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The Stop Tax Haven Abuse Act

Bill Targets Tax Havens and Tax Dodging

On July 12, Senator Carl Levin (D-MI) and five cosponsors introduced S. 1346, the Stop Tax Haven Abuse Act (the "Stop Act") which includes important new rules to deter offshore transactions designed to avoid U.S. income taxes.[1] Representative Lloyd Doggett (D-TX) is planning to introduce a companion bill in the House.

The U.S. Treasury loses an estimated $100 billion a year in tax revenues due to tax havens, and many believe the figure is really much higher.[2]

At a press conference to announce the bill's introduction, Senator Levin stated that "people are sick and tired of tax dodgers using trickery and abusive tax shelters to avoid paying their fair share. This bill offers powerful new tools to combat those offshore and tax shelter abuses, raise revenues, and eliminate incentives to send U.S. profits and jobs offshore."[3]

Some of the abuses targeted by the Stop Act are crimes involving taxpayers hiding their income from the IRS (tax *evasion*). Other abuses targeted by the act are currently legal and not hidden at all from the IRS, but are simply arrangements that are clearly meant to reduce taxes (tax *avoidance*) in ways that were not intended by Congress and that undermine the tax system.

Most of the provisions in the Stop Act deal with foreign countries that serve as offshore tax havens, which can facilitate both tax evasion and tax avoidance.

Foreign countries facilitate tax *avoidance* when they impose no taxes, or very low taxes, on certain types of profits and income. This serves as an invitation for U.S. corporations to shift their profits to subsidiaries in the tax haven country. A U.S. corporation might do this by using accounting gimmicks and transactions that exist only on paper to make it appear that the U.S.

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[1] For the text of the bill, go to http://www.gpo.gov/fdsys/pkg/BILLS-112s1346is/pdf/BILLS-112s1346is.pdf

[2] See, for example, Kimberly A. Clausing, "The Revenue Effects of Multinational Firm Income Shifting," Tax Notes, March 8, 2011 estimating a revenue loss of $90 billion in 2008 from corporate profit shifting alone. Tax revenues lost to individual tax evasion estimated at $40-70 billion annually in Joseph Guttentag and Reuven Avi-Yonah, "Closing the International Tax Gap," in Max B. Sawicky, ed., Bridging the Tax Gap: Addressing the Crisis in Federal Tax Administration, April 2006, Economic Policy Institute.

[3] Sen. Levin's floor statement is available at http://levin.senate.gov/newsroom/speeches/speech/levin-floor-statement-on-introduction-of-stop-tax-haven-abuse-act/?section=alltypes.

corporation has lower U.S. taxable profits because of payments it made to an offshore subsidiary (i.e., to itself), which may be a shell corporation incorporated in a tax haven country.

Foreign countries can facilitate tax *evasion* when they adopt secrecy rules that make it impossible for U.S. tax enforcement authorities to find out whether Americans are hiding their income there. These crimes are typically committed by individuals using foreign bank accounts that are not reported to the U.S. or shell companies incorporated in the tax haven country.

The bill also targets some other types of tax dodging, as well as the bankers, lawyers, and accountants who facilitate these abuses by their clients.

Highlights of the Stop Act

Sen. Levin has introduced similar legislation in the past four sessions of Congress. This bill adds new provisions closing credit default swap loopholes and foreign subsidiary deposit loopholes, and strengthening the Foreign Account Tax Compliance Act (FATCA) which was enacted during the last session of Congress.[4]

Here is a summary of some of the most noteworthy aspects of the Stop Act. The provisions of the bill are explained in their entirety in the appendix.

Allows Treasury to impose requirements on financial institutions that don't cooperate with U.S. tax enforcement.
The special requirements that Treasury can put on financial institutions under the Patriot Act to combat money laundering would be available to combat tax evasion. Treasury could also ban U.S. banks from accepting credit cards from certain tax haven countries, which is one of the main ways that individuals in the U.S. access the money they stash in tax havens.

