

EC-3891. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Addition of Certain Persons on the Entity List; Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States" (RIN0694-AE97) received during adjournment of the Senate in the Office of the President of the Senate on October 28, 2011; to the Committee on Commerce, Science, and Transportation.

EC-3892. A communication from the Secretary of Transportation, transmitting, the Department's fiscal year 2011 annual report as required by the Superfund Amendments and Reauthorization Act (SARA) of 1986; to the Committee on Commerce, Science, and Transportation.

EC-3893. A communication from the Secretary of Transportation, transmitting, pursuant to law, an annual report relative to the accomplishments made under the Airport Improvement Program for fiscal year 2009; to the Committee on Commerce, Science, and Transportation.

EC-3894. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "Television Broadcasting Services; Panama City, Florida" (MB Docket No. 11-140) received in the Office of the President of the Senate on November 7, 2011; to the Committee on Commerce, Science, and Transportation.

EC-3895. A communication from the Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "In the Matter of Anglers for Christ Ministries, Inc.; New Beginning Ministries; Petitioners Identified in Appendix A; Interpretation of Economically Burdensome Standard; Amendment of Section 79.1(f) of the Commission's Rules; Video Programming Accessibility, Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking" (FCC 11-159) received in the Office of the President of the Senate on November 7, 2011; to the Committee on Commerce, Science, and Transportation.

EC-3896. A communication from the Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled "73.1201 Station Identification (vacates rule change and eliminates effective date note 2); 73.3526 Local Public Inspection File of Commercial Stations (vacates rule change and eliminates effective date note 2); 73.3527 Local Public Inspection File of Noncommercial Educational Stations (vacates rule change and eliminates effective date note)" (FCC 11-162) received in the Office of the President of the Senate on November 7, 2011; to the Committee on Commerce, Science, and Transportation.

EC-3897. A communication from the Director, Office of Science and Technology Policy, Executive Office of the President, transmitting, pursuant to law, a report of relative to the conclusion of the U.S. Government Accountability Office (GAO) that the Office of Science and Technology Policy violated the Antideficiency Act by engaging in diplomatic activities purportedly prohibited by section 1340(a) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011; to the Committee on Appropriations.

#### REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transpor-

tation, with an amendment in the nature of a substitute:

S. 453. A bill to improve the safety of motorcoaches, and for other purposes (Rept. No. 112-93).

#### EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. LIEBERMAN for the Committee on Homeland Security and Governmental Affairs.

\*John Francis McCabe, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

\*Peter Arno Krauthamer, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

\*Danya Ariel Dayson, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

\*Nancy Maria Ware, of the District of Columbia, to be Director of the Court Services and Offender Supervision Agency for the District of Columbia for a term of six years.

\*Michael A. Hughes, of the District of Columbia, to be United States Marshal for the Superior Court of the District of Columbia for the term of four years.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. THUNE:

S. 1831. A bill to direct the Securities and Exchange Commission to eliminate the prohibition against general solicitation as a requirement for a certain exemption under Regulation D; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, Mr. JOHNSON of South Dakota, Mr. BOOZMAN, Mr. REED, Mr. BLUNT, Mr. WHITEHOUSE, Mr. CORKER, and Mr. PRYOR):

S. 1832. A bill to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes; to the Committee on Finance.

By Mr. MANCHIN (for himself, Mr. COATS, Mr. NELSON of Nebraska, and Mr. CORKER):

S. 1833. A bill to provide additional time for compliance with, and coordinating of, the compliance schedules for certain rules of the Environmental Protection Agency; to the Committee on Environment and Public Works.

By Mr. CORKER:

S. 1834. A bill to restore and repair the United States mortgage markets by making them transparent, bringing in private capital, winding down the Government-sponsored enterprises, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. HAGAN (for herself, Mr. CORKER, Mr. SCHUMER, and Mr. CRAPO):

S. 1835. A bill to establish standards for covered bond programs and a covered bond regulatory oversight program, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MENENDEZ (for himself and Mr. NELSON of Florida):

S. 1836. A bill to amend the Oil Pollution Act of 1990 to clarify that the Act applies to certain incidents that occur in water beyond the exclusive economic zone of the United States; to the Committee on Environment and Public Works.

By Mr. LEE (for himself, Mr. CRAPO, Mr. DEMINT, Mr. PAUL, Mr. RISCH, and Mr. BLUNT):

S. 1837. A bill to amend the Internal Revenue Code of 1986 to modify and permanently extend the incentives to reinvest foreign earnings in the United States; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. BOOZMAN, and Mr. PRYOR):

S. 1838. A bill to require the Secretary of Veterans Affairs to carry out a pilot program on service dog training therapy, and for other purposes; to the Committee on Veterans' Affairs.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SCHUMER:

S. Res. 318. A resolution to authorize the printing of a revised edition of the Senate Rules and Manual; considered and agreed to.

