HIRE ACT

Mr. LEVIN. Mr. President, today President Obama signed into law the Hiring Incentives to Restore Employment Act, H.R. 2847, which will help put Americans back to work. More must be done on to help fight the unacceptably high unemployment rate, and I hope we can soon address other factors holding back our recovery, and particularly that we make it easier for businesses to obtain the funds they need to survive and grow.

While we work in Congress to get people back to work, I also want to take a moment to focus on another benefit of today's new law.

The HIRE Act is a significant victory for law-abiding U.S. taxpayers, and a significant blow against those who dodge their responsibilities. The Permanent Subcommittee on Investigations, which I chair, has spent years investigating offshore tax abuses which together cost the federal treasury an estimated $100 billion in lost tax revenues annually. In addition to its provisions designed to help foster economic growth, the HIRE Act contains foreign account tax compliance provisions that represent a major new and positive development in the efforts to stop offshore banks from using secrecy laws to help U.S. taxpayers evade their taxes.

These offshore tax compliance provisions are the culmination of over a year's worth of study, debate, and drafting efforts to protect America's honest taxpayers. The drafting effort involved a host of Members of Congress from both the Senate Finance Committee and the House Ways and Means Committee, and the work drew upon multiple bills, including the Stop Tax Haven Abuse Act, S. 506, which I introduced with Senators MCCASKILL, NELSON, WHITEHOUSE, SHAHEEN, and SANDERS, and which Congressman LLOYD DOGGETT introduced in the House with 67 cosponsors. I would like to commend Senator BAUCUS and Congressman RANGEL, in particular, for leading this drafting effort, and for involving us in producing a strong bill that President Obama is signing into law today.

This is a big bill, and its offshore tax provisions are complex. I want to provide some explanation of how this legislation is intended to work, both to guide the development of implementing regulations and to inform the courts of our legislative intent.

Section 501, ''Reporting on Certain Foreign Accounts,'' gives foreign financial institutions a choice. If those financial institutions hold U.S. investments of any variety—from U.S. treasuries to U.S. stocks and bonds to debt and equity interests in U.S. businesses—they must either pay a 30 percent withholding tax on their investment earnings, or disclose any and all accounts held by U.S. persons. The legislative intent behind this choice is to force foreign financial institutions to disclose their U.S. accountholders or pay a steep penalty for nondisclosure. The 30 percent will be withheld by a withholding agent in the United States before the funds are permitted to exit the U.S. financial system.

The reason for this strong approach was seen dramatically in hearings before the Permanent Subcommittee on Investigations. A July 2008 hearing, for example, showed how two foreign banks, UBS AG of Switzerland and LGT Bank of Liechtenstein, used a variety of secrecy tricks to help U.S. clients open foreign bank accounts and hide millions of dollars in assets from U.S. tax authorities. One 2004 UBS document indicated that 52,000 U.S. clients had Swiss accounts that had not been disclosed to the IRS. UBS estimated that those hidden accounts contained a total of about $18 billion in cash, securities, and other assets. In order to defer a criminal prosecution against the bank by the U.S. Department of Justice, UBS admitted that it had participated in a scheme to defraud the United States of tax revenues, paid a $750 million fine, and agreed to stop opening accounts that are not disclosed to the IRS. UBS also agreed to reveal the names of a limited number of U.S. accountholders, although the bulk of the 52,000 still may escape U.S. tax enforcement actions due to Swiss secrecy laws that continue to conceal their identities.

In order to avoid the 30 percent withholding tax, this new law will require each foreign financial institution to enter into an agreement with the Secretary of the Treasury to obtain and verify information which will make it possible for them to determine which of their accounts belong to U.S. account holders, report key information about those U.S. account holders, and comply with any request by the Treasury Secretary related to those U.S. accounts. The bill is written to end wide spread abuses. There are several issues that must be addressed in implementing this provision.

For instance, it is clearly intended that the definition of foreign ''financial institution'' be applied broadly, to include banks, securities firms, money services businesses, money exchange houses, hedge funds, private equity funds, commodity traders, derivative dealers, and any other type of financial firm that holds, invests, or trades assets on behalf of itself or another person.