Strengthens FATCA, the anti-tax evasion bill enacted last year.
The Stop Act would strengthen the Foreign Account Tax Compliance Act to prevent Americans from using highly technical formalities to pretend that they do not own or control offshore shell companies, among other improvements.

Makes it easier for IRS to pursue offshore dealings with banks that don't comply with FATCA.
In civil tax proceedings involving Americans with accounts in institutions that are not compliant with FATCA, the court would presume (put the burden on the defendant to rebut) that any offshore entity set up by the taxpayer is controlled by the taxpayer and any funds from offshore are taxable income and have not been taxed. These and other new presumptions would make it easier for the IRS to win such cases.

Ends the charade of American companies incorporated as "foreign" entities.
Large companies that are incorporated in other countries but managed and controlled by people in the U.S. would be taxed as U.S. corporations. This would prevent companies (notably hedge funds) that are American for all practical purposes from avoiding U.S. taxes by claiming to

[4] A press release and summary of the bill's provisions from Sen. Levin's office are available at http://levin.senate.gov/newsroom/press/release/levin-unveils-stop-tax-haven-abuse-act.

be a foreign company simply because it did certain paperwork and maintains a post office box in a tax haven country.

Increases disclosure by banks.

Individuals can use tax havens to hide their income from the IRS only if the tax haven and the financial institution there can maintain secrecy. The bill would create new disclosure rules that would put the IRS on notice that a taxpayer is using offshore entities.

Closes the loophole for credit default swap payments.

The U.S. imposes a withholding tax on dividend payments made to foreigners outside the U.S. in order to reduce tax avoidance, but it generally doesn't impose withholding taxes on other types of payments made by American entities to foreigners (or foreign corporations owned by Americans). So instead of selling stock to foreigners, some U.S. companies sell credit default swaps (CDSs) that mimic a transaction of stock except that the payments made to a CDS holder are not dividends and thus do not trigger U.S. withholding taxes. The Stop Act would change the rule so that CDS payments from the U.S. would be considered U.S. income.

Requires country-by-country reporting of financial information for publicly traded corporations.

The Stop Act would require most large multinational corporations to report their employees, sales, financing, tax obligations, and tax payments on a country-by-country basis. This will make it more difficult for tax havens to be used for tax avoidance and evasion, not to mention fraud and corruption by foreign officials.

Cracks down on tax shelter promoters.

The Stop Act would increase penalties for promoting abusive tax shelters, which currently are so low that some practitioners would rather risk paying the penalties rather than give up the fees they generate facilitating tax evasion. It would also ban fees contingent on successful tax dodging by their clients, and would require agencies that inspect financial institutions to work with tax enforcement agencies to be better able to spot signs of tax abuse.

Appendix

Full Explanation of Provisions in the Stop Tax Haven Abuse Act

Deterring the Use of Tax Havens for Tax Evasion

Authorize Special Measures Where U.S. Tax Enforcement is Impeded (Sec. 101 of the bill)
The Stop Act would add to existing Treasury authority to impose special requirements on U.S. financial institutions, foreign jurisdictions, and others that impede U.S. tax enforcement. Under the Patriot Act, Treasury can impose a range of requirements on U.S. financial institutions dealing with certain entities—from requiring greater information reporting to prohibiting opening accounts.[5] The Patriot Act's provisions are aimed at combating money laundering. The Stop Act bill would extend that authority to allow Treasury to use those tools against foreign jurisdictions or financial institutions that are "impeding U.S. tax enforcement." It would add an additional tool to the Treasury's arsenal: it would allow Treasury to prohibit U.S. financial institutions from accepting credit card transactions involving a designated foreign jurisdiction or financial institution. This provision would greatly inhibit the ability of U.S. residents to access their hidden offshore funds.[6]

Strengthen FATCA (Section 102(a)-(f))
The Stop Act would strengthen the Foreign Account Tax Compliance Act, which was enacted in 2010, in several ways.