By Mr. GRAHAM (for himself, Mr. CASEY, and Mr. MCCAIN):

S. Res. 319. A resolution honoring the life and legacy of Joe Frazier; considered and agreed to.

#### ADDITIONAL COSPONSORS

S. 273

At the request of Mr. LAUTENBERG, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 273, a bill to amend chapter 1 of title 23, United States Code, to condition the receipt of certain highway funding by States on the enactment and enforcement by States of certain laws to prevent repeat intoxicated driving.

S. 362

At the request of Mr. WHITEHOUSE, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. 362, a bill to amend the Public Health Service Act to provide for a Pancreatic Cancer Initiative, and for other purposes.

S. 431

At the request of Mr. PRYOR, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Kansas (Mr. MORAN) and the Senator from Indiana (Mr. COATS) were added as cosponsors of S. 431, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first Federal law enforcement agency, the United States Marshals Service.

S. 730

At the request of Ms. MURKOWSKI, the name of the Senator from Louisiana

(Ms. LANDRIEU) was added as a cosponsor of S. 730, a bill to provide for the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes.

S. 779

At the request of Mr. SCHUMER, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 779, a bill to authorize the acquisition and protection of nationally significant battlefields and associated sites of the Revolutionary War and the War of 1812 under the American Battlefield Protection Program.

S. 877

At the request of Mr. HATCH, the name of the Senator from Ohio (Mr. PORTMAN) was added as a cosponsor of S. 877, a bill to prevent taxpayer-funded elective abortions by applying the longstanding policy of the Hyde amendment to the new health care law.

S. 896

At the request of Mr. BINGAMAN, the name of the Senator from Delaware (Mr. COONS) was added as a cosponsor of S. 896, a bill to amend the Public Land Corps Act of 1993 to expand the authorization of the Secretaries of Agriculture, Commerce, and the Interior to provide service opportunities for young Americans; help restore the nation's natural, cultural, historic, archaeological, recreational and scenic resources; train a new generation of public land managers and enthusiasts; and promote the value of public service.

S. 998

At the request of Mr. AKAKA, the names of the Senator from Hawaii (Mr. INOUE) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 998, a bill to amend title IV of the Employee Retirement Income Security Act of 1974 to require the Pension Benefit Guaranty Corporation, in the case of airline pilots who are required by regulation to retire at age 60, to compute the actuarial value of monthly benefits in the form of a life annuity commencing at age 60.

S. 1039

At the request of Mr. CARDIN, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 1039, a bill to impose sanctions on persons responsible for the detention, abuse, or death of Sergei Magnitsky, for the conspiracy to defraud the Russian Federation of taxes on corporate profits through fraudulent transactions and lawsuits against Hermitage, and for other gross violations of human rights in the Russian Federation, and for other purposes.

S. 1048

At the request of Mr. MENENDEZ, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1048, a bill to expand sanctions imposed with respect to the Islamic Republic of Iran, North Korea, and Syria, and for other purposes.

S. 1161

At the request of Mr. GRASSLEY, the name of the Senator from Ohio (Mr.

BROWN) was added as a cosponsor of S. 1161, a bill to amend the Food Security Act of 1985 to restore integrity to and strengthen payment limitation rules for commodity payments and benefits.

S. 1251

At the request of Mr. CARPER, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 1251, a bill to amend title XVIII and XIX of the Social Security Act to curb waste, fraud, and abuse in the Medicare and Medicaid programs.

S. 1265

At the request of Mr. BINGAMAN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1265, a bill to amend the Land and Water Conservation Fund Act of 1965 to provide consistent and reliable authority for, and for the funding of, the land and water conservation fund to maximize the effectiveness of the fund for future generations, and for other purposes.

S. 1335

At the request of Mr. INHOFE, the names of the Senator from Utah (Mr. HATCH), the Senator from Utah (Mr. LEE) and the Senator from Kentucky (Mr. PAUL) were added as cosponsors of S. 1335, a bill to amend title 49, United States Code, to provide rights for pilots, and for other purposes.

S. 1527

At the request of Mrs. HAGAN, the names of the Senator from Michigan (Mr. LEVIN), the Senator from Washington (Ms. CANTWELL), the Senator from Illinois (Mr. KIRK), the Senator from Delaware (Mr. CARPER) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 1527, a bill to authorize the award of a Congressional gold medal to the Montford Point Marines of World War II.

At the request of Mr. JOHANNIS, his name was added as a cosponsor of S. 1527, *supra*.

S. 1718

At the request of Mr. WYDEN, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 1718, a bill to amend title XVIII of the Social Security Act with respect to the application of Medicare secondary payer rules for certain claims.

