

“(E) EXCEPTION FOR COMPENSATED USE OF PROPERTY.—In the case of the use of any trust property other than a loan of cash or marketable securities, paragraph (1) shall not apply to the extent that the trust is paid the fair market value of such use within a reasonable period of time of such use.”.

(c) APPLICATION TO GRANTOR TRUSTS.—Subsection (c) of section 679, as amended by this Act, is amended by adding at the end the following new paragraph:

“(6) UNCOMPENSATED USE OF TRUST PROPERTY TREATED AS A PAYMENT.—For purposes of this subsection, a loan of cash or marketable securities (or the use of any other trust property) directly or indirectly to or by any United States person (whether or not a beneficiary under the terms of the trust) shall be treated as paid or accumulated for the benefit of a United States person. The preceding sentence shall not apply to the extent that the United States person repays the loan at a market rate of interest (or pays the fair market value of the use of such property) within a reasonable period of time.”.

(d) CONFORMING AMENDMENTS.—Paragraph (3) of section 643(i) is amended—

(1) by inserting “(or use of property)” after “If any loan”;

(2) by inserting “or the return of such property” before “shall be disregarded”, and

(3) by striking “REGARDING LOAN PRINCIPAL” in the heading thereof.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to loans made, and uses of property, after the date of the enactment of this Act.

SEC. 534. REPORTING REQUIREMENT OF UNITED STATES OWNERS OF FOREIGN TRUSTS.

(a) IN GENERAL.—Paragraph (1) of section 6048(b) is amended by inserting “shall submit such information as the Secretary may prescribe with respect to such trust for such year and” before “shall be responsible to ensure”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 535. MINIMUM PENALTY WITH RESPECT TO FAILURE TO REPORT ON CERTAIN FOREIGN TRUSTS.

(a) IN GENERAL.—Subsection (a) of section 6677 is amended—

(1) by inserting “the greater of \$10,000 or” before “35 percent”, and

(2) by striking the last sentence and inserting the following: “At such time as the gross reportable amount with respect to any failure can be determined by the Secretary, any subsequent penalty imposed under this subsection with respect to such failure shall be reduced as necessary to assure that the aggregate amount of such penalties do not exceed the gross reportable amount (and to the extent that such aggregate amount already exceeds the gross reportable amount the Secretary shall refund such excess to the taxpayer).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to notices and returns required to be filed after December 31, 2009.

PART V—SUBSTITUTE DIVIDENDS AND DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS

SEC. 541. SUBSTITUTE DIVIDENDS AND DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS.

(a) IN GENERAL.—Section 871 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

“(l) TREATMENT OF DIVIDEND EQUIVALENT PAYMENTS.—

“(1) IN GENERAL.—For purposes of subsection (a), sections 881 and 4948(a), and chapters 3 and

4, a dividend equivalent shall be treated as a dividend from sources within the United States.

“(2) DIVIDEND EQUIVALENT.—For purposes of this subsection, the term ‘dividend equivalent’ means—

“(A) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States,

“(B) 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, and

“(C) any other payment determined by the Secretary to be substantially similar to a payment described in subparagraph (A) or (B).

“(3) SPECIFIED NOTIONAL PRINCIPAL CONTRACT.—For purposes of this subsection, the term ‘specified notional principal contract’ means—

“(A) any notional principal contract if—

“(i) in connection with entering into such contract, any long party to the contract transfers the underlying security to any short party to the contract,

“(ii) in connection with the termination of such contract, any short party to the contract transfers the underlying security to any long party to the contract,

“(iii) the underlying security is not readily tradable on an established securities market,

“(iv) in connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract, or

“(v) such contract is identified by the Secretary as a specified notional principal contract,

“(B) in the case of payments made after the date which is 2 years after the date of the enactment of this subsection, any notional principal contract unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

“(4) DEFINITIONS.—For purposes of paragraph (3)(A)—

“(A) LONG PARTY.—The term ‘long party’ means, with respect to any underlying security of any notional principal contract, any party to the contract which is entitled to receive any payment pursuant to such contract which is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States with respect to such underlying security.

