

JEFFERSON COUNTY MENTAL HEALTH CENTER, INC.

HEARING
BEFORE THE
SUBCOMMITTEE ON TAXATION AND
DEBT MANAGEMENT GENERALLY
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
FIRST SESSION
ON
S. 690
A PRIVATE BILL FOR THE RELIEF OF THE JEFFERSON
COUNTY MENTAL HEALTH CENTER, INC.

OCTOBER 14, 1977

Printed for the use of the Committee on Finance



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JEFFERSON COUNTY MENTAL HEALTH CENTER, INC.

FRIDAY, OCTOBER 14, 1977

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
GENERALLY OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m. in room 2221, Dirksen Senate Office Building, Hon. Harry F. Byrd, Jr. (chairman of the subcommittee) presiding.

Senator BYRD. The subcommittee will come to order.

The Subcommittee on Taxation and Debt Management Generally will consider this afternoon S. 690.

Senator Haskell of Colorado, along with Senator Hart are the chief sponsors of this measure. It is a private bill for the relief of the Jefferson County Mental Health Center, Inc. to obtain a refund of social security taxes paid for 103 individuals.

Jefferson County Mental Health Center is a nonprofit hospital in Lakewood, Colo., which provides mental health services to three counties in Colorado.

The center returned social security withholding taxes, to its employees to discussions it had with the Internal Revenue Service as to the validity of its election to be covered under social security.

The Senate now seeks a refund from the Internal Revenue Service for these payments to its employees.

For the record, I submit a copy of the press release, a summary of the bill prepared by the Joint Committee on Taxation, and the text of the bill, S. 690.

[The material referred to follows:]

PRESS RELEASE

SEPTEMBER 28, 1977.

COMMITTEE ON FINANCE, U.S. SENATE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT ANNOUNCES HEARING ON S. 690

Subcommittee Chairman Harry F. Byrd, Jr. (I. Va.) today announced that a hearing will be held on October 14, 1977, on S. 690. The bill would permit the Jefferson County (Colorado) Mental Health Center to obtain a refund of social security taxes paid for one hundred and three of its employees for the period beginning January 1, 1972. Nonprofit organizations are ordinarily not subject to social security taxation on behalf of their employees unless they file a certificate waiving their immunity to such taxation. The Subcommittee understands that the Jefferson County Mental Health Center believes that it was incorrectly informed by the Internal Revenue Service that no waiver had been filed and that it refunded taxes to the employees involved in reliance on that information.

The sponsor of the legislation is Senator Floyd Haskell.

The hearings will begin at 2 p.m. in room 2221 Dirksen Senate Office Bldg.

In announcing the hearings, Senator Byrd stated that the bill before the Subcommittee is a private relief measure dealing only with the particular situation of the Jefferson County Mental Health Center. The Subcommittee intends to examine the issues and equities involved in this situation but is not, at this time, examining any broader issues which may be involved concerning the taxation for social security purposes of nonprofit organizations.

Witnesses who desire to testify in the hearings should submit a written request to Michael Stern, Staff Director, Committee on Finance, room 2227 Dirksen Senate Office Building, Washington, D.C. 20510 by no later than the close of business on October 6, 1977. Treasury comments on the proposed legislation are requested.

Legislative Reorganization Act.—Senator Byrd stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify must comply with the following rules:

(1) A copy of the statement must be filed by the close of business two days before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 75 copies must be submitted by the close of business the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Committee, but are to confine their ten-minute oral presentation to a summary of the points included in the statement.

(5) Not more than ten minutes will be allowed for oral presentation.

Written testimony.—Senator Byrd stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five (5) copies by October 22, 1977, to Michael Stern, Staff Director, Committee on Finance, room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

S. 690—SENATOR HASKELL (AND SENATOR HART)

Relief of the Jefferson County Mental Health Center, Lakewood, Colorado

Present law

Under present law, employees of a nonprofit organization are excluded from social security coverage unless the organization files with the Internal Revenue Service a certificate waiving its exemption from taxation. Coverage may be provided retroactively for up to 5 years before the calendar quarter in which the waiver is filed. Employees of the organization at the time the waiver certificate is filed are given the option to participate in the program and, if they decide to do so, must sign a form accompanying the certificate waiving their right of exemption. All employees subsequently hired by the organization are automatically covered under the program. After a waiver certificate has been in effect for 8 years, an organization may terminate it after giving 2 years advance notice.

Facts

The staff understands the facts to be as follows:

The Jefferson County Mental Health Center, Inc. (Center), an exempt organization described in section 501(c)(3) of the Internal Revenue Code, in 1963 filed a waiver certificate pursuant to section 3121(k)(1)(A) of the Code, by which the Center waived the exemption for payment of social security (FICA) taxes. In accordance with that filing, the Center began deducting the employees' portion of FICA and paid that portion, along with its portion, to the Internal Revenue Service.

As a result of a mistaken response by the Center to a questionnaire circulated by the IRS, the Western Region Service Center of IRS at Ogden, Utah, mistakenly notified the Center by letter dated February 28, 1975, that the Center was not liable for the FICA taxes. As a result of that letter, and follow-up instructions received by telephone from the IRS, the Center contacted those

persons whom they were able to locate who had been employed by the Center, (133 in number), during the calendar years 1972 through 1974, and each of those individuals was offered an election as to whether or not they wished to be covered over the prior 3 years (1972 through 1974) and in the future under FICA. One hundred and three of those contacted elected not to be covered by FICA, and to those 103 employees and former employees, the Center paid out \$74,128 from its own funds as refunds covering contributions by and for them to FICA over the 3 years, 1972, 1973 and 1974. Those employees unable to be contacted were treated as though they had elected to be covered. No refunds were made to those employees nor to those who elected to remain covered (a total of 30 in both categories). This action was taken due to assurances by the IRS that a prompt refund would be made to the Center of the employees' tax and the tax the Center had paid, once refunds had been advanced by the Center out of its own funds to those employees.

After the Center had paid the employees \$74,128, the Western Region Service Center of IRS, on May 14, 1975, notified the Center that the Service had found a valid waiver certificate on file, and that neither the refunds nor the employees' elections should have been made.