S. 1733

At the request of Mr. TESTER, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of S. 1733, a bill to establish the Commission on the Review of the Overseas Military Facility Structure of the United States.

S. 1756

At the request of Mrs. HAGAN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1756, a bill to extend HUBZone designations by 3 years, and for other purposes.

S. 1808

At the request of Mr. COONS, the name of the Senator from Virginia (Mr.

WEBB) was added as a cosponsor of S. 1808, a bill to amend the Immigration and Nationality Act to toll, during active-duty service abroad in the Armed Forces, the periods of time to file a petition and appear for an interview to remove the conditional basis for permanent resident status, and for other purposes.

S. 1829

At the request of Mr. WHITEHOUSE, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1829, a bill to amend the Truth in Lending Act to empower the States to set the maximum annual percentage rates applicable to consumer credit transactions, and for other purposes.

S.J. RES. 29

At the request of Mr. UDALL of New Mexico, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S.J. Res. 29, a joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

S. RES. 241

At the request of Mr. MENENDEZ, the name of the Senator from Nebraska (Mr. JOHANNIS) was added as a cosponsor of S. Res. 241, a resolution expressing support for the designation of November 16, 2011, as National Information and Referral Services Day.

AMENDMENT NO. 927

At the request of Mr. HELLER, his name was added as a cosponsor of amendment No. 927 proposed to H.R. 674, to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes.

At the request of Mrs. MURRAY, the names of the Senator from Virginia (Mr. WARNER) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 927 proposed to H.R. 674, *supra*.

At the request of Mr. TESTER, the names of the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Connecticut (Mr. BLUMENTHAL) were added as cosponsors of amendment No. 927 proposed to H.R. 674, *supra*.

AMENDMENT NO. 928

At the request of Mr. MCCAIN, the names of the Senator from Arizona (Mr. KYL) and the Senator from Oklahoma (Mr. COBURN) were added as cosponsors of amendment No. 928 proposed to H.R. 674, to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes.

STATEMENTS ON INTRODUCED  
BILLS AND JOINT RESOLUTIONS

By Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, Mr. JOHNSON of South Dakota, Mr. BOOZMAN, Mr. REED, Mr. BLUNT, Mr. WHITEHOUSE, Mr. CORKER, and Mr. PRYOR):

S. 1832. A bill to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes; to the Committee on Finance.

Mr. ENZI. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1832

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Marketplace Fairness Act".

**SEC. 2. SENSE OF CONGRESS.**

It is the sense of Congress that States should have the ability to enforce their existing sales and use tax laws and to treat similar sales transactions equally, without regard to the manner in which the sale is transacted, and the right to collect - or decide not to collect - taxes that are already owed under State law.

**SEC. 3. AUTHORIZATION TO REQUIRE COLLECTION OF SALES AND USE TAXES.**

(a) STREAMLINED SALES AND USE TAX AGREEMENT.—Each Member State under the Streamlined Sales and Use Tax Agreement is authorized to require all sellers not qualifying for a small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to that Member State pursuant to the provisions of the Streamlined Sales and Use Tax Agreement. Such authority shall commence beginning no earlier than the first day of the calendar quarter that is at least 90 days after the date of the enactment of this Act.

(b) ALTERNATIVE.—

(1) IN GENERAL.—A State that is not a Member State under the Streamlined Sales and Use Tax Agreement is authorized to require all sellers not qualifying for the small seller exception to collect and remit sales and use taxes with respect to remote sales sourced to that State, but only if the State adopts and implements minimum simplification requirements. Such authority shall commence beginning no earlier than the first day of the calendar quarter that is at least 6 months after the date that the State enacts legislation to implement each of the following minimum simplification requirements:

(A) Provide—

(i) a single State-level agency to administer all sales and use tax laws, including the collection and administration of all State and applicable locality sales and use taxes for all sales sourced to the State made by remote sellers,

(ii) a single audit for all State and local taxing jurisdictions within that State, and

(iii) a single sales and use tax return to be used by remote sellers and single and consolidated providers and to be filed with the State-level agency.

(B) Provide a uniform sales and use tax base among the State and the local taxing jurisdictions within the State.

(C) Require remote sellers and single and consolidated providers to collect sales and

use taxes pursuant to the applicable destination rate, which is the sum of the applicable State rate and any applicable rate for the local jurisdiction into which the sale is made.

(D) Provide—

(i) adequate software and services to remote sellers and single and consolidated providers that identifies the applicable destination rate, including the State and local sales tax rate (if any), to be applied on sales sourced to the State, and

(ii) certification procedures for both single providers and consolidated providers to make software and services available to remote sellers, and hold such providers harmless for any errors or omissions as a result of relying on information provided by the State.