“(B) SHORT PARTY.—The term ‘short party’ means, with respect to any underlying security of any notional principal contract, any party to the contract which is not a long party with respect to such underlying security.

“(C) UNDERLYING SECURITY.—The term ‘underlying security’ means, with respect to any notional principal contract, the security with respect to which the dividend referred to in paragraph (2)(B) is paid. For purposes of this paragraph, any index or fixed basket of securities shall be treated as a single security.

“(5) PAYMENTS DETERMINED ON GROSS BASIS.—For purposes of this subsection, the term ‘payment’ includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

“(6) PREVENTION OF OVER-WITHHOLDING.—In the case of any chain of dividend equivalents one or more of which is subject to tax under subsection (a) or section 881, the Secretary may reduce such tax, but 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. For purposes of this paragraph, a dividend shall be treated as a dividend equivalent.

“(7) COORDINATION WITH CHAPTERS 3 AND 4.—For purposes of chapters 3 and 4, each person

that is a party to any contract or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made on or after the date that is 180 days after the date of the enactment of this Act.

Subtitle B—Delay in Application of Worldwide Allocation of Interest

SEC. 551. DELAY IN APPLICATION OF WORLDWIDE ALLOCATION OF INTEREST.

(a) IN GENERAL.—Paragraphs (5)(D) and (6) of section 864(f) are each amended by striking “December 31, 2017” and inserting “December 31, 2019”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

ORDERS FOR FRIDAY, FEBRUARY 26, 2010

Mr. DURBIN. I ask unanimous consent that following my remarks, the Senate adjourn until 9:30 a.m., Friday, February 26.

I would like to ask by way of a question, does the Senator from Kentucky seek recognition?

Mr. BUNNING. Yes, I will.

Mr. DURBIN. Would you like to speak after I have made the request so I could make the adjournment subject to your speaking?

Mr. BUNNING. That is acceptable.

Mr. DURBIN. I ask unanimous consent that following my remarks and the remarks of the Senator from Kentucky and the remarks of the Senator from Tennessee for debate only—let me suspend this unanimous consent request.

Mr. President, I will attempt to make this unanimous consent request again. I ask unanimous consent that following my remarks, the remarks of the Senator from Tennessee, Mr. CORKER, who will make a unanimous consent request and then engage in debate only beyond that, and the remarks of the Senator from Kentucky, following those remarks, the Senate adjourn until 9:30 a.m., Friday, February 26; that following the prayer and 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 proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each. I didn’t make it clear that the Senator from Kentucky would speak in debate only.

Mr. BUNNING. I have a few things I would like to comment on.

Mr. DURBIN. In debate only.

Mr. BUNNING. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

PROGRAM

Mr. DURBIN. There will be no rollcall votes during Friday’s session of the Senate. The next rollcall vote will occur on Tuesday morning. I have

given notice to Senator BUNNING and others that I will be renewing this unanimous consent request tomorrow morning.

ORDER FOR ADJOURNMENT

Mr. DURBIN. If there is no further business to come before the Senate, I ask unanimous consent that it adjourn after the statements that have already been noted as part of this request.

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

The Senator from Tennessee.

UNANIMOUS CONSENT REQUEST— H.R. 4691

Mr. CORKER. Mr. President, I thank the Senator from Illinois for his nature this evening. I thank all of my colleagues on the other side of the aisle. I think we have had a nice discussion. I think we all know this is not about any of our lack of desire to make sure that these benefits are extended. I think everybody here knows this. It has been nice listening to some of the comments.

Therefore, since it was out of order before, I would like to ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4891, that the amendment at the desk which offers a full offset be agreed to, that the bill, as amended, be read a third time and passed, and the motion to reconsider be laid upon the table, and this issue will be dealt with. Every American that is looking for the benefits we have discussed will have those forthcoming.

Mr. President, I ask that that be approved.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Reserving the right to object, I believe the Senator from Tennessee said 4891. I think the bill was 4691.

Mr. CORKER. H.R. 4691.

Mr. DURBIN. If the Senator would not mind repeating his unanimous consent, I didn't quite hear the end of it.