The first change would expand the reporting requirements for Passive Foreign Investment Companies (PFICs). U.S. persons who are direct or indirect shareholders of PFICs are required to report certain information about the PFIC to the IRS. Taxpayers have been able to avoid reporting by using an offshore service provider to hold title to the PFIC stock although the U.S. person has control. The bill would expand the reporting requirement so that a return must be filed by any U.S. person who formed a PFIC, sent assets to it, received assets from it, was a beneficial owner of it, or had beneficial interests in it. It would prevent taxpayers from arguing that no reporting was required because they did not hold a formal ownership interest in the PFIC.

Other changes would amend FATCA provisions to make it clear that 1) all types of accounts, including checking accounts and derivatives are subject to FATCA reporting, 2) if a bank has any reason to know that a non-U.S. entity is beneficially owned by a U.S. person, it cannot treat that entity as a non-U.S. customer, 3) waivers from FATCA requirements by the Treasury are possible only where there is a minimal risk of tax evasion, 4) the FATCA requirements apply to U.S. persons who are beneficial owners of an entity that is one of the partners in a partnership, and

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[5] An overview of the special measures provision in the Patriot Act is available at http://www.treasury.gov/press-center/press-releases/Pages/tg1056.aspx.

[6] For more on the offshore credit card problem see David Cay Johnston, Perfectly Legal, Chapter 15; and "Challenges Remain in Combating Abusive Tax Schemes," report by the Government Accountability Office to the U.S. Senate Committee on Finance, No. GAO-04-50, November 2003, available at http://www.gao.gov/new.items/d0450.pdf.

5) the new tax return disclosure requirements apply to persons who have a beneficial, as well as a direct or nominal, interest in "specified foreign financial assets."[7]

The Stop Act would also amend the rules prohibiting IRS disclosure of tax return information to allow disclosure to federal law enforcement agencies, including the SEC and bank regulators, and to allow the disclosure of the names of foreign financial institutions which have lost their FATCA-compliant status.

Presumptions Pertaining to Entities and Transactions Involving Non-FATCA Institutions (Sec. 102(g))
In the case of transactions, accounts, or entities involving non-FATCA institutions, the Stop Act would create three presumptions in favor of the IRS in a civil (not criminal) tax enforcement proceeding and two presumptions in favor of the SEC for enforcing securities laws.

When one of the opponents in a legal dispute gets the benefit of a presumption, it means that they do not have to prove that element of the case. It is presumed to be a fact and the other side has to disprove it. This is a big advantage to the side with the presumption. It makes winning the case a lot easier. In his statement introducing the act, Sen. Levin stated that the presumptions are intended to eliminate the unfair advantage provided by offshore secrecy laws.

The first presumption is that a U.S. taxpayer who "formed, transferred assets to, was a beneficiary of, had a beneficial interest in, or received money or property" from an offshore entity that has an account in a non-FATCA institution is in control of that entity. For example, this rule would prevent U.S. taxpayers from claiming that the trustee (usually a foreign person or entity) of their offshore trust is not permitted by the trust document to send money back to the U.S. to pay creditors (including the IRS).[8] The second presumption is that funds or other property received from offshore are taxable income, and funds or other property transferred offshore have not yet been taxed. The taxpayer will have to prove that the funds aren't taxable income, or else pay the tax.[9] The third presumption is that a financial account in a foreign country controlled by a U.S. taxpayer has a large enough balance ($10,000) that it must be reported to the IRS. If the taxpayer does not report it, the U.S. person would be subject to penalties.

Two presumptions relate to "control" for purposes of U.S. securities laws. The first presumption would be that a director, officer, or major shareholder of a U.S. corporation associated with an offshore entity is presumed to control that entity. The second presumption would be that securities owned by an entity and held in a non-FATCA institution are beneficially owned by any U.S. person that directly or indirectly exercised control over the entity.

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[7] For an explanation of the FATCA provisions see Joint Committee on Taxation JCS-2-11, March 24, 2011, "Explanation of Tax Legislation Enacted in the 111th Congress," Part Seven: Revenue Provisions of the Hiring Incentives to Restore Employment Act, available at http://www.jct.gov/publications.html?func=startdown&id=3775.