Those employees who elected not to be covered by FICA and who remained employees of the Center after January 1, 1975, have been treated by the Center as continuing not to be covered by FICA in accordance with their election made pursuant to the IRS instructions arising out of the February 28, 1975, letter.

The IRS has advised the Center that there is no provision in the law which would authorize administrative relief for the action which the Center has taken in reliance upon the letter from IRS of February 28, 1975.

Issue

Whether the Center should be treated as not having a valid social security waiver certificate in effect for the Center's 103 named employees for the period from January 1, 1972, through the end of the quarter when the bill is enacted.

Explanation of bill

The bill would treat the waiver of exemption as not being filed with respect to the 103 named individuals for the period beginning on January 1, 1972, and ending on the last day of the calendar quarter in which the bill is enacted.

Also, the statute of limitations on claims for refund or credit of the FICA taxes would be waived if the Center files a claim within 90 days of the enactment of the bill. The Center's claim must show proof that the employees were repaid their FICA taxes withheld.

The bill also provides that the time period for which the waiver is treated as not filed shall not be taken into account in determining an individual's eligibility for social security benefits.

Effective date

The bill will be effective upon enactment.

Revenue effect

This bill will allow a refund of \$148,256 in fiscal year 1978. Net budget receipts will be reduced by that amount.

95TH CONGRESS
1ST SESSION

S. 690

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10 (legislative day, FEBRUARY 1), 1977

Mr. HASKELL (for himself and Mr. GARY HART) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

For the relief of the Jefferson County Mental Health Center,
Incorporated, and one hundred and three individuals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the waiver certificate filed by the Jefferson County
4 Mental Health Center, Incorporated (taxpayer identification
5 number 84-047417), under section 3121(k)(1)(A) of
6 the Internal Revenue Code of 1954 (relating to waiver of
7 exemption by organization) shall be deemed not to have
8 been filed with respect to the one hundred and three individ-
9 uals named in section 6 of this Act with respect to the
10 period from January 1, 1972, through the last day of the

1 calendar quarter in which the date of enactment of this
2 Act occurs.

3 **SEC. 2.** The Secretary of the Treasury or his delegate,
4 upon proof reasonably satisfactory to him that repayment
5 has been made to the one hundred and three individuals
6 named in section 6 of this Act by the Jefferson County Men-
7 tal Health Center, Incorporated, of sums representing the
8 amount of taxes imposed on such individuals under section
9 3101 of the Internal Revenue Code of 1954 (relating to
10 rate of tax) and deducted and paid by the Jefferson County
11 Mental Health Center, Incorporated, under section 3102
12 of such Code (relating to deduction of tax from wages)
13 during the period specified in the first section of this Act,
14 shall consider such sums paid to such employees as over-
15 payments of tax under section 6413 (b) of such Code (re-
16 lating to overpayment of certain employment taxes) and
17 shall approve a claim for a refund, credit, or adjustment filed
18 prior to or within ninety days of the date of enactment of
19 this Act by the Jefferson County Mental Health Center,
20 Incorporated, under sections 6402 of such Code (relating
21 to authority to make credits or refunds) or 6611 (a) or
22 (b) (2) of such Code (relating to interest on overpay-
23 ments).

24 **SEC. 3.** (a) Any period of limitations for filing a claim
25 for credit or refund under section 6511 of the Internal Reve-

1 nue Code of 1954 (relating to limitations on credit or re-
2 fund) shall be waived with respect to any claim for refund,
3 credit, or adjustment made by the Jefferson County Mental
4 Health Center, Incorporated, under section 2 of this Act.

5 (b) Section 6514 of such Code (relating to credits or
6 refunds after a period of limitation) shall not apply to any
7 such claim.

8 SEC. 4. (a) (1) A certificate of waiver filed by the
9 Jefferson County Mental Health Center, Incorporated, un-
10 der section 3121 (k) (1) (A) of the Internal Revenue Code
11 of 1954 shall apply to the one hundred and three individuals
12 named under section 6 of this Act and the Jefferson County
13 Mental Health Center, Incorporated, after the last day of
14 the quarter in which this Act is enacted:

15 (2) Notwithstanding the provisions of section 3121
16 (k) (1) (B) (iii) of such Code, the Jefferson County Mental
17 Health Center, Incorporated, may not elect to have such
18 certificate of waiver apply to any of the one hundred and
19 three individuals named in section 6 of this Act for the
20 period specified in the first section of this Act.

21 (b) The certificate of waiver filed by the Jefferson
22 County Mental Health Center, Incorporated, under section
23 3121 (k) (1) (A) of such Code, or any prior corresponding
24 provision of law, shall be inapplicable, under the provisions
25 of this Act, only with respect to the one hundred and three

1 individuals named in section 6 of this Act and only for the
2 period specified in the first section of this Act.

3 SEC. 5. (a) The period for which any of the one hun-
4 dred and three individuals named in section 6 of this Act
5 received a repayment of the tax imposed on such individuals
6 under section 3101 of the Internal Revenue Code of 1954
7 shall not be considered in any determination of eligibility
8 for benefits under the Social Security Act. This subsection
9 shall not apply to the determination of eligibility for benefits
10 under the Social Security Act for any individual named in
11 section 6 of this Act or the family of such an individual if
12 the individual died, became disabled, or reached the age of
13 sixty-two during such period.

14 (b) The provisions of this Act shall not be construed
15 to affect the consideration given to any period of employ-
16 ment prior to or after the period specified in the first section
17 of this Act in the determination of eligibility for benefits
18 under the Social Security Act.