Mr. CORKER. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4691 which I understand to be the measure that is before us, that the amendment at the desk, which I understand offers a full offset to pay for this, be agreed to, the bill, as amended, be read for a third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Kentucky.

OFFSETTING THE UNEMPLOYMENT BENEFIT EXTENSION

Mr. BUNNING. Mr. President, it has been a long night. It is called an ambush. That is what happened. The consent that I was assured of was going to be that the Senator from Illinois offer the same—I am going to get it right—30-day extension without an offset. He was going to offer it, and I was going to have a chance to object. We weren't going to stand around for 3½ hours debating the issue. That is the understanding I had with the leader of the Democrats.

Now, I don't know what I have for tomorrow. I have been assured that the Senator from Illinois will offer the same amendment tomorrow morning, and I will have a chance to object, if I so choose. But I want to assure the people who have watched this thing until a quarter of 12, I have missed the Kentucky-South Carolina game that started at 9 o'clock. It is the only redeeming chance we had to beat South Carolina, since they are the only team that has beat Kentucky this year. All of these things that we have talked about and all the provisions that have been discussed, the unemployment benefits, all these things, if we had taken a longer version of the jobs bill that was mutually agreed on, a bipartisan bill that Senator BAUCUS and Senator GRASSLEY agreed on, that the Senator from Nevada, the leader withdrew his support from and brought his own narrowly scoped bill to the floor, \$10 billion was not paid for, \$5 billion was—so we have \$10 billion immediately after we passed pay-go last week, so we have a \$10 billion bill we talked about early on that just passed and now we have an extension—by the way, the Baucus-Grassley bill was totally and completely—it is debatable, according to the Senator from Illinois, but it was paid for—CBO said it was paid for, but at least that is what Joint Tax said, too, because I happen to be on the same committee with those two gentlemen—we would not have spent 3 hours-plus—almost 3½—telling everybody in the United States of America that Senator BUNNING does not give a damn about the people who are on unemployment; the doctors whom I represent that I did not want to extend SGR; all of the other things—COBRA, flood insurance, small business loans, and small business provisions.

I feel sorry for the people in Kentucky who live in east Kentucky who may lose their Satellite Home Viewer Act for a day or two because they will miss all those Senate commercials that are going on. I know how they desperately want to watch those, but if they do not have cable, they will not be able to do it.

But this debate could have been completely changed had not the other side

rammed through a bill, a partisan bill, over a bipartisan bill. You cannot preach bipartisanship and practice partisanship. I do not give a darn how good you are at conning people, people see through it. If you think I am kidding, go into your State and ask. The American people understand what is going on up here. That is why the Congress and the Senate have a 30-percent approval rating. Even the President of the United States is higher than that, and his is not good because it is below 50 percent.

But I have served in this body and over in the House—I have not had as long; I have had 2 years shorter than the House service of the Senator from Illinois and 2 years shorter than the Senator's Senate service; so I have spent 12 and 12, 12 years here and 12 in the House—and we are not conning the people in the United States about anything. They know what is going on. That is why they are madder than heck. They are tired of Senators who talk out of both sides of their mouths. They are tired of people who have been appointed to positions who come before the Congressional committees and do not speak the truth. If you think the Tea Party people are crazy, get them involved in your Senate race or get them against you when you are running.

Remember now, this all could have been changed had not the leader of the Senate decided that a bipartisan compromise jobs bill was not as important as his partisan jobs bill that just passed right before all this debate.

I just want to tell the people who have watched—and I doubt if there are many right now—that I am as interested in all those things I have objected to because of no offsets as the people who have spoken on the other side of the aisle or my good friend from Tennessee or my good friend from Alabama.

This body should be and can be better than it has been. In my 24 years of service, I have never seen the Congress of the United States perform as badly as we are performing presently. And it shows up. Bipartisanship means input from both sides—not talking about it, doing it. That is the whole difference in what we have had here tonight. We did not even have to have this debate. Thank you.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. The Senate stands in adjournment until Friday, February 26, 2010, at 9:30 a.m.

Thereupon, the Senate, at 11:52 p.m., adjourned until Friday, February 26, 2010, at 9:30 a.m.