[8] Senate Homeland Security and Government Affairs Permanent Subcommittee on Investigations (PSI) Report, "Tax Haven Abuses: The Enablers, The Tools, and Secrecy," August 1, 2006, available at http://hsgac.senate.gov/public/_files/TAXHAVENABUSESREPORT107.pdf. The report outlined six case histories of offshore tax evasion, all of which involved offshore trusts, corporations, or other entities which "had all the trappings of independence but, in fact, were controlled by the U.S. taxpayer."

[9] The 2006 PSI report documents the tax evasion by the Wyly brothers on hundreds of millions of dollars in stock option compensation and stock trading gains by funneling the transactions through offshore entitites.

Taxpayers could provide evidence that the presumptions were not accurate, for example, that funds received from offshore were a gift. But if the taxpayer wants to introduce evidence from a foreign person (like the trustee), an affidavit would not be enough. The foreign person would have to appear in the U.S. proceeding and be subject to cross examination.

Treatment of Foreign Corporations Managed and Controlled in the U.S. (Sec. 103)
This provision in the Stop Act would treat foreign corporations as U.S. domestic corporations for tax purposes if 1) the corporation is publicly traded or has aggregate gross assets of $50 million or more, AND 2) its management and control occurs primarily in the U.S. The bill would not override the current-law rules for taxing U.S. multinationals with foreign subsidiaries. This provision is similar to the corporate inversion rules adopted in the American Jobs Creation Act of 2005, but adds entities which are incorporated directly in another country.

This provision of the bill is particularly aimed at hedge funds and investment management businesses that are structured as foreign entities, although their key decision-makers live and work in the U.S. As Sen. Levin put it in his statement, this provision would end "the unfair situation where some U.S.-based companies pay their fair share of taxes, while others who set up a shell corporation in a tax haven are able to defer or escape taxation, despite the fact that their foreign status is nothing more than a paper fiction."

Increase Disclosure of Offshore Accounts and Entities (Sec. 104)
Offshore tax evasion depends on secrecy. The bill would create two new disclosure rules that would put the IRS on notice that a taxpayer is using offshore entities.

The first disclosure rule would expand income reporting responsibilities of financial institutions. Under current anti-money laundering laws, U.S. financial institutions are supposed to know who really owns an account held by an offshore entity. This information is designed to keep the U.S. financial system from being misused by terrorists, money launderers, and other criminals. Also under current law, a financial institution must file Forms 1099 with the IRS reporting income[10] such as dividends and stock sales earned on an account, *unless the account is owned by a foreign entity not subject to U.S. tax law*. The Stop Act would require U.S. and FATCA-compliant financial institutions to file information returns with the IRS on an account owned by a foreign entity, if the financial institution has knowledge that a U.S. person is the beneficial owner of the foreign entity.[11]

The second disclosure rule would require financial institutions to report to the IRS a transaction that directly or indirectly establishes a foreign entity, such as a trust or corporation, or that opens an account in a non-FATCA institution for a U.S. customer. Under existing law, the U.S. customer is already obligated to report that information to the IRS, but many taxpayers do not, relying on the bank secrecy laws to keep their accounts hidden. The third-party obligation to

[10] A 2007 Government Accountability Office Report found that income subject to a high degree of third-party reporting, such as wages, was correctly reported on recipients' income tax returns 98.8 percent of the time. When the income is subject to little or no reporting, the report found it is correctly reported only 46 percent of the time. "Tax and Administration: Costs and Uses of Third-Party Information Returns," GAO-08-266, November 2007, available at http://www.gao.gov/new.items/d08266.pdf.
[11] The PSI Report found that three major U.S. financial institutions opened dozens of accounts for the Wylys in the name of offshore trusts and corporations but treated those accounts as foreign-owned.

report will make it much more likely that the IRS will have notice of those transactions and be able to investigate them.