The definition of ''account'' will cover not only traditional savings, checking, and securities accounts, but also debt and equity interests in hedge funds, private equity funds, and other types of investment firms.

The definition of ''U.S. person'' will apply to U.S. citizens, U.S. residents, and all types of U.S. businesses.

The purpose of the provision is to have foreign financial institutions look past the nominal owners of their accounts to identify the true beneficial owners. That means accounts which are held in the name of a foreign legal representative, agent, or trustee on behalf of a U.S. person, or in the name of a foreign entity, such as an offshore corporation, partnership, or trust, for the benefit of a U.S. person, must be disclosed to U.S. authorities.

Foreign financial institutions are to make use of all customer identification information about each account to determine whether the beneficial owners of the account are U.S. persons—including using all information gathered as a result of antimoney laundering and anticorruption requirements or efforts. So no foreign bank will be able to automatically determine that all foreign offshore shell corporations are foreign accountholders; they will have to look deeper to identify that corporation's beneficial owners and, if any beneficial owner is a U.S. person, to report that person's identity to the United States.

This approach is intended to remedy past IRS regulations which have allowed banks to treat all foreign corporations as foreign accountholders, no matter who the beneficial owner is. Our purpose here is to impose on foreign financial institutions the duty to identify the beneficial owners of each corporation and report any U.S. beneficial owners to the IRS.

Treasury, in implementing this statute, should develop a standard agreement for foreign financial institutions that lays out these requirements with respect to accounts, U.S. persons, and nominee accountholders. That standard agreement must also be constructed in such a way that foreign financial institutions will provide account information in a standardized electronic format that will enable efficient analysis of the data. Treasury should consult with the IRS and the Justice Department's Tax Division to determine how the collected information should be structured to provide timely and usable data in tax enforcement efforts.

The Treasury will need to construct a withholding regime that will efficiently withhold the 30 percent tax on all U.S. investment earnings held by a noncooperative foreign financial institution. This statute will not be effective unless the 30 percent tax is withheld promptly, reliably, and in a comprehensive way. In devising this withholding regime, it is our purpose to apply the term ''withholdable payment'' broadly to cover all types of payments from sources in the United States, including interest payments, dividends, rents, wages, stock gains, and derivative payments originating in the United States.

Finally, we expect that the Treasury, when exercising authority under the bill to grant exceptions or waivers or deem foreign financial institutions to be in compliance with the law, will exercise that authority narrowly and in a fashion that is consistent with the purposes of the statute and will promote disclosure of foreign accounts with U.S. account holders.

Sections 511 through 521 of the HIRE Act establish stronger disclosure requirements for U.S. taxpayers with foreign financial assets. Section 511 will require full disclosure of assets held outside of the United States, in order to end years of abuses involving the concealment of offshore assets, including disclosure, for example, of interests in foreign accounts, securities, complex financial instruments, debt or equity interests in foreign hedge funds, private equity funds, or other investment vehicles, and derivative contracts and trading arrangements. A new requirement in Section 521 for annual reports filed by shareholders of passive foreign investment companies will provide additional important disclosures of assets held outside of the United States. Tough penalties and a longer statute of limitations will add to the effectiveness of these new disclosure requirements.

Sections 531 through 535 tighten U.S. tax rules for foreign trusts and address a variety of abuses identified in my Permanent Subcommittee in Investigations 2006 hearings exposing how U.S. taxpayers use foreign trusts to evade their U.S. tax obligations. Section 531 ends shenanigans involving U.S. persons who are not officially beneficiaries of a foreign trust, but could be named a beneficiary by the trustee, or who write ''Letters of Intent'' instructing the trustee how to use or distribute trust assets. Section 532 creates a ''Presumption that Foreign Trust Has United States Beneficiary'' if a U.S. person directly or indirectly transfers property to that foreign trust. The presumption is rebuttable, but the onus is placed on the proper party, the person who has access to the information about the foreign trust, to rebut the presumption. Section 533 will stop abuses in which U.S. persons instruct foreign trusts to purchase and lend them property on an uncompensated basis, including jewelry, artwork, and even luxury homes. Section 534 requires U.S. grantors as well as trustees to ensure that trust transactions are properly reported to the IRS. These provisions will help put an end to foreign trust tax abuses that significantly undermine the U.S. Government's ability to collect taxes owed by foreign trusts with U.S. beneficiaries.

