

S 2498

Tax Shelter Transparency Act

Congress: 107 (2001–2003, Ended)

Chamber: Senate

Policy Area: Taxation

Introduced: May 9, 2002

Current Status: Placed on Senate Legislative Calendar under General Orders. Calendar No. 466.

Latest Action: Placed on Senate Legislative Calendar under General Orders. Calendar No. 466. (Jun 28, 2002)

Official Text: <https://www.congress.gov/bill/107th-congress/senate-bill/2498>

Sponsor

Name: Sen. Baucus, Max [D-MT]

Party: Democratic • State: MT • Chamber: Senate

Cosponsors (3 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Grassley, Chuck [R-IA]	R · IA		May 9, 2002
Sen. Lieberman, Joseph I. [D-CT]	D · CT		May 15, 2002
Sen. Johnson, Tim [D-SD]	D · SD		Jul 11, 2002

Committee Activity

Committee	Chamber	Activity	Date
Finance Committee	Senate	Reported By	Jun 28, 2002

Subjects & Policy Tags

Policy Area:

Taxation

Related Bills

No related bills are listed.

Tax Shelter Transparency Act - **Title I: Tax Shelter Transparency Requirements** - Amends the Internal Revenue Code to prescribe a civil penalty of \$50,000 for a failure to include on any return or statement certain specified information required about a "reportable transaction." Defines "reportable transaction" as any transaction with respect to which the Code requires a return or statement because the Secretary of the Treasury determines it has a potential for tax avoidance or evasion. Prescribes a civil penalty of \$100,000 in cases involving a "listed transaction," defined as a reportable transaction which is the same as, or similar to, a transaction identified by the Secretary as a tax avoidance transaction under the Code.

Doubles the reporting penalty if the offender is a "large entity" or a "high net worth individual." Defines "large entity" as an entity with gross receipts in excess of \$10 million. Defines a "high net worth individual" as a natural person whose net worth exceeds \$2 million immediately before the transaction. Permits the Commissioner of Internal Revenue to rescind all or any part of a reporting penalty for a non-listed reportable transaction under certain specified circumstances. Allows the Commissioner to delegate authority for rescinding only to the head of the Office of Tax Shelter Analysis. Directs the Commissioner to send in an annual report to Congress a summary of the total number and aggregate amount of penalties imposed (as well as rescinded) for failure to report required information about listed and other reportable transactions, which shall contain a description of each rescinded penalty with accompanying rationale.

Requires any person required to file periodic reports under the Securities Exchange Act of 1934 or who is required to pay a penalty with respect to a reportable transaction to disclose to the Secretary, for such periods as the Secretary may specify, certain civil penalties. Prescribes a civil penalty of \$100,000 for a failure to disclose either transgression.

(Sec. 102) Imposes an accuracy-related civil penalty of 20 percent (or higher for nondisclosed and other avoidance transactions) of the amount of any reportable transaction understatement for such understatement. Specifies a formula for deriving a reportable transaction understatement. Specifies that a "reportable transaction understatement" shall be attributable to listed transactions and other reportable transactions which have as a significant purpose to avoid or evade Federal income tax. Provides for coordination with penalties on other understatements, including prohibiting penalties under this section from applying to the penalty for fraud.

Prohibits imposition of a penalty for any portion of a reportable transaction understatement if reasonable cause for making such an understatement is shown and it is demonstrated the taxpayer acted in good faith. Includes as a condition for withdrawing a penalty that the relevant facts affecting the tax treatment of an item are adequately disclosed. Categorizes a taxpayer as meeting such requirement if the Secretary waived a penalty for a failure to disclose information about the reportable transaction. Includes as further conditions that there is or was substantial authority for such treatment and that the taxpayer had "reasonable belief" in making an understatement that such treatment was more likely than not the proper treatment. Delineates requirements for "reasonable belief" and disqualifies tax advisors' advice from counting towards the establishment thereof under certain specified circumstances.

(Sec. 103) Revises the formula for determining a substantial understatement of income tax for a corporation other than an S corporation or personal holding company in nonreportable transactions. Provides for a reduction by that portion of such an understatement attributable to tax treatment for which the taxpayer had reasonable belief that it was more likely than not the proper treatment (instead of in cases in which there is or was substantial authority for such treatment).

Authorizes the Secretary to prescribe, for specified parts of the Code, a list of positions for which the Secretary deems there is not substantial authority or no reasonable belief that the tax treatment is more likely than not the proper tax treatment.

(Sec. 104) Expands the scope of provisions that do not give the confidentiality privilege to communications between a corporation and its tax practitioner concerning tax shelters to make such provisions applicable to communications between any taxpayer and the taxpayer's tax practitioner.

