

would adversely affect the capital treatment of the stock or financial instrument under current or successor applicable capital provisions compared to a capital instrument with identical terms other than the term and condition described under clause (i).

(I) REQUIREMENTS ON FINANCIAL INSTRUMENTS ISSUED BY A COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION LOAN FUND.—Any equity equivalent capital issued to the Treasury by a community development loan fund receiving a capital investment under the Program shall provide that the rate at which interest is payable shall be 2 percent per annum for 8 years. After 8 years, the rate at which interest is payable shall be 9 percent.

(6) ADDITIONAL INCENTIVES TO REPAY.—The Secretary may, by regulation or guidance issued under section 4104(9), establish repayment incentives in addition to the incentive in paragraph (5)(E) that will apply to new capital investments in a manner that the Secretary determines to be consistent with the purposes of this subtitle.

SA 4615. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____ . MAXIMUM 35 PERCENT RATE ON TRADE OR BUSINESS INCOME.

(a) IN GENERAL.—Section 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(j) MAXIMUM RATE ON TRADE OR BUSINESS INCOME.—

“(1) IN GENERAL.—If, for any applicable taxable year, a taxpayer who is an individual (other than an estate or trust) has qualified trade or business income, then, in lieu of the tax imposed on the taxpayer by subsection (a), (b), (c), or (d), there is hereby imposed a tax equal to the lesser of—

“(A) the tax imposed by this section without regard to this subsection, or

“(B) a tax equal to the sum of—

“(i) a tax computed at the rates and in the manner as if this subsection had not been enacted on the greater of—

“(I) taxable income reduced by qualified trade or business income and any net capital gain, or

“(II) the amount of taxable income (reduced by any net capital gain) taxed at a rate below the highest rate of tax imposed by section 11(b) for such taxable year, plus

“(ii) a tax equal to the product of such highest rate of tax and the taxpayer's qualified trade or business income which was not taken into account under clause (i).

“(2) COORDINATION WITH RATE ON NET CAPITAL GAINS.—If a taxpayer has qualified small business income for any applicable taxable year and also has a net capital gain for such taxable year—

“(A) this subsection shall not apply, and

“(B) the tax computed under subsection (h)(1)(A) shall not exceed the amount determined under paragraph (1).

“(3) QUALIFIED TRADE OR BUSINESS INCOME.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘qualified trade or business income’ means, with respect to any taxable year, an amount equal to the excess (if any) of—

“(i) the aggregate income from the actual conduct of a trade or business which—

“(I) is income from sources within the United States (within the meaning of section 861), and

“(II) is not passive income (as defined in section 904(d)(2)(B)), over

“(ii) the sum of—

“(I) the cost of goods sold that are allocable to such income, and

“(II) other expenses, losses, or deductions that are properly allocable to such income.

“(B) CAPITAL GAINS AND LOSSES DISREGARDED.—Items taken into account in determining net capital gain shall not be taken into account in determining qualified trade or business income.

“(4) APPLICABLE TAXABLE YEAR.—For purposes of this subsection, the term ‘applicable taxable year’ means any taxable year of the taxpayer with respect to which any rate of tax under the applicable table contained in subsection (a), (b), (c), or (d) exceeds 35 percent.

“(5) NET CAPITAL GAIN.—For purposes of this subsection, the term ‘net capital gain’ has the meaning given such term by subsection (h).”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2010.

SA 4616. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

On page 237, line 25, before the period insert “including, to the extent possible based on the available reporting data, details on lending to women-owned businesses, veteran-owned businesses, and minority-owned businesses”.

SA 4617. Mr. FRANKEN submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, after line 25, add the following:

SEC. 1137. TEMPORARY PROGRAM FOR RAPID DEPLOYMENT OF RENEWABLE ENERGY AND ELECTRIC POWER TRANSMISSION PROJECTS.

Section 1705(a) of the Energy Policy Act of 2005 (42 U.S.C. 16516(a)) is amended by adding at the end the following:

“(4) Energy efficiency projects, including projects to retrofit residential, commercial, and industrial buildings, facilities, and equipment.”.

PRIVILEGES OF THE FLOOR

Mr. DURBIN. Mr. President, on behalf of Senator LINCOLN, I ask unanimous consent that Bradley Karmen, a detailee of the Senate Agriculture Committee, be granted the privilege of the floor for the remainder of this Congress.

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

NATIONAL AEROSPACE WEEK

Mr. DURBIN. Madam President, I ask unanimous consent the Commerce Committee be discharged from further consideration of H. Con. Res. 292 and the Senate proceed to its immediate consideration.

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

The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 292) supporting the goals and ideals of National Aerospace Week, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 292) was agreed to.

The preamble was agreed to.

MEASURES READ THE FIRST TIME—S. 3772 and S. 3773

Mr. DURBIN. Madam President, I understand there are two bills at the desk. I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will read the titles of the bills for the first time.

The legislative clerk read as follows:

A bill (S. 3772) to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

A bill (S. 3773) to permanently extend the 2001 and 2003 tax relief provisions and to provide permanent AMT relief and estate tax relief, and for other purposes.