19 SEC. 6. The one hundred and three individuals affected
20 by this Act are as follows:

Name	Social security number
Assafi, Ines.....	078-30-2687
Bucklew, Beverly.....	450-64-6725
Burr, Janet.....	082-28-4395
Casey, William.....	522-68-5084
Chapman, Stephen.....	513-42-7215
Dunham, Martha.....	524-72-3978
Gilchrist, Kay.....	510-36-4853
Hughes, Mary.....	521-30-4097

Name	Social security number
Hyatt, Aven.....	523-48-8548
Jones, Alice.....	326-16-3001
Satterfield, William.....	516-30-7060
Moore, Reid.....	503-46-5274
Moriarty, Patrick.....	476-34-1400
Rewey, Helen.....	515-38-4953
Rich, Nancy.....	513-46-1945
Unsell, Margaret.....	060-36-9623
Auten, Cyndi.....	523-60-8586
Blackmore, Merihelen.....	297-36-1640
Braden, Eric.....	285-38-0307
Cranston, Connie.....	503-40-6980
Dines, William.....	524-38-5886
Benz, Ann Charlotte.....	522-68-0380
Hrynkow, Ron.....	479-54-9131
Mansfield, Lorita.....	491-30-8890
Olson, Keith.....	521-46-9793
Persson, Berdell.....	523-14-0367
Porter, William.....	514-34-2662
Sheehan, Daniel.....	343-36-0979
Winters, Billy R.....	448-34-2877
Parker, Ginger Joy.....	431-92-4062
Kempton, Phyllis.....	479-18-8743
Gerali, Virginia.....	523-32-6565
Holmboe, Chris.....	552-01-5265
Hendrix, Carmella.....	522-62-2412
Ridge, Linda.....	514-50-5485
Tobias, Lester.....	050-36-7998
Dawson, Lynn.....	520-56-1017
Dea, Timothy.....	524-72-7626
Graham, Patricia.....	566-76-8106
Means, Zetta.....	515-48-6422
Nicoletti, John.....	523-60-2958
McClain, Rodella.....	523-56-4958
Psenicka, Lee.....	523-84-4267
Nally, Michael.....	234-56-2595
Martin, Sandra.....	521-78-3426
Olson, Roxcen.....	524-88-5833
Mitchell, Vickie.....	297-38-4067
Edwards, Lee.....	523-88-2707
Mansfield, Maura.....	523-98-1354
Martin, Sherry.....	522-88-4614
Gordon, Sharon.....	565-76-6096
Alder, Nancy.....	524-78-9023
Ferney, Nancy.....	522-58-3131
McLean, Anne.....	377-46-3105
Miller, E. Pat.....	475-52-2344
Ramirez, Cathy.....	524-46-6867
Clark, Josephine.....	461-52-4539
Grace, LaRose.....	306-44-6181
Donovan, Carey.....	007-52-2226

Name	Social security number
Pomerantz, Jay	212-54-5207
Shoemaker, James	604-60-8244
Neptune, Belmont	522-01-9411
Siefkin, Diane	621-92-2202
Cornish, Susan	464-82-0167
Evans, Chris	263-84-4766
Fleming, Glennys	522-44-0262
Harris, Virginia	476-46-9717
Koback, Patricia	367-50-6918
Briggs, Gayle	523-54-8924
Vollmer, Betsy	228-62-9384
Myrant, John	468-60-1822
Peterson, Stephanie	528-56-9995
Godfrey, Susan	511-48-8354
Thomas, Georgia	523-56-6820
Zaranka, Judy	144-40-2842
Camp, Gay-Leigh	573-66-5864
Igle, Diane	144-38-1164
Marshall, George	064-26-9963
Turner, Deanne	523-68-0535
Meiners, Cathy	281-48-9929
Murray, Bonnie	524-46-5667
Ferrigno, Bea	011-32-2299
Fisher, Nettie	321-44-7894
Allen, Dan	244-50-8196
Long, John	264-86-4601
Dunn, Diane	523-92-2291
Mathews, Joan	544-42-7659
Butts, Janet	523-38-0200
Cavaleri, Joann	524-30-6561
Seitz, Anita	321-09-0972
Germer, William	459-72-5763
Dotsch, Marcella	380-32-8618
Lee, Christie	521-84-9635
Wolf, Debra	523-90-6041
Nelson, Betty	224-54-3867
Warner, Richard	524-90-3363
Dudden, JoEtta	524-66-3874
Murin, Becky	522-90-0656
Litzenberger, Judy	524-76-1818
Rullman, Alene	510-48-0492
Liem, Charles	264-80-4372
Gibbens, Gary	521-60-1969
Singleton, Vickie	489-60-2592

Senator Byrd. Senator Haskell had hoped and expected to be here this afternoon. He unfortunately has the flu and will not be able to be present. He has a statement, however, and at this point, the testimony of Senator Haskell will be inserted in the record.

[The material referred to follows:]

TESTIMONY OF SENATOR FLOYD K. HASKELL

SUMMARY OF PRINCIPAL POINTS

1. I urge the Committee to favorably and expeditiously consider S. 630, a bill which I introduced for the relief of the Jefferson County Mental Health Center, Inc. in Lakewood, Colo.

2. The bill is required to reimburse the Center for payments in the amount of \$74,128 which the Center made to current and former employees for Social Security contributions which the IRS informed the Center had been erroneously collected and had to be reimbursed. The IRS later reversed itself, after the reimbursements had been made, but was unable to reimburse the Center under its existing statutory authority for the \$74,128 involved.

3. The bill which I introduced provides that the Secretary determine the amounts withheld and subsequently reimbursed by the Center to its employees, and then treat those amounts as overpayments of tax which are then reimbursable to the Center.

4. The bill should be enacted because the Center, acting in good faith on the word of the IRS, is out of pocket in the amount of \$74,128 and only legislation can restore these funds to the Center.

Mr. Chairman, I am very pleased for the opportunity to appear before you today on the matter of obtaining relief for the Jefferson County Mental Health Center in Lakewood, Colorado. I wish to thank you, Senator Byrd, for your cooperation in arranging this hearing today.

On February 10, 1977, I introduced a bill, S. 690, for myself and Senator Hart, for the relief of the Jefferson County Mental Health Center, Inc., and 108 individuals.

The Jefferson County Mental Health Center is a nonprofit hospital in Lakewood, Colorado, which provides outstanding mental health services to three counties in Colorado. The center has become entangled in a series of misunderstandings with the IRS which can only be resolved by legislation.

