

Mr. LEMIEUX. This document goes through the various offers of assistance and what is the current status of the response. So if we go to the European Maritime Safety Agency, skimmers, under consideration. May 13 is the date of the offer. As of last Friday, no response. Republic of Korea, skimmers, under consideration. May 2, the offer is made. As of last Friday, no response. Sweden, April 30, skimmers; more skimmers offered on June 15. Under consideration. No response. United Arab Emirates, skimmers, under consideration, offer made May 10. No response. Why are we not welcoming all of these offers of assistance to bring these skimmers and put them in the Gulf of Mexico to suck up the oil?

I wish to show an example of an offer of assistance made to the United States. The ship here is from a Dutch company called Dockwise. The name of this vessel is the *Swan*. Unlike some of the skimmers being used and deployed by the Navy, which can be put on a train car or flown on an airplane to the location—and although very welcome are relatively small—this is a massive ship that could take in 20,000 tons of oil or an oil-water mixture off of the water. They rig the ship with skimming equipment that hangs off the sides.

So on May 7, Dockwise offered the *Swan* to the United States. The offer went under consideration. After 48 days, the offer for this massive ship with 20,000 tons of skimming capacity is still under consideration. But the ship is not available anymore because Dockwise now has employed the ship for other purposes because the U.S. Government, from all the information we have, never got back to them. Here is a Dutch company offering us a massive ship to skim 20,000 tons of oil and water off the top of the Gulf of Mexico, and the U.S. Government doesn't return the phone call. They never hear whether we want the ship. People involved with the situation believe the *Swan* was rejected due to Jones Act considerations and that a similar vessel, the SEACorp vessel named the *Washington*, was chosen instead. The *Washington* is an American flag vessel. Its capacity is 1,000 tons, one-twentieth the capacity of the *Swan*. I am for America first, but why aren't we using both of them? There is plenty of oil to skim up. Use the American vessel, but don't fail to respond to the Dutch company that has this massive ship that has a 20,000-ton skimming capacity. Why would we not employ both?

I could not be more frustrated with the lack of response. I could not be more frustrated with the lack of a sense of urgency from this administration in getting this job done.

The people of the State of Florida are scared to death about the oilspill. When I was in Pensacola last week, I met a woman who works at the pier on Pensacola Beach. I asked her how things were going. She serves food at the pier.

She said: It has been very harrowing for us.

I asked her: Are people coming out?

She said: People from north Florida are coming to the beach. These are people who haven't been to the beach in a long time.

I said: Why are they coming?

She said: They are coming to see the beach one last time, as if they were going to visit a friend who was on his or her deathbed. They don't believe the beach will ever look the way they remember it looking.

Why we are not deploying every available national asset, military asset, and accepting every offer of assistance from foreign countries is beyond belief, and it is not acceptable. I will continue to meet with the Coast Guard and the Navy. When I see the President tomorrow at the White House, I will raise this issue with him. I will do everything I can to keep clamoring for this. It is not acceptable that in this, the greatest country in the world, our response would be this anemic.

I yield the floor.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, at 12:28 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business until 5 p.m. with the time equally divided between the two leaders or their designees, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming.

#### SELF-EMPLOYMENT TAX

Mr. ENZI. Mr. President, the Reid-Baucus tax extenders bill before the Senate includes several provisions that, to my knowledge, have never been vetted by congressional tax writers either in the Senate Finance Committee or in the House Ways and Means Committee. As an accountant with practical expertise in tax matters, this disturbs me greatly. It should also disturb the small business owners because there is a provision in this bill that would slap them in the face with a 15-percent tax increase. I am talking about the provision that would apply a

15.3-percent self-employment tax to the distributions of certain subchapter S corporations. Those are the small business corporations. This self-employment tax would apply when 80 percent of the gross income of the small business is attributable to three or fewer professionals in a professional services corporation. We are talking about the smallest of the small businesses.

This is a \$9.1 billion hit on a small subset of small businesses engaged in a service trade. I wonder, the next time an offset is needed, will the Senate go after all the small businesses, changing the Tax Code this same way?

My colleagues on the other side of the aisle call this a "loophole closer" or an "anti-fraud provision." I assure my colleagues this is neither. These words are convenient labels my colleagues use to defend tax-and-spend policies. The small business corporation provision is, however, a massive tax increase on small business.

This new payroll tax on nonwage income would hurt the ability of small businesses to reinvest and to create jobs. At nearly 10 percent unemployment, I don't think the Federal Government is in any position to pursue job-killing tax increases. Small businesses are the lifeblood of our economy. It is imperative that we nurture their growth, not hinder it, so they can create jobs and get our economy back on track.

None of us is in favor of fraud, but that is not really what we are talking about.