Title II: Promoter and Preparer Related Provisions - Subtitle A: Provisions Relating to Reportable Transactions -

Directs a "material advisor" with respect to any reportable transaction to make a return (in such form as the Secretary may prescribe) describing the transaction, its potential tax benefits and other information prescribed by the Secretary. Defines "material advisor" as any person who provides material aid, assistance or advice regarding a reportable transaction and who derives gross income in excess of a threshold amount. Sets the threshold at \$50,000 in the case of a transaction substantially all of the tax benefits from which are provided to natural persons and \$250,000 in other cases. Authorizes the Secretary to prescribe exemptions from such requirements.

Requires material advisors to maintain lists identifying each person whom such advisor aided in a reportable transaction and any other information requested by the Secretary in such manner as the Secretary prescribes.

(Sec. 202) Imposes a civil penalty of \$50,000 in cases where a material advisor fails to file a return involving a reportable transaction by the time prescribed or files false or incomplete information. Imposes a civil penalty of at least \$200,000 for such a violation involving a listed transaction. Sets forth a formula for deriving the latter figure. Permits the Commissioner to rescind all or any part of such a reporting penalty under certain specified circumstances.

(Sec. 203) Imposes a civil penalty on a material advisor of \$10,000 a day for each day after the 20th day following the Secretary's request for a list of advisees until the advisor produces such a list. Exempts an advisor from the penalty in cases where failure to furnish a list within 20 days is due to reasonable cause.

(Sec. 204) Permits district courts to enjoin promoters of tax shelters from engaging in specified conduct subject to penalties under the Code.

Subtitle B: Other Promoter and Preparer Provisions - Amends provisions penalizing an income tax preparer for supporting an understatement of liability with respect to a return or claim to impose a fine of \$1,000 (currently, \$250) if any part of such understatement was due to an unrealistic position. Revises language detailing what constitutes an unrealistic position. Increases from \$1,000 to \$5,000 the civil penalty for willful or reckless conduct by an income tax preparer in support of an understatement of liability with respect to a return or claim.

(Sec. 212) Amends provisions of Federal law pertaining to a civil penalty for violations concerning records and reports on foreign financial agency transactions to authorize the Secretary to impose a penalty of up to \$5,000 in cases not involving willful violations (currently the maximum is \$100,000 and applies to willful violations). Sets forth an exemption if such a violation was due to reasonable cause and the amount of the transaction or the balance in the account at the time of the transaction was properly reported. Permits a penalty of between \$25,000 and \$100,000 in instances of willful violation, with no exemption.

(Sec. 213) Modifies prohibition of filing a "frivolous" tax return, and increases the amount of the civil penalty for committing such an offense from \$500 to \$5,000. Imposes a civil penalty of \$5,000 on anyone who submits a "specified frivolous submission." Defines "specified frivolous submission." Rescinds the penalty for a specified frivolous submission if the individual who filed the submission withdraws it within 30 days of being notified of its status.

Directs the Secretary to prescribe and periodically revise a list of positions which the Secretary has deemed as frivolous. Allows the Secretary to reduce a penalty upon determining that such reduction will promote compliance.

Allows the Secretary to deny any portion of a request for a hearing, an offer-in-compromise, or an installment agreement determined to be frivolous without the decision being subjected to further administrative or judicial review if specified requirements are met.

(Sec. 214) Amends Federal law concerning practice before the IRS to allow the Secretary to censure a representative (this is in addition to the current penalties of suspension and disbarment) who commits any of certain specified behaviors. Permits the Secretary to impose a civil monetary penalty on: (1) a representative who has been censured, suspended, or disbarred; and (2) an organization such a representative was acting on behalf of if the organization knew, or reasonably should have known, of such misconduct.

(Sec. 215) Penalizes an individual for making a statement with respect to certain tax statements (deductions, credits, etc.) that an individual knows is false or fraudulent as to any material matter at the rate of 50 percent of the gross income derived from such activity.

Title III: Other Provisions - Allows the Secretary to prescribe rules applicable to corporations filing consolidated returns that are different from other provisions that would apply if such corporations filed separate returns.

Declares that the Code shall be interpreted by treating Treasury regulation 1.1502-20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in *Rite Aid Corporation v. United States* 255 F.3d 1357 (Fed. Cir. 2001).

Actions Timeline

- **Jun 28, 2002:** Committee on Finance. Reported by Senator Baucus with an amendment in the nature of a substitute. With written report No. 107-189.
- **Jun 28, 2002:** Committee on Finance. Reported by Senator Baucus with an amendment in the nature of a substitute. With written report No. 107-189.
- **Jun 28, 2002:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 466.
- **Jun 18, 2002:** Committee on Finance. Ordered to be reported with an amendment in the nature of a substitute favorably.
- **May 9, 2002:** Introduced in Senate
- **May 9, 2002:** Sponsor introductory remarks on measure. (CR S4158-4159)
- **May 9, 2002:** Read twice and referred to the Committee on Finance. (text of measure as introduced: CR S4159-4163)