8 creased by 15.75 percentage points.

9 **Subtitle F—Other Provisions**

10 **SEC. 1501. COMMUNITY COLLEGE AND CAREER TRAINING**  
11 **GRANT PROGRAM.**

12 Section 279(b) of the Trade Act of 1974 (19 U.S.C.  
13 2372a(b)) is amended by striking “SUPPLEMENT” and all  
14 that follows through “Funds” and inserting “There are”  
15 and by striking “pursuant” and all that follows and insert-  
16 ing “\$500,000,000 for each of fiscal years 2011, 2012,  
17 2013, and 2014 to carry out this subchapter, except that  
18 the limitations contained in section 278(a)(2) shall not  
19 apply to such funds and each State shall receive not less  
20 than 0.5 percent of the amount appropriated pursuant to  
21 this subsection for each such fiscal year.”.