Close the Loophole for Credit Default Swap Payments (Sec. 105)
A credit default swap (CDS) is a financial instrument that is essentially a "bet" about whether a company, bond, loan, mortgage-backed security or other financial instrument will default. Current U.S. tax regulations treat the CDS payments as "sourced" to the recipient. In other words, if a CDS payment is sent from the U.S. to Bermuda, the "source" of the payment for tax purposes is considered to be Bermuda.[12] This allows foreign recipients to avoid U.S. tax on those payments and allows U.S. taxpayers to shift the profits offshore and defer U.S. tax or avoid U.S. tax altogether because that foreign-source income allows them to use foreign tax credits. The Stop Act would end this offshore game by changing the tax law so that the source of a CSD payment would be determined by reference to the location of the payer.

Close the Repatriation Loophole (Sec. 106)
The foreign earnings of a U.S. multinational corporation are not subject to U.S. tax until they are brought back to the United States, or "repatriated," usually by payment of a dividend from the foreign sub to the U.S. parent corporation. It is estimated that U.S. multinational corporations have over $1.2 trillion in accumulated unrepatriated earnings. A concerted lobbying effort is being waged to allow those earnings to come back to the U.S. at an ultra-low tax rate.[13] But much of that many is, in fact, already back in the U.S.

U.S. multinational corporations are directing foreign subsidiaries to deposit their offshore earnings in U.S.-dollar denominated accounts. This way the U.S. corporation is getting all the benefits of using U.S. financial institutions and U.S. currency, the safest in the world, without paying U.S. tax on the income. For example, if a foreign subsidiary asks its Cayman Islands bank to convert its deposits to U.S. dollars, the Cayman Islands bank generally does that by opening a correspondent bank account in the U.S. In fact, the most recent Federal Reserve report on U.S. banks' liabilities to foreigners shows that 42 percent of the liabilities are to Caribbean countries.[14]

The Stop Act would treat any funds deposited for a foreign subsidiary in an account located in the United States as a taxable distribution by the foreign subsidiary to its U.S. parent corporation, making the funds currently subject to U.S. tax.

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[12] U.S. Treas. Reg. Sec. 1.863-7(b)(1) available at http://edocket.access.gpo.gov/cfr_2003/aprqtr/pdf/26cfr1.863-7.pdf.
[13] For more on the repatriation holiday, see Citizens for Tax Justice, "No Amnesty for Corporate Tax Dodgers," March 25, 2011, at http://www.ctj.org/taxjusticedigest/archive/2011/03/stop_the_amnesty_for_corporate.php.
[14] Federal Reserve, "Liabilities to Foreigners Report by Banks in the United States, June 2011, available at http://www.federalreserve.gov/econresdata/releases/statbanksus/liabfor20110630.htm. Overall, 61 percent of the foreign liabilities are to other banks, but that number is not reported by country.

Other Measures to Combat Tax Haven and Tax Shelter Abuses

Require Country-by-Country Reporting of Financial Information for All Multinational Corporations Filing Reports with the Securities and Exchange Commission (Sec. 201)
The Stop Act would require all multinational corporations who file financial reports with the Securities and Exchange Commission to report the following information on a country-by-country basis: employees, sales, financing, tax obligations, and tax payments. Investors need the country-specific information to analyze the companies' overall financial health, its exposure to individual countries' problems, and the risk inherent in its worldwide operations. The country-by-country information would also help combat tax evasion,[15] financial fraud, and corruption.

Increase Penalty for Failure to Make Required Securities Disclosures (Sec. 202)
Companies who are subject to Securities and Exchange Commission (SEC) rules are required to report offshore ownership and offshore transactions in their stock. Tax dodgers have avoided this reporting, claiming that the offshore entities are independent, even though they are effectively controlled by a U.S. company or a majority stockholder.[16] The bill would establish a new penalty of up to $1 million for persons who violate U.S. securities laws by knowingly failing to disclose offshore transactions and stock holdings.