Still another section of the bill makes important changes to curb offshore tax abuses involving nonpayment of U.S. taxes on U.S. stock dividends. Section 541 is a direct result of a yearlong inquiry by my Permanent Subcommittee on Investigations into this problem. In September 2008, the subcommittee held a hearing and released a report detailing how offshore entities routinely dodge taxes on U.S. stock dividends—S. Hrg. 110–778. As discussed at the hearing, over the last ten years, dividend tax abuse has cost the U.S. treasury and honest taxpayers billions of dollars in lost revenue. The report made four recommendations:

First, end offshore dividend tax abuse. Congress should end offshore dividend tax abuse by enacting legislation to make it clear that non-U.S. persons cannot avoid U.S. dividend taxes by using a swap or stock loan to disguise dividend payments. Section 541 is designed to address this problem by eliminating the different tax rules for U.S. stock dividends, dividend equivalent payments, and substitute dividend payments, and making them all equally taxable as dividends.

Second, take enforcement action. The IRS should complete its review of dividend-related transactions and take civil enforcement action against taxpayers and U.S. financial institutions that knowingly participated in abusive transactions aimed at dodging U.S. taxes on stock dividends. The IRS has recently designated ending dividend tax dodging as a Tier I enforcement issue, and section 541 will provide the IRS with new tools in that enforcement effort. Section 541 requires exactly that.

Third, strengthen regulation on equity swaps. To stop misuse of equity swap transactions to dodge U.S. dividend taxes, the IRS should issue a new regulation to make dividend equivalent payments under equity swap transactions taxable to the same extent as U.S. stock dividends.

Fourth, strengthen stock loan regulation. To stop misuse of stock loan transactions to dodge U.S. dividend taxes, we recommended that the IRS immediately meet its 1997 commitment to issue a new regulation on the tax treatment of substitute dividend payments between foreign parties to make clear that inserting an offshore entity into a stock loan transaction does not eliminate U.S. tax withholding obligations. After waiting over 18 months for Treasury and the IRS to act, section 541 now provides them with a clear legislative mandate to issue stronger regulation of swaps and stock loans.

Section 541 makes a number of key changes in the law. First, section 541 calls for ''dividend equivalents'' to be treated as a U.S. sourced dividend and therefore subject to withholding tax beginning 180 days from enactment. ''Dividend equivalent'' is defined to include ''any substitute dividend made pursuant to a securities lending or a sale-repurchase agreement that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States.'' Once this becomes effective, all payments made based on, or by reference to, a dividend from a U.S. source under a securities lending or sale-repurchase transaction will be treated as a dividend from a U.S. source.

Treating dividend equivalents as U.S. sourced income sets an important precedent. Before this provision was enacted into law, the source of a dividend equivalent payment—often carried out through a swap arrangement—was determined according to who received the payment. But it makes no sense and turns the English language on its head to say the recipient of a payment is the ''source'' of that payment. The source of a payment will to be determined according to the person who initiated the payment, not according to its recipient, and section 541 makes that clear.

''Dividend equivalent'' is also defined to include ''any payment made pursuant to a specified notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States.''

''Specified notional principal contract'' is defined differently depending upon whether the payment is made before or after 2 years from the Act's enactment. For the first year-and-a-half after the act's effective date, payments made pursuant to notional principal contracts that are made based on, or by reference to, a dividend from a U.S. source are treated as a dividend from a U.S. source if they meet any of the criteria specified in newly enacted 26 U.S.C. 871(l)(3)(A)(i)–(iv) or ''such contract identified by the Secretary.'' The four specific criteria define the worst of the abusive notional principal contracts that the subcommittee uncovered.