If the IRS wants to improve compliance with the self-employment tax, they have the right tools. They just need to use them. For example, the IRS Revenue Ruling 74-44 that specifically addresses the tax treatment of dividends in lieu of compensation gives them all they need.

I ask unanimous consent to have the IRS revenue ruling printed in the RECORD following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ENZI. I also have pages and pages of case law of which the IRS has successfully litigated the issue of dividends in lieu of compensation and the applicability of employment taxes.

Plus, Congress has codified the economic substance doctrine which says a transaction must have an economic purpose aside from the reduction of tax liability in order to be considered valid. In my opinion, this is the IRS's ace-in-the-hole card. The IRS can close any loophole—real or imagined—with the power of the new law.

Why can't the IRS do its job with the volumes of legislative regulatory and judicial tools it already has? For example, the IRS revenue ruling could be codified somehow, but then it wouldn't provide an offset for new programs, would it? Nor would it permit my colleagues across the aisle to reduce the tax on venture capitalists for their carried interest. I don't like the carried

interest provision, but to soften the impact of that policy on the backs of small businesses is just plain wrong.

Even the Government Accountability Office agrees the IRS should be doing more with what it has to crack down on fraud. In a 2009 report, the GAO stated: "IRS efforts to enforce the rules on paying adequate wage compensation to small business shareholders have been limited," and the IRS provides only "limited guidance in determining adequate compensation" guidelines for taxpayers.

A 2002 report by the Treasury's inspector general found that "IRS agents did not always address officer compensation, even when little or no compensation was paid."

Clearly, the IRS isn't doing its job. That is the loophole. The IRS can and should do more with what they already have.

As a former accountant, I find this small business corporation payroll tax totally unworkable. For example, the tax would apply when 80 percent or more of gross income of the S corporation is attributable to three or fewer shareholders in the S corporation. How are taxpayers supposed to track the attribution of gross income? Let me give an example.

My friend, the senior Senator from Massachusetts, has introduced S. 144 that would exempt cell phones from the recordkeeping requirements under the listed property rules. Why? Because the paperwork burden is too costly and time consuming for business. I think it is a good bill, and I am proud to be a cosponsor. In fact, the bill has 72 cosponsors. That is a supermajority of the Senate who agree it is a good bill. But if a supermajority of the Senate agrees the bookkeeping burden of parcelling out an itemized cell phone bill between business and personal use is too onerous, why would we think that itemizing the source of gross income across shareholders and employees in an S corporation would be any easier?

This new payroll tax on small business was written without any input from the tax-writing committees, and it shows. Although I am sure it was unintended, this new law has the potential to reduce Social Security benefits. Since the new payroll tax would reclassify income from certain small businesses as wage income, it could trigger the earnings test for folks receiving early retirement benefits from Social Security.

Even Senator BAUCUS admitted the payroll tax provision needs "modifications." I remember it well because he made this statement during a Treasury hearing a few weeks ago when I raised this issue as an onerous tax increase.

Not only is this a job-killing tax, but the manner in which it was concocted is appalling. The original tax extenders bill raised the taxes on Wall Street bankers, but when their lobbyists howled, lawmakers went looking someplace else—small businesses—for the revenue they needed. Small businesses

aren't as able to defend themselves when the tax man cometh, and in the end it results in a new tax that robs David to pay Goliath.

The outrageousness of this new tax led me and my colleague, Senator SNOWE from Maine, to file an amendment that would strike the S corporation payroll tax from the underlying tax extenders bill.

If my colleagues across the aisle seriously believe that noncompliance with the self-employment tax among S corporations is a problem, then the best, most workable solution is to codify the "reasonable compensation" standard into law. This S corporation "attribution of gross income" basis isn't workable. If you don't believe me, again, I refer you to the experts.

I have a letter I wish to submit for the RECORD. It is a letter from the AICPA, the American Institute of Certified Public Accountants. In the letter they say:

We are concerned that there may be unintended consequences that have not been fully aired and discussed. Accordingly, we strongly support the amendment being offered by Senators Snowe and Enzi which would strike Section 413.

I ask unanimous consent this letter be printed in the RECORD at the end of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. ENZI. Again, this seemingly small provision in the tax extenders bill would have a \$9 billion impact, and that is just on a subset of S corporations, these small businesses.

This payroll tax provision ought to be stripped and sent back to the tax-writing committees where it can be addressed in the proper fashion. I strongly urge my colleagues to support the Snowe-Enzi amendment in our efforts to remove this misguided, outrageous new tax. I think there is support on both sides of the aisle for doing that.

I thank the Chair and yield the floor.