Include Hedge Funds and Company Formation Agents in Money-Laundering Programs (Sec. 203-204)
Hedge funds and private equity funds are the only type of financial institutions that are not required by the Bank Secrecy Act to have anti-money laundering programs such as Know Your Customer, due diligence procedures, and requirements to file suspicious activity reports. The Treasury Department proposed, but never finalized, anti-money laundering regulations for these unregistered investment companies, but withdrew them without explanation during the Bush administration. The bill would require Treasury to issue final regulations within 180 days of the bill's enactment.

Company formation agents are also not covered by the anti-money laundering rules. Many taxpayers are aided in their tax avoidance schemes by agents who form companies for them: U.S. company formation agents setting up offshore entities for U.S. clients and forming U.S. shell companies for foreign clients. The Stop Act would direct Treasury to develop anti-money laundering regulations for company formation agents as well within 120 days of the bill's enactment.

Facilitate IRS John Doe Summons (Sec. 205)
The IRS uses a John Doe summons to request information from a third party in cases where the taxpayer's identity is unknown. For example, the IRS might issue a John Doe summons to a bank to get information about an account owned by a foreign entity, although the IRS doesn't know who the foreign entity or its U.S. owner is. When the taxpayer is known, the taxpayer gets a notice of a third-party summons and has 20 days to ask a court to quash the summons.

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[15] It is estimated that the U.S. Treasury loses about $90 billion annually to offshore profit-shifting, see Kimberly A. Clausing, "Multinational Firm Tax Avoidance and Tax Policy," *National Tax Journal* 62 (4), 2009.
[16] In addition to tax evasion, the Wyly brothers violated securities laws related to insider trading by not reporting the offshore transactions. The brothers have been indicted for their violations of securities laws, see New York Times, "S.E.C. Charges Brothers with $550 Million Fraud," http://www.nytimes.com/2010/07/30/business/30sec.html?dbk. Their motion to have the case dismissed has been denied.

When the IRS doesn't know the name of the taxpayer and where to send the notice, the law provides a procedure for the IRS to get advance permission to serve the summons on the third party. To get the court's permission, the IRS must show that: 1) the summons relates to a particular person or class of persons, 2) there is a reasonable basis for concluding that there is a tax compliance issue involved, and 3) the information is not readily available from other sources. The IRS has successfully used the John Doe summons process to identify offshore hidden funds and collect unpaid taxes. The process, however, is expensive and time consuming. The bill would provide that the court may presume that the case raises tax compliance issues when there is an account or a transaction in a tax haven, relieving the IRS of proving that element in case after case.

In cases where an offshore bank has an account with a U.S. financial institution, the bill would allow the IRS to issue a summons for the U.S. bank accounts records without court approval.

The bill would also streamline the process in large "project" investigations. Where the IRS is planning to issue multiple summonses to definable classes of third parties (such as banks or credit card companies) to get information related to specific taxpayers, the bill would provide a process to have one court approve multiple summonses and retain ongoing oversight of the case. The IRS would be relieved of the burden of proving the same facts before multiple judges in many different jurisdictions.

Authorize IRS to Investigate FBARs and Suspicious Activity Reports (Sec. 206)
Current law requires a taxpayer controlling a foreign financial account over $10,000 to check a box on his or her income tax return (for individuals on Form 1040 Schedule B – Interest and Dividends) and to file a Foreign Bank Account Report (FBAR) with the IRS. Here's the glitch: the IRS authority under Title 26[17] of the U.S. Code allows the IRS to use tax information only for the administration of the Internal Revenue Code or "related statutes." The FBAR requirement is under Title 31.[18] Although the Treasury Department's Financial Crimes Enforcement Network (FinCEN) has delegated its power to investigate FBAR violations to the IRS, it's not clear that the IRS has the authority under the law. The bill would change the statute to make it clear that the relevant sections of Title 31 are to be considered internal revenue laws.

The penalty for FBAR violations is determined in part by the balance of the foreign bank account at the time of the "violation," which is the date the report is due. The report for the previous calendar year is due on June 30, so the penalty is reduced if taxpayers withdraw funds after December 31 but before filing the report. The bill would change the statute to impose the penalty on the highest balance in the account during the reporting period (the calendar year).