However, as established in the subcommittee report and hearing on this matter, many financial institutions have moved away from the blatantly abusive practices that are addressed in subsections (3)(A)(i)–(iv) and now use more subtle methods of ensuring a riskless transfer between holding U.S. securities and engaging in notional principal contracts. It is the legislative intent of the authors of this provision that the Secretary will use the authority granted in (3)(A)(v) to identify and extend coverage of this statue to stop the more subtle abusive practices as well, and I encourage Treasury to act quickly to do so.

Two years from the date of enactment, any payment made pursuant to a notional principal contract that is based on, or by reference to, a dividend from a U.S. source is treated as a dividend from a U.S. source, ''unless the Secretary determines that such a contract is of a type which does not have the potential for tax avoidance.'' Again, it is the intent of this language that the Secretary uses this exception authority very sparingly, that only narrow types of contracts be excepted, and that such exceptions be fashioned only after conducting a thorough analysis to ensure that the contracts under consideration cannot be exploited for tax avoidance. As the language states, an exception is available only after the Secretary determines that the type of contract is not being used for tax avoidance, and does not have the potential for tax avoidance. That is intentionally a very high standard.

In addition to substitute dividends and payments made pursuant to notional principal contracts, ''dividend equivalent'' is also defined to include

''any other payment determined by the Secretary to be substantially similar'' to substitute dividends and payments made pursuant to notional principal contracts. Treasury is intended to utilize this explicit legislative directive to aggressively enforce dividend tax collection on substantially similar payments and transactions. For example, as explained in the Joint Committee on Taxation's ''Technical Explanation of the Revenue Provisions Contained in Senate Amendment 3310, the 'Hiring Incentives to Restore Employment Act,' Under Consideration by the Senate'' (JCX–4–10), ''the Secretary may conclude that payments under certain forward contracts or other financial contracts that reference stock of U.S. corporations are dividend equivalents.'' The point of the ''substantially similar'' language is to provide Treasury and the IRS with broad authority and the flexibility needed to prevent misuse of other financial instruments or trading activities to evade U.S. dividend taxes.

Finally, section 541 contains an important provision on the ''prevention of over-withholding.'' As the language states, the Secretary may reduce the tax on dividends only ''to the extent that the taxpayer can establish that such tax has been paid with respect to another dividend equivalent in such chain, or is not otherwise due, or as the Secretary determines is appropriate to address the role of financial intermediaries in such chain.'' The burden of proof placed on the taxpayer is intentionally high due to the numerous abuses that have occurred over the years in which taxpayers have designed elaborate chains of transactions to escape all taxation of U.S. stock dividends. This provision provides an equitable way to address the potential problem of over-withholding, while setting an intentionally high burden of proof to avoid abusive over-withholding claims.

I appreciate the attention that the Senate Finance and House Ways and Means Committees gave to the tax dodging problems identified in the Subcommittee's investigation. We also appreciate the technical guidance and cooperation provided by the Treasury Department, Internal Revenue Service, and the Joint Committee on Taxation in this Section.

I hope these remarks help shine a light on how this piece of legislation will begin to curb the $100 billion in offshore tax abuses now robbing honest taxpayers of needed government resources each year.

COMMISSIONING OF THE USS ''DEWEY''

Mr. LEAHY. Mr. President, on March 6, the USS *Dewey*—DDG 105—was commissioned at the Naval Weapons Station in Seal Beach, CA.

The *Dewey*, an *Arleigh Burke*-class ship, is the Navy's newest and most technologically advanced guided-missile destroyer. The ship's sponsor, Deborah Mullen, the wife of Chairman of the Joint Chiefs of Staff Admiral Mike Mullen, christened the ship in January of 2008 during a ceremony at Northrop Grumman Shipbuilding in Pascagoula, MS. Mrs. Mullen recently visited Vermont with Chairman Mullen as they came to a deployment ceremony for the Vermont Army Guard 86th Brigade which is now serving in Afghanistan.

