

111TH CONGRESS  
1ST SESSION

# S. 765

To amend the Internal Revenue Code of 1986 to allow the Secretary of the Treasury to not impose a penalty for failure to disclose reportable transactions when there is reasonable cause for such failure, to modify such penalty, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 1, 2009

Mr. NELSON of Nebraska (for himself, Mr. ROBERTS, Mr. BAYH, Mr. CRAPO, Mr. JOHANNS, and Mr. LUGAR) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow the Secretary of the Treasury to not impose a penalty for failure to disclose reportable transactions when there is reasonable cause for such failure, to modify such penalty, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. NONIMPOSITION OF PENALTY FOR FAILURE TO**  
2 **DISCLOSE REPORTABLE TRANSACTIONS**  
3 **WHEN THERE IS REASONABLE CAUSE FOR**  
4 **SUCH FAILURE.**

5 (a) IN GENERAL.—Subsection (a) of section 6707A  
6 of the Internal Revenue Code of 1986 is amended by in-  
7 serting “, unless it is shown that such failure is due to  
8 reasonable cause and not due to willful neglect” before the  
9 period.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Subparagraph (C) of section 6664(d)(2) of  
12 the Internal Revenue Code of 1986 is amended by  
13 striking “was rescinded under section 6707A(d)”  
14 and inserting “was not imposed under section  
15 6707A(a)”.

16 (2) Section 6707A of such Code is amended by  
17 striking subsection (d) and redesignating subsections  
18 (e) and (f) as subsections (d) and (e), respectively.

19 (3) Subsection (c) of section 6707 of such Code  
20 is amended to read as follows:

21 “(c) RESCISSION AUTHORITY.—

22 “(1) IN GENERAL.—The Commissioner of In-  
23 ternal Revenue may rescind all or any portion of any  
24 penalty imposed by this section with respect to any  
25 violation if—

1                   “(A) the violation is with respect to a re-  
2                   portable transaction other than a listed trans-  
3                   action, and

4                   “(B) rescinding the penalty would promote  
5                   compliance with the requirements of this title  
6                   and effective tax administration.

7                   “(2) NO JUDICIAL APPEAL.—Notwithstanding  
8                   any other provision of law, any determination under  
9                   this subsection may not be reviewed in any judicial  
10                   proceeding.

11                   “(3) RECORDS.—If a penalty is rescinded under  
12                   paragraph (1), the Commissioner shall place in the  
13                   file in the Office of the Commissioner the opinion of  
14                   the Commissioner with respect to the determination,  
15                   including—

16                   “(A) a statement of the facts and cir-  
17                   cumstances relating to the violation,

18                   “(B) the reasons for the rescission, and

19                   “(C) the amount of the penalty re-  
20                   scinded.”.

21                   (c) EFFECTIVE DATES.—

22                   (1) IN GENERAL.—Except as provided in para-  
23                   graph (2), the amendments made by this section  
24                   shall apply to penalties assessed after January 1,  
25                   2008.

#### 4 SEC. 2. PROPORTIONALITY OF PENALTY.

5 (a) IN GENERAL.—Subsection (b) of section 6707A  
6 of the Internal Revenue Code of 1986 is amended to read  
7 as follows:

8        "(b) AMOUNT OF PENALTY.—

9                 “(1) IN GENERAL.—Except as provided in para-  
10                 graph (2), the amount of the penalty under sub-  
11                 section (a) with respect to a reportable transaction  
12                 shall be the amount that is equal to 100 percent of  
13                 the penalty that would be imposed under section  
14                 6662A (without regard to subsection (c) thereof) if  
15                 the taxpayer had a reportable transaction under-  
16                 statement (as defined in section 6662A(b)) with re-  
17                 spect to such transaction.

18                 “(2) LISTED TRANSACTION.—The amount of  
19                 the penalty under subsection (a) with respect to a  
20                 listed transaction shall be the amount that is equal  
21                 to 200 percent of the penalty that would be imposed  
22                 under section 6662A (without regard to subsection  
23                 (c) thereof) if the taxpayer had a reportable trans-  
24                 action understatement (as defined in section  
25                 6662A(b)) with respect to such transaction.”.

1       (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to penalties assessed after January  
3 1, 2008.

4 **SEC. 3. ONE-TIME ASSESSMENT OF PENALTY.**

5       (a) IN GENERAL.—Subsection (a) of section 6707A  
6 of the Internal Revenue Code of 1986, as amended by sec-  
7 tion 1, is amended by striking “Any person” and inserting  
8 “Any taxpayer”.

9       (b) CONFORMING AMENDMENTS.—Subsection (d) of  
10 section 6707A of the Internal Revenue Code of 1986, as  
11 redesignated by section 1, is amended by striking “per-  
12 son” each place it appears and inserting “taxpayer”.

13       (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to penalties assessed after January  
15 1, 2008.

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