

## AMENDMENT NO. 2790

At the request of Mr. CASEY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2790 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2804

At the request of Mr. CORNYN, the name of the Senator from Nebraska (Mr. JOHANNIS) was added as a cosponsor of amendment No. 2804 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2827

At the request of Mr. TESTER, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of amendment No. 2827 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2878

At the request of Mr. CARDIN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of amendment No. 2878 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2903

At the request of Ms. SNOWE, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2903 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 2947

At the request of Ms. KLOBUCHAR, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of amendment No. 2947 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time home-

buyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3037

At the request of Mr. JOHNSON, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of amendment No. 3037 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3119

At the request of Mr. WARNER, the names of the Senator from Arkansas (Mr. PRYOR), the Senator from Maryland (Ms. MIKULSKI), the Senator from Missouri (Mrs. McCASKILL) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of amendment No. 3119 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3136

At the request of Mr. UDALL of New Mexico, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of amendment No. 3136 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3156

At the request of Mr. LAUTENBERG, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of amendment No. 3156 proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## AMENDMENT NO. 3203

At the request of Mr. BAYH, the names of the Senator from Massachusetts (Mr. KIRK) and the Senator from California (Mrs. BOXER) were added as cosponsors of amendment No. 3203 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY (for himself, Mr. DURBIN, Mr. HARKIN, Mr. SCHUMER, Mr. MENENDEZ, Mr. BROWN, and Mr. KIRK):

S. 2882. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the treatment of indi-

viduals as independent contractors or employees, and for other purposes; to the Committee on Finance.

Mr. KERRY. Mr. President, today I am introducing the Taxpayer Responsibility, Accountability and Consistency Act of 2009 which will provide a level playing field to America's workers to ensure they are afforded protections already in the law, such as workers' compensation, Social Security, Medicare, payment of overtime, unemployment compensation, and the minimum wage. This legislation is cosponsored by Senators DURBIN, HARKIN, SCHUMER, BROWN, MENENDEZ, and KIRK.

Under current law, employers are required to take certain actions on behalf of their employees including withholding income taxes, paying Social Security and Medicare taxes, paying for unemployment insurance, and providing a safe and nondiscriminatory workplace. Employers are not required to undertake these obligations for independent contractors. When workers are misclassified, businesses that play by the rules lose business to competitors that do not play by the rules and workers lose valuable rights and protections.

The Internal Revenue Service, IRS, currently uses a common law test to determine whether a worker is an employee or independent contractor. Unfortunately, a loophole exists which allows a business to escape liability for misclassifying employees as independent contractors. Furthermore, there is statutory prohibition on the IRS providing guidance through regulation on employee classification.

Federal and State revenue is lost when businesses misclassify their workers as independent contractors. A study estimated that, between 1996 and 2004, \$34.7 billion of Federal tax revenues went uncollected due to the misclassification of workers and the tax loopholes that allow it. Recent GAO and Treasury Inspector General reports have cited misclassification as posing significant concerns for workers, their employers, and government revenue.

A study commissioned by the U.S. Department of Labor in 2000 found that up to 30 percent of firms misclassify their employees as independent contractors. State studies also show that misclassification is on the rise. In Massachusetts, the rate of misclassification has grown from 8.4 percent in 1995 through 1997 to a rate of 13.4 percent in 2001 through 2003.

Misclassification is more rampant than studies indicate. Studies cannot adequately capture the "underground economy," where workers are paid off the books, often in cash. Unreported cash is one aspect of this problem and it is difficult for the IRS to discover because employers have no record of pay.

States have been leading the way in documenting and recovering taxes related to the misclassification of workers. In the Commonwealth of Massachusetts, Governor Deval Patrick has

tackled this issue head on and created an interagency task force on the underground economy and employee misclassification. The purpose of the task force is to gather information and assess current enforcement resources in an effort to improve current enforcement methods.

The Federal Government needs to follow the lead of the States by addressing the current safe harbor. The determination of whether an employer-employee relationship exists for federal tax purposes is made under a common-law test that has been incorporated into specific provisions of the Internal Revenue Code or is required to be used pursuant to Treasury regulations.

In 1987, based on an examination of cases and rulings, the Internal Revenue Service developed a list of 20 factors for determining whether an employer-employee relationship exists. The IRS recognizes that there may be relevant factors in addition to the 20 factors. Most recently, the IRS has structured its inquiry into three groupings: behavioral control, financial control, and the relationship of the worker and firm.

Section 530 of the Revenue Act of 1978 generally allows taxpayers to treat a worker as not being an employee for employment tax purposes, regardless of the worker's actual status under the common law test, unless the taxpayer has no reasonable basis for such treatment or fails to meet certain requirements. Section 530 is commonly referred to as a "safe harbor." This provision was initially enacted for a year to give Congress time to resolve these complex issues. In 1982, the safe harbor provision was made permanent.

The Taxpayer Responsibility, Accountability and Consistency Act of 2009 would address the current loophole by requiring information reporting and making changes to the safe harbor. It would require businesses that pay any amount greater than \$600 during the year to corporate providers of property and services to file an information report with each provider and with the IRS. A similar provision has been proposed by both Presidents Obama and Bush. This provision will ensure that contractor income is accurately reported in order to prevent fraudulent underpayment of taxes.

The Taxpayer Responsibility, Accountability and Consistency Act of 2009 revises the safe harbor and makes it part of the Internal Revenue Code of 1986. The safe harbor would continue to be available to employers for purposes of shielding them from liability, but it will be narrowed to reduce abuses and to ensure they had a genuinely reasonable basis for not treating such individual as an employee. Under the Taxpayer Responsibility, Accountability and Consistency Act of 2009, an employer shall be treated as having a reasonable basis for treating an individual as an independent contractor only if the decision was based on a written determination by the IRS to the taxpayer addressing the employment status of

such individual or another individual holding a substantially similar position with the taxpayer, or a concluded employment tax examination by the IRS.

The current safe harbor would continue to apply to services rendered up to one year after the date of enactment; after that, the new safe harbor would apply to services rendered more than one year after the date of enactment.

I urge my colleagues to cosponsor the Taxpayer Responsibility, Accountability and Consistency Act of 2009 which will provide valuable protections to workers who are erroneously misclassified and help combat the underground economy.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3219. Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3220. Mr. RISCH submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3221. Mr. WYDEN (for himself and Mr. DURBIN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3222. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3223. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3224. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3225. Mr. LEMIEUX submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3226. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3227. Mr. CARDIN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3228. Ms. LANDRIEU (for herself, Mr. WARNER, and Mr. AKAKA) submitted an

amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3229. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3230. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3231. Mr. CRAPO submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3232. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3233. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3234. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3235. Mr. CASEY (for himself and Mr. SPECTER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3236. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3237. Mr. BURRIS submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3238. Mr. ROCKEFELLER (for himself, Mr. KOHL, Mr. CARPER, and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3239. Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3240. Mr. ROCKEFELLER (for himself, Mr. LIEBERMAN, Mr. WHITEHOUSE, and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3241. Mr. CARPER (for himself, Mr. CONRAD, and Mrs. SHAHEEN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.