In brief, the problem centers around the payment of social security taxes by the center. Nonprofit organizations which are exempt from taxation under section 501(c)(3) of the Internal Revenue Code are not generally covered under social security, unless the organization elects to be included. A form SS-15 must be filed with the IRS waiving the exemption from coverage.

The Jefferson County Mental Health Center and its employees elected to be covered, the form was filed, and FICA taxes were deducted and paid starting in 1963. However, in the course of an IRS program evaluation, it was determined that the waiver had never been filed.

The center was told by the IRS on February 28, 1975, that it had been improperly withholding the FICA tax, that the amounts so withheld should be returned to the employees, and that the center would be promptly reimbursed by the IRS. The center proceeded to locate the employees involved and reimbursed them out of its own funds for the \$74,128 involved. Shortly after that, however, the center was informed by the IRS that the waiver form had been located and that the IRS would not therefore reimburse the funds. Naturally, it was not possible to retrieve the funds previously repaid by the center to its employees, since some had spent their repayments and others were no longer employed by the center.

The IRS cannot remedy what it admits is an unfortunate mistake for all concerned because it does not have the authority to expend funds without a legal obligation to do so or a statutory authorization. Former Commissioner Alexander has acknowledged the dilemma and indicated that he would not object to a private relief bill to remedy the situation.

The bill which I introduced provides that the Secretary determine the amounts withheld and subsequently reimbursed and then treat those amounts as overpayments of tax which are then reimbursable to the center. An identical bill had been introduced in the House of Representatives by Congressman Timothy Wirth.

Last year a bill was introduced by Congressman Ottinger and subsequently enacted which sets general legislative guidelines for such problems in the future. However, the Jefferson County Mental Health Center is unique in that they expended their own money in reliance on the directives of the IRS and this is not covered under the provisions of Public Law 94-563.

Acting in good faith on the word of the IRS, the Jefferson County Mental Health Center today finds itself \$74,128 out of pocket. Only legislation can restore these funds to the Center. This matter has now been pending for more than a year. I urge you to favorably and expeditiously consider S. 690.

Let me conclude by again expressing my appreciation to the Chairman for his assistance in this matter.

Senator BYRD. The committee will now be glad to recognize Mr. John Shaw, Director, Division of Coverage and Disability Benefits, Social Security Administration; and also Mr. Harry L. Arkin, attorney on behalf of the Jefferson County Mental Health Center, Inc.

You may proceed as you wish.

STATEMENT OF JOHN SHAW, DIRECTOR, DIVISION OF COVERAGE AND DISABILITY BENEFITS, SOCIAL SECURITY ADMINISTRATION

Mr. SHAW. Mr. Chairman, I am Director of the Division of Coverage and Disability Benefits of the Social Security Administration, and this is a member of my staff, Mrs. Sidney Turner.

Senator BYRD. Both of you are most welcome.

Mr. SHAW. I think I may summarize my statement, because I am sure you are familiar with the background and what has happened that led to this private relief bill.

Even though I submitted it for the record, I would like to restate our position briefly.

We are sympathetic with the situation of the Jefferson County Mental Health Center. However, there are some problems with the bill in its present form that do not permit us to endorse the bill at this time. We believe that the center deserves relief for the money it refunded to its employees. However, we are very concerned about the protection of those employees who performed services during that period, and we would not like them to lose their social security coverage for that period.

One of our major concerns is that the deletion of social security coverage earned during the period provided in the bill would seriously impair social security protection of the employees involved and of their families. This loss of coverage could significantly reduce the amount of benefits paid to the workers and their families and could prevent some workers from meeting the requirements for the entitlement of benefits.

Under the bill, affected employees could lose over 5 years of social security coverage, including disability insurance protection, unless they receive credit for employment between December 31, 1971 and the end of the calendar quarter in which the bill is enacted from some other work that was covered by social security.

We believe that the consequences of the unfortunate misunderstanding between the center and the Internal Revenue Service should not fall on the center's employees. In addition to being harsh for the employees, the bill could have some inequitable and confusing results.

Work that was covered under social security when it was performed generally would be treated as not covered under the bill. However, credit for such work would be given to some workers for purposes of establishing entitlement benefits, but not for purposes of computing the amount of the benefits.

This provision would also be inequitable because only employees who became disabled, died or reached age 62 during the period for which they received the refund of social security employee contributions could have their wages counted for purposes of determining eligibility for determining social security benefits.

Employees who became disabled, reached age 62 or died during a time for which they did not receive a refund would not receive any credit for their wages from the center for the period specified in the bill, even though they may be in a situation that is substantially the same as the other group of workers who did receive credit for their wages.

In seeking a solution to the problem of the Jefferson County Mental Health Center, we want to be fair to the center, but also fair to the employees who worked to earn social security coverage. Therefore, we could support legislation similar to S. 690 if it were modified to insure that the affected employees would retain social security benefits that they have worked to earn.

Thank you, Mr. Chairman, for this opportunity to testify. I would be happy to answer any questions you might have.

Senator BYRD. Can you endorse a refund to employees yet have them get credit for social security? Is that what you propose?

Mr. SHAW. What has happened is that the refund has already been made to the employees by the center and what S. 690 does would be to reimburse the center for the funds representing the employee contributions that they have already returned to the employees.

It seems to us that the center is caught in the middle here. However, those employees did work under social security coverage at that time, because the waiver certificate had been filed previously. We think that they should have protection for that, even though the center was reimbursed.

Senator BYRD. I am not sure that I understand your position. You are opposed to the bill as it now stands?

Mr. SHAW. As it now stands.

Senator BYRD. But you could support it if it were changed in what regard?

Mr. SHAW. So that all employees who worked for the center and did have social security coverage by virtue of that work would have social security coverage, not only for the purpose of seeing whether or not they are insured to meet the entitlement requirements, but also to figure the amount of their benefit for that period for which the refund was made to them by the center.

Senator BYRD. Would that create any precedent that would be disadvantageous to the Social Security Administration in the future?

Mr. SHAW. I would think that this is an unusual, unfortunate incident that occurred at the center, and hopefully we would not find the same situation arising again.

