

“(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