#### EXHIBIT 1

[From taxanalysts]

FEDERAL RESEARCH LIBRARY: IRS REVENUE RULINGS

(Rev. Rul. 74-44; 1974-1 C.B. 287)

REV. RUL. 74-44

Advice has been requested whether, under the circumstances described below, an electing small business corporation incurred liability for the taxes imposed by the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages (chapters 21, 23, and 24, respectively, subtitle C, Internal Revenue Code of 1954).

The corporation is a small business corporation with two shareholders, that has elected, pursuant to section 1371(a) of the Code, not to be subject to corporate income tax, but to have all its income taxed directly to its shareholders.

In 1972, the shareholders performed services for the corporation. However, to avoid the payment of Federal employment taxes, they drew no salary from the corporation but arranged for the corporation to pay them

"dividends" of 100x dollars, which is the amount they would have otherwise received as reasonable compensation for services performed.

Sections 3121(a) and 3306(b) of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, respectively, define the term "wages," with certain specific exceptions not material here, as "all remuneration for employment." Section 3401(a) of the Code, relating to the withholding of income tax, contains a similar definition.

In the instant case, the "dividends" paid to the shareholders in 1972 were in lieu of reasonable compensation for their services. Accordingly, the 100x dollars paid to each of the shareholders was reasonable compensation for services performed by him, rather than a distribution of the corporation's earnings and profits. Such compensation was "wages" and liability was incurred for the taxes imposed by the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source on Wages.

#### EXHIBIT 2

AMERICAN INSTITUTE OF  
CERTIFIED PUBLIC ACCOUNTANTS,  
Washington, DC, June 14, 2010.

Hon. MAX BAUCUS,

Chairman, Senate Committee on Finance,  
Washington, DC.

Hon. CHARLES GRASSLEY,

Ranking Member, Senate Committee on Finance,  
Washington, DC.

AMENDMENT TO H.R. 4213, SECTION 413—EMPLOYMENT TAX TREATMENT OF PROFESSIONAL SERVICE BUSINESSES—S. AMENDMENT 4342

DEAR CHAIRMAN BAUCUS AND RANKING MEMBER GRASSLEY: The American Institute of Certified Public Accountants (AICPA) opposes Section 413 of the American Jobs and Closing Tax Loopholes Act of 2010 which we believe threatens to result in a significant increase in taxes and complexity for S corporations and their shareholders, and for certain limited partners. Section 413 represents a major change in longstanding tax policy that has never been the subject of public hearings, thus, we are concerned that there may be unintended consequences that have not been fully aired and discussed. Accordingly, we strongly support the amendment being offered by Senators SNOWE and ENZI, S. Amendment 4342, which would strike Section 413. The proposed Section 413: Fails to take into account a fair and reasonable return on the human and investment capital of the owners; may reduce Social Security benefits for early retirees; may create unintended consequences to qualified and non-qualified retirement plans of owners that would now have both wages and self-employment income; and ignores the fact that the IRS currently has the appropriate enforcement tools it needs to re-characterize the distributions of S corporations as salary subject to employment taxes under FICA.

The AICPA would like to work with Congress and the IRS to address the best way to collect S corporation shareholders' and partners' fair share of employment/self-employment taxes. Such a provision should not be rushed through the legislative process without due process and deliberation. Thank you very much for taking time to consider our serious concerns and suggestions regarding Section 413 of this Act, and the much needed Snowe-Enzi amendment. If we can be of assistance, please contact Peter Kravitz, AICPA Director of Congressional & Political Affairs or Edward S. Karl, AICPA Vice President—Taxation.

Sincerely,

ALAN R. EINHORN,  
Chair, Tax Executive Committee.

The PRESIDING OFFICER. The Senator from Montana.

#### MONTANA WEATHER EMERGENCIES

Mr. TESTER. Mr. President, I rise today to share an incredible story about a community working together in the aftermath of a powerful storm in Billings, MT.

The storm that occurred on Father's Day spawned at least one tornado that touched down in Billings Heights, blowing apart several businesses and one of the city's most familiar buildings.

If my colleagues will take a look, this is a picture of what the inside of Rimrock Auto Arena looks like today. You can see the tornado ripped off the roof. Thousands and thousands of folks have memories from inside this building, from concerts to sporting events to graduations.

This picture was taken by Larry Mayer, a photographer for the Billings Gazette. Minutes after the tornado tore through, emergency responders, as my colleagues can see, arrived on the scene to keep folks away from the debris in the streets.

The wind twisted guardrails around light poles. The rain turned streets into rivers. Golf ball-sized hail came crashing down.

In our part of the country, we are used to extreme weather—subzero cold, drought, snow, and severe thunderstorms—but a tornado tearing through the middle of Montana's largest city is pretty darn rare. Through it all, only one minor injury was reported, and that was due to hail.

While we stand together in support of the folks who lost their businesses and their property last Sunday, we are grateful no one died. Nobody lost their home. I attribute that to a lot of luck and to quick action and smart decisions by emergency responders in Billings and in Yellowstone County.