Financial institutions are required to report suspicious transactions to FinCEN by filing Suspicious Activity Reports (SARs). FinCEN is required to share the information with law enforcement, but not with IRS agents investigating civil tax enforcement cases. IRS civil (as opposed to criminal) agents are issuing an IRS summons to the financial institutions (at substantial time and expense) to get access to the report which Treasury already has. The bill

[17] Title 26 of the U.S. Code is the Internal Revenue Code.
[18] Title 31 is the Money and Finance section of the U.S. Code.

would clarify that "law enforcement" includes civil tax enforcement, giving IRS civil agents access to the information.

Combating Tax Shelter Promoters

Strengthen Tax Shelter Penalties (Sec. 301 and 302)
The IRS can assess penalties for promoting an abusive tax shelter for up to 50 percent of the fees earned by the promoter. Many tax shelters sell for hundreds of thousands, if not millions, of dollars. The bill would raise the penalty to an amount up to 150 percent of the promoters' gross income from the prohibited activity. A similar provision that imposes penalties on persons who aid or abet an understatement of tax, such as accounting, law and investment firms, and banks, would raise the penalty to up to 150 percent of the aider and abettor's gross income from the prohibited activity. Sen. Levin's statement related the case of an international accounting firm's cost-benefit analysis, deciding to participate in an abusive tax shelter because the average deal would bring them $360,000 in fees and the maximum penalty would be only $31,000.

Prohibit Fees Contingent on Obtaining Tax Benefits (Sec. 303)
The American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Public Company Accounting Oversight Board have all issued rules that allow contingent fees only in limited circumstances. In many states, accounting firms are prohibited from charging contingent fees on tax work, to reduce the incentive to devise abusive tax shelters. But the content and enforcement of these rules vary widely. And tax professionals are getting around them by making sure that most of the services are performed in a jurisdiction that does not prohibit contingency fees, even if the client is in a jurisdiction that does. The Stop Act would establish a single national rule that would prohibit tax practitioners from charging fees based directly or indirectly on tax savings.

Deter Financial Institution Participation in Abusive Tax Shelter Activities (Sec. 304)
Many abusive tax shelters depend on some sort of financial transaction, for example, using financing or trading securities. The tax code prohibits financial institutions from aiding or abetting tax evasion, but the agencies that oversee the financial institutions, such as the SEC or the Federal Reserve Bank, are not experts in tax law. The bill would require the bank and securities regulators to develop examination techniques with the IRS to detect these abuses. The new examinations would become part of the routine regulatory exams, and potential violations would be reported to the IRS.

End Communication Barriers between Enforcement Agencies (Sec. 305)
The tax code has stringent rules to keep the IRS from disclosing our tax information. Unfortunately, these rules also prohibit the IRS from informing bank regulators, the SEC, or the PCAOB when a tax examination discloses violations of banking, securities, or accounting laws. The bill would authorize the Treasury Secretary, which oversees the IRS, to disclose tax return information related to abusive tax shelters to those agencies, with appropriate privacy safeguards. The information would only be used for law enforcement purposes, such as detecting securities violations or accounting fraud.

Increase Disclosure of Information to Congress (Sec. 306)
Although they have been subpoenaed by Congress, accounting and law firms have refused to comply with requests for information, such as documents related to the sale of abusive tax shelters. The tax professionals rely on a section of the Internal Revenue code which prohibits tax preparers from disclosing tax information to third parties. There are regulations that state this provision was never intended to create a privilege or override a Congressional subpoena, but tax professionals continue to obstruct the investigations. The Stop Act would codify the regulations and put the necessary language directly into the law.

The bill would also require the IRS to grant Congress access to information about a Treasury decision to deny or revoke an organization's tax exempt status.

Regulate Tax Shelter Opinion Letters (Sec. 307)
The bill would provide express statutory authority for the Treasury Department to issue regulations that establish standards for tax professionals who provide opinion letters on the tax treatment of potential tax shelter transactions. The standards would address issues such as independence, conflicts of interest, appropriate fees, and collaboration among various practitioners.