Senator BYRD. When the employees accepted the refund, did they not accept the refund in lieu of coverage?

Mr. SHAW. I think it is difficult, perhaps, for an individual to make an informed decision about what they are doing, given that situation. There was, perhaps, a significant amount of money that was involved and available to them. I am sure they did not recognize what they might be losing through this loss of protection in social security.

Senator BYRD. If you are not in a hurry, perhaps if you would stay for the next witness, the committee might have some questions at that point.

Mr. SHAW. I would be glad to, Mr. Chairman.

Senator BYRD. Thank you.

[The prepared statement of Mr. Shaw follows:]

STATEMENT OF JOHN SHAW, DIRECTOR, DIVISION OF COVERAGE AND DISABILITY BENEFITS, OFFICE OF PROGRAM EVALUATION AND PLANNING, SOCIAL SECURITY ADMINISTRATION

Mr. Chairman, members of the subcommittee: My name is John A. Shaw. I am Director of the Division of Coverage and Disability Benefits, Office of Program Evaluation and Planning, Social Security Administration.

I appreciate this opportunity to discuss with the Subcommittee S. 690, a bill for the relief of the Jefferson County Mental Health Center, Incorporated, and 103 individuals.

Mr. Chairman, we sympathize with the situation of the Jefferson County Mental Health Center. The Center is a nonprofit organization. Under present law, employees of tax-exempt nonprofit organizations (as the Center is) are not covered under social security unless the organization files with the Internal Revenue Service a certificate waiving its exemption from the payment of social security contributions. The Center filed such a certificate in 1963, and social security coverage of its employees began.

In February 1975, the Internal Revenue Service, in the mistaken belief that no waiver certificate had been filed, notified the Center that its employees were not covered under social security. IRS advised the Center that the social security employer-employee contributions paid on the wages of its employees during the preceding 3-year period (which was not barred to correction by the statute of limitations) could be reimbursed to the Center, if the Center first refunded the employees' share of the contributions to the employees involved. In May 1975, after the Center refunded \$74,128 to 103 of its employees, IRS notified the Center that a waiver certificate had in fact been filed by the Center in 1963, and the employees were properly covered under social security.

Mr. Chairman, while we believe that the Center deserves relief for the money it refunded to its employees, we cannot support S. 690—in its present form—because it would remove from social security coverage services performed by certain employees of the Jefferson County Mental Health Center, even though the services were properly covered under social security at the time they were performed. We believe these employees should receive full credit under social security for wages paid during the period covered by the bill.

The bill, as you know, would direct the Secretary of the Treasury to reimburse to the Center the amount of any social security employee contributions for the period from January 1, 1972, to the date of enactment, which the Center refunded to the 103 employees named in the bill. Wages earned by the employees during the same period would be treated as not covered under social security. However, if any of the employees named in the bill died, became disabled, or reached age 62 during the period for which the social security employee contributions were refunded, the wages earned during the period could be used to determine eligibility for social security benefits for the employee and his family.

One of our major concerns is that deletion of the social security coverage earned during the period provided in the bill would seriously impair the social security protection of the employees involved and of their families. The loss of coverage could significantly reduce the amount of benefits paid to the workers and their families and could prevent some workers from meeting the requirements for entitlement to benefits. Under the bill, affected employees could lose over 5 years of social security coverage, and their disability insurance protection, unless they received credit for other covered employment between December 31,

1971, and the end of the calendar quarter in which the bill is enacted. We believe that the consequences of the unfortunate misunderstanding between the Center and the Internal Revenue Service should not fall on the Center's employees.

In addition to being harsh for the employees, the bill would have confusing and inequitable results. Work that was covered under social security when performed generally would be treated as not covered. However, credit for such work would be given to some workers for purposes of establishing entitlement to benefits, but not for purposes of computing the amount of the benefits. This provision would also be inequitable because only employees who became disabled, reached age 62, or died during a period for which they received a refund of social security employee contributions would have their wages counted for purposes of determining eligibility for social security benefits. Employees who became disabled, reached age 62, or died during a time for which they did not receive a refund, would not receive any credit for their wages even though their situation would be substantially the same as that of the other employees who received credit for their wages.

In seeking a solution to the problem that the Jefferson County Mental Health Center finds itself in, we want to be fair to the Center and also be fair to employees who worked to earn social security coverage. Therefore, we could support legislation similar to S. 690, if it were modified to insure that the affected employees would retain the social security protection that they have worked to earn.

Thank you Mr. Chairman for this opportunity to testify. I would be happy to answer any questions you or other Members may have.

Senator BYRD. The Chair will now recognize Mr. Harry L. Arkin, attorney on behalf of the Jefferson County Mental Health Center, Inc.

**STATEMENT OF HARRY L. ARKIN, ATTORNEY, ON BEHALF OF
JEFFERSON COUNTY MENTAL HEALTH CENTER, INC., JEFFERSON
COUNTY, COLO.**

Mr. ARKIN. Thank you, Mr. Chairman.

I believe that you have a copy of my testimony previously submitted. To summarize that, I would simply suggest that the summary I submitted does a fairly good job of that.

The Jefferson County Mental Health Center, a nonprofit regional health center located in Lakewood, Colo., was the victim of a mistake made by the Internal Revenue Service which caused the mental health center to pay out \$74,128 to mostly past, and a few still-present employees, at IRS' direction.

IRS acknowledge the mistake, but they had no statutory or other authority to reimburse the Jefferson County Mental Health Center for these funds which have been phased out and are not, from a practical standpoint, recoverable from the 103 persons to whom they were paid.

Thus, this private relief bill will rectify the mistake and cure the financial problem that long has been caused the Jefferson County Health Center, because of the IRS error.

If I may, with your permission, Mr. Chairman, depart from the text of my statement, if I could ask that that be simply incorporated into the record—

Senator BYRD. Without objection, your full statement will be incorporated into the record at this point.

[The prepared statement of Harry L. Arkin follows:]

STATEMENT OF HARRY L. ARKIN, ATTORNEY, JEFFERSON COUNTY MENTAL HEALTH CENTER**SUMMARY**

The Jefferson County Mental Health Center, a nonprofit regional health center located in Colorado was the victim of a mistake made by the Internal Revenue Service, which caused the Mental Health Center to pay out Seventy-Four Thousand, One Hundred and Twenty-Eight Dollars (\$74,128.00) to mostly past and a few present employees, at I.R.S.'s direction. I.R.S. acknowledges the mistake but doesn't have statutory or other authority to reimburse the Jefferson County Mental Health Center for these funds which had been paid out and not practically recoverable from the One Hundred and Three (103) persons to whom they were paid. Thus this Private Relief Bill will rectify the mistake and cure the financial problem and loss caused the Jefferson County Mental Health Center, because of the I.R.S. error.

Mr. Chairman and members of the committee: My name is Harry L. Arkin. I am an attorney of Denver, Colorado, and I am representing the Jefferson County Mental Health Center, Incorporated, and One Hundred and Three (103) individuals who were and in some instances, are presently employees of the Mental Health Center.

I am here today to testify in support of Senate Bill 690, a Bill for the private relief of the Jefferson County Mental Health Center, Incorporated and those One Hundred and Three (103) individuals.

The Jefferson County Mental Health Center, Incorporated is a non-profit Corporation, qualified for tax exempt status pursuant to Internal Revenue Code Section 501(c)(3). It was formed in 1963, and at that time, it had approximately six (6) employees.

The Mental Health Center is funded primarily by State, Federal and County monies. It renders mental health and family counseling services to one of Denver's most populous suburban areas.

In 1963 the Mental Health Center filed a waiver certificate, I.R.S. Form SS-15, pursuant to Section 3121(k)(1)(A) of the Internal Revenue Code. Customarily, non-profit organizations, such as the Jefferson County Mental Health Center, are exempt from payment of Social Security Taxes (F.I.C.A.); however, by filing I.R.S. Form SS-15, they waived that exemption and gave to their employees the protection of Social Security benefits. Everyone at the Center believed the Form SS-15 had been properly accomplished and filed with the Internal Revenue Service.

In 1975, the Internal Revenue Service conducted a survey of organizations similar to, and including, the Jefferson County Mental Health Center. As a result of the Mental Health Center responding to that survey, I.R.S. advised them by letter dated February 28, 1975, that the Mental Health Center had not properly filed Form SS-15. Then officials of the Mental Health Center, who were not those who had been there in 1963, could not initially find in the records, a copy of the SS-15, which they were certain had been filed in 1963 but could not prove. I.R.S. instructed the Mental Health Center to refund to One Hundred and Three (103) of their past and present employees monies which had been withheld from their salaries during 1972, 1973, and 1974 for Social Security Taxes in the sum of Seventy-Four Thousand, One Hundred and Twenty-Eight Dollars (\$74,128.00). These funds had previously been forwarded to IRS by the Mental Health Center. The I.R.S. advised the Mental Health Center that after the Mental Health Center had made such refunds to its One Hundred and Three (103) past and present employees, and presented proof of such payments to those employees, they, the I.R.S., would reimburse the Mental Health Center for that payment. The Jefferson County Mental Health Center, in accordance with the instructions of the Western Regional Service Center of the I.R.S. at Ogden, Utah, complied with the I.R.S. direction.

After following I.R.S.'s direction and making payment of the Seventy-Four Thousand, One Hundred and Twenty-Eight Dollars (\$74,128.00), but before the Mental Health Center could even submit proof of payment to I.R.S., (though they later did so), I.R.S. called them and advised that they, the Internal Revenue Service, had erred; that, in fact, the SS-15 had been properly filed. When I.R.S. was informed by the Jefferson County Mental Health Center Staff that the refunds had already been made pursuant to the I.R.S.'s prior direction, the Jefferson County Mental Health Center was immediately told by the Internal Revenue Service that the Internal Revenue Service regretted the error, but there was nothing that could be done. This was confirmed by I.R.S. in subsequent meetings with the Jefferson County Mental Health Center, in the Office of the Denver District of the I.R.S., which meeting included the Western Regional Counsel from San Francisco. I should like to emphasize that the District Director in Denver, Mr. Milbacher, and his Chief of Collections, Mr. Bolle, have been courteous and sympathetic throughout this matter.

Subsequently, I was retained by the Jefferson County Mental Health Center. I arranged a meeting in Washington with the then Commissioner of Internal Revenue, Donald P. Alexander. His staff had briefed him and he thoroughly understood the problem. He acknowledged the error that had been made, and confirmed that I.R.S. had no statutory or other authority to make a refund. When I suggested a Private Relief Bill, he advised that I.R.S. would comment favorably upon such a Bill when asked to do so in the normal processes which are undertaken once a Bill has been introduced. I understand that favorable comment on private relief bills is most unusual, and that the best, one usually can hope for, is a "no comment" response. I am also aware that since all I.R.S.'s comments are reviewed as they pass through the Department of the Treasury, they may not arrive in Congress the way they leave I.R.S.

Senator Haskell, for himself, and Senator Gary Hart of Colorado, introduced such a Bill in the Ninety-Fourth Congress. Congressman Timothy Wirth from the Second District of Colorado introduced simultaneously an identical Bill in the House of Representatives. I have been told that the reports on those Bills from HEW and Treasury were requested, but apparently did not receive the necessary attention of those departments since the reports were not received by the Sub-Committee Staffs prior to adjournment of the Ninety-Fourth Congress.

Senator Haskell, on behalf of himself and Senator Hart, were kind enough to reintroduce the Bill early in this Session of Congress, and that is the Bill, S. 960, on which I am speaking today. Congressman Wirth has also reintroduced an identical Bill in the House of Representatives; namely, H.R. 3997.

That, Mr. Chairman, is what happened, where we are, and why we need the Senate Bill 690. This Bill will direct the Secretary of the Treasury to confirm the amount involved and the re-payment to its employees by the Jefferson County Mental Health Center, and then treat that sum as overpayment of taxes by, and to reimburse, the Jefferson County Mental Health Center. The individuals to whom the money was paid were among former, as well as a few present employees. They were people who went out and expended that money to pay debts, to make house payments, to pay college expenses for their children. Recovery from them is a practical impossibility, would cost further money, if it could be accomplished, and cause many substantial hardships.