Immediately after the clouds lifted, officers kept onlookers out of harm's way. More than a dozen National Guardsmen immediately secured the area, answering a late night call on Father's Day. News reporters went to work sharing the story. Unelected leaders, from councilmen to commissioners, buckled down to hammer out the next steps.

This week, people across the country opened their newspapers and turned on their TVs to see the incredible pictures from Billings, MT. They saw what happens when a community works together in the aftermath of a storm such as this. Everyone lived to share their story, and the community grew stronger because of it.

It is not just Billings that felt the force of wild weather this last week. Further north, the community of Rocky Boy's Indian Reservation is still trying to tally up the damage after a powerful rain storm last Thursday night. In the nearby Bear Paw Moun-

tains, there is word that water wiped out entire roads. Dozens of families in the area were forced out of their homes, and roads were destroyed.

Last week, a microburst destroyed a home near Froid, MT. Ramona Ryder, the woman who lived in a residence there, died in that storm.

Of course, Montana is a State where agriculture is not just the top industry, it is the livelihood of thousands of families. Weather takes its toll on crops and soil and irrigation. But over the past week, we have seen unusual weather across the Big Sky State, and we can expect more of it. From farmers to tribal communities to folks who live in Montana's biggest cities, it impacts everyone.

Now we begin the process of rebuilding the businesses and the familiar buildings destroyed by these storms.

I ask the Presiding Officer and all of my colleagues to stand with me to offer any support we can to the Billings and Rocky Boy's communities and to those folks up in the Bear Paw Mountains and especially to the folks who have to start from scratch because, as we know all too well in Montana, it takes working together to rebuild, and we will become stronger.

With that, Mr. President, I yield the floor. I suggest the absence of a quorum, and I ask unanimous consent that the time during the quorum call be divided equally between the Democrats and Republicans.

The PRESIDING OFFICER (Mrs. GILLIBRAND). Without objection, it is so ordered.

The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. CARDIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KAUFMAN). Without objection, it is so ordered.

#### HAMAS IN GAZA

Mr. CARDIN. Mr. President, I rise today to speak about the current situation in the Gaza Strip.

In 2007, Hamas, a State Department-designated foreign terrorist organization, forcibly seized control of Gaza. Hamas continues to refuse to recognize Israel's right to exist and, in fact, has perpetrated terrorist attacks against Israel, launching countless rockets from Gaza into Israel.

Hamas calls for the elimination of Israel and Jews from Islamic holy lands. No Hamas leader has publicly expressed a willingness to disarm or to stop attacks on Israel and Israelis.

Israel, like every other country in the world, has a right to defend itself. With a sworn enemy on its border, Israel must protect her citizens against potential attacks every single day. Under the blockade, Israel directs ships to the port of Ashdod, where they are inspected for arms and other dangerous items before Israel allows off-loading

and assists in the delivery of legitimate goods to Gaza.

We know that Israel's concerns about arms transfers to Gaza are legitimate because both weapons and raw materials are smuggled into Gaza through tunnels from the Sinai in Egypt. Thousands of rockets and mortars have been fired from Gaza into Israel over the last decade.

Just last week, Israel has shown signs of compromise, announcing its intention to ease the blockade and allow more civilian goods and humanitarian aid to enter the Palestinian territory by land, including construction materials for civilian projects.

It is important to note that Hamas has made no such compromises and continues to maintain its vehement and violent stance against Israel's existence. Hamas also continues to endanger Gaza's civilian population by using hospitals, schools, mosques, and residential neighborhoods as command and operations centers or as weapons storage facilities.

While Hamas claims to be the popular representatives of the Palestinians in Gaza, their actions show that they hardly care for the plight of the average Gazan, as their rule deprives their own people of a transparent democracy, civil rights and freedom.

The best way to ameliorate that and to fix the broader current crisis and prevent future ones, of course, is Israeli-Palestinian peace and the creation of an independent Palestinian state that lives side-by-side with Israel, providing security and economic stability for the Palestinian and the Israeli people.

Today, it is Israel that continues to acknowledge the necessary framework for any peace agreement.

Israel has shown willingness for direct negotiations, but the Palestinians continue to insist on proximity talks. Israel is seeking to make peace with a partner whose parliament is controlled by Hamas, an organization still sworn to the destruction of Israel.

The only way to achieve peace is for Hamas to give up its militancy, forego terrorism and violence against innocent civilians, recognize Israel's right to exist and become a legitimate partner in Palestinian institutions. The more than 1 million Palestinians living in Gaza deserve that, the millions of Israelis who are subject to Hamas rockets and terror deserve that and frankly, the world deserves a stable, secure Middle East.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. ENZI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.