The new destroyer honors Navy Admiral George Dewey and is the third U.S. Navy ship to be named after him. Admiral Dewey, who is from my hometown, Montpelier, VT, became an American hero in 1898 for leading his squadron of warships against the Spanish fleet at Manila Bay. Under his leadership, the U.S. Navy destroyed the Spanish fleet in only 2 hours without the loss of a single American vessel. Dewey was promoted to admiral of the Navy in 1903, a rank which was created for him.

The new USS *Dewey* has the ability to conduct a wide range of operations. The ship contains a multitude of offensive and defensive weapons and will be capable of fighting air, surface, and subsurface battles simultaneously. The USS *Dewey* is an example of how naval warships have the flexibility to conduct a variety of missions.

We Vermonters are proud that another ship has been named after Admiral Dewey. I wish Godspeed to the ship and its crew.

IRAN

Mr. CASEY. Mr. President, I rise today to commemorate Nowruz, the traditional Iranian New Year, which begins with the arrival of spring on the Vernal Equinox. More than 1 million Iranian Americans in the United States as well as millions of Iranians and others around the world celebrate Nowruz, which embodies the ideals of understanding and appreciation of others. Universally, the beginning of spring is associated with rebirth.

At this festive time, when Mother Nature is beginning a new cycle and families around the world are gathering to celebrate a new calendar year, I would like to appeal to the good will of the Iranian government by calling for the immediate release of Joshua Fattal, Sarah Shourd, and Shane Bauer. These three young American hikers have spent almost 8 months in confinement in Iran's Evin prison for allegedly crossing a poorly marked border. We are heartened that the Iranians recently allowed the three young Americans to call their families for the first time since their detention on July 31 last year. Still, we ask at the beginning of Persian New Year that Josh, Sarah, and Shane be released to celebrate a spring with their desperately concerned parents and other family members. Laura Fattal, mother of Josh, recently appealed to the Iranian authorities, asking for them ''to show compassion and allow our families to be reunited in joy and happiness as well.''

I would like to recognize the Senators from California and Minnesota, as well as Senator SPECTER, who have worked tirelessly to reunite Josh, Sarah, and Shane with their families. I hope that Supreme Leader Khamenei, in the spirit of Nowruz, will make the humanitarian gesture of immediately releasing Josh, Sarah, and Shane.

ADDITIONAL STATEMENTS

RECOGNIZING THE UNIVERSITY OF MONTANA GRIZZLIES

• Mr. BAUCUS. Mr. President, today I recognize the achievements of an outstanding college basketball team from my home State of Montana. High school and college sports are a way of life across Big Sky country. On cold winter nights in towns across the state from Libby to Lewistown and from Fort Benton to Fairview folks fill up gymnasiums to cheer on their favorite teams. The University of Montana Grizzlies have legions of devoted fans around Montana, and pack thousands into the Adams Center on the UM campus in Missoula for home games.

This season's edition of the Griz has thrilled fans throughout, and the team is now headed for the NCAA Tournament after a thrilling come from behind win to capture the Big Sky Conference Championship on March 10. The Grizzlies showed the heart, determination, and hustle Montana athletes are known for, in clawing their way back from a 22-point deficit to defeat Weber State University on the Wildcats' home court. Anthony Johnson turned in a performance for the ages and one that will be remembered for decades across Montana. The senior guard poured in a school and Big Sky tournament record 42 points including the winning shot. To illustrate how amazing this performance was Johnson by himself outscored Weber State 34 to 25 in the second half.

In the end it all came down to teamwork as guard Will Cherry made a stellar defensive play to stop Weber State on their last possession, and big men Derek Selvig and Brian Qvale contributed with big blocks and rebounds throughout. This was yet another illustration of how the team has pulled together all year to get big wins no matter the adversity they faced.

The Griz now move on to face the University of New Mexico Lobos in the NCAA Tournament. The Griz have had tournament success in the past, winning a first round game in 2006 despite being a heavy underdog and having a memorable run in the 1975 tournament as well. In 1975 another tremendous performance was turned in by a Grizzly as guard Eric Hays nearly led the team to an upset of defending national champion UCLA in the second round. Hays played the game of his life—he