(E) Hold remote sellers using a single or consolidated provider harmless for any errors and omissions by that provider.

(F) Relieve remote sellers from liability to the State or locality for collection of the incorrect amount of sales or use tax, including any penalties or interest, if collection of the improper amount is the result of relying on information provided by the State.

(G) Provide remote sellers and single and consolidated providers with 30 days notice of a rate change by any locality in the State.

(2) TREATMENT OF LOCAL RATE CHANGES.—For purposes of this subsection, local rate changes may only be effective on the first day of a calendar quarter. Failure to provide notice under paragraph (1)(G) shall require the State and locality to hold the remote seller or single or consolidated provider harmless for collecting tax at the immediately preceding effective rate during the 30-day period. Each State must provide updated rate information as part of the software and services required by paragraph (1)(D)

(c) SMALL SELLER EXCEPTION.—A State shall be authorized to require a remote seller, or a single or consolidated provider acting on behalf of a remote seller, to collect sales or use tax under this Act if the remote seller has gross annual receipts in total remote sales in the United States in the preceding calendar year exceeding \$500,000. For purposes of determining whether the threshold in this subsection is met, the sales of all persons related within the meaning of subsections (b) and (c) of section 267 or section 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.

**SEC. 4. TERMINATION OF AUTHORITY.**

The authority granted by this Act shall terminate on the date that the highest court of competent jurisdiction makes a final determination that the State no longer meets the requirements of this Act, and the determination of such court is no longer subject to appeal.

**SEC. 5. LIMITATIONS.**

(a) IN GENERAL.—Nothing in this Act shall be construed as—

(1) subjecting a seller or any other person to franchise, income, occupation, or any other type of taxes, other than sales and use taxes,

(2) affecting the application of such taxes, or

(3) enlarging or reducing State authority to impose such taxes.

(b) NO EFFECT ON NEXUS.—No obligation imposed by virtue of the authority granted by this Act shall be considered in determining whether a seller or any other person has a nexus with any State for any tax purpose other than sales and use taxes.

(c) LICENSING AND REGULATORY REQUIREMENTS.—Other than the limitation set forth in subsection (a), and section 3, nothing in this Act shall be construed as permitting or prohibiting a State from—

(1) licensing or regulating any person,

(2) requiring any person to qualify to transact intrastate business,

(3) subjecting any person to State taxes not related to the sale of goods or services, or

(4) exercising authority over matters of interstate commerce.

(d) NO NEW TAXES.—Nothing in this Act shall be construed as encouraging a State to impose sales and use taxes on any goods or services not subject to taxation prior to the date of the enactment of this Act.

(e) INTRASTATE SALES.—The provisions of this Act shall only apply to remote sales and shall not apply to intrastate sales or intrastate sourcing rules. States granted authority under section 3(a) shall comply with the intrastate provisions of the Streamlined Sales and Use Tax Agreement.

**SEC. 6. DEFINITIONS AND SPECIAL RULES.**

In this Act:

(1) CONSOLIDATED PROVIDER.—The term "consolidated provider" means any person certified by a State who has the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions serviced or processed for the sale of goods or services made by remote sellers on an aggregated basis.

(2) LOCALITY; LOCAL.—The terms "locality" and "local" refer to any political subdivision of a State.

(3) MEMBER STATE.—The term "Member State"—

(A) means a Member State as that term is used under the Streamlined Sales and Use Tax Agreement as in effect on the date of the enactment of this Act, and

(B) does not include any associate member under the Streamlined Sales and Use Tax Agreement.

(4) PERSON.—The term "person" means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or other legal entity, and a State or local government.

(5) REMOTE SALE.—The term "remote sale" means a sale of goods or services attributed to a State with respect to which a seller does not have adequate physical presence to establish nexus under *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

(6) REMOTE SELLER.—The term "remote seller" means a person that makes remote sales.

(7) SINGLE PROVIDER.—The term "single provider" means any person certified by a State who has the rights and responsibilities for sales and use tax administration, collection, remittance, and audits for transactions serviced or processed for the sale of goods or services made by remote sellers.

(8) SOURCED.—For purposes of a State granted authority under section 3(b), the location to which a remote sale is sourced refers to the location where the item sold is received by the purchaser, based on the location indicated by instructions for delivery that the purchaser furnishes to the seller. When no delivery location is specified, the remote sale is sourced to the customer's address that is either known to the seller or, if not known, obtained by the seller during the consummation of the transaction, including the address of the customer's payment instrument if no other address is available. If an address is unknown and a billing address cannot be obtained, the remote sale is sourced to the address of the seller from which the remote sale was made. A State granted authority under section 3(a) shall comply with the sourcing provisions of the Streamlined Sales and Use Tax Agreement.

(9) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico,