

1 EXECUTIVE COMMITTEE MEETING

2 TUESDAY, JUNE 16, 1992

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The meeting was convened, pursuant to notice,
7 at 8:53 a.m., in Room SD-215, Dirksen Senate
8 Office Building, Hon. Lloyd Bentsen (Chairman)
9 presiding.

10 Also present: Senators Moynihan, Baucus,
11 Boren, Bradley, Mitchell, Pryor, Riegle,
12 Rockefeller, Daschle, Breaux, Packwood, Dole,
13 Roth, Danforth, Chafee, Durenberger, Symms,
14 Grassley and Hatch.

15 Also present: Vanda McMurtry, Staff Director
16 and Chief Counsel; Edmund Mihalski, Chief of
17 Staff, Minority.

18 Also present: Fred Goldberg, Assistant
19 Secretary of the Treasury for Taxation; Dr. Alan
20 Cohen, Economic Major, Department of the Treasury.

21 Also present: Hank Gutman, Chief of Staff,
22 Joint Committee on Taxation; Sam Sessions,
23 Majority Chief Tax Counsel; Mary Schmitt, Deputy
24 Chief of Taxation, Joint Committee on Taxation;
25 John Leggett, Tax Counsel; Patty McClanahan,

1 Majority Tax Counsel; Maurice Foley, Tax Counsel,
2 Majority; Kyle Bigg, Accountant, Joint Committee
3 on Taxation; Mark Prater, Tax Counsel, Minority.

4 (The prepared statements of Senators Chafee
5 and Hatch appear in the appendix.)

6 (The press release announcing the meeting
7 follows:)

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1 The Chairman. If you will be seated and cease
2 conversation, we will get under way. Today we are
3 going to mark up two important pieces of
4 legislation: the energy bill, the tax portions of
5 that, and the extenders; and the repeal of the
6 luxury taxes.

7 The Chairman's mark for the energy bill
8 largely follows the House bill. In general, these
9 two provisions are designed to promote energy
10 conservation, increase domestic production of oil
11 and gas, and encourage the use of alternative
12 sources of energy.

13 These tax incentives are an important part of
14 efforts to establish an effective national energy
15 policy that will reduce our growing dependence on
16 energy, particularly our costly reliance on
17 foreign oil and to ensure adequate energy
18 resources for future economic growth.

19 The House has already acted on this, and it is
20 incumbent upon us to move the energy bill toward
21 enactment as soon as possible. The committee has
22 already held hearings on these proposals, with
23 Senator Daschle having held two days of hearing in
24 the Subcommittee on Energy and Agricultural
25 Taxation on the conservation and alternative

1 energy proposals, in particular.

2 We have also held hearings on the provisions
3 relating to the alternative minimum tax relief for
4 independent oil and gas operators.

5 The second piece of legislation, extending the
6 expiring provisions and retroactively repealing
7 the luxury tax, which we are marking up today, has
8 not been considered by the House.

9 But these provisions are expiring this month
10 and because of the strong and persistent interest
11 shown by many members of this committee, I have
12 taken an extraordinary step of scheduling a mark-
13 up of these provisions and using one of the few
14 House revenue bills available to the Finance
15 Committee at this time.

16 The expiring provisions are scheduled to
17 expire at the end of the month, and I know that
18 many of the members, including me, have an
19 interest in extending them before they expire.

20 Similarly, many members have repeatedly called
21 for repeal of the luxury tax. I have asked that
22 it be repealed retroactive to the beginning of the
23 year. My mark honors those commitments I have
24 made on it.

25 In order to expedite reconsideration of these

1 provisions, ten Finance Committee members have
2 agreed to oppose all non-germane amendments to
3 this bill, and I will join them.

4 That means that we should pass a clean
5 extenders and luxury tax repeal bill that can be
6 taken up by the House and enacted before the end
7 of the month. We have a full agenda this morning;
8 a limited time.

9 We are under a procedural limitation. We will
10 have to adjourn at the end of two hours after the
11 Senate comes into session. So, I hope we can
12 expeditiously move on these two pieces of
13 legislation. Who is starting out? Mr. Gutman, if
14 you would, on the tax provisions of the energy
15 bill.

16 Mr. Gutman. Thank you, Mr. Chairman. You and
17 the members of the committee have before you a
18 document, JCX22-92, and this document is the
19 Chairman's mark of the revenue-related provisions
20 of H.R. 776.

21 You also have in front of you a revenue table,
22 Revenue Table 92-2141. The revenue table displays
23 the revenue consequences of the provisions that
24 are included in your mark.

25 I would just like to take a few minutes to

1 review with you a summary of the provisions. The
2 first provision of the mark relates to the
3 exclusion from income for employee-provided
4 transportation benefits.

5 Under current law, employer-provided
6 transportation transit passes and other similar
7 items are excluded from the income of a recipient,
8 so long as the total value of the benefit does not
9 exceed \$21 per month, and if the total value
10 exceeds \$21, the full value of the benefits is
11 included in income.

12 In addition, under current law, parking that
13 is paid for by an employer is excludable from the
14 gross income of the employee, regardless of its
15 value.

16 Under the mark, gross income would not include
17 qualified transportation fringe benefits, and
18 qualified transportation fringe benefits would
19 include transportation in a commuter highway
20 vehicle. It would also include a transit pass,
21 and it would also include qualified parking.

22 The substance of the change would be to
23 exclude from income the value of transit passes to
24 the extent that the value does not exceed \$60 per
25 month, as compared to \$21 per month, and it would

1 also cap the exclusion from income of employer-
2 provided parking at \$155 per month.

3 So, the mark would increase the exclusion for
4 transit passes and put a cap on the amount that
5 would be excluded from income for employer-
6 provided parking.

7 A similar proposal was in H.R. 4210, the tax
8 bill that was passed by both the House and the
9 Senate. And the revenue effects of these
10 provisions that I am describing are set forth, as
11 I have said, in Table 92-2141.

12 The second provision involves an exclusion
13 from income for certain conservation measures that
14 have been provided by public utilities. And the
15 proposal would provide an exclusion from gross
16 income for any customer of a public utility for
17 the value of any subsidy that has been provided by
18 that utility for the purchase or installation of
19 an energy conservation measure in a residential
20 building.

21 That provision would be effective with respect
22 to amounts received after December 31st, 1992. In
23 addition, for taxable years beginning after 1993,
24 the proposal would provide an exclusion from the
25 gross income of a commercial or industrial

1 customer for 80 percent of the value of any
2 subsidy provided by the utility.

3 For definitional purposes, regulated public
4 utilities, rural electric cooperatives, State and
5 municipality-owned utilities, and certain
6 federally-operated utilities would be considered
7 public utilities.

8 And, in addition, the proposal would apply to
9 certain payments made by public utilities to third
10 party contractors and to certain payments received
11 pursuant to State-sponsored conservation programs.

12 The third provision is a provision involving a
13 tax deduction for clean fuel vehicles and certain
14 refueling property.

15 Under the proposal, a deduction would be
16 allowed for the cost of qualified clean fuel
17 vehicle property and qualified clean fuel vehicle
18 refueling property placed in service during any
19 taxable year.

20 The amount of the deduction for qualified
21 clean fuel vehicle property would be limited based
22 on the type of motor vehicle of which the property
23 is a part. The amount of the deduction for
24 qualified clean fuel vehicle refueling property
25 generally would be limited to \$100,000.

1 In the case of a motor vehicle that may be
2 propelled by both a clean burning fuel and any
3 other fuel, the cost of any qualified clean fuel
4 vehicle property that may be used by both the
5 clean burning fuel and the other fuel would be
6 taken into account to the extent that the cost of
7 the property exceeds the cost which would have
8 been used had the vehicle been proposed solely by
9 the non-clean burning fuel.

10 In other words, where there is a vehicle that
11 can be propelled both by clean burning and non-
12 clean burning fuel, the cost that is taken into
13 account is the incremental cost involved in
14 adapting the engine to being able to burn the
15 clean burning fuel.

16 Senator Chafee. Well, you only get the
17 deduction for the extra amount you pay.

18 Mr. Gutman. With respect to those types of
19 vehicles that can both burn gasoline and clean
20 burning fuel, the deduction would be based on the
21 incremental cost of adapting the engine to be able
22 to burn the clean burning fuel, Senator.

23 Senator Chafee. Well, it is what the
24 customers pays, the extra. Is it not?

25 Mr. Gutman. That is right.

1 Senator Chafee. Up to \$2,000.

2 Mr. Gutman. Yes. That is right, Senator.

3 Senator Chafee. Thank you.

4 Mr. Gutman. The next provision involves an
5 income tax credit for electricity that is
6 generated using certain renewable energy sources.
7 The provision, which is similar to the tax credit
8 for generation of electricity from renewable
9 energy sources that was included in the House
10 bill, would provide a 1.5 cent per kilowatt hour
11 tax credit for wind energy, and a 1.5 cent per
12 kilowatt hour tax credit for biomass energy from
13 closed loop systems.

14 Senator Grassley. Mr. Chairman.

15 The Chairman. Yes.

16 Senator Grassley. Is it your desire that we
17 would ask questions now, or wait till the
18 explanation is done? Because I have a question on
19 this point here.

20 The Chairman. I think if you would ask them
21 as we go along, that would be helpful.

22 Senator Grassley. All right. First of all,
23 Mr. Chairman, I would like to thank you for
24 including this in your mark. It follows the sense
25 of the Senate resolution that you had accepted

1 that I sponsored when we had the last tax bill up.
2 So, I really appreciate it being here.

3 Now, for Mr. Gutman, I assume, or anybody else
4 who can answer, the first issue I want to bring up
5 involves a definition of reference price in
6 determining the phase-out period for the
7 production credit.

8 I was concerned that the House version used
9 old contracts with inflated prices in today's
10 market for a reference. And it is my
11 understanding that this committee is now using
12 current contracts to determine reference price.
13 Could you comment if that is true?

14 Mr. Gutman. The reference price is determined
15 with reference to energy sold under contracts
16 entered after December 31st, 1989, Senator.

17 Senator Grassley. Then my second concern
18 dealt with the fact that it is not clear that the
19 production credit would be available to utility
20 companies that supply power for sale in their own
21 grid system. My understanding is that this
22 committee has made it clear that these companies
23 would be included.

24 Mr. Gutman. That is correct, Senator.

25 Senator Grassley. Thank you, Mr. Chairman.

1 The Chairman. Surely. Proceed, Mr. Gutman.
2 Mr. Gutman. The next provision of the mark,
3 Mr. Chairman, involves the changes to the minimum
4 tax relating to oil and gas production for
5 independent producers, non-integrated oil
6 companies. And under the proposal, the excess IDC
7 preference and the excess percentage depletion
8 preference for oil and gas would be repealed.

9 The repeal of the excess IDC preference,
10 however, could not result in the deduction of the
11 amount of the taxpayer's otherwise determined
12 alternative minimum tax by more than 40 percent
13 after 1994, and by more than 30 percent in taxable
14 years beginning in 1993. The purpose of the
15 latter provision is to prevent taxpayers from
16 being able to zero out their minimum tax
17 liability.

18 The next provision of the mark involves the
19 business energy tax credits for solar, geothermal
20 and ocean thermal property. The solar and
21 geothermal business tax credits are currently
22 scheduled to expire on June 30th, 1992, and, under
23 the mark, they would be extended permanently. In
24 addition to that, qualified ocean thermal property
25 would be eligible for this business energy tax

1 credit.

2 The next provision involves the treatment of
3 nuclear decommissioning funds. And under the
4 mark, the present law investment restrictions that
5 apply to nuclear decommissioning funds would be
6 repealed. This provision was included in H.R.
7 4210, as passed by the House and the Senate.

8 Senator Breaux. Could I ask a question on
9 that, Mr. Chairman?

10 The Chairman. Yes, of course. Senator
11 Breaux.

12 Senator Breaux. You are removing the
13 investment restrictions. What are you doing with
14 the rate?

15 Mr. Gutman. The rate has not been changed,
16 Senator.

17 Senator Breaux. You are allowing for more
18 risky investments that would presumably produce a
19 greater return and you are keeping the rate the
20 same. Would you not be producing revenues? How
21 does the House treat this thing, can you tell me
22 that?

23 Mr. Gutman. Senator Breaux, apparently we
24 have anticipated there would not be a substantial
25 change in the portfolio mix in doing the estimate.

1 Senator Breaux. Can you tell me how the House
2 treats this?

3 Mr. Gutman. The House provision also changed
4 the rate and it reduced the tax rate from the
5 current rate to 22 percent in 1994 and 20 percent
6 in 1996.

7 Senator Breaux. Thank you.

8 Mr. Gutman. Now, the next portion of the mark
9 deals with the revenue-raising provisions in the
10 mark. The revenue raising provisions are outlined
11 at the top of page two of the revenue table.

12 There are two revenue raising provisions. The
13 first is the repeal of the deduction for club
14 dues. This proposal was included in H.R. 4210,
15 and the proposal would be effective for club dues
16 paid after the date of enactment.

17 Senator Packwood. Can I ask a question on
18 that?

19 The Chairman. Yes. Senator Packwood.

20 Senator Packwood. On the club dues, when they
21 were included in the bill that was vetoed, as I
22 recall, in our minds we were more or less thinking
23 of them as an offset to tip credit. Am I correct?

24 Mr. Gutman. They were coupled with that in
25 the other bill, Senator. That is correct.

1 Senator Packwood. And, to the extent that
2 those of us who still believe that should be
3 repealed were thinking of using this as a revenue
4 source--and it is a non-energy source--it is now
5 going to be used to pay for some of the energy
6 credits.

7 Mr. Gutman. It is in the mark in that
8 context. That is correct, Senator.

9 Senator Packwood. The FICA tax repeal is not
10 in this program?

11 Mr. Gutman. It is not in this mark, Senator.
12 The second revenue raising provision which is
13 similar to that which was in the House bill is an
14 increase in the tax base of initially listed and
15 newly listed ozone depleting chemicals in the
16 amounts that are set forth in footnote #4 of the
17 revenue table, and as described on pages 18 and 19
18 of the mark.

19 Senator Chafee. Mr. Chairman.

20 The Chairman. Yes. Senator Chafee.

21 Senator Chafee. On that last one, the denial
22 of the club dues. I just want to indicate some
23 distress over that. That was originally
24 suggested, as I understand it--now, there is no
25 patent on these things--by the restaurant

1 association in order to pay for the FICA.

2 The Chairman. I must say to you, Senator, I
3 have heard that one for years. So, I do not see
4 it tied to any particular thing. We are looking
5 for sources of revenue here, and it is not easy.
6 None of them are happy choices.

7 People like to get the benefits, but normally
8 they do not like to pay for them. And, in seeking
9 sources of revenue, this is one of those that was
10 utilized.

11 Senator Chafee. But we do not do anything
12 about the FICA on this, obviously.

13 The Chairman. You would have to have more
14 revenue to do that.

15 Mr. Sessions. Senator, I might comment that
16 the House bill included some revenue raisers that
17 were not included in this bill, and that could not
18 be included under the budget rules. These were
19 outlay reductions. As a result, the mark includes
20 revenue raisers that were not included in the
21 House bill to offset the cost.

22 The Chairman. That is a good point. If you
23 would proceed.

24 Mr. Gutman. I have completed my description,
25 Mr. Chairman.

1 The Chairman. All right. Are there further
2 questions?

3 Senator Packwood. Is this now open for
4 amendments?

5 The Chairman. Yes, it is.

6 Senator Packwood. Then I have an amendment to
7 offer relating to the Mid Columbia Dams. These
8 dams are in the State of Washington, actually, not
9 in the State of Oregon, although they produce
10 power that is used in Idaho, Utah, Oregon, and
11 Montana. It is part of the grid system.

12 Under the Tax Reform Act of 1986, these public
13 utility districts are allowed to issue tax-exempt
14 bonds, but they are, within the State of
15 Washington, volume capped, although other States
16 benefit.

17 And I would simply like to offer an amendment
18 that would exempt them from the State of
19 Washington volume cap. The amendment is generic.
20 It would apply to about eight different public
21 utility districts in the State and the bonds that
22 they issue would have to be used to meet the
23 improvements required of these dams by federal
24 law. And it is a cost of about \$3 million over
25 the five years, the Joint Tax Committee estimates.

1 And I see we have the money to pay for that.

2 The Chairman. Are there further comments
3 concerning it?

4 Senator Moynihan. That makes sense. Mr.
5 Chairman, we have been mandating these measures in
6 the Committee on Environment and Public Works and
7 we ought to let the public utilities pay for it.

8 The Chairman. Senator Baucus.

9 Senator Baucus. I was wondering if I could
10 ask Senator Packwood. Is this somewhat in
11 contemplation of changes in the Columbia that
12 might be required in conformance with the
13 Endangered Species Act?

14 Senator Packwood. That is part of it. There
15 is going to have to be major changes made, as you
16 are well aware, in the hopes of saving some fish.

17 Senator Baucus. Yes. Some salmon, in
18 particular.

19 Senator Packwood. Yes. Particularly salmon.

20 Senator Baucus. Thank you.

21 The Chairman. Are there further comments or
22 questions concerning it?

23 Senator Bradley. Mr. Chairman, I would just
24 say I think the amendment is merited.

25 The Chairman. It is what?

1 Senator Bradley. It is merited, I think. The
2 whole operation of the Columbia is going to be, if
3 not already, under a court order.

4 Senator Packwood. It soon will be, I think.

5 The Chairman. Any further comments?

6 Senator Rockefeller. Mr. Chairman.

7 The Chairman. Yes.

8 Senator Rockefeller. Some of us have
9 literally just seen this amendment and have
10 absolutely no idea of its consequences whatsoever.

11 The Chairman. Why do you not comment on it
12 further, Senator Packwood.

13 Senator Packwood. Well, in 1986 we said that
14 these PUDs--Public Utility Districts--could
15 continue to issue tax-exempt bonds, but they had
16 to be within the volume cap of the State that they
17 are in. All of these dams that I am thinking of
18 are in the State of Washington, although they sell
19 power throughout the region.

20 And, yet, they are subject to solely the State
21 of Washington volume caps, so the other States are
22 benefitting from them, in essence, and the State
23 of Washington is having to put them within the
24 volume cap.

25 This would simply, although it is generically

1 written and would affect other Public Utility
2 Districts, frankly, it is presumed that these will
3 be the dams that will use these because of the
4 requirements that we are adding to them in the
5 Endangered Species Act and environmental problems
6 that the dams are causing.

7 The Joint Tax Committee estimates it is about
8 a \$3 million cost over five years, and we have
9 about a \$300 million surplus in the energy mark.

10 Senator Chafee. I take it that this would
11 solely be when the federal licensing authority
12 required these changes. Is that correct?

13 Senator Packwood. That is correct. And the
14 money is to be used solely for environmental
15 purposes in the upgrading of the dams. These dams
16 are not that old; they were built in the 1950s.
17 They have plenty of life left in them. But the
18 environmental laws that they had to comply with in
19 the 1950s are totally different from what they
20 have to do now.

21 Senator Chafee. What would be taking place
22 would be building fish ladders, and so forth?

23 Senator Packwood. Fish ladders, or fish
24 screens. The fish are killed more likely going
25 down than they are coming back as they go over the

1 spillways. So, they put screens in the dams.
2 These are not the only laws that we have to comply
3 with, but the money is to be used solely to meet
4 the environmental standards.

5 The Chairman. Mr. Gutman, can someone speak
6 to me as to what happened on the House side
7 concerning this amendment?

8 Mr. Gutman. This was not in the House bill.

9 The Chairman. I am aware of that.

10 Mr. Gutman. It was brought up by Mr. Chandler
11 and it was pointed out that this benefitted, at
12 the present time, only a single taxpayer. Then it
13 was not put into the House bill.

14 Senator Packwood. But the way it is written
15 now, it would benefit about eight different Public
16 Utility Districts, all of which are not
17 necessarily in the State of Washington.

18 Mr. Gutman. It is true that it would benefit
19 that number of utility districts that would be
20 able to take advantage of the provision. There is
21 currently only one utility that we know of in
22 existence that would benefit from it.

23 Mr. Sessions. Mr. Chairman.

24 The Chairman. Yes.

25 Mr. Sessions. Can I make one point regarding

1 a point that Senator Packwood made? And this is
2 important, I think, for examining both of the
3 bills that the committee will be considering this
4 morning.

5 In determining how much extra revenue there is
6 in the bill, since the committee is operating
7 under the new rules and has not had that much
8 experience with this--maybe Mr. Cohen will want to
9 comment after I do--the points of order in the
10 Senate require that the bill be revenue-neutral in
11 1992, 1993, and the period 1993 to 1997.

12 Therefore, in looking at both bills, it is
13 important to focus on the dollar amount of extra
14 revenue, in particular in the period 1993 to 1997.
15 That means in the case of the energy bill, that
16 rather than \$37 million of extra revenue, you have
17 \$37 less the \$20 million in 1992, so, it is \$17
18 million in the energy bill. And a similar
19 analysis applies to the bill relating to the
20 expiring provisions.

21 In other words, for the bill concerning
22 expiring provisions, rather than there being \$300
23 million of extra revenue for amendments, it is, in
24 fact, \$325 less \$313, or \$12 million because of
25 the need to comply to make the bill revenue-

1 neutral over 1993 to 1997.

2 That is a point that the committee has not
3 really focused on before, but that is, in fact,
4 what is necessary to avoid a 60-vote point of
5 order. There is still some amount of extra
6 revenue, but it is not the amount that appears
7 under the last column in the revenue table.

8 Senator Packwood. I might add, just to
9 slightly correct Mr. Gutman, there are, in the
10 State of Washington --

11 Mr. Gutman. I am sorry, Senator. Excuse me.

12 Senator Packwood. There are three different
13 Public Utility Districts that own six dams. These
14 are all public bodies, but, in that sense, it is
15 not a rifle shot for one dam or one district.

16 Mr. Gutman. Thank you, Senator.

17 The Chairman. Let me state that I think it
18 sounds like a very meritorious amendment. My
19 concern is that it can get to be a pretty slippery
20 slope when we start voting exemptions to the bond
21 cap. So, I would urge you to proceed with
22 caution.

23 Senator Packwood. I offer this in a different
24 sense because five other States benefit from the
25 electricity that is generated, but the State of

1 Washington is stuck with the volume cap for these
2 dams.

3 And if I thought there was a way you could
4 allocate it to different States, I would try --
5 considering the modest amount of money involved,
6 it frankly was not worth it to try to allocate it
7 to each State in proportion to the electricity
8 they might buy.

9 The Chairman. All right. Is there any
10 objection to the amendment, then?

11 (No response.)

12 The Chairman. All right. All in favor of the
13 amendment as stated, make it known by saying, aye.

14 (A chorus of ayes.)

15 The Chairman. Opposed, similar sign.

16 (No response.)

17 The Chairman. Motion adopted. But, once
18 again -- Yes. Mr. Sessions, were you seeking
19 recognition?

20 Mr. Sessions. Mr. Gutman may want to comment
21 on this. There is some possibility of interaction
22 between the two bills. That amendment, I believe,
23 does not create a problem, but there is a revenue-
24 estimating issue relating to the two bills that he
25 may wish to comment on.

1 Mr. Gutman. Yes. Mr. Chairman and members of
2 the committee, there is something we need to just
3 focus on as we go through. These bills are being
4 considered by the committee and will be considered
5 on the floor of the Senate each as a separate
6 bill, standing on its own. But there are
7 interactions, in some instances, between the
8 provisions of the two bills.

9 And, consequently, it is possible, depending
10 upon the order in which the bills are enacted, for
11 there to be changes in the scoring of the bills
12 from what we are considering today.

13 So, every once in awhile we may have to just
14 take a minute to consider whether an amendment to
15 the energy bill would have an effect on the
16 extenders bill if the energy bill were passed
17 before the extenders bill, or vice versa.

18 But, for your information, the way the scoring
19 has been done is to comply with the budget rules
20 for floor action, which is that each bill has to
21 satisfy the rules.

22 The Chairman. All right. We are open to
23 further comments. Is there anything further to be
24 offered?

25 Senator Packwood. I have another amendment.

1 Senator Riegle. Mr. Chairman, I am going to
2 have an amendment. But we are trying to refine it
3 just a little bit.

4 The Chairman. All right. Senator Packwood.

5 Senator Packwood. The next amendment I would
6 offer relates to solar and geothermal credits, and
7 it would increase it from ten to 20 percent,
8 effective January 1, 1998.

9 And the reason I picked that date is that,
10 even with this amendment in place, the companies
11 that will take advantage of this will have several
12 years of gearing up and they will not need the
13 credit now.

14 The Chairman. And what are the costs of the
15 amendment?

16 Senator Packwood. There is no revenue loss
17 during the period, because it does not start until
18 1988.

19 The Chairman. Oh. Can I get a comment on it?

20 Senator Bradley. Mr. Chairman.

21 The Chairman. Yes.

22 Senator Bradley. May I ask a question?

23 The Chairman. Yes.

24 Senator Bradley. If it were in effect today,
25 what would it cost?

1 Mr. Gutman. It would roughly double the cost,
2 Senator. It would be about \$150 million a year.

3 Senator Bradley. So, we can anticipate at
4 least \$150 million more a year, at least, in 1998.

5 Mr. Gutman. That is correct.

6 Senator Packwood. But look at it this way,
7 Bill.

8 (Laughter)

9 Senator Packwood. If you put it in now and it
10 does not go into effect until 1998, if, in 1998
11 you need money, you repeal this and you pick up
12 \$150 million.

13 (Laughter)

14 Mr. Gutman. Senator Bradley, it would double
15 the cost, so it would be \$75 million more. But
16 \$150 would be the year outside.

17 The Chairman. Well, I think that is quite
18 apparent. I frankly do not think we ought to be
19 reaching out beyond that budget window. People
20 talk about a Balanced Budget Amendment, and all
21 that type of thing. I think this takes us down
22 the wrong path.

23 Senator Baucus. Mr. Chairman.

24 The Chairman. Yes.

25 Senator Baucus. Mr. Chairman, I would agree.

1 I mean, if this is needed in 1997, we can look at
2 it for 1998. But I do not think in 1992 we should
3 be enacting a provision which loses that much
4 revenue.

5 The Chairman. There may be a somewhat
6 different crowd looking at it 1997.

7 (Laughter)

8 The Chairman. Are you offering the amendment,
9 or not?

10 Senator Packwood. I do not sense a ground
11 swell of support for this amendment.

12 (Laughter)

13 Senator Packwood. And I think I will
14 withhold.

15 The Chairman. All right. Are there further?

16 Senator Daschle. Mr. Chairman.

17 The Chairman. Yes. Senator Daschle.

18 Senator Daschle. Only if Senator Packwood has
19 completed.

20 The Chairman. No, he is withdrawn his
21 amendment.

22 Senator Daschle. Did he withdraw? Mr.
23 Chairman, I am offering an amendment that would
24 permit ethanol blenders greater flexibility in
25 using the existing excise tax-exemption and tax

1 credits. It has two parts to it.

2 The first amendment would allow blenders to
3 use the exemption at two levels lower than ten
4 percent: 5.7 and 7.7 percent. And the important
5 thing here is that the amount of credit would be
6 proportionally reduced.

7 That is, they would no longer be eligible for
8 the full ten percent credit. Were they to blend
9 at 5.7, they would receive a credit at 5.7. Were
10 they to blend at 7.7, that would be their
11 eligibility for credit.

12 Under the current law, ethanol can only be
13 blended exactly at ten percent in order to
14 qualify. But we passed the Clean Air Act a couple
15 of years ago, Mr. Chairman, and, as a result of
16 the Clean Air Act, there is now a requirement that
17 ethanol be blended at lower levels.

18 And we have been working with EPA in trying to
19 find ways with which to accommodate the current
20 requirement for a ten percent blend, and this
21 really appears to be the very best approach.

22 There are either two ways with which to do it.
23 One would be in regulations, and the other would
24 be simply to allow this exemption to have greater
25 flexibility.

1 There is nothing magic about the ten percent.
2 When it was put into law in 1979, ten percent just
3 seemed like a good number. It is easy to
4 calculate. But now the Clean Air Act really
5 mandates that those formulations for gasoline be
6 different than what we expected they would be back
7 in 1979. So, that is the first-half of the
8 amendment.

9 The second amendment deals with those blenders
10 who really cannot use the excise tax exemption.
11 It simply does for ethanol what we have already
12 done for oil and gas, and that is to say, for
13 those blenders with such low income that they
14 cannot use the exemption, we allow the ethanol
15 credit to be made available under AMT exactly like
16 we do for oil and gas.

17 So, I am told that the revenue estimate, which
18 was just received last night, is \$183 million over
19 five years. And I would suggest that, as we
20 consider an offset, that one that is already in
21 the bill having to do with employer-provided
22 parking benefits, excludable from taxable income
23 be adjusted so as to include this additional
24 amount.

25 The Chairman. Mr. Gutman, do you have any

1 comments on this?

2 Mr. Gutman. Yes, Mr. Chairman. The provision
3 that Senator Daschle is proposing would take money
4 from the Highway Trust Fund, as a matter of fact.
5 And I think Dr. Cohen is familiar with that
6 operation of the provision. Perhaps he ought to
7 address it.

8 The Chairman. All right. Dr. Cohen.

9 Dr. Cohen. Thank you, Mr. Chairman. The
10 provision would, by reducing excise tax required
11 on fuels, those excise taxes are earmarked at the
12 current time for the Highway Trust Fund.

13 So, to the extent that those excise taxes are
14 reduced relative to what they are under current
15 law, there would be less revenues going into the
16 Highway Trust Fund. And the Highway Trust Fund is
17 more or less right at its balance point at the
18 moment.

19 So, if there were fewer revenues going into
20 that trust fund, then less spending could take
21 place out of that trust fund. So, there would be
22 an effect on the Highway Trust Fund spending as a
23 result of the passage of this amendment.

24 The Chairman. Tell me what else you have
25 insofar as compliance questions under the present

1 provision. Are we getting the kind of compliance
2 that we would anticipate or expect in that regard?

3 Mr. Gutman. I am sorry, Mr. Chairman.

4 The Chairman. A question on compliance.

5 Mr. Gutman. I have been informed, Mr.
6 Chairman, that the Internal Revenue Service has
7 said that it has had difficulty in the past in
8 terms of measuring compliance of the blended
9 fuels, and that it would anticipate even more
10 difficulty having now to measure three different
11 blends.

12 The Chairman. Senator Moynihan, you had a
13 comment?

14 Senator Moynihan. Yes, Mr. Chairman. I guess
15 I am speaking from the perspective of the
16 Committee on Environment and Public Works and the
17 Highway Trust Fund. We are in trouble now. I
18 think Dr. Cohen indicated that we are right on the
19 cusp of the Byrd Amendment coming into effect.

20 That requires that the current commitments,
21 plus two years' apportionment cannot exceed the
22 cash balance, plus two years' projected tax
23 revenues or we will have to start cutting back
24 Highway Trust Fund outlays. And I do not think we
25 should do this.

1 It is a good purpose involved, but it impinges
2 on the trust fund at a time when, as Dr. Cohen
3 says, the revenues are down a little bit from what
4 we expected and we are right on the edge of a
5 sequester. And I would not want to see that
6 happen.

7 Senator Dole. Mr. Chairman.

8 The Chairman. Yes. Senator Dole.

9 Senator Dole. I am sorry. Dave was first.

10 The Chairman. Senator Durenberger.

11 Senator Durenberger. Mr. Chairman, if I may,
12 I will just take a minute. I would prefer to hear
13 from Senator Dole on this issue, anyway. But as
14 long as I have been here, we have dealt with the
15 ethanol blend issue.

16 So, the arguments are old arguments. They
17 always seem to start out where this one started
18 out. The first words out of somebody's mouth is
19 the Highway Trust Fund.

20 So, I must, with all due respect to my
21 colleague from New York, as a member of the
22 Environment and Public Works Committee, as a
23 supporter of my friend from South Dakota's
24 amendment, and as someone who sat for long hours
25 through the passage of the Surface Transportation

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25 through the passage of the Surface Transportation

1 Act say that I can clearly remember, there is more
2 Highway Trust Fund money than contemplated in this
3 amendment going into one little Congressional
4 district in Pennsylvania in one year than would go
5 in five years into trying to provide cleaner air
6 through blended alternative alcohol/ethanol fuels.

7 Let us get to the reality of where the trust
8 fund money goes. It is not in trouble because it
9 has done such a judicious job of meeting highway
10 needs that it could not take a small \$161 million-
11 over-five-year effort to get cleaner air in
12 America.

13 The Chairman. May I have further comments?
14 Senator Dole.

15 Senator Dole. Well, Mr. Chairman, I think we
16 have to go either the Daschle approach, which I
17 support, or, by legislation, make a technical
18 correction. Because, in the Clean Air Act, there
19 is a drafting glitch. And we thought we had this
20 fixed up and we would not have to come back and
21 even bother the Highway Trust Fund.

22 So, we either go the route suggested by the
23 Senator from South Dakota, or we can adopt another
24 approach. And, if the committee prefers, I have
25 an amendment drafted to do this.

1 And let me just explain briefly why. If we
2 are going to have ethanol in the market at all,
3 and reformulated gasoline, we have to make some
4 changes. Otherwise, we are going to be shut out
5 from 60 percent or 70 percent of the market. And
6 that is a big, big problem for a lot of people.

7 So, Section 211H of the Clean Air Act that
8 dealt with fuel volatility contained an express
9 waiver of one pound per square inch from the Rapid
10 Read Vapor Pressure Standard set for all gasoline.
11 Now, we believe that this waiver applied to all
12 gasolines in the bill.

13 The express waiver was not repeated. We did
14 not repeat it, we thought it already applied in
15 Section 211, so we did not put it back in Section
16 211(k), which contains the reformulated gasoline
17 program.

18 Now, without the waiver, the only way ethanol
19 could be blended in the RFG--Reformulated
20 Gasoline--would be for refiners to make two
21 different types of gasoline. They would have to
22 make one for direct consumption, and one which
23 they would blend with ethanol. They are not going
24 to do that. Obviously, the refiners are not going
25 to do that.

1 The amendment amends the Clean Air Act--the
2 one that I would offer if we cannot work out the
3 Daschle Amendment--and would do three things: It
4 would extend the current waiver to blends
5 containing between five and ten percent to allow
6 greater flexibility; the same thing the Senator
7 from South Dakota is trying to do.

8 Second, it would apply the waiver to Section
9 211(k), which we thought we did in the Clean Air
10 Act, because it applies to Section 211(h).

11 And, third, it clarifies that increases in NOX
12 and VOCs attributable to ethanol blends should not
13 be calculated when determining reasonable further
14 progress that are required in Title I of the act.

15 The reason being is that this recognizes the
16 offsetting environmental benefits of ethanol
17 blends, such as reduced carbon monoxide, an ozone
18 precursor, lower reactivity ozone-forming
19 potential, and assures a mass-based VOC approach
20 does not preclude the use of ethanol.

21 Now, we can go one way or another. We had a
22 meeting yesterday in my office with a number of my
23 colleagues on this side of the aisle, plus every
24 agency involved in this, and everybody wants to
25 find a solution; either go the Daschle route, or

1 go the waiver route with the other provisions.

2 But it seems to me we ought to address the
3 problem and we ought to find some way to clear up
4 what was a drafting error in the first place. And
5 now EPA tells us they do not have the authority--
6 even though they might concede it was a drafting
7 error--to make the necessary change.

8 Senator Bradley. Mr. Chairman.

9 The Chairman. Yes. Senator Bradley.

10 Senator Bradley. Mr. Chairman, what is the
11 cost of this amendment?

12 Mr. Gutman. The cost of Senator Dole's
13 amendment?

14 Senator Bradley. No, no. Senator Daschle's
15 amendment.

16 Mr. Gutman. Senator Daschle's amendment is
17 \$183 million, Senator.

18 Senator Dole. And what is the cost of my
19 amendment? None. No cost.

20 Mr. Gutman. No known cost.

21 The Chairman. Now, let us not get to joking
22 on this, now. I want to know, is there a cost or
23 not?

24 Mr. Gutman. I have not seen Senator Dole's
25 amendment, Mr. Chairman.

1 The Chairman. All right.

2 Senator Bradley. And how does Senator Daschle
3 propose to pay for his amendment?

4 Mr. Gutman. Senator Daschle proposes to pay
5 for his amendment by lowering the amount that is
6 excluded from income for employer-provided
7 parking.

8 Senator Bradley. Which is currently in the
9 mark-up, as I understand.

10 Mr. Gutman. It is currently in the mark at
11 \$155. We have not attempted to estimate how low
12 that would have to go to satisfy the revenue
13 requirements here.

14 Senator Bradley. So, anywhere in the country
15 if your employer pays for your parking you get
16 \$155 without taxable consequences, and this would
17 reduce it to an unspecified lower number.

18 Mr. Gutman. That is exactly right.

19 Senator Bradley. Maybe even zero it out?

20 Mr. Gutman. I do not know, Senator. I do not
21 think it would zero it out, but it would take it
22 lower.

23 Senator Moynihan. Mr. Chairman.

24 The Chairman. Yes. Senator Moynihan.

25 Senator Moynihan. Just a point that Senator

1 Bradley is making. We have been working for a
2 decade to get some balance between parking and
3 transit in terms of tax treatment and we think we
4 have finally done it. We worked it out very
5 carefully, that proposal. It was the first one up
6 on the energy bill in the exposition.

7 And we have a parking provision at \$155. It
8 was to be \$160, but we had to take it down just a
9 bit. And we have a balance that has taken a
10 decade to get. It is important in the whole
11 transportation balance of the country, and now we
12 are putting it in jeopardy.

13 I suppose if your only interest in life was
14 mass transit, this would be fine. It would take
15 away parking benefits from 20-30 million people, I
16 would think. We do not know how many; we do not
17 know how much. I mean, I am not sure we are
18 prepared for this. This other matter we have been
19 working on for ten years, this just suddenly comes
20 all of a sudden.

21 Mr. Gutman, you said you did not know how much
22 this would cost. Do you have any idea how many
23 people would be affected?

24 Mr. Gutman. By the change, Senator?

25 Senator Moynihan. Yes.

1 Mr. Gutman. No. We simply have not looked at
2 it.

3 Senator Moynihan. Right. Well, I could
4 understand that.

5 Senator Daschle. Well, Mr. Chairman, could I
6 ask a question of Mr. Gutman, as well?

7 The Chairman. All right. Senator Daschle.

8 Senator Daschle. Because, as I understand it,
9 how much revenue are we generating with the
10 current change that you are proposing as an offset
11 today?

12 Mr. Gutman. Just a second, Senator. I will
13 get the break out.

14 (Pause)

15 Mr. Gutman. We have the figure netted in the
16 table. That is why I just need to get the break-
17 out between the two.

18 Senator Daschle. As they are getting that
19 figure, Mr. Chairman, let me just reiterate my
20 concern for the estimate to begin with. Because,
21 I must tell you, there is nothing in here that
22 generates any additional benefits for the ethanol
23 blenders.

24 There is a portion reduction in their
25 eligibility for the exemption as they reduce their

1 blend. If they only blend at 5.7, that is all the
2 exemption they get. If they only blend at 7.7,
3 that is all the exemption they get. So, people
4 ought to be sure they understand we are not giving
5 them any additional benefit, we are simply giving
6 them more flexibility to utilize the blend in
7 order to accommodate the Clean Air Act.

8 Mr. Gutman. Senator, the answer is roughly
9 \$300 million.

10 Senator Daschle. \$300 million.

11 Mr. Gutman. Roughly \$300 million is what we
12 are generating with the cap at \$155.

13 Senator Daschle. What was it before?

14 Mr. Gutman. Well, before there was a total
15 exclusion.

16 Senator Daschle. Total exclusion.

17 Mr. Gutman. Yes. So, what --

18 Senator Daschle. Generating \$300 million.

19 Mr. Gutman. \$300 million by saying that the
20 value that can be excluded cannot exceed \$155 per
21 month.

22 Senator Moynihan. Can I say one more word?

23 The Chairman. Yes. Senator Moynihan.

24 Senator Moynihan. Mr. Chairman, may I say,
25 sir, we are under some pressure of time to get two

1 major pieces of facts legislation here today.

2 I have to say to my friend, Senator Daschle,
3 that the balance we put together in increasing the
4 deductibility of transit passes and putting a cap
5 on the deductibility of parking benefits, at \$155,
6 we would affect relatively few places, all of them
7 urban, which are non-attainment.

8 And the cities that take the trade, fewer
9 parking benefits can be provided, but they have to
10 get to air quality levels, anyway. This will help
11 bring it about.

12 Now, we know where those places are; we could
13 name them. There are about seven cities. If you
14 start doing this, you are going to be taking away
15 people's privileges to park behind the Main Street
16 in New York, or in Dubuque, Iowa. You are down to
17 very small places, and you do not know how many.

18 I mean, you may be taking away a benefit that
19 some ten million people have, or it may be 20
20 million. I just do not know. It would take us
21 six months to learn. Dr. Cohen, do you have any
22 idea?

23 Dr. Cohen. No, I do not, Senator.

24 Senator Moynihan. We just do not know.

25 The Chairman. Do we have any other comments?

1 Because we want to move along.

2 Senator Chafee. Mr. Chairman.

3 The Chairman. Senator Chafee.

4 Senator Chafee. I just want to ask a quick
5 question. It is not only to the \$155 that is paid
6 to the parker, but the company has to figure how
7 much each space costs. If they bought the land,
8 they have to apportion the price per car. Is that
9 correct?

10 Mr. Gutman. That is correct, Senator.

11 Senator Chafee. So, it is not just a direct
12 cash payment.

13 Mr. Gutman. It is the value of the provision
14 of the parking.

15 Senator Chafee. So, somehow the companies
16 have got to figure what they paid for the place;
17 what the taxes are.

18 Mr. Gutman. That is correct. And that is one
19 of the reasons for having a cap amount, is to try
20 to avoid the administrative difficulty that you
21 would get into if you went very low down.

22 If you made the exclusion very limited, then
23 when you got to employer-provided parking where
24 someone just put a parking lot outside his plant,
25 for example, he would have to try to figure out

1 whether the value of that parking would be
2 included or not. Consequently, the cap amount is
3 designed, at least in part, to be at a level where
4 those administrative difficulties will be avoided.

5 The Chairman. I would like to move along
6 here.

7 Senator Grassley. Mr. Chairman.

8 The Chairman. Yes. Senator Grassley.

9 Senator Grassley. I want to support Senator
10 Daschle. But I think we ought to look at this
11 just a little more broadly than what Senator
12 Daschle has brought before us, and the
13 technicality of his having to provide an offset.

14 Now, I know that is not just a technicality,
15 that is a requirement of the Budget Act. But let
16 me say this, that there is a secondary benefit
17 that is going to increase revenue in our Federal
18 Treasury. And that secondary benefit is, various
19 agricultural crops are used for the production of
20 ethanol.

21 And we anticipate, under the Clean Air Bill,
22 if the decisions that the Senate made in that
23 Clean Air Bill, which were very much for
24 domestically produced alternative fuels, that we
25 would triple the production of ethanol this

1 decade.

2 There is a direct relationship that is going
3 to save money on agricultural programs. The
4 deficiency payment for certain crops is going to
5 go down in direct proportion to the increase in
6 the price of these crops.

7 And this is going to enhance the value of
8 those crops so that the cost to the Federal
9 Treasury is going to be much less than what
10 Senator Daschle is even proposing here in the cost
11 of this program.

12 So, do not be so short-sighted to think in
13 terms of some little problem with \$183 million
14 because Senator Daschle has to meet the technical
15 requirements of the Budget Act, and Gramm-Rudman,
16 and all that.

17 When he gets his amendment adopted, which is
18 doing nothing more than carrying out the intent of
19 Congress in the Clean Air Act, then we are going
20 to reduce the cost of the agricultural programs
21 more.

22 And do not take my word for it. That is not
23 blue smoke, that is directly from testimony from
24 the Secretary of Agriculture that there is a
25 direct dollar-for-dollar relationship. Very

1 direct. As we raise the price of these crops,
2 dollar-for-dollar, the cost of the deficiency
3 payment is coming down.

4 The Chairman. Are we prepared to vote?

5 Senator Baucus. Mr. Chairman.

6 The Chairman. Senator Baucus.

7 Senator Baucus. Mr. Chairman, I think the
8 amendment is a good one in the sense that it
9 encourages the use of ethanol which will help
10 reduce carbon monoxide and help achieve some of
11 the goals in the Clean Air Act.

12 I, however, have a lot of sympathy with the
13 points made by the Senator from New York because
14 in the transportation bill there were provisions
15 which also help further goals in the Clean Air
16 Act; certainly this parking provision is one of
17 them.

18 I am wondering if the Senator from South
19 Dakota--because I think it is a good amendment and
20 I want to see it adopted--would consider
21 withdrawing it temporarily for the next, say, half
22 hour, hour or so, and work with the staff to see
23 if he can come up with another offset.

24 Because that, personally, would be a better
25 approach and accomplish the public policy

1 objectives I think that most of us are attempting
2 to accomplish.

3 Senator Daschle. Mr. Chairman, let me just
4 make sure everyone understands this. As I
5 understand, we were told last night --
6 unfortunately, we only got the figures late last
7 night from Joint Tax.

8 Senator Bradley. We only got the documents
9 this morning.

10 Senator Daschle. That is right. But we are
11 trying to accommodate those who are concerned.
12 But at \$160-cap, we raise \$300 million. And I am
13 told that that \$160 cap affected two cities--New
14 York and Boston--at \$160.

15 So, if we are dropping it below \$155, I really
16 wonder how painful this is going to be as a
17 country. The fact is that each dollar of
18 reduction, the exemption will actually raise
19 increasingly more money. So, we are not going to
20 have to reduce it that much more beyond that \$150
21 cap.

22 So, I would just as soon go ahead; let us pass
23 it. If we can find a more suitable offset at some
24 point, let us attempt to do that prior to the end
25 of the mark. But we are at this point, we have

1 talked about it a lot. Everybody has made their
2 views known that want to be heard on the issue,
3 and I would hope we could just have a vote and
4 revisit the offset if we find the need later on.

5 Mr. Gutman. Senator Packwood has been seeking
6 recognition.

7 Senator Packwood. Tom, do I understand this
8 production credit can be totally offset against
9 the minimum tax?

10 Senator Daschle. That is correct.

11 Senator Packwood. You see, here is my
12 misgiving. I see us starting down this road. We
13 already have an immense, billion dollar loser with
14 the oil and gas industry on the minimum tax.

15 And once we start down this road, somebody is
16 going to offer an amendment on donation of
17 appreciated property. And then the people who
18 want low-income housing are going to say they are
19 as meritorious as the oil and gas industry, and
20 that they should be exempt from the minimum tax.

21 Everything we tried to do in terms of the
22 minimum tax, I think, is going to very rapidly
23 disappear, because I will wager that every one of
24 you have been visited by capital-intensive
25 industries that are stuck forever with the present

1 tax system and want to get out from under the
2 alternative minimum tax. I know we use the word
3 "slippery slope" a lot, but I think we are
4 starting down that road.

5 The Chairman. Senator Moynihan.

6 Senator Grassley. Mr. Chairman.

7 The Chairman. Just a minute, please. All
8 right, Senator Daschle.

9 Senator Daschle. I will be very brief. I
10 would only say that we are already doing this for
11 oil and natural gas right now, completely. So, we
12 are not starting down the slippery slope, we are
13 already there.

14 We are simply saying if we are going to be
15 using energy and looking at all of the
16 alternatives, and as we find the most appropriate
17 way with which to blend different fuels together,
18 let us make sure from a tax point of view that
19 they are also treated similarly. The difference
20 is \$5 million over a five-year period of time, so
21 it really is not that consequential.

22 The Chairman. All right. Senator Moynihan.

23 Senator Moynihan. Mr. Chairman, I just want
24 to ask the committee, in terms of we do not know
25 what we are doing here.

1 We are just in the process of adopting, for
2 the first time in our history, a cap on the value
3 of parking that may be provided to an employee
4 without that employee counting it as revenue.
5 Now, we have it at \$155. New York City is above
6 that, generally speaking. We know that, and that
7 is all right because we have compliance problems.

8 If it comes down to \$80, as this might bring
9 it, everybody parking in the State of Oregon is
10 going to wonder, what the hell did you do to me?
11 And it goes right around this place. I just plead
12 with you. We will be back on this subject, and
13 soon.

14 The Chairman. Gentlemen, are we ready for a
15 vote? Do I have a motion? You want a roll call?

16 Senator Daschle. Mr. Chairman, I move the
17 amendment.

18 Senator Chafee. Well, Mr. Chairman, do I
19 understand that the way he is going to pay for it
20 is indefinite? It is some deduction, but he has
21 not specified.

22 Senator Bradley. He does not know. There is
23 no revenue estimate.

24 The Chairman. He does not have the number.

25 Senator Bradley. It could be 50, 80, 90, ten,

1 any of those.

2 Senator Chafee. Everybody in Rhode Island
3 will know very quickly.

4 (Laughter)

5 The Chairman. All right.

6 Senator Bradley. Whenever any employer has a
7 garage and you pull into the parking lot, if that
8 is imputed to be more than \$50, it is going to be
9 a taxable event for the worker.

10 The Chairman. All right, gentlemen.

11 Senator Daschle. Mr. Chairman, we do not know
12 that, and I cannot let that stand.

13 The Chairman. All right.

14 Senator Daschle. The fact is that we raise
15 \$300 million by putting a cap on at \$160 a month.
16 Now, we may raise another \$300 million by putting
17 the cap at \$150. Joint Tax tells us they cannot
18 give us any assurance where the figure is.

19 All I am saying is, let us suggest it so as
20 over five years we could come up with an
21 additional \$182 million. Now, it could be 154, it
22 could be 150, it could be 147; we do not know.
23 But I guarantee you, it is not going to be as low
24 as \$50.

25 The Chairman. All right. We have a motion

1 before us, and we will have a roll call on it.

2 The Clerk. Mr. Moynihan.

3 Senator Moynihan. No.

4 The Clerk. Mr. Baucus.

5 Senator Baucus. Aye.

6 The Clerk. Mr. Boren.

7 The Chairman. Aye, by proxy.

8 The Clerk. Mr. Bradley.

9 Senator Bradley. No.

10 The Clerk. Mr. Mitchell.

11 Senator Mitchell. Aye.

12 The Clerk. Mr. Pryor.

13 Senator Pryor. Aye.

14 The Clerk. Mr. Riegle.

15 Senator Riegle. Aye.

16 The Clerk. Mr. Rockefeller.

17 Senator Rockefeller. Aye.

18 The Clerk. Mr. Daschle.

19 Senator Daschle. Aye.

20 The Clerk. Mr. Breaux.

21 Senator Breaux. Aye.

22 The Clerk. Mr. Packwood.

23 Senator Packwood. Because of the minimum tax,
24 no.

25 The Clerk. Mr. Dole.

1 Senator Dole. Aye.
2 The Clerk. Mr. Roth.
3 Senator Roth. No.
4 The Clerk. Mr. Danforth.
5 Senator Danforth. Mr. Danforth.
6 Senator Danforth. Aye.
7 The Clerk. Mr. Chafee.
8 Senator Chafee. No.
9 The Clerk. Mr. Durenberger.
10 Senator Durenberger. Aye.
11 The Clerk. Mr. Symms.
12 Senator Symms. Aye.
13 The Clerk. Mr. Grassley.
14 Senator Grassley. Aye.
15 The Clerk. Mr. Hatch.
16 Senator Hatch. Aye.
17 The Clerk. Mr. Chairman.
18 The Chairman. Aye.
19 The Clerk. There are 15 Senators in favor;
20 five opposed.
21 The Chairman. All right. The amendment is
22 adopted.
23 Senator Rockefeller. Mr. Chairman.
24 The Chairman. Yes. Senator Rockefeller.
25 Senator Rockefeller. I have an amendment.

1 The Chairman. All right.

2 Senator Rockefeller. The provision which I
3 bring is the same one that I brought in March. It
4 has to do with coal mine retirees' health
5 benefits. There is no difference in the language
6 whatsoever.

7 It is identical to what was passed out of here
8 in March and was passed by the House, was passed
9 again by the Senate, was passed by the Congress as
10 part of the tax legislation. It is a much more
11 urgent situation now because the coal miner's
12 chances of having their benefits removed are much
13 more imminent. The labor contract is about to
14 expire.

15 The solution is the same as it was before, and
16 that is that those who operate and those who
17 formerly did operate with contracts will take care
18 of their own, and, as according to the majority of
19 the Dole Commission a couple of years back, the
20 entire industry would help to pay. I will say
21 that no one disagrees that the coal miners have to
22 be protected; not a single person. The coal
23 miners and their families, the average age is 77
24 years old. There are 120,000 of them. Actually,
25 since March, probably about 2,000 have died, so

1 there is probably about 118,000. They are out
2 there on the limb by themselves, and they need our
3 protection. In this committee, we can do it for
4 them.

5 Having said that, I am working to try to find
6 more accommodating ways to be accommodating to
7 others at some point in the relatively near
8 future, but I move the amendment.

9 It is precisely the same amendment that was
10 passed by this committee in March and the urgency
11 for our retired coal miners and their families is
12 only that much more urgent.

13 The Chairman. Let me state, we have debated
14 this one at some length before. We would like to
15 move along, so if we have some comments, I would
16 like to hear them. Senator Dole.

17 Senator Dole. Well, there is no change in the
18 amendment, so I think at least we ought to make a
19 record. He may have the votes to pass it, and I
20 think he does have a terrible problem. I wish I
21 could figure out some fair way to solve it.

22 But what this proposal does, it bails out the
23 very group who made these very generous agreements
24 with their union members and its penalizes non-
25 union companies and workers that have nothing to

1 do with the dispute.

2 BCOA has facilitated current financial crisis
3 of plans by reducing contribution levels under the
4 1988 agreement. If the pre-1988 rates have been
5 retained, current shortfalls would not exist.
6 This is an industry-wide tax to bail out some
7 large, financially strong companies.

8 In my view, it is terrible public policy.
9 They are not weak companies, they are strong
10 companies. And why should a non-union worker who
11 does not receive benefits subsidize union retirees
12 and their dependents by hundreds of dollars per
13 year?

14 I am not certain that the Senator from
15 Oklahoma is going to--I see he is not here at the
16 moment--offer an alternative. His is not perfect,
17 but it is a better approach than this.

18 And, again, I certainly share the concern
19 expressed by the Senator from West Virginia.
20 There are people who need help, by why should we
21 go out and take care of BCOA who made this
22 agreement in the first place and penalize every
23 other non-union worker i the country because of
24 it. It seems to me that it is bad policy and it
25 should not be passed.

1 The Chairman. Further comments. Senator
2 Symms.

3 Senator Chafee. Mr. Chairman.

4 The Chairman. Senator Symms.

5 Senator Symms. Mr. Chairman, I will be very
6 brief. I agree with everything that the
7 Republican Leader has just stated, and would just
8 simply, in summary, say that it is absolutely no
9 legal, moral, financial responsibility that you
10 can justify to impose this on people who did not
11 do it. I mean, it is just a very, very poor
12 public policy.

13 But I would appeal, also, to my colleagues on
14 a broader issue here. I think this energy bill is
15 an important piece of legislation. We need to get
16 it through the Senate.

17 The fact is, this Senator has an amendment
18 that I am not going to offer in committee today,
19 out of deference to the Chairman. But I will be
20 offering it on the floor dealing with high-speed
21 rail, and I want to see this bill become law. But
22 what is going to happen is if this amendment is
23 put in, this bill will be fought over.

24 The Majority Leader is here, the Minority
25 Leader is here. There will be major opposition to

1 this from the people who represent those that are
2 being asked to pay for something that they had
3 nothing to do with.

4 It is only correct that Senators will take on
5 an issue that disproportionately, unfairly affects
6 their constituency, and that is exactly what will
7 happen. It might mean the failure of the entire
8 energy package, and I think that would be a big
9 mistake for the Senate.

10 So, I would urge my colleagues to set this
11 amendment aside. I compliment my colleague from
12 West Virginia for his tenacity, his willingness to
13 try to look out for those coal miners, whom I
14 think we all agree we need to have concern about.
15 But this is a very, very poor time to have this on
16 a bill, and I hope my colleagues will vote against
17 it.

18 Senator Chafee. Mr. Chairman. Mr. Chairman.

19 The Chairman. Yes.

20 Senator Chafee. Mr. Chairman, does this meet
21 your guidelines of germaneness that we discussed
22 earlier?

23 The Chairman. Yes. It is the tax on the
24 production of coal.

25 Senator Chafee. Well, I appreciate it is the

1 tax on the production of coal. Oh. Thus, it
2 falls within an energy bill?

3 The Chairman. The production of coal
4 certainly does, and it is a tax on an energy
5 matter.

6 Senator Chafee. Well, I have a little trouble
7 seeing how taking care of retired miners ties in
8 with an energy bill, it being germane.

9 The Chairman. Well, we are dealing with coal
10 and we are dealing with taxes.

11 Senator Rockefeller. Mr. Chairman, I am
12 prepared to respond to all of the arguments that
13 have been made before. Many of these companies
14 that are referred to as being big are not big.

15 For every \$1 that they are paying for their
16 own people, they are paying \$3 for other people.
17 I would move the amendment, and hope that we could
18 see it passed.

19 The Chairman. Well, Senator Boren, I see, has
20 just arrived, and I know he has an interest in
21 this issue. Did you care to comment?

22 Senator Boren. Mr. Chairman, just briefly.
23 Because, of course, we have, as Senator
24 Rockefeller has just said, debated this at length
25 previously.

1 But, again, I just make the point that I think
2 we would set here a very dangerous precedent. We
3 had a negotiated contract, we had the parties to
4 those contracts undertake an obligation. Now we
5 are asking the companies that were not a party to
6 those negotiations to step forward and take over
7 those responsibilities.

8 Now, we all have a very strong interest in
9 taking care of those individuals who need health
10 care benefits that are provided for under these
11 contracts.

12 And some of us have made alternative proposals
13 to transfer excessive pension fund surpluses into
14 these accounts to take care of these workers in
15 the short run. That is an action that is a
16 possible alternative to this one.

17 But, in addition, I think the argument that
18 the companies that enter into these agreements are
19 simply going to be allowed to walk away from them
20 and not meet these responsibilities is one that
21 may well not be accurate.

22 I am not at all convinced that these companies
23 will be let off the hook if this matter, indeed,
24 ends up being determined by the courts. I cannot
25 believe that they would be let off the hook; they

1 entered into these agreements.

2 These agreements provided for long-term
3 commitments, not merely for commitments that would
4 be carried out during the short-term of the
5 contract itself. These were, in essence,
6 permanent obligations that were undertaken as long
7 as any of these individuals needed health care.

8 So, I think we are setting a very dangerous
9 precedent, as sympathetic as I am, to seeing the
10 needs of these minors met. I am simply not
11 convinced that they will not be met by court order
12 ultimately by the companies that undertook the
13 responsibility.

14 And I simply cannot, in conscience, support an
15 effort to establish a precedent that companies
16 that were not involved in negotiations, that were
17 not involved in making a contract should have to
18 then step in and meet the contractual obligations
19 of other parties.

20 One of the fundamental principles of contract
21 law is that there has to be a meeting of the minds
22 between the parties. There certainly cannot be a
23 meeting of the minds with a party that is not even
24 present during the negotiations.

25 So, I understand and sympathize with my

1 colleague from West Virginia in terms of the need
2 that he is trying to meet, but I simply do not
3 think this is an appropriate way to go, and,
4 therefore, I am going to vote against this
5 proposal.

6 The Chairman. Are there further comments?

7 Senator Packwood. Mr. Chairman.

8 The Chairman. Yes. Senator Packwood.

9 Senator Packwood. Do I understand, the way
10 this is drawn, that basically the coal reserves in
11 Texas and Montana are exempt?

12 The Chairman. I hope so.

13 (Laughter)

14 Senator Packwood. Texas and Montana coal is
15 basically exempt from this?

16 Senator Baucus. Well, because we have sub-
17 bituminous coal. Sub-bituminous.

18 Senator Rockefeller. There is no coal in
19 Texas; it is lignite.

20 Senator Packwood. Pardon me. It is exempt,
21 in any event.

22 Senator Rockefeller. That is correct. Mr.
23 Chairman.

24 The Chairman. Yes.

25 Senator Rockefeller. Although it will not

1 make a difference in the result, I would ask--and
2 I am not sure it would be possible for you to
3 grant me this--I would ask that I be recorded as
4 voting no on the previous issue.

5 The Chairman. All right. That will be so
6 recorded. We have an amendment before us. Let us
7 have a roll call on it.

8 The Clerk. Mr. Moynihan.

9 Senator Moynihan. Aye.

10 The Clerk. Mr. Baucus.

11 Senator Baucus. Aye.

12 The Clerk. Mr. Boren.

13 Senator Boren. No.

14 The Clerk. Mr. Bradley.

15 Senator Bradley. Aye.

16 The Clerk. Mr. Mitchell.

17 Senator Mitchell. Aye.

18 The Clerk. Mr. Pryor.

19 Senator Pryor. Aye.

20 The Clerk. Mr. Riegle.

21 Senator Riegle. Aye.

22 The Clerk. Mr. Rockefeller.

23 Senator Rockefeller. Aye.

24 The Clerk. Mr. Daschle.

25 Senator Daschle. Aye.

1 The Clerk. Mr. Breaux.
2 Senator Breaux. Aye.
3 The Clerk. Mr. Packwood.
4 Senator Packwood. No.
5 The Clerk. Mr. Dole.
6 Senator Dole. No.
7 The Clerk. Mr. Roth.
8 Senator Roth. No.
9 The Clerk. Mr. Danforth.
10 Senator Packwood. Mr. Danforth votes no, by
11 proxy.
12 The Clerk. Mr. Chafee.
13 Senator Chafee. No.
14 The Clerk. Mr. Durenberger.
15 Senator Durenberger. Present.
16 The Clerk. Mr. Symms.
17 Senator Symms. No.
18 The Clerk. Mr. Grassley.
19 Senator Grassley. No.
20 The Clerk. Mr. Hatch.
21 Senator Packwood. Senator Hatch votes
22 present.
23 The Clerk. Mr. Chairman.
24 The Chairman. Aye.
25 The Clerk. There are ten Senators in favor;

1 eight opposed; two voting present.

2 The Chairman. The amendment is adopted. Do
3 we have further amendments? Senator Riegle, are
4 you ready?

5 Senator Riegle. Yes. Mr. Chairman, I have an
6 amendment on alternative fuels having to do with
7 the provision that is in the House bill that you
8 proposed putting in our bill on the tax deduction
9 for retrofitting cars for alternative fuels.

10 And the amendment that I am offering is co-
11 sponsored by Senator Rockefeller, Senator
12 Danforth, and Senator Roth. And what it would do
13 is provide a tax deduction of \$2,000 for purchase
14 of passenger cars weighing under 10,000 pounds
15 which burn clean fuel like natural gas, ethanol,
16 methanol or propane, and this covers the years
17 1983, 1984, and 1995.

18 Now, we have tried to craft this very
19 carefully with bipartisan co-sponsorship. I will
20 just take a minute and describe it. Before I do,
21 I want to say that the amendment is supported by
22 the Renewable Fuels Association, the Methanol
23 Institute, Corn Growers, the Clean Fuels
24 Development Corporation, the National Association
25 of Fleet Administrators, the Electrical

1 Transportation Coalition, and the Big Three auto
2 companies, all of which are under tremendous
3 pressure to bring on-line alternative fuel cars,
4 both in terms of not consuming so much foreign
5 imported oil, but also to solve the emissions
6 problem.

7 The amendment that I am offering is really
8 tailored after an amendment or a bill that was
9 originally sponsored by Senator Rockefeller, S.
10 1178. Now, the House approach would pay the tax
11 deduction to the cost of converting a vehicle to
12 utilize an alternative fuel.

13 Our amendment works in a different way by
14 really opening up the market forces to bring on-
15 line more quickly a variety of alternative fuel
16 methods to create these alternative fuel cars by
17 providing a flat \$2,000 tax deduction.

18 We allow a higher deduction for trucks and
19 vans in a higher weight class, and also, then, for
20 very heavy trucks and vans in still a higher
21 weight class, and for buses, as well.

22 Now, we have undertaken to have this amendment
23 have the same budget effect as what is in the
24 House provision, which you have recommended to us.
25 And, so, I would have the staff make whatever

1 adjustment was necessary to make sure that the
2 cost was precisely the same as that in the House
3 bill. But we designed it to approximate that as
4 it is.

5 We also have an electric car provision where
6 our amendment for electric and electric hybrid
7 cars would provide a 25 percent tax deduction for
8 the cost of purchasing electric-powered vehicles,
9 and the deduction would be made available to
10 business and individual purchasers who could use
11 this as an itemized deduction.

12 The House bill does not properly encourage use
13 of clean burning fuels, such as ethanol and
14 methanol, and it discriminates specifically
15 against what are called "flex-fuel vehicles."

16 Those are vehicles that can use alternative
17 fuels, and are designed to be able to switch from
18 one to the other, which could run on clean fuels,
19 on gasoline, or on some combination of fuels.

20 Under our amendment, these flex-fuel vehicles
21 are eligible for a \$2,000 tax deduction so as not
22 to discriminate against fuel and fuel delivery
23 systems.

24 The House provision discriminates against some
25 fuels by only allowing vehicle conversion expenses

1 to be eligible for tax credit. We think that it
2 is simply limited to a conversion cost which tends
3 to stack it in one way.

4 It is much better to have in here a much more
5 equal kind of a credit system so that you really
6 allow the fuel options to be present and compete
7 one against the other to provide the best mix of
8 cost advantage, supply advantage, as well as the
9 least amount of emissions coming out into the
10 environment.

11 So, this amendment, I think, is a sound one.
12 I think it is a fair one. I think it is important
13 to note that these vehicles are going to have to
14 come on line.

15 In the case of California, for example, as a
16 State, they have mandated that two percent of all
17 the cars sold in the year 1998 either be zero
18 emission cars or electric cars.

19 So, we have out there factors that are pushing
20 us in the direction of bringing this new type of
21 industry or this innovative application of a fuel
22 source on-line more quickly.

23 And I think this amendment costing the same as
24 the House amendment is a much more even-handed
25 amendment and I think will give us much better

1 results. And I would hope that the committee
2 would accept it and put in place of the one that
3 has come over from the House.

4 Senator Breaux. Mr. Chairman.

5 The Chairman. Yes. Senator Breaux.

6 Senator Breaux. I just want to ask the author
7 of the amendment, how do we encourage the use of
8 alternative fuels if we give the same tax breaks
9 to companies that make gasoline cars and
10 alternative fuel cars?

11 I mean, the concept was, we want to encourage
12 these alternative fuel vehicles, so we gave them a
13 tax credit if they produced them. And if we are
14 going to give the same tax credit to companies
15 that produce gasoline cars, as well as alternative
16 fuel vehicle cars, we are defeating the purpose.

17 It would be much easier for somebody just to
18 buy that car, get the tax credit, and keep on
19 buying regular gasoline. You are defeating the
20 purpose of the tax credit.

21 Senator Riegle. No, I do not think so. What
22 we are saying here is we only allow it when people
23 buy a vehicle -- and, of course, it is their
24 choice, it is not stacked toward the
25 manufacturers; this credit goes to the customer

1 who actually makes the decision and purchase
2 themselves. But, in order to do it, they have got
3 to opt for one of these novel fuel methods. They
4 have got to move in that direction in order to
5 qualify for the credit.

6 Senator Breaux. Well, let me ask you one
7 other question.

8 Senator Riegle. By leaving them on a basis to
9 be able to make the choice, you leave open the
10 options. You let the market work.

11 Senator Breaux. But would it not be possible,
12 if your amendment is adopted, to have somebody buy
13 a dual fuel vehicle and only buy gasoline in it,
14 never use an alternative fuel one time and still
15 get the tax credit?

16 Senator Riegle. Well, I do not think that
17 is --

18 Senator Breaux. Would that not be possible?

19 Senator Riegle. I suppose you might argue
20 that in an extreme case. But the point of the
21 additional cost of a flexible fuel vehicle would
22 be such that anybody who is going to pay that
23 premium cost obviously wants the option of being
24 able to move out into these alternative fuels.
25 And I think we have to keep that option open.

1 The people who know the most about this
2 business tell us that these flexible fuel vehicles
3 which should be part of what is available out
4 there, obviously, the decision is going to be made
5 on the basis of technology, market price, and so
6 forth.

7 But I do not think it is a realistic
8 assumption to assume somebody is going to pay a
9 premium amount for a vehicle that can use two or
10 three alternative fuel sources, and yet they are
11 just going to and use gasoline. I do not think
12 that is realistic and that is certainly not the
13 intent of this provision.

14 The Chairman. Let me understand this,
15 Senator. As I understood it, the House bill was
16 on an incremental basis. And if this is on a full
17 deduction for the full \$2,000, surely it must cost
18 more money.

19 Senator Riegle. No, I do not want it to cost
20 more money.

21 (Laughter)

22 The Chairman. Why not?

23 Senator Riegle. And, as a matter of fact, I
24 want to specifically indicate that I want the
25 credit. If the credit has to be scaled down in

1 the haste with which all of this is going on, if
2 it has to be scaled down a small amount in order
3 to accommodate the same figure that is in the
4 House bill, which is a figure of--let me find that
5 number here--\$258 million over five years, then I
6 would plug to that same number.

7 So, I am not here to try to create an amount
8 that is different, I am arguing for a different
9 philosophy and a different approach. You cannot
10 tilt this off its axis so that the only way we are
11 approaching this is through retrofitting of
12 existing vehicles, which tends to more freeze out
13 alternative fuel sources than the approach that I
14 am talking about, which opens up all alternative
15 fuel sources.

16 The Chairman. Well, it would seem to me that
17 if you are talking about a \$2,000 credit, as
18 opposed to the House's incremental approach, that
19 you would be, with the limitation you then put on
20 to hold the costs the same, applying it to a lot
21 fewer automobiles. Let me get a comment, Mr.
22 Gutman.

23 Mr. Gutman. I had a number of comments, Mr.
24 Chairman. First, the revenue number that is
25 associated with the provision in your mark is \$198

1 million. Second, just in terms of assessing
2 Senator Riegle's amendment --

3 Senator Riegle. Well, let me just stop you
4 there. \$198, that is a different number. How
5 long have we had that number, and what time period
6 does it cover?

7 Mr. Gutman. That number was in the House
8 bill, Senator Riegle.

9 Senator Riegle. For what time period?

10 Mr. Gutman. May 5th was when the House bill
11 was done, Senator.

12 Senator Riegle. No, I understand. But what
13 time period does it cover?

14 Mr. Gutman. It is effective July 1, 1993.

15 Senator Riegle. But stretching how far into
16 the future?

17 Mr. Gutman. Just a moment.

18 (Pause)

19 Mr. Gutman. To the year 2004. Mr. Chairman,
20 also, we have been talking about this in terms of
21 a deduction and I just wanted to clarify with
22 Senator Riegle that he, too, is talking about a
23 deduction and not a credit.

24 And I suppose the other point is that, without
25 a little bit more detail, it is difficult for us

1 to be able to give you an idea of how low the
2 deduction would have to be taken to satisfy this
3 revenue constraint. Those are the basic points.

4 The Chairman. Well, it seems to me we are
5 effecting a lot more automobiles by taking the
6 incremental approach than we would under this kind
7 of a limitation. That is what the House bill --

8 Mr. Gutman. Yes. And the theory --

9 The Chairman. If I may, Mr. Gutman.

10 Mr. Gutman. Yes. Certainly.

11 The Chairman. And what we are talking about
12 here is a deduction up to \$2,000 for the
13 qualifying cost of cars that run on clean burning
14 alternative fuels, whether you are talking about
15 high-blend methanol, or compressed natural gas, or
16 you are talking about alcohol fuels and
17 electricity. And we put in a greater deduction,
18 as I recall, for trucks, buses, and refueling
19 property. I would have to oppose the Senator's
20 amendment. Are there further comments?

21 Senator Riegle. Well, let me just respond to
22 that, if I may. The difference in theory here is
23 that if you simply go with retrofitting existing
24 vehicles, the high-cost retrofits are really
25 designed to make use of natural gas, and that

1 ought to be one of several options that we look
2 at.

3 The way the House has done this, however, is
4 to stack this credit in the direction of using
5 that source, and, therefore, it obviously is of
6 particular value to that industry.

7 What we are looking at here is to accelerate
8 the bringing on-line of alternative fuel vehicles
9 faster by tapping into the broad range of fuel
10 sources, not tilting it in some fashion that
11 favors one fuel source as against the others.

12 And that is why these institutions that I have
13 cited who are actually working with this want this
14 open playing field. They want to be able to move
15 across the full range of fuel sources.

16 Now, with respect to the question that was
17 asked, I am proposing a tax deduction in terms of
18 the first part that I talked about in terms of
19 using the alternative fuel in these vehicles and a
20 credit only in the case of the electric vehicles.

21 But if we leave this the way it is right now,
22 what we are doing is we are encouraging the
23 highest cost approach that we know of, and, in
24 effect, we are tilting it that way and also
25 tilting it toward one industry.

1 What we ought to be doing here is putting out
2 an incentive that if somebody can figure out a way
3 to develop an application for alternative fuel
4 with a brand new vehicle, new system, and bring it
5 on-line that is the best choice for the consumer,
6 let the consumer make that judgment, but to put
7 that incentive out there equally for everyone that
8 wants to play in this game and not stack it in a
9 way that arbitrarily favors only one area.

10 The Chairman. Well, I do not agree with that
11 at all. I think when we are talking about using
12 high-blend methanol, talking about alcohol fuels,
13 electricity, or you are talking about CNG, or you
14 are doing it where you have an incremental cost to
15 it, you apply it to a lot more vehicles.

16 I think you got a much better utilization
17 through the process than we have in the Chairman's
18 mark, frankly, in what the House did.

19 Senator Rockefeller. Mr. Chairman.

20 The Chairman. Yes.

21 Senator Rockefeller. I am strongly support
22 Senator Riegle's amendment. I mean, FFVs are the
23 key for transition to all fuels, number one.
24 Number two, in my judgment, the estimators have
25 made a fundamental over-estimate based upon the

1 assumption for some reason, on their part, that
2 this is going to work much better than it is.

3 The experience in California has shown that
4 the transition to flexible fuel vehicles is very,
5 very slow. This amendment, in my judgment, is
6 needed to improve what is in the mark.

7 Senator Chafee. Mr. Chairman.

8 The Chairman. Yes. Senator Chafee.

9 Senator Chafee. Could I ask a couple of
10 questions of the Senator from Michigan? First,
11 are you proposing a credit or a deduction?

12 Senator Riegle. I am proposing a deduction on
13 the purchase of a passenger car weighing under
14 10,000 pounds that burns a clean fuel like natural
15 gas, ethanol, methanol, or propane. And, in the
16 area of an electric car, I am proposing a tax
17 credit, as opposed to a deduction.

18 Senator Chafee. All right. Second question.
19 If one purchases a flexible fuel vehicle, and let
20 us assume it is \$200 extra cost, under your
21 proposal, the individual would get a \$2,000
22 deduction. Is that correct?

23 Senator Riegle. First of all, let me just say
24 that the illustration does not match the real
25 world because there is nothing out there on the

1 horizon where we see that option within that kind
2 of a cost range, a \$200 cost premium. I mean,
3 now, you can posit that as a way of testing the
4 theory. I wish we had those options out there.
5 If we had that, we would be drafting this a
6 different way.

7 So, you are looking at a figure that is going
8 to be far higher than that in the time period we
9 are talking about to bring out these more
10 experimental alternative vehicles.

11 But, if, in that hypothetical you had some
12 magic way to get the new alternative use for
13 almost no cost--the \$200 cost premium, as you
14 say--yes, you would be entitled to the larger
15 deduction, but that is fantasy. Why not have
16 it --

17 The Chairman. Just let me have a comment from
18 staff here. Mr. Sessions.

19 Mr. Sessions. Mr. Chairman, this does not
20 relate directly to this discussion. Do you want
21 me to go ahead? I just wanted to clarify one
22 thing, which is something that Mr. Gutman alluded
23 to.

24 The paper describing the amendment indicates
25 that the target revenue loss is \$299 million, and

1 we need to know, in order to evaluate whether this
2 amendment would comply with the budget rules,
3 whether the target is, in fact, \$299 million,
4 which would mean that the amendment would not, or,
5 on the other hand, the \$198 million revenue loss
6 in the table. I think Senator Riegle indicated
7 that he wanted to be revenue-neutral.

8 Senator Riegle. Yes.

9 Mr. Sessions. But the piece of paper suggests
10 a different figure.

11 Senator Riegle. Well, that is exactly why I
12 made that point, because the numbers have moved
13 around. And I would have our amendment adjusted
14 so that the cost done by the estimators would be
15 the same as the House provision. So, you could
16 either shift the effective dates or you could
17 lower the amount of the deduction or the credit
18 accordingly.

19 But I do not intend to add an additional
20 dollar cost beyond what the House provision costs,
21 I simply want to change the approach that is
22 contained in the House provision.

23 The Chairman. Are there further comments?

24 Senator Symms. Well, Mr. Chairman, just to
25 make sure I understand this, what this means is

1 that you could feasibly buy an automobile that was
2 fitted to burn, say, methanol, which costs more
3 than gasoline, and you would never burn anything
4 but gasoline in the car but you get the tax
5 deduction.

6 Senator Riegle. Yes. But I think that does
7 not make any sense, quite frankly--no disrespect.
8 Because the cost of producing a flex vehicle is
9 going to have a substantial--at least in the early
10 years that we are talking about here--cost premium
11 because you have got an entirely different kind of
12 a configuration that has got to go into the car,
13 it is more expensive, the unit production is much
14 smaller.

15 And, also, in order to take advantage of the
16 alternatives, you are stuck with the inconvenience
17 of having to go and find alternative sources here
18 or there. But for those vehicles which were the
19 flex vehicles that could burn gasoline, someone
20 would have that option. But it does not make any
21 sense.

22 Why would somebody pay the premium that is
23 required in order to do that? I do not think the
24 deduction here is of a size that would offset the
25 bad economics of going in that direction.

1 I think we have structured it in a way to
2 really open up the playing field so that we can
3 have access to all of the alternative fuel
4 options, bring them on-line faster, and get both
5 the improvement to the environment in terms of
6 emissions, and also stop spending so much on
7 foreign oil. That is what is really designed
8 here.

9 The Chairman. Are there further comments? If
10 not, let us get a vote here.

11 Senator Roth. Could I ask a question?

12 The Chairman. Yes, Senator Roth.

13 Senator Roth. Mr. Chairman, I would like to
14 say that Senator Danforth and I strongly support
15 the amendment of the distinguished Senator from
16 Michigan.

17 I think the key point is that we are trying to
18 overcome market resistance. Somehow we have got
19 to make a breakthrough, and that is exactly what
20 the legislation authored by Senator Riegle would
21 do. I would like to ask Mr. Goldberg what the
22 position of the administration would be.

23 Secretary Goldberg. Senator, our difficulty
24 is, we start by opposing the underlying provision
25 in the House bill, and that is our base

1 position.

2 Having said that, if you accept the underlying
3 purpose of the statute, then broadening access to
4 different types of alternative fuels is consistent
5 with the underlying statute. And if the committee
6 chooses to go that way, that will not affect our
7 underlying opposition to the base provision.

8 The Chairman. Are there further comments from
9 staff? If not --

10 Mr. Gutman. Mr. Chairman, I just wanted to
11 clarify one point in terms of the cost estimate.
12 The cost estimate was based on the assumption that
13 at the present time the production cost of a fuel-
14 flexible methanol automobile is about \$2,000 more
15 than a comparably equipped vehicle. But we
16 anticipate that the cost will fall by 1996, based
17 on our industry sources and our research.

18 Consequently, on that analysis, if the cost
19 differential were to be \$300, the value of the tax
20 subsidy is \$560. And, consequently, people would
21 have at least an economic incentive, on those
22 numbers, to purchase a multi-fuel vehicle, even if
23 they intended to use it simply for gasoline use.

24 The Chairman. So, they, in effect, get a
25 windfall out of the situation. They do not have

1 to use --

2 Mr. Gutman. If, in fact, the incremental cost
3 goes down, as we have assumed, that would be the
4 result.

5 The Chairman. All right. Can I get a vote on
6 this, Senator?

7 Senator Riegle. Well, I just want to rebut
8 that point, Mr. Chairman, because we are talking
9 about unproven technologies. It will be
10 interesting to know how many people in the room
11 are ready to run out and spend the premium dollars
12 to go with an experimental vehicle. So, I just
13 challenge that assumption.

14 The Chairman. All right. We have a motion
15 before us. We will take a roll call on it. Would
16 you call the roll, please?

17 The Clerk. Mr. Baucus.

18 Senator Baucus. No.

19 The Clerk. Mr. Boren.

20 Senator Boren. No.

21 The Clerk. Mr. Bradley.

22 Senator Bradley. No.

23 The Clerk. Mr. Mitchell.

24 Senator Mitchell. Aye.

25 The Clerk. Mr. Pryor.

1 Senator Pryor. Pass, for the moment.
2 The Clerk. Mr. Riegle.
3 Senator Riegle. Aye.
4 The Clerk. Mr. Rockefeller.
5 Senator Rockefeller. Aye.
6 The Clerk. Mr. Daschle.
7 Senator Daschle. Aye.
8 The Clerk. Mr. Breaux.
9 Senator Breaux. Aye.
10 The Clerk. Mr. Packwood.
11 Senator Packwood. No.
12 The Clerk. Mr. Dole.
13 Senator Dole. No.
14 The Clerk. Mr. Roth.
15 Senator Roth. Aye.
16 The Clerk. Mr. Danforth.
17 Senator Danforth. Aye.
18 The Clerk. Mr. Chafee.
19 Senator Chafee. No.
20 The Clerk. Mr. Durenberger.
21 Senator Durenberger. No.
22 The Clerk. Mr. Symms.
23 Senator Symms. No.
24 The Clerk. Mr. Grassley.
25 Senator Grassley. Aye.

1 The Clerk. Mr. Hatch.

2 Senator Hatch. No.

3 The Clerk. Mr. Pryor.

4 Senator Pryor. Aye.

5 The Clerk. Mr. Moynihan.

6 The Chairman. No, by proxy.

7 The Clerk. Mr. Chairman.

8 The Chairman. No.

9 The Clerk. The votes are nine in favor; 11
10 opposed.

11 The Chairman. All right. Next amendment.

12 Senator Bradley. Mr. Chairman.

13 The Chairman. Yes, Senator Bradley.

14 Senator Bradley. Mr. Chairman, I would like
15 to, if I could, address the issue of the
16 alternative minimum tax relief for oil and gas.
17 In the bill, it excludes intangible drilling costs
18 from the alternative minimum tax and eliminates
19 the alternative minimum preference for excess
20 percentage depletion.

21 I would like to strike that provision of the
22 bill, and I would like to explain why I would like
23 to do that. First, I guess if I had my
24 preference, it would be that we would not have an
25 alternative minimum tax; that, instead, we would

1 have eliminated sufficient numbers of tax
2 expenditures so that whatever you paid, you paid.

3 But the effort to put in alternative minimum
4 tax was for the purpose of making sure that
5 everyone paid their fair share and could not
6 dramatically reduce their tax liability by the use
7 of various preferences.

8 As I understand this provision--and there were
9 several versions of this provision--this is not
10 sun-setted. Is that correct, could I ask the
11 staff?

12 Mr. Gutman. That is correct.

13 Senator Bradley. In that sense, I applaud the
14 authors of the amendment because I think that this
15 idea of extending for six months, or a year, or
16 whatever, is simply a way of postponing an
17 ultimate decision.

18 This is a permanent action, and, therefore, I
19 think that it is a serious action because, as we
20 all know, when something gets in the code, it is
21 really never reviewed.

22 So, this is a decision as to whether we want
23 to permanently exclude intangible drilling costs
24 from the alternative minimum tax, and whether we
25 wanted to eliminate the alternative minimum tax

1 for excess percentage depletion.

2 I would argue that this is a slippery slope;
3 that once we eliminate intangible drilling costs
4 in percentage depletion, there are going to be any
5 number of industries that are going to be in here
6 dealing with various types and forms of
7 depreciation schedules that are going to be
8 pleading their case that they should be excluded
9 from the alternative minimum tax, just as the oil
10 and gas industry is excluded from the alternative
11 minimum tax. I think that that is a kind of
12 dangerous direction to head in.

13 I would also argue that in 1990, when we
14 passed the big deficit reduction package, we
15 significantly cut back on preference for the
16 intangible drilling costs and also reduced the
17 preference for percentage depletion and provided
18 the oil and gas industry \$1.1 billion in tax
19 relief.

20 Now we are back a little less than two years
21 later and we are now seeking to provide tax relief
22 for the oil and gas industry of \$1.024 billion. I
23 would argue that a lot of things have changed
24 since then: changes in the world; changes in our
25 cities; changes in our perceptions of what the

1 range of our problems are.

2 I do not think the best way to spend \$1.1
3 billion is simply giving it to the oil and gas
4 industry, particularly after they received \$1.1
5 billion in 1990. I would argue that there are a
6 lot of other higher priorities for that money, and
7 we are not taking an action here that is in
8 isolation.

9 I mean, we cannot put our blinders on and say
10 the \$1.1 billion that we are spending for relief
11 for the oil and gas industry does not affect
12 anything else we do; it does. It increases the
13 deficit by that amount.

14 If we did not do this, we would have \$1.1
15 billion to spend. I might point out that the
16 President's whole urban enterprise zone approach
17 costs \$2.3 billion. The supplemental urban bill
18 that we passed a few weeks ago cost \$2 billion.

19 So, this is a subsidy to the oil and gas
20 industry that is equal to half of what the
21 President has proposed to do for all of urban
22 America. In my view, it is for those reasons that
23 I think that I would move to strike this
24 provision. As I count votes, this is not going to
25 be a winner, I do not think.

1 But I think the point has got to be made,
2 because we cannot put blinders on in the
3 committee, particularly when we deal with the tax
4 portion of the budget and say that what we spend
5 in subsidies through the Tax Code means nothing to
6 anything else; it does. It takes up precious
7 public dollars.

8 And the question is, do you want those public
9 dollars spent to subsidize the oil and gas
10 industry, or do you want those public dollars
11 spent for farm programs, or do you want them spent
12 for urban America, or do you want them spent for
13 infrastructure, or do you want them spent for
14 other things? And we are never going to get
15 control of the deficit if we continue to put
16 blinders on and look at things in categories.

17 If someone got into an energy or into an oil
18 and gas argument and said, nothing else that we do
19 is relevant except this, within the dynamics and
20 premises of that world, one might make a case
21 here. I would not agree with it, but one might
22 make a case.

23 But in the larger world that we are operating
24 in, with deficits where they are and the need to
25 reduce those deficits, I do not see that this is

1 the best way to spend precious public dollars.
2 And that, Mr. Chairman, is why I would move to
3 strike this provision from this bill.

4 The Chairman. If I might comment in response.
5 Because of the concerns that you have cited
6 insofar as the incentive here, we have not
7 extended Section 29. And that is a roughly
8 comparable incentive. That has been taken out.

9 The other point, of course, is that we have
10 just seen our troops go to the Middle East to try
11 to stabilize the situation. And one of the
12 primary reasons was our concern about our growing
13 dependence on foreign oil and trying to at least
14 hope that it had it in somewhat friendly hands.

15 You are seeing the rig counts in this country,
16 the lowest rig count you have seen in decades, as
17 you have seen less and less exploration for oil
18 and gas in our own country.

19 And that growing dependence gives us problems
20 from a trade imbalance and makes us further
21 vulnerable from a national security standpoint.
22 So, once again, this particular incentive is paid
23 for by not extending Section 29. But I would
24 yield to Senator Boren for any comments he might
25 have.

1 Senator Boren. Mr. Chairman, I am sure that,
2 considering the State that I represent I could be
3 expected to be opposed to this amendment. But my
4 feelings about it go much deeper than simply
5 trying to look after the interests of my home
6 State, which is certainly impacted because we are
7 in the midst of what I can only describe as a
8 continuing depression in our State.

9 We are still continuing to have falling
10 revenue and we have had a collapse of real estate
11 values since 1983 of 50 percent, which is quite a
12 depreciation or reduction of values.

13 But I think we really need to think about this
14 in terms of a national perspective. The first
15 point I want to make to my colleagues is that the
16 provision that is now in the bill, which is the
17 same as what the House adopted, would not allow
18 anyone who is making money to escape payment of
19 the minimum tax.

20 There is an explicit provision in this package
21 which provides that there would be a cap on the
22 extent to which the AMT income could be reduced by
23 this particular provision.

24 So, that cap is 30 percent, and in the out-
25 years, 40 percent, so that there could be no one

1 that would escape the payment of alternative
2 minimum tax completely by virtue of this
3 amendment.

4 The second point I would make is this: we are
5 altering the make-up of the oil and gas industry
6 in this country year-by-year. We have lost
7 450,000 jobs during this decade in the independent
8 sector, and in the oil and gas industry that is
9 more jobs than the automobile, textile, steel and
10 electronic industries have lost during this same
11 period of time.

12 The rig count, as the Chairman has indicated,
13 stands at 610, which is the lowest level ever
14 recorded. We are not replacing the reserves that
15 we are now using. The replacement ratio, for
16 example, on gas, has fallen to 70 percent. That
17 is the lowest replacement ratio we have had in
18 years.

19 And, most alarming, we have lost more than
20 half of all of the independent producer entities
21 in this country during this last decade. We have
22 gone from over 15,000--such entities in the early
23 1980s--down to 8,000.

24 Many of these are in severe distress and will
25 be lost. And that is important for a number of

1 reasons. I do not think it is healthy for the
2 industry to be totally dominated only by a few
3 large, international oil companies.

4 More and more, these companies are budgeting
5 their dollars outside the continental United
6 States. They are staying busy, but they are
7 staying busy overseas. They are producing
8 profits, but they are producing profits mainly on
9 their overseas activities.

10 And I do not think we want to put in place
11 policies that will destroy the independent sector,
12 principally of small producers, in this country.
13 They are the ones doing the job inside of the
14 United States. They drill 85 percent of the
15 wells; they discover over half of the additions to
16 our reserves of natural gas and oil.

17 And I would point out that this does become,
18 as the Chairman has said, a national security
19 issue. This year, over 50 percent of our total
20 trade deficit will be due to the fact that we are
21 importing more and more of our energy into this
22 country.

23 In fact, in the first three months of this
24 year, 75 percent of our total national trade
25 deficit was due to increased importation of energy

1 into this country. I think we would make a
2 serious mistake.

3 This is not a case of crying wolf in terms of
4 what is happening in the independent sector of
5 this industry. It is virtually being destroyed.
6 It has already been reduced by 50 percent in this
7 decade.

8 Our dependence on foreign sources is up above
9 the 50 percent level, and we are having a major
10 impact on the balance of trade that affects the
11 economic well-being of this country, not to
12 mention that we have moved away from the goal that
13 all of us stated at the time of the Persian Gulf
14 crisis: never again to have to risk American lives
15 because of our dependence upon foreign sources of
16 energy.

17 So, I would urge members to take a look at
18 this, to think carefully about it. It is not a
19 matter of something that simply impacts the oil
20 and gas-producing States, it is something that
21 impacts the national interest.

22 It is something that goes to the fundamental
23 question about the structure of the oil and gas
24 industry in this country and whether or not it is
25 going to be an industry solely composed of large

1 international companies, which I do not think
2 would be healthy.

3 So, I hope we will think long and hard about
4 this. It is paid for by not continuing some other
5 incentives that are already in the law. It is
6 more targeted to independent producers and it is
7 something that has a protection in it to make sure
8 that no one would escape paying some taxes, so it
9 is capped and that protection is in there.

10 So, I would urge my colleagues to look at this
11 from the point of view of what I genuinely and
12 sincerely believe is in the national interest and
13 defeat this amendment.

14 The Chairman. Secretary Goldberg, do you have
15 a comment from the administration on this?

16 Secretary Goldberg. Yes, Mr. Chairman. We
17 are strongly opposed to the Senator's amendment.
18 The intangible drilling costs, in particular, the
19 nature of the industry and the economics of the
20 industry, it is not clear to us that they should
21 be treated as a preference item at all, so we are
22 opposed to his amendment.

23 Senator Dole. Mr. Chairman.

24 The Chairman. Senator Dole.

25 Senator Dole. Mr. Chairman, I would just call

1 attention to my colleagues, this is not an oil
2 study, it is prepared by Tax Notes May 4th, 1992
3 on the U.S. and Foreign Effective Tax Rates. You
4 can get a pretty good glimpse of tax rates. We
5 will start with aerospace. In 1986, it was 12.5
6 percent; now it is up to 53.2 percent.

7 Broadcasting stayed about the same: 29
8 percent. Glass/concrete, about 36 percent in
9 1987 to 1989. Petroleum, which was a minus 30 --
10 they had tax benefits in 1986. Now the effective
11 tax rate is 72.5 percent; higher than any other
12 group in America. 72.5 percent.

13 Now, foreign effective tax rates for this same
14 period of time are 42.9 percent. And I would
15 underscore the argument made by the Chairman and
16 by the distinguished Senator from Oklahoma that
17 this is what it is all about. And I also take
18 issue with Treasury.

19 I have a letter here from Secretary Brady,
20 "The President agrees with you that the impact of
21 these rules on independent producers should be
22 ameliorated." We also recognize that the
23 alternative minimum tax treatment of intangible
24 drilling costs can result in a cliff effect which
25 deters drillers from undertaking projects that

1 would otherwise be attractive.

2 We understand that independent producers may
3 be particularly affected by the alternative
4 minimum tax, as they have to rely on internally-
5 generated capital-financed drilling and spend a
6 higher percentage of their capital on drilling
7 costs. Thus, the alternative minimum tax
8 exacerbates disincentives to drilling."

9 Secretary Goldberg. Senator Dole, if I can
10 clarify.

11 The Chairman. Secretary Goldberg, let us get
12 a clarification. I understood you to be opposing
13 the amendment on the floor.

14 Secretary Goldberg. I am opposing Senator
15 Bradley's amendment to drop the --

16 The Chairman. Oh. All right.

17 Senator Dole. Excuse me. Then I would just
18 make one other point. We can all make the
19 argument about domestic industry, but I try to
20 make a balance here to indicate what the effective
21 tax rate is on the oil industry.

22 We are talking about independent producers.
23 And you go out in our part of the country, Kansas
24 is not a very big producer of oil, in any event.
25 Most of our wells average about two to three

1 barrels per day, and that is pretty much the same
2 in parts of Oklahoma, parts of Texas, parts of
3 Louisiana. We are not talking about big, big
4 producers, we are talking about survival of an
5 industry.

6 And getting back to what I said on the Senate
7 floor many times, there were only three letters
8 for the reason we were in the Gulf: they were O-I-
9 L.

10 And if we are going to become more and more
11 dependent on foreign oil by closing down more and
12 more independent producers, small producers, two,
13 three, four, five, six barrel-a-day, then you
14 ought to support Senator Bradley.

15 But if you want this industry to survive--and
16 it is on its last legs now--then this relief is
17 small, but it might help rescue, save, or preserve
18 what we have left of the independent industry. I
19 do not know how many rigs are working now; maybe
20 Senator Bentsen or Senator Boren knows.

21 Senator Chafee. 610.

22 Senator Dole. How many?

23 Senator Chafee. 610.

24 Senator Dole. Yes. That is an all-time low,
25 and it keeps declining. So, I would hope my

1 colleagues -- maybe you do not have oil in your
2 States, maybe you do not have very much. We do
3 not have much in the State of Kansas, but we think
4 it is a resource that ought to be preserved. And
5 I strongly oppose the Bradley proposal.

6 Senator Breaux. Mr. Chairman.

7 The Chairman. Senator Breaux has been seeking
8 recognition.

9 Senator Breaux. Thank you, Mr. Chairman. I
10 think the Senator from New Jersey correctly
11 pointed out his concern for inner cities, and the
12 domestic agenda, and the programs that should be
13 directed at our domestic agenda, and that this was
14 not necessary.

15 But I would point out that in the next bill
16 that we are going to consider we are going to have
17 low-income housing assistance, we are going to
18 have mortgage revenue bond assistance, we are
19 going to have jobs bill assistance, we targeted
20 jobs credit. The next package is going to have a
21 great deal to address the issue of the domestic
22 agenda, and particularly the inner cities.

23 Let me point out something on the amendment.
24 I oppose it. OPEC does not pay any taxes, yet we
25 are paying them \$35 billion a year to buy imported

1 oil which now amounts to almost 50 percent of the
2 oil we use in this country, and they do not pay a
3 penny to the Treasury.

4 And, yet, we are letting them dominate
5 the domestic oil and gas industry, which is
6 critical to our security from an economic
7 standpoint and a national security standpoint of
8 this country.

9 Now, the AMT relief that is in this bill does
10 not go to Texacos, and Exxons, and Shells, and
11 international companies and the majors that are
12 doing business all over the world.

13 It is targeted assistance through the
14 domestic industry, and only to the independent
15 producers that need the help that are trying
16 to rebuild the domestic source of energy for
17 America for a change.

18 And we can let OPEC sell us all the oil at
19 \$35 billion. I think that it is incredibly
20 important that alternative minimum tax not
21 be used--which it is currently being used--
22 to eliminate any assistance that we have
23 for the small producers in this country.

24 And that is what has happened. We provided
25 intangible drilling cost deductions for

1 independent producers, then we provided percentage
2 depletion for independent producers, then we took
3 it all away. And we took it all away when we
4 passed alternative minimum tax.

5 The idea is not to have anybody pay zero tax,
6 and this amendment does not address that. The
7 provisions in the bill would assure that no one
8 gets away without paying any tax whatsoever.

9 But I think it is absolutely critical that a
10 Congressional original intent in providing
11 incentives to independent producers be changed in
12 order that they can take advantage, as an American
13 company, of something that we think is absolutely
14 essential and critical.

15 The Chairman. Senator Rockefeller, you have
16 been seeking recognition.

17 Senator Rockefeller. Mr. Chairman, in
18 supporting Senator Bradley's amendment, it is
19 interesting the way things work here. Somebody
20 has made comment about international oil companies
21 running all of this stuff.

22 The comment was just made, we have got to help
23 our American oil and gas industry. Then somebody
24 just said, well, this is going to be the end of
25 the oil industry.

1 We just finished voting down Senator Riegle's
2 bill. If you deal with methanol, ethanol, natural
3 gas, and other things in this country, that is the
4 way you are going to cut down on the use of
5 imported oil.

6 I mean, people who vote against methanol and
7 against this, I mean, I do not know where their
8 argument is coming from. But what is very
9 interesting to me is that my State of West
10 Virginia--which is not generally understood to be
11 one of the richest States in the United States--
12 depends entirely, in fact, literally 90 percent--
13 90 percent--on Section 29. Section 29 has been a
14 part of our extenders for years and years. In
15 order to pay for this, it was simply eliminated.

16 I mean, people had to look around for
17 someplace to eliminate, and so it is my
18 independent, small, tiny, none of them
19 international, not one of them international
20 people that are going to be eliminated.

21 Does that make me angry? Yes, that makes me
22 very angry. I think we look around for ways to
23 help the oil and gas industry. I certainly know
24 some of my relatives that used to do that in a
25 pretty big way.

1 But I have got a fairly strong interest in
2 protecting tiny, small, independent, American,
3 non-foreign people who are trying to produce gas
4 in West Virginia and who will no longer be able to
5 do it, who will stop, shut down, close. Because,
6 in order to pay for this, Section 29 was removed.

7 The Chairman. Are there further comments?

8 Senator Chafee. Mr. Chairman.

9 The Chairman. Senator Chafee.

10 Senator Chafee. Mr. Chairman, I would like to
11 ask a couple of questions of Senator Boren, if I
12 might.

13 The Chairman. Of course.

14 Senator Chafee. Do you think there is a
15 relationship between getting rid of this AMT and
16 the current decline in rigs?

17 Senator Boren. Yes, sir. I do.

18 Senator Chafee. Well, I will put it the other
19 way around. If we repeal this, in accordance with
20 the underlying bill, will we see more rigs? Do
21 you think so?

22 Senator Boren. I think so. Because one of
23 the provisions that we are dealing with here --
24 number one, the independent producers tend to put
25 back about 100 percent of their cash flow back

1 into more drilling, so you will increase their
2 cash flow in the short run. But specifically, one
3 of the provisions that has really hit us hard has
4 been what is known as the intangible drilling
5 costs.

6 This is much like R&D, for example, of other
7 industries, when you really look at it. This is
8 the cost that you expend before you have any
9 proven asset at all.

10 For example, you send out your survey crews,
11 you run your seismic, you go out and acquire the
12 leases, all of these sort of front-end
13 expenditures, before you really even know whether
14 you are going to hit oil, or gas, or not.

15 Now, when you penalize an independent producer
16 who is already strapped for cash -- and, frankly,
17 in a lot of cases, because the banking collapsed
18 in our area and a lot of national banks have red-
19 lined making any loans whatsoever to independent
20 oil and gas producers that do not generate their
21 huge internal capital flows like your major
22 international companies do, they simply, if they
23 are being hit on this--and sometimes they are hit
24 on it even when there is not an income flow
25 because they cannot deduct it--it really makes it

1 into more drilling, so you will increase their
2 cash flow in the short run. But specifically, one
3 of the provisions that has really hit us hard has
4 been what is known as the intangible drilling
5 costs.

6 This is much like R&D, for example, of other
7 industries, when you really look at it. This is
8 the cost that you expend before you have any
9 proven asset at all.

10 For example, you send out your survey crews,
11 you run your seismic, you go out and acquire the
12 leases, all of these sort of front-end
13 expenditures, before you really even know whether
14 you are going to hit oil, or gas, or not.

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16 who is already strapped for cash -- and, frankly,
17 in a lot of cases, because the banking collapsed
18 in our area and a lot of national banks have red-
19 lined making any loans whatsoever to independent
20 oil and gas producers that do not generate their
21 huge internal capital flows like your major
22 international companies do, they simply, if they
23 are being hit on this--and sometimes they are hit
24 on it even when there is not an income flow
25 because they cannot deduct it--it really makes it

1 much more difficult for them to go out and put
2 these rigs into operation.

3 So, I think there is a very direct
4 relationship. We had hearings in this committee
5 in which we had several independent producers come
6 in and shared with us the actual figures from
7 their accountants showing that in years in which
8 they had lost money, in total, their total
9 incomes, they were still paying alternative
10 minimum tax because they were going out doing the
11 things we wanted them to do, that is explore for
12 new oil and gas and drill for them.

13 Senator Chafee. All right. The other
14 question is, is there anything in the underlying
15 bill, if we reject the Bradley amendment, that
16 would encourage recovery of oil? In other words,
17 conservation techniques, strippers, or whatever
18 they might be?

19 Senator Boren. Well, not particularly in this
20 bill. In the other part of this amendment, by the
21 way, which relates to depletion, again, is whether
22 or not you can keep -- and we have some tax
23 credits that were written into law, I think, last
24 year or the year before; you remember when we had
25 that discussion strictly aimed at the stripper

1 wells.

2 But these small wells that are now in
3 production that are depleting in terms of their
4 productive capacity, and in our area it is not at
5 all unusual to have a well that produces 100
6 barrels of salt water for every barrel of oil,
7 which is horrendously expensive because you have
8 to dispose of it in an environmentally safe way,
9 and the rest of it.

10 So, when you have oil prices in the \$20 range
11 and you have that kind of ratio, the costs are
12 very, very high, even with the credit that we have
13 previously put in place aimed specifically at some
14 of these marginal wells. They are not economic.

15 We have wells in my own county, for example,
16 that, when you take salt water disposal costs, the
17 electric bill for pumping the oil up because it
18 does not flow up like it does in Saudi Arabia, you
19 can have \$14 to \$15 direct cost of production from
20 some of these wells. Then when you add taxes and
21 other things onto it, they become very, very
22 marginal, even with what we have already done.

23 By allowing the depletion here, or 70 percent
24 of the depletion -- not to be counted as a
25 preference item because, as I say, there is this

1 cap; you cannot get out of all of it. We are not
2 totally doing away with the effect of the minimum
3 tax here. Because of deleting these preference
4 items, you are still caught for 30-40 percent no
5 matter what. I think we make a difference there
6 at the margin in terms of producing this resource
7 which, of course, then makes it available for
8 recovery later on.

9 What has always worried me, and we have always
10 under-funded our research, is enhanced recovery.
11 And, yet, we have about 60 percent of our oil
12 still in the ground. And the longer we can keep
13 them alive, the greater chance we have of finding
14 an economic way to ultimately recover this oil on
15 which the environmental costs have already been
16 paid.

17 So, I believe that the two prongs of this
18 package which essentially relate to IDCs--
19 intangible drilling costs--which relates, really,
20 to new drilling, and the depletion which relates
21 to existing resource, preserving these
22 particularly smaller marginal properties, I
23 believe both of these are economically well-
24 founded.

25 The House committee is not known to be a

1 committee which is overly generous to the oil and
2 gas industry, especially the independent sector.
3 They had sent this package over to us. They have
4 looked at it with a fine-toothed comb. And, as I
5 said, given the make-up of that it is not
6 producer-dominated.

7 I honestly believe that this is good policy
8 that we have in this package, and I hope that we
9 will be able to keep it in. And, as I say, I am
10 sure the Senator from Rhode Island always expects
11 this Senator to be in favor of the oil and gas
12 industry; that is no surprise, considering where I
13 am from.

14 But I think this is a package that has been
15 crafted in a way that makes economic sense
16 wherever you are from, in terms of the national
17 interest.

18 Senator Bradley. Mr. Chairman.

19 The Chairman. Let me make another comment,
20 too, on the Section 29 comments that were made
21 earlier. Some of the biggest companies in the
22 country use Section 29 extensively, big gas
23 companies. And that is true in my State, and it
24 has been utilized in my State.

25 So, when we talk about using this exploration

1 of Section 29, it affects many of us in the
2 production within our State. But, in trying to
3 meet the comments of people like Senator Bradley,
4 we have tried to find, within the oil and gas
5 industry, a trade-off on this incentive. Yes,
6 Senator Bradley.

7 Senator Bradley. Mr. Chairman, if I could, I
8 would like to ask Mr. Gutman, because there seems
9 to be some confusion in my own mind. I was under
10 a different impression, maybe.

11 In terms of the 30 percent cap, does that
12 apply both to intangible drilling costs and to
13 depletion?

14 Mr. Gutman. Only to intangible drilling
15 costs, Senator.

16 Senator Bradley. Only to intangible drilling
17 costs.

18 Mr. Gutman. That is right.

19 Senator Bradley. So that someone could zero
20 out if they had depletion?

21 Mr. Gutman. Well, on the alternative minimum
22 tax side, that is conceivable. But there is a
23 limitation on the regular income tax side on the
24 use of percentage depletion that would assure that
25 people would be paying some tax in the regular tax

1 if their deductions were simply attributable to
2 percentage depletion.

3 Senator Bradley. All right. So, the cap
4 applies only to intangible drilling costs, though,
5 not to depletion.

6 Mr. Gutman. That is correct.

7 Senator Bradley. Now, the other point is, the
8 72 percent tax rate that Senator Dole referred to,
9 are those only independents?

10 Mr. Gutman. No, that covers everyone. But we
11 are right in there.

12 Senator Bradley. Right. All right. So, my
13 point is that the 72 percent tax rate applies to
14 the big integrated oil companies that are not
15 going to benefit from this amendment and I think
16 if you took independents out, you would find an
17 effective tax rate much lower--much lower--than 72
18 percent, and lower yet after this amendment
19 passes.