Mr. DURBIN. I now ask for a second reading en bloc, and I object to my own request en bloc.

The PRESIDING OFFICER. Objection is heard. The bills will be read for the second time on the next legislative day.

ORDERS FOR TUESDAY, SEPTEMBER 14, 2010

Mr. DURBIN. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Tuesday, September 14; that following the prayer

and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 5297, the small business jobs bill, with the time until 11 a.m. equally divided and controlled between the two leaders or their designees. Finally, I ask that the Senate recess from 12:30 p.m. until 2:15 p.m. tomorrow to allow for the weekly caucus meetings.

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

PROGRAM

Mr. DURBIN. Madam President, at 11 a.m., the Senate will proceed to a series of up to three rollcall votes in relation to the small business jobs bill. Those votes will be on the motion to invoke cloture on the Johannis amendment relating to 1099 forms, the Nelson of Florida amendment, also on 1099 forms, and the substitute amendment to the small business jobs bill.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. DURBIN. Madam President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:55 p.m., adjourned until Tuesday, September 14, 2010, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

THE JUDICIARY

ROBERT NEIL CHATIGNY, OF CONNECTICUT, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIRCUIT, VICE GUIDO CALABRESI, RETIRED.

GOODWIN LIU, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE A NEW POSITION CREATED BY PUBLIC LAW 110—177, APPROVED JANUARY 7, 2008.

LOUIS B. BUTLER, JR., OF WISCONSIN, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN, VICE JOHN C. SHABAZ, RETIRED.

EDWARD MILTON CHEN, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, VICE MARTIN J. JENKINS, RESIGNED.

JOHN J. MCCONNELL, JR., OF RHODE ISLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND, VICE ERNEST C. TORRES, RETIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS VICE CHIEF OF STAFF, UNITED STATES AIR FORCE, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 8034 AND 601:

To be general

LT. GEN. PHILIP M. BREEDLOVE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE

AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. WILLIAM L. SHELTON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. RICHARD Y. NEWTON III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. HERBERT J. CARLISLE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. STANLEY T. KRESGE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. SUSAN J. HELMS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. OTIS G. MANNON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. RICHARD T. DEVEREAUX

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. CURTIS M. SCAPAROTTI

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. PHILLIP M. CHURN, SR.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. RICHARD T. TRYON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. TERRY G. ROBLING

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. (SELECTEE) JOHN M. RICHARDSON

DEPARTMENT OF AGRICULTURE

ELIZABETH ANN HAGEN, OF VIRGINIA, TO BE UNDER SECRETARY OF AGRICULTURE FOR FOOD SAFETY, VICE RICHARD A. RAYMOND, RESIGNED, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

FEDERAL RESERVE SYSTEM

PETER A. DIAMOND, OF MASSACHUSETTS, TO BE A MEMBER OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR THE UNEXPIRED TERM OF FOURTEEN YEARS FROM FEBRUARY 1, 2000, VICE FREDERIC S. MISHKIN.

MISSISSIPPI RIVER COMMISSION

SAMUEL EPSTEIN ANGEL, OF ARKANSAS, TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION FOR A TERM OF NINE YEARS. (REAPPOINTMENT)

DEPARTMENT OF HOMELAND SECURITY

ALAN D. BERSIN, OF CALIFORNIA, TO BE COMMISSIONER OF CUSTOMS, DEPARTMENT OF HOMELAND SECURITY, VICE W. RALPH BASHAM.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DONALD M. BERWICK, OF MASSACHUSETTS, TO BE ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, VICE MARK B. MCCLELLAN.

DEPARTMENT OF THE TREASURY

JEFFREY ALAN GOLDSTEIN, OF NEW YORK, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE ROBERT K. STEEL, RESIGNED.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

RICHARD SORIAN, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES, VICE CHRISTINA H. PEARSON, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

DEPARTMENT OF STATE

MARI CARMEN APONTE, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF EL SALVADOR, TO WHICH POSITION SHE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

CAMERON MUNTER, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF PAKISTAN.

PAMELA ANN WHITE, OF MAINE, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF THE GAMBIA.

NATIONAL MEDIATION BOARD

THOMAS M. BECK, OF VIRGINIA, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 2013, VICE ELIZABETH DOUGHERTY, TERM EXPIRED.

STATE JUSTICE INSTITUTE

MARSHA TERNUS, OF IOWA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2012, VICE ROBERT A. MILLER, TERM EXPIRED.

SMALL BUSINESS ADMINISTRATION

WINSLOW LORENZO SARGEANT, OF WISCONSIN, TO BE CHIEF COUNSEL FOR ADVOCACY, SMALL BUSINESS ADMINISTRATION, VICE THOMAS M. SULLIVAN, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE.

CONFIRMATION

Executive nomination confirmed by the Senate, Monday, September 13, 2010:

THE JUDICIARY

JANE BRANSTETTER STRANCH, OF TENNESSEE, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.