Thus, this Bill will resolve our problems and alleviate a financial burden which the loss of these funds have caused the Jefferson County Mental Health Center in its efforts to carry out its people serving functions.

Passage of Senate Bill 690, will cure the error made by the Internal Revenue Service, which they sincerely regret, but can do nothing about. The Bill will cause no great hardship to the economy nor to any of the agencies involved.

Thank you for the opportunity to appear before you. I will be glad to attempt to answer any questions which you may have for me.

Mr. ARKIN. Mr. Chairman, we, too, join with the Social Security Administration in wishing to assure that there is no harm done to the coverage of the 103 employees. These people had social security payments made on their behalf by the Jefferson County Mental Health Center for the years 1972, 1973, and 1974, so we believed them to be covered and trust that they are covered for those years.

When IRS made its unfortunate error in being unable to find a form that had been filed in 1963, and only later discovered that that form was in their file, the Jefferson County Mental Health Center was ordered to refund to them, the employees, the moneys that had been withheld from their salary and paid to IRS for turning over to the Social Security Administration.

Senator BYRD. Who ordered the center to do that?

Mr. ARKIN. The Western Regional Center of the Internal Revenue Service at Ogden, Utah in the belief that the necessary form to allow these people to be covered under social security had not been filed. Later, they discovered that it had been, after the center had complied with IRS instructions to give those people back the money that had been withheld for social security.

But, when IRS discovered their mistake, the money had been refunded to these people. They had gone out and spent it and used it, and getting it back was a practical impossibility.

We understood, Mr. Chairman, that they would remain covered, and I spoke to the Social Security Administration in Baltimore in January 1976 on this matter, and they expressed their concern to us at that time.

We, of course, feel that if—and we would urge Mr. Shaw's department to file, or submit, language amending S. 690 to Senator Haskell, who I am sure would accept it, and Congressman Wirth for the House bill, that would assure that, so there would be no question. We do not want these people to suffer any injury at all in their coverage under social security, and we thought the present bill took care of that, and the refund to the center would not impair that.—

But if additional language is needed, obviously the center not only has no objection, but endorses such an amendment.

Senator BYRD. Is it correct that an election was offered the individuals as to whether they wished to be covered over the prior 3 years, 1972 through 1974?

Mr. ARKIN. I would suggest, Mr. Chairman, that Mr. Shaw's statement as to that is probably accurate, that they did not understand the technicalities of an offer of refund of moneys that had been withheld and therefore did not understand what it was all about. I understand there was an election in the technical language, a piece of paper was sent out to them, they asked for the refund. I feel reasonably confident in assuring you that these people were not aware that if they accepted this refund there would be any problem if it was determined that the refund had been improper and the money repaid the center by IRS. IRS found out that they had no statutory authority to repay us, even though they had made a mistake. Thus, Senate bill 690.

Senator BYRD. Well, the individuals benefited by the refund to the extent of roughly \$600?

Mr. ARKIN. Well, it was in varying amounts, Mr. Chairman, but essentially, yes. It depended on how long they had been there, and it was over a 3-year period.

Senator BYRD. Well now, the total cost of S. 690 would be how much?

Mr. ARKIN. \$74,128.

Senator BYRD. \$74,128?

Mr. ARKIN. Yes, sir.

Senator BYRD. Do you happen to know what the Treasury's position is on this bill?

Mr. ARKIN. I can only tell you that I met with the former Commissioner of Internal Revenue, Mr. Donald Alexander, in late 1975 or early 1976, and at that time he told me that it was very unusual for IRS to ever speak favorably in a report to a private relief bill to have IRS refund money.

He said that this was one of those rare instances when it would certainly be justified. Now, their report had to go to Treasury and then to OMB and it never made it in the 94th session and it still has not made it in this session, Mr. Chairman.

Senator BYRD. So there is no report from Treasury at this point?

Mr. ARKIN. No, sir. And I know that Senator Haskell's office has diligently tried to get them to come up with one, as has Congressman Wirth's office.

Senator BYRD. But even though Senator Haskell's office has been diligent in seeking to get a report from Treasury, Treasury still has not made it in this session, Mr. Chairman.

Mr. ARKIN. That is correct, sir.

Senator BYRD. Now, did the mental health center continue to refund social security withholding after it was informed by the IRS that a valid waiver certificate from exemption for payment had been filed?

Mr. ARKIN. No, they did not, and unfortunately, the damage had already been done for the 3 years that they had been directed to make the refunds and submit evidence to IRS that they had been made, and then IRS would reimburse them. In that interim period, IRS said: "Stop. You did file the proper form back in 1963. Do not make any more refunds and pay social security to your people."

And they called me, of course, and I said absolutely, let's keep filing, make the deductions and pay social security, and they have continued to do so since this matter first came up in 1975.

Senator BYRD. But you did not continue to make refunds?

Mr. ARKIN. No, sir. We made refunds only for those 3 years as directed by IRS and those amounted to the \$74,128.

As Mr. Shaw pointed out, it was just one of those rare, unusual, unprecedented errors and probably will not set any precedents for anything in the future. IRS certainly hopes not, I am sure.

Senator BYRD. Why did the center refund the social security taxes out of its own funds instead of first waiting for a refund of this withholding amount from the IRS?

Mr. ARKIN. IRS Regional Service Center at Ogden, Utah directed that that procedure be followed, that they first find the people, refund the money, present proof of the refund to IRS, and only then would IRS refund to the center the money.

Senator BYRD. But IRS has not carried through on that? It has not refunded?

Mr. ARKIN. No. As I attempted to point out, IRS subsequently, when they discovered that they had made a mistake in the first place, advised the center, even had their Western Regional Counsel from San Francisco fly into Denver and have a meeting with the Center officials and advised them that there just was not any statute that authorized them to cure their own mistake.

It was after that that I was retained, sought an audience and was granted it, with Commissioner Alexander in Washington and I proposed a private relief bill and he agreed with me that that was the only solution to the problem because of their lack of statutory authority to give us a refund.