20 * * * *(CONTINUED ON PAGE 111) * * * * *

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1 Senator Bradley. And so I would simply argue once again
2 that we cannot do it all anymore with the Federal budget. We
3 can't be serious about reducing the deficit and try to do it
4 all. And when I say do it all I mean money for entitlements,
5 money for the cities, money for the senior citizens, money for
6 this industry and that industry, and that industry; and yet
7 this amendment is in the tradition of when money was free. You
8 could do anything you wanted.

9 I guarantee you when this amendment passes next year
10 there's going to be another industry in here. They are going
11 to be claiming inclusion under the alternative minimum tax is
12 unfair and hurts national security and competitiveness and they
13 are going to be wanted out from under the alternative minimum
14 tax. The result is going to be a loss of more taxpayer dollars
15 going to this industry and that industry, not making us more
16 competitive, but increasing the deficit or not having the money
17 available for other things.

18 I guess the bottom line on this amendment for me is if I
19 was going to spend \$1.1 billion I'd rather have it for child
20 care than I would for the oil and gas industry. And it is that
21 spirit, as well as the spirit of candor, about where we are in
22 the budget that moves me to move that we strike this provision
23 from the bill.

24 Senator Boren. Mr. Chairman?

25 The Chairman. Yes, Senator Boren.

1 Senator Boren. Mr. Chairman, just one brief follow-up. I
2 know we all understand these arguments so I won't make it
3 lengthy. I do want to go back again about what Mr. Gutman said
4 just a minute ago. I think I am correct.

5 If you take the two provisions together, the cap on IDCs as
6 a preference item, the 30 percent cap, and you take the
7 provision of current law which says you cannot escape all of
8 your regular tax liability because of depletion, the effect of
9 these two provisions together would mean that just because you
10 are taking a preference item on IDCs and depletion you could
11 not avoid having some tax liability. Am I not correct?

12 Mr. Gutman. That's correct, Senator.

13 Senator Boren. So there is a protection here. And again,
14 we can always talk about trade-offs with other very
15 advantageous programs and those of which bring about the
16 greatest, most intense reactions and emotional reactions by all
17 of us. But I think we really still ought to think about the
18 fact, and we talk about our ability to provide child services
19 or anything else in this country, we have to look to our
20 fundamental economic strength.

21 If it is not there we are not going to be able to do a lot
22 of things we want to do in this country, all of us want to do.
23 And when we continue to have our trade imbalance impact as it
24 is by the loss of the independent sector of this industry,
25 which if you put it is really the heart of the domestic

1 industry as opposed to the international oil and gas industry,
2 I think we have to think about what we are doing here.

3 All I can say is that the facts speak for themselves. If
4 the independents are getting an excessive tax advantage today
5 it is hard to understand why over half of them have gone out of
6 business in the last decade. So I think that is an indicator.
7 As I say, it is an indicator even more serious than steel,
8 automobile and electronic and textile segments. So I think we
9 have to bear that in mind.

10 The Chairman. All right.

11 The motion is before us. Let us have a roll call on this.

12 The Clerk. Senator Moynihan.

13 Senator Moynihan. No.

14 The Clerk. Senator Baucus.

15 Senator Baucus. No.

16 The Clerk. Senator Boren.

17 Senator Boren. No.

18 The Clerk. Senator Bradley.

19 Senator Bradley. Aye.

20 The Clerk. Senator Mitchell.

21 Senator Bradley. Aye by proxy.

22 The Clerk. Senator Pryor.

23 Senator Pryor. No.

24 The Clerk. Senator Riegle.

25 Senator Riegle. No.

1 The Clerk. Senator Rockefeller.
2 Senator Rockefeller. Aye.
3 The Clerk. Senator Daschle.
4 Senator Daschle. No.
5 The Clerk. Senator Breaux.
6 Senator Breaux. No.
7 The Clerk. Senator Packwood.
8 Senator Packwood. Aye.
9 The Clerk. Senator Dole.
10 Senator Dole. No.
11 The Clerk. Senator Roth.
12 Senator Roth. Aye.
13 The Clerk. Senator Danforth.
14 Senator Danforth. No.
15 The Clerk. Senator Chafee.
16 Senator Chafee. No.
17 The Clerk. Senator Durenberger.
18 Senator Dole. Aye by proxy.
19 The Clerk. Senator Symms.
20 Senator Symms. No.
21 The Clerk. Senator Grassley.
22 Senator Grassley. No.
23 The Clerk. Senator Hatch.
24 Senator Dole. No by proxy.
25 The Clerk. Mr. Chairman.

1 The Chairman. No.

2 Mr. Clerk. There are 6 Senators in favor, 14 opposed on
3 the motion.

4 The Chairman. Are there further amendments?

5 Senator Breaux. Mr. Chairman?

6 The Chairman. Senator Breaux.

7 Senator Breaux. Mr. Chairman, I have an amendment that the
8 members have at their desk and it is identified as an amendment
9 to modify the definition of independent producer.

10 I point out first of all that this does not affect AMT. It
11 is not an AMT amendment. It is a definition amendment. I
12 think all the members may remember back in the 1970s, in 1975
13 when we did the tax reform bill. We took away from the major
14 oil companies two things that they had at that time to provide
15 incentives to exploration and production. That was the
16 intangible drilling cost deduction and the percentage
17 depletion.

18 The reason Congress did that in 1975 really was in reaction
19 to the oil crisis. Remember the long lines and people were hot
20 about having to wait and they were mad about the price of gas
21 at the pumps. Congress at that time felt that, well, there was
22 a potential for oil companies to gouge the public at the pump.
23 They would make sales of gasoline that were totally
24 unregulated. And as a result there was a potential to have
25 huge price increases that Congress was trying to get a handle

1 on.

2 So in 1975 in the Tax Reform Act Congress said major oil
3 companies are no longer going to get these benefits, took the
4 benefits away from them. They said that any company that also
5 produces and sells at the retail level cannot have these
6 incentives to produce and the reasoning quite simply as I have
7 explained is for the fear of people who sell gasoline in the
8 market being able to gouge the public.

9 Unfortunately, we also brought in natural gas companies.
10 That is the problem. This bill, this energy bill, is to
11 encourage environmentally safe ways of cleaning up the
12 environment and natural gas is one of the best. It is one of
13 the cheapest fuels. It is one of the cleanest burning fuels.
14 It does not pollute and it has very little wear and tear on
15 automobiles and people who use it.

16 Now what the problem is, and this amendment corrects, is to
17 say that independent natural gas companies that produce natural
18 gas and sell natural gas should not be treated like the big oil
19 companies, that they are natural gas companies. And the second
20 reason, the most important, is that their sales are regulated.
21 What a natural gas company -- we have identified about 20 of
22 them from all over the country -- Iowa, Michigan, New York, New
23 Jersey, about 20 companies that are natural gas companies --
24 that when they produce the gas they also sell it. But they
25 cannot possibly gouge the public. They cannot possibly raise

1 their prices because all of their prices are regulated by the
2 public service utilities within the State.

3 Their margin of profit is regulated. They go before the
4 Public Service Commission and they say how much they have cost
5 to produce it and how much they want to sell it for and the
6 public utility company makes an announcement and a regulation
7 that regulates the price of that product.

8 Therefore, the argument is that if you eliminate the
9 problem of them being able to gouge the public which we have
10 done through the public service utilities; therefore, these gas
11 companies ought to be able to receive the benefits and the
12 incentives of any other independent producer. The public is
13 protected. It would encourage the use of natural gas. It
14 would encourage the production of natural gas throughout the
15 United States.

16 Mr. Chairman and Members, the second part of the amendment
17 which deals with independent status for refineries I think is
18 relatively simple. I think it merely coincides with the intent
19 of this Committee and this Congress. A refinery right now that
20 produces 50,000 barrels of oil a day is an independent
21 refinery, if they produce 50,000 barrels or less.

22 I think the intent of the Congress was it should be an
23 average of 50,000 barrels a day over a year's period. Right
24 now if a refinery produces 51,000 barrels of oil on one day
25 they are knocked out from being an independent refinery, even

1 though the next day they may produce only 40,000 barrels of
2 oil.

3 I think the intent of the Congress when we passed this was
4 to say it should be an average of 50,000 barrels a day or less.
5 And the second part of the amendment does exactly that.

6 Mr. Chairman, I would like to pass out an offset for this.
7 The figure on how much this integrated gas company definitions
8 costs is \$166 million over a five-year period. I remember the
9 old wine commercial on television. The wine commercial was,
10 you should never drink any wine before its time. Well, I have
11 decided you should pass out no offsets before its time because
12 they sometimes get lost.

13 So the offset that I am offering as a result of my
14 amendment is called the reinsurance excise tax. As most
15 members know foreign reinsurers pay no tax. That is giving
16 them a particularly advantage, I think improper advantage, over
17 United States American reinsurance companies; and I would
18 suggest that to put them on equal footing with domestic
19 reinsurance companies an amendment which would increase the tax
20 from 1 percent on the excise tax on reinsurance to 4 percent
21 puts them on a level playing field.

22 Any country that we have a treaty with, a tax treaty, would
23 not be covered by the greater excise tax. But we are getting
24 after the tax savings, the companies in Bermuda, the companies
25 in the Cayman Islands, who right now compete with U.S. domestic

1 reinsurance companies, do not pay any tax, putting our
2 companies at a disadvantage. I think as long as the protection
3 is there for those countries we have a tax treaty with that we
4 are not offending anybody in the United States.

5 This reinsurance excise tax generates \$455 million over
6 five years, more than enough to offset the integrated gas
7 company change that we are recommending.

8 The Chairman. Do we have further comments?

9 (No response.)

10 The Chairman. I would like to hear from staff. Secretary
11 Goldberg, do you have any comments on this?

12 Secretary Goldberg. Yes, Mr. Chairman.

13 With respect to the proposed amendments, the integrated gas
14 companies provision, we think the statute is drafted that
15 excludes retailers is appropriate and, therefore, we do not
16 support the Part I proposal regarding integrated gas companies
17 with respect to --

18 Senator Breaux. Can I ask a question on that? I did not
19 understand what you said. I heard the last word, you oppose
20 it; but I did not hear the reasoning for it.

21 Secretary Goldberg. Well, we do not support it.

22 Senator Breaux. I heard that.

23 Secretary Goldberg. The current law carves out retailing
24 operations.

25 Senator Breaux. Well, Mr. Chairman, let us talk about that

1 because that is not correct. There are about 20 major gas
2 producing companies in the United States that have retail sales
3 that cannot take advantage of that, in effect a sham,
4 reorganizing and structurally their companies, either because
5 of geographic reasons or because of sale reasons.

6 What we are doing is allowing some companies to get out of
7 that prohibition by restructuring their companies. Companies
8 should not have to do that in order to be classified as an
9 independent. If everybody could do that I would have no
10 argument with that. But it is clear the major natural gas
11 companies in this country with retail sales -- and I have a
12 list of about 20 -- cannot take advantage of that because of
13 other prohibitions and thereby are being penalized.

14 The Chairman. Could I get some comments concerning the
15 source of revenue from the Secretary.

16 Secretary Goldberg. Yes.

17 We do not support the proposed pay for at this time. We
18 believe that those issues relating to the reinsurance are best
19 addressed through the treaty process and we do not think that
20 they should be addressed by statute.

21 Senator Breaux. Could I ask?

22 Secretary Goldberg. yes, sir.

23 Senator Breaux. My amendment specifically excludes any
24 countries where we have a tax treaty with that country. For
25 those countries that have bilateral tax agreements with the

1 United States we are not changing that at all.

2 Secretary Goldberg. Senator, the issue as you point out,
3 it runs beyond. But you do implicate situations where you have
4 a treaty with country A and there is pass on of insurance
5 through a tax haven. That is an issue that we believe is best
6 addressed through treaty shopping provisions and that is how we
7 would propose to deal with the issue.

8 Senator Bradley. Is there a GATT question with regard to
9 it?

10 Secretary Goldberg. I would like to note with respect to
11 the 50,000 barrels we do support that change.

12 Yes, sir.

13 Senator Bradley. Is there a GATT question here?

14 The Chairman. Are there further questions?

15 (No response.)

16 The Chairman. Mr. Gutman, do you have any comments on the
17 revenue source or the other?

18 Mr. Gutman. Well, Mr. Chairman, in terms of the number of
19 taxpayers affected, our information is that with respect to the
20 first part of Senator Breaux's amendment there would be six
21 taxpayers who are directly affected and there could be as many
22 as ten or twelve more who will be indirectly affected.

23 With respect to the second part, the average production, we
24 believe that there are between one and four taxpayers who are
25 affected by that.

1 The Chairman. Are we prepared to vote?

2 Senator Bradley. So this is a provision that benefits ten
3 taxpayers. That is what I heard you say.

4 Mr. Gutman. I said that we knew of six directly, Senator
5 Bradley, on the first part; and between one and four on the
6 second.

7 Senator Breaux. Mr. Chairman?

8 The Chairman. Yes, Senator Breaux.

9 Senator Breaux. I have a list of about 20 major gas
10 producing companies that are directly affected by it. I mean
11 there is a difference. He may not have all of the list. But
12 it is a question of not only how many taxpayers, of how many
13 consumers of natural gas in this country are affected and that
14 is literally hundreds of millions.

15 I mean their prices they charge for the product is
16 regulated by the Public Service Commission. They cannot gouge
17 the public. They can only charge what a public utility
18 regulating committee allows them to charge. And that is the
19 whole purpose of the amendment.

20 The Chairman. Let us have a roll call on that.

21 The Clerk. Senator Moynihan.

22 Senator Moynihan. Aye.

23 The Clerk. Senator Baucus.

24 Senator Baucus. Aye.

25 The Clerk. Senator Boren.

1 The Chairman. Aye by proxy.
2 The Clerk. Senator Bradley.
3 Senator Bradley. Pass.
4 The Clerk. Senator Mitchell.
5 The Chairman. No by proxy.
6 The Clerk. Senator Pryor.
7 Senator Pryor. Pass.
8 The Clerk. Senator Riegle.
9 Senator Riegle. Aye.
10 The Clerk. Senator Rockefeller.
11 Senator Rockefeller. Aye.
12 The Clerk. Senator Daschle.
13 Senator Daschle. Aye.
14 The Clerk. Senator Breaux.
15 Senator Breaux. Aye.
16 The Clerk. Senator Packwood.
17 Senator Packwood. No.
18 The Clerk. Senator Dole.
19 Senator Packwood. Aye.
20 The Clerk. Senator Roth.
21 Senator Roth. Aye.
22 The Clerk. Senator Danforth.
23 Senator Danforth. No.
24 The Clerk. Senator Chafee.
25 Senator Chafee. No.

1 The Clerk. Senator Durenberger.
2 Senator Durenberger. No.
3 The Clerk. Senator Symms.
4 Senator Symms. Aye.
5 The Clerk. Senator Grassley.
6 Senator Grassley. No.
7 The Clerk. Senator Hatch.
8 Senator Packwood. Aye by proxy.
9 The Clerk. Senator Chairman.
10 The Chairman. Aye.
11 The Clerk. Senator Bradley.
12 Senator Bradley. No.
13 The Clerk. Senator Pryor.
14 Senator Pryor. Aye.
15 The Clerk. Mr. Chairman.
16 The Chairman. Aye.
17 Senator Dole. Mr. Chairman?
18 The Chairman. Yes, Senator Dole.
19 Senator Dole. Mr. Chairman, earlier I voted against the
20 Riegle amendment because I was concerned about a point raised
21 near the end about a windfall that would come to certain with a
22 \$2,000 credit.
23 Excuse me.
24 The Clerk. The Breaux Amendment, there are 13 Senators in
25 favor, 7 opposed.

1 The Chairman. All right.

2 If you would proceed, Senator Dole.

3 Senator Dole. I have discussed this with Senator Riegle
4 and Senator Roth who were the primary sponsors of the original
5 amendment. It seemed to me that one way to address that would
6 be to reduce that reduction to \$1200, leave it to \$2,000 for
7 natural gas cars, do not change the credit; then you would
8 avoid the possible windfall.

9 If that modification were acceptable I would be prepared to
10 vote to support the amendment. I would offer that
11 modification.

12 The Chairman. Would Senator Riegle comment on that?

13 Senator Riegle. Mr. Chairman, we have talked about that.
14 I think this is a reasonable compromise and I think we should
15 support it and I support it.

16 The Chairman. Well, the Chairman then will support the
17 amendment.

18 Senator Roth. Mr. Chairman, I would like to say also that
19 I think this is a good compromise. It accomplishes what I
20 think is important and I express my appreciation to Senator
21 Dole for working the compromise out.

22 The Chairman. All right.

23 Senator Bradley?

24 Senator Bradley. Another? Moving on?

25 The Chairman. No, no. What I want then, I think that

1 realizing what the vote was last time and what the changes have
2 been, it seems it is acceptable, but all in favor of the
3 amendment make it known by saying aye.

4 Senator Chafee. Well, Mr. Chairman, could you just explain
5 it a little. Regardless of whether the automobile would cost
6 more, the purchaser would get a \$1200 deduction; is that
7 correct?

8 Senator Dole. Right.

9 The Chairman. Mr. Gutman, do you have some comments on
10 that?

11 Mr. Gutman. I do, Mr. Chairman.

12 If the Committee would recall, we started off by saying
13 what we were going to do here was reduce the amount of the
14 deduction that Senator Riegle had originally proposed in order
15 to meet the revenue target of \$198 million. We do not know
16 what that number is at the moment.

17 Consequently, a vote at this time specifying a number or
18 even a differential we cannot guarantee that we will be able to
19 meet the revenue targets that seem to be the operating
20 parameters of Senator Riegle's amendment.

21 Senator Riegle. Can't that be solved by focusing on the
22 out years?

23 Senator Chafee. Mr. Chairman?

24 The Chairman. Senator Chafee.

25 Senator Chafee. I just do not get the purpose of the

1 amendment. Somebody goes and buys and automobile that is a
2 flexible fuel vehicle and that may well cost no more than a
3 regular vehicle. So they buy the flexible fuel vehicle, get a
4 \$1200 deduction, and never drive it at all with the flexible
5 fuel. What is the point? I mean, what is the matter with the
6 House bill in which you get a deduction for the incremental
7 amount? It seems to me that makes perfect sense.