Senator BYRD. Well, how do you propose to treat the period in question as far as coverage social security is concerned for those employees who received refunds? Will these employees receive credit for social security benefits for this period, or will they be considered to have been outside the social security?

Mr. ARKIN. When I spoke, Mr. Chairman, with a Mr. Cahill of the Social Security Administration in 1976, in referring back to my notes, he said that the coverage was a problem, that there would have to be some arrangements made to be assured that they would retain coverage for that 3-year period, 1972, 1973, and 1974.

I was of the impression, Mr. Chairman, that the present bill took care of that. Apparently Mr. Shaw, who certainly has more expertise than I in these matters, does not believe it does, and we would welcome, and I am sure Senator Haskell and Congressman Wirth would accept willingly and adopt any amending language that would assure those people would obtain that coverage. We do not want them hurt. They, too, in a sense are victims of the mistake.

Senator BYRD. Mr. Shaw, it is your feeling, is it, that approval of this legislation would not create a precedent that would be difficult for the Social Security Administration in the future?

Mr. SHAW. Mr. Chairman, I do not believe it would create a precedent. I think that this was an unfortunate incident that happened, and to the best of my knowledge, it is treated as an isolated incident. I do not think of it as having a precedent value broadly.

I would like to add one other point, and that is that, in effect, the position taken by the Department of Health, Education, and Welfare has been endorsed by the Office of Management and Budget, so it does represent the administration position.

Mr. ARKIN. We are delighted, Mr. Chairman, to hear that. It is welcome and last minute news which I had not been informed of previously.

Senator BYRD. Now, what about the employer's share? Is that involved in this legislation?

Mr. ARKIN. No, sir. It has already been paid. It was not refunded, and we are not asking for a refund of that, so that will already be there to cover these employees. We are only asking for a refund of the employees' share which we paid twice.

Senator BYRD. It is not correct that the Social Security Administration has already been paid the social security taxes for these 3 years in question?

Why would there be any question about the employees' being covered, then?

Mr. SHAW. There is no question except for S. 690 itself and the way it is drafted.

Senator BYRD. Oh, I see. It is a defect in the bill?

Mr. SHAW. Well, from our view it is a defect in the bill because it does, in effect, place certain restrictions on services that were performed in 1972, 1973, and 1974. It says they can only be counted if the

worker dies or reaches age 62 or becomes disabled within the period covered by the bill, and then only for purposes of determining eligibility for benefits, but not to determine the benefit amount.

Senator BYRD. I see.

Mr. SHAW. That, in our view, is a limitation in S. 690.

Senator BYRD. Well, let me phrase it this way, then. As of today, these employees are covered?

Mr. SHAW. That is correct.

Senator BYRD. And there is no problem there?

Mr. SHAW. That is correct.

Senator BYRD. So the only problem is, you feel that the enactment of this legislation, in its present form, would tend to jeopardize the employees?

Mr. SHAW. That is correct, Mr. Chairman.

Senator BYRD. I suppose that the best thing would be for the committee to ask the staff to work with Senator Haskell and with you and see if satisfactory language can be worked out to protect the employees, because no one wants to take action which would jeopardize the social security benefits of those employees.

Mr. ARKIN. Mr. Chairman, we would not only welcome, but solicit, any suggestions that Mr. Shaw's Department, agency, might have which would cure any prospective problem and request that he provide that both to me and to Senator Haskell's and Congressman Wirth's office so that we could incorporate those additional assurances and to perhaps amend it.

Mr. SHAW. The Department would be glad to provide any technical assistance.

Senator BYRD. Fine.

Now, once again, just to be clear on the point, the center is not asking for a refund of its social security taxes?

Mr. ARKIN. No, sir.

Senator BYRD. Congressman Wirth has submitted a statement for the record which I will insert at this point.

[The material to be furnished follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., October 14, 1977.

Senator RUSSELL LONG,
Chairman, Committee on Finance,
Washington, D.C.

DEAR SENATOR: Thank you for providing this opportunity to present the technical case of the Jefferson County Mental Health Center.

The Jefferson County Mental Health Center located in Lakewood, Colo., provides mental health services to a tri-county area.

As the testimony before you has shown, the Center has suffered a series of administrative misunderstandings with the Internal Revenue Service that can only be remedied through legislation.

The problem developed over the payment of social security taxes by the Center. Because the Center is a non-profit organization, it is exempt from inclusion in the social security system. However, employees at the Center elected to participate in the program.

Proper forms were filed with the IRS and FICA taxes were deducted and paid beginning in 1963. However, in the course of an IRS review of the Center, it was discovered by the IRS that the proper form for employee withholding had not been filed.

The IRS informed the Center that because of a lack of the proper documentation, the Center had been wrongfully withholding the FICA tax. The IRS told the Center to reimburse those employees covered by social security for taxes they had paid, stating they would reimburse the Center for the expense.

The Jefferson County Mental Health Center reimbursed 133 employees for a total of \$74,128. Shortly thereafter, the IRS informed the Center that proper forms had been originally filed and had now been located. Consequently, the IRS said it would not reimburse the Center for money it had already returned to employees.

By this time, it was too late to get the money back from the employees, who had spent the money or were no longer employed by the Center.

The IRS cannot remedy this unfortunate mistake because it does not have the authority to expend funds without a legal obligation to do so or a statutory authorization. This legislation would correct the situation by allowing the Secretary of the Treasury to determine the amounts withheld and treat these amounts as tax overpayments which are then reimbursable to the Center. The matter has been reviewed previously by the Internal Revenue Service and they have informed me that they have no objection to this remedy.

I particularly wish to stress at this time that the Jefferson County Mental Health Center has acted in good faith throughout this unfortunate misunderstanding and, reciprocally, I urge that Congress act in a similar manner to remedy this situation.

Thank you for consideration.

Sincerely yours,

TIMOTHY E. WIRTH.

Senator BYRD. Thank you, very much.

Mr. ARKIN. Thank you, Mr. Chairman.

[Thereupon, at 2:20 p.m. the subcommittee proceeded to other business.]