8 The Chairman. Senator Rockefeller wants to comment on
9 that.

10 Senator Rockefeller. The point about this is that
11 everybody is making an assumption that ethanol, methanol
12 alternative fuels are something that consumers are just going
13 to see and they are not going to say, gee, this is terrific, we
14 will just start doing it right away.

15 It is going to take time. Let me put it bluntly. I went
16 out a couple weeks ago to Detroit where I have been battling
17 along with Senator Danforth for years for the automobile
18 companies to get going on this business of alternative fuels.
19 If you want to reduce imported oil, this is the way to go.
20 This is the way to go.

21 Now, they are very enthusiastic about a much more
22 substantive approach which was introduced but not accepted by
23 this Committee. They would, if we reduced it to the Riegle
24 bill which lost in the last round, they would rather oppose
25 that than proceed. Because people do not do this quickly. It

1 is not working in Southern California quickly. It is a long-
2 term prospect.

3 That is why this compromise has to be accepted, because it
4 is reasonable and it will work.

5 The Chairman. Let me state that I am concerned about
6 Mr. Gutman's comment insofar as taking care of the budget
7 problems on this. I would like to, if the authors of the
8 amendment would agree, to give staff the authority to do such
9 adjustments that have to be made to see that we stay within our
10 budget requirements.

11 Senator Dole. A good idea.

12 The Chairman. Is there no objection to that?

13 Senator Chafee. Mr. Chairman, I would just like to comment
14 about the California situation. The California situation may
15 be as described, but the point is that in California you do not
16 have any existing deduction in the Federal Tax Code now and the
17 proposal is you would be able to get a deduction for the
18 incremental amount.

19 Senator Rockefeller. In California they are getting cash
20 subsidies right now and the people still are not buying the
21 cars, Senator Chafee.

22 The Chairman. All right.

23 With the further comment, gentlemen, we will move on if we
24 can.

25 Senator Bradley. Mr. Chairman?

1 The Chairman. Yes, Senator Bradley.

2 Senator Bradley. I have one last amendment.

3 The Chairman. Wait a minute. Let us wait until we
4 finished with this.

5 Senator Roth?

6 Senator Roth. No, I have an amendment, Mr. Chairman.

7 The Chairman. All right.

8 All in favor of the amendment as stated, make it known by
9 saying aye.

10 (A chorus of ayes.)

11 The Chairman. Opposed.

12 (A chorus of nays.)

13 Senator Dole. The ayes have it.

14 The Chairman. The ayes have it?

15 (Laughter)

16 The Chairman. The ayes have it. The ayes have it.

17 Senator Chafee. Well, I would like to be recorded as
18 voting no.

19 Senator Breaux. I would like to be recorded as voting no
20 as well.

21 The Chairman. So recorded.

22 All right, Senator Bradley.

23 Senator ~~Breaux~~^{BRADLEY}. Mr. Chairman, I have an amendment that
24 deals with four substances that are very toxic -- lead,
25 mercury, asbestos and uranium. Right now they are accorded

1 percentage depletion treatment in the Tax Code which is a
2 subsidy above cost depletion.

3 What I would propose to do is eliminate that subsidy which
4 is the difference between cost depletion and percentage
5 depletion for those four substances -- lead, mercury, asbestos
6 and uranium. It would raise about \$62 billion over four years
7 that would be available for the Committee to use in any way
8 that it shows.

9 I think that the important point here is that all four of
10 these substances are highly toxic. And in particular with
11 regard to lead if we do not try to tax those substances which
12 are detrimental to our health and provide a subsidy for their
13 continued mining the result is that we are going to encourage
14 their use. Encouraging their use will, I think, increase the
15 amount of the substance in the environment and that will lead
16 to detrimental impacts on health and it will undermine
17 recycling efforts.

18 We have already banned the use of lead in paint and we have
19 restricted the use of lead in gasoline. Lead continues to be
20 in many substances that we encounter everyday, anything from
21 tin cans to many things that use solder to coffee cups even. I
22 believe that we have to send a very clear market signal that we
23 want to reduce the production of lead.

24 Now the bulk of the lead is used in lead batteries. The
25 bulk of those lead batteries end up in land fills. We have got

1 to have an incentive for recycling. A tax subsidy for the
2 production of the substance is the opposite of the incentive
3 for recycling.

4 So I would move to strike that subsidy.

5 Senator Baucus. Mr. Chairman?

6 The Chairman. Senator Baucus.

7 Senator Baucus. Mr. Chairman, it sounds good to try to cut
8 back the production of lead because of the health problems.
9 But the fact is that we in this country have already taken care
10 of the bulk of the lead, as we reduce the bulk of the lead that
11 does get out in the environment.

12 We have cut out 90 percent of lead in gasoline, for
13 example. Lead paint is no longer a problem. It is true that I
14 think some children, way too many, and other people have been
15 subject to lead in the past. But that is essentially a problem
16 that has been resolved.

17 Seventy percent of the lead consumed today is used in lead
18 acid batteries. Contrary to what the Senator said, the vast
19 bulk of those batteries are not put in landfills or
20 incinerators. In fact, 95 percent of lead acid batteries are
21 now recycled. In fact, in addition with the Resource
22 Conservation Recovery Act Bill that was reported out the
23 Environment and Public Works Committee just about a month ago,
24 there are provisions in that bill which prohibit the
25 incineration or landfilling of lead acid batteries.

1 In addition, there is a deposit requirement to make it
2 clear that all of the lead that is going to be used in the
3 future is going to be recycled and it is subject to very strict
4 controls and virtually none of it, or very little of it, will
5 get into paint and house paint, fuels and so forth.

6 So it is really not a problem anymore, although it was a
7 problem in the future.

8 Second, the effect of this amendment is to hurt American
9 producers of lead and help foreign producers of lead because
10 this amendment would essentially repeal the percentage
11 depletion that applies to domestic producers, not foreign
12 producers.

13 I can tell you, Senator, that if this amendment passes that
14 a lot of lead is going to be coming in from Mexico, from
15 Canada, Australia, Peru and other countries, countries that are
16 not subject to the same environmental production standards that
17 the United States has.

18 So essentially it just seems to me that for those three
19 reasons -- one, we have taken care of lead already in the past;
20 second, the remaining lead that is produced is going to be
21 handled, I think, very well, just because it will be recycled;
22 and third, because this amendment hurts American and benefits
23 foreign producers. It really does not make a lot of sense with
24 respect to lead anyway for this amendment to be adopted.

25 Now I cannot speak for the other commodities mentioned in

1 this amendment because I know less about them. But at least
2 with respect to lead, I do think that it does not make any
3 sense.

4 Senator Symms. Mr. Chairman, could I ask Senator Baucus a
5 question on that?

6 The Chairman. Yes, Senator Symms.

7 Senator Symms. Senator Baucus, is it not true that most
8 all of the lead batteries are now being recycled now anyway?
9 Did we not have that testimony?

10 Senator Caucus. In 1990, that is true, 95 percent
11 recycled.

12 Senator Symms. And I concur with what you said.

13 The Chairman. Senator Danforth.

14 Senator Danforth. Mr. Chairman, I have a personal
15 situation which I do not know how to handle. Therefore, the
16 only thing I can think about doing is to disclose it.

17 I suppose, and I am confident, that an argument could be
18 made that I have a personal conflict of interest with respect
19 to this amendment in that a very substantial part of my own
20 assets are in the stock of the Ralston Purina Company which
21 owns a battery company, Eveready Battery.

22 I suppose the argument could be made that therefore this
23 amendment goes to the cost of lead which goes to the cost of
24 production of batteries and so on.

25 The Chairman. Do you want to vote present, Senator?

1 Senator Danforth. No, I do not know. I do not think so.

2 Because 95 percent of the lead that is produced in the
3 United States is produced in my State. I cannot understand how
4 I can serve on the Finance Committee without opposing this
5 amendment. It would clearly be disastrous to some of the
6 poorest counties in my State if this were adopted.

7 So I do not think I am going to vote present because I do
8 not think I can represent the State of Missouri and simply vote
9 present and say nothing about it. This amendment would be the
10 equivalent to a 10 percent increase on the tax of primary lead.
11 The affect would be that in the State of Missouri, according to
12 the Bureau of Mines, six of the major U.S. lead producing
13 properties are marginally profitable, and any increase in
14 production costs would make these operations unprofitable. And
15 it would cost an awful lot of jobs of people who are in very,
16 very poor rural counties in Missouri.

17 So I do not know how to handle the potential conflict
18 issue. I could either vote present or I could simply disclose
19 it. Maybe there is somebody who has a legal opinion on what to
20 do about that.

21 Senator Symms. Mr. Chairman?

22 The Chairman. I would say, Senator, the Chairman just
23 wishes he shared your problem.

24 (Laughter)

25 Senator Symms. Likewise, I agree with that.

1 Mr. Chairman, on another issue like this that I did get a
2 ruling from the Ethics Committee once before. If you have the
3 same interest of many of your constituents you do not have a
4 conflict of interest that you should withhold your vote on.

5 Senator Danforth. Can I just say, I think that is right.
6 I mean, I can remember when I was State Attorney General
7 getting into the question relating to whether or not the Benn
8 State Veterinarian could participate in the Brucellosis program
9 in the State of Missouri; and the answer was that if he was
10 similarly situated as other people, the answer was yes.

11 But in any event, Senator Baucus has said that 95 percent
12 of the batteries in this country are recycled. The information
13 I have is that it is 97.8 percent. So I mean if 97.8 percent
14 of the batteries are recycled, what is the great conservation
15 effect of this amendment. It seems that as a practical matter
16 it has no conservation effect at all.

17 The only effect of it is, as Senator Baucus points out, to
18 export American jobs and particularly to export American jobs
19 from very, very poor areas in the State of Missouri. So I am
20 opposed to it.

21 The Chairman. Gentlemen, are we prepared to vote?

22 Senator Bradley. Mr. Chairman, may I just make two
23 comments?

24 The Chairman. Yes. All right.

25 Senator Bradley. One is whether it is 75 percent recycled

1 or higher or 95 percent, the fact is that for every 1 percent
2 that is not recycled it is 26 million pounds of lead
3 unaccounted for. For every 1 percent of lead batteries that
4 are not recycled it is 26 million pounds of lead unaccounted
5 for.

6 In terms of American industry this would be a tax of about
7 \$5 million per year on the industry. It has an annual sales of
8 \$400 million. I doubt that this is going to destroy the
9 industry. From the standpoint of personal history, it is not
10 only those who work who have jobs in these industries, but
11 those who work, who have jobs in these industries, and die
12 because of the pollution.

13 How do I know? Because I had an uncle who worked in the
14 lead mine in Missouri, in a lead factory in Missouri, and died
15 because of the contamination in large part. So this is not
16 only for the whole environment, but it is for every person who
17 is exposed to lead.

18 So I would make the argument that this is a vote on the
19 issue of whether we should try to tax those things which are
20 clearly toxic pollutants in our environment as opposed to
21 taxing income or something else. This is a very small, very
22 small tax. This is not even a tax. It is removing a subsidy,
23 a subsidy we put in the Code that says go ahead and produce all
24 that lead, go ahead and produce it all. No matter if 1 percent
25 is unaccounted means 26 million pounds in the environment.

1 The Chairman. Gentlemen, do we have further comments? If
2 not, is the motion made, Senator.

3 (No response.)

4 The Chairman. All in favor of the motion make it known by
5 saying aye.

6 Senator Bradley. Mr. Chairman, could I have a roll call,
7 please.

8 The Chairman. Yes, of course.

9 Roll call vote is requested.

10 The Clerk. Mr. Moynihan.

11 Senator Moynihan. Aye.

12 The Clerk. Mr. Baucus.

13 Senator Baucus. No.

14 The Clerk. Mr. Boren.

15 Senator Boren. No.

16 The Clerk. Mr. Bradley.

17 Senator Bradley. Aye.

18 The Clerk. Mr. Mitchell.

19 Senator Bradley. Aye by proxy.

20 The Clerk. Mr. Pryor.

21 Senator Pryor. Aye.

22 The Clerk. Mr. Riegle.

23 Senator Riegle. No.

24 The Clerk. Mr. Rockefeller.

25 Senator Rockefeller. No.

1 The Clerk. Mr. Daschle.
2 Senator Daschle. No.
3 The Clerk. Mr. Breaux.
4 Senator Breaux. No.
5 The Clerk. Mr. Packwood.
6 Senator Packwood. No.
7 The Clerk. Mr. Dole.
8 Senator Dole. No.
9 The Clerk. Mr. Roth.
10 Senator Roth. Aye.
11 The Clerk. Mr. Danforth.
12 Senator Danforth. No.
13 The Clerk. Mr. Chafee.
14 Senator Chafee. Aye.
15 The Clerk. Mr. Durenberger.
16 Senator Durenberger. No.
17 The Clerk. Mr. Symms.
18 Senator Symms. No.
19 The Clerk. Mr. Grassley.
20 Senator Grassley. Aye.
21 The Clerk. Mr. Hatch.
22 Senator Dole. No by proxy.
23 The Clerk. Mr. Daschle.
24 Senator Daschle. Aye.
25 The Clerk. Mr. Chairman.

1 The Chairman. No.

2 The Clerk. There are 8 Senators in favor of the amendment,
3 12 opposed.

4 The Chairman. The amendment fails.

5 Are there further amendments?

6 Senator Roth. Mr. Chairman?

7 The Chairman. Yes, Senator Roth.

8 Senator Roth. Mr. Chairman, mine is a straightforward,
9 simple amendment. It would provide for a tax credit of \$100
10 for those who participate in a recycled vehicle program and
11 turned in a car in working condition from the model year 1975
12 or older.

13 The Clean Air Amendments of 1990 provided for programs to
14 encourage the removal of pre-1980 model year cars and trucks.
15 According to EPA pre-1980 cars represent 38 percent of the
16 nation's fleet, but they are responsible for 71 percent of
17 automobile volatile organic compound and carbon monoxide
18 emissions. A scrappage program would reduce these emissions.

19 Now as I say the Clean Air Act of 1990 provided for the
20 private sector to encourage the removal of these cars and a
21 number of them have done so. But my proposal would be aimed at
22 creating a national incentive to get these cars off the road
23 for good. It would be temporary, so as to encourage owners not
24 to wait around, knowing that they could turn their cars in at
25 any time to get the tax credit. They would have to act fast

1 and it would get the harmful cars off the roads all the
2 earlier.

3 We believe this program would encourage new programs to
4 expand and to be developed. I would emphasize it is a
5 voluntary program. No one has to turn in their car. If you
6 have antique or classic cars you are not forced to take them
7 off the road.

8 I chose pre-1976 because after that catalytic converters
9 were required on all U.S. cars. If you look at harmful
10 emissions by car's model year it is very clear that pre-1976
11 cars and trucks are responsible for a very proportionate amount
12 of the harm caused our atmosphere by U.S. autos.

13 The cost of the program would be \$152 million and we would
14 pay for that by changing a couple loopholes in the current
15 ozone depleting excise tax. We think this is a simple approach
16 to urban air and I urge its adoption.

17 The Chairman. May we have further comments?

18 Senator Grassley. Mr. Chairman?

19 The Chairman. Senator Grassley.

20 The Chairman. I have a question for either Senator Roth or
21 the Joint Committee Staff or maybe both about the offset
22 provision regarding methyl bromide. The question is, to what
23 extent is this chemical used in fertilizer or other agriculture
24 products? What affect would adding this chemical to the excise
25 tax have on the agricultural community in regard to the use of

1 it in fertilizer?

2 Senator Roth. Well, let me first seek to answer that
3 question. First of all, I would point out that there are
4 substitutes available, such as methane sodium. Secondly, I
5 would point out that methyl bromide will be listed by EPA and
6 Congress will eventually include it as a Class I substance, all
7 of which are subject to the tax.

8 So it is only a matter of time until the tax is going to be
9 posed in any event.

10 Furthermore, I think it is only equitable that we treat all
11 ozone depleting chemicals alike. We are not removing them from
12 the market, just subjecting them to the same tax that other
13 ozone depleting chemicals are now paying.

14 Senator Grassley. Could I also follow that up then? If
15 there are substitutes available -- I do not doubt that there
16 might be -- are they being used now?

17 Senator Roth. Yes, they are on the market and being used
18 now. But again, I would emphasize, we are not removing this
19 material from the market. We are just treating it the same as
20 all ozone depleting substances are being treated.

21 Senator Grassley. Well, increasing the price that is an
22 input into the production of food.

23 Would somebody from Joint Tax have any information on that
24 for me and the Committee as a whole?

25 Mr. Gutman. Senator Grassley, to the extent that the taxed

1 chemical would be used as an ingredient in fumigants, it would
2 increase the price of that and would subsequently find its way
3 through to probably, to some extent, to the price of
4 agricultural commodities.

5 The Chairman. If the Senator is through, let me comment
6 just a minute here. You know, we are trying to encourage the
7 recycling of a lot of things, a lot of things. Here you are
8 talking about \$100 on an automobile. Frankly, I doubt very
9 seriously that that is going to influence someone to do
10 something they would not have done otherwise. I think you are
11 just fluffing off the \$100.

12 And if we start down this slope to try to encourage
13 recycling, I do not know where we end. So I would urge the
14 Committee not to vote for the amendment.

15 Senator Roth. In answer to what the Chairman has said, I
16 would point out that most of these older cars are in the hand
17 of the poor. And while to many \$100 would not seem a lot this
18 could be quite significant.

19 I would also point out that by adopting this program by the
20 Federal Government that it would encourage the private sector
21 to do the same, so that collectively I think it would have a
22 very significant impact on a key pollution problem of this
23 nation.

24 The Chairman. Are there further comments?

25 (No response.)

1 The Chairman. If not you proposed the amendment. All in
2 favor --

3 Senator Roth. Mr. Chairman, I would ask for a roll call
4 vote.

5 The Chairman. A roll call vote has been asked for. All
6 right.

7 Mr. Gutman. We had one revenue point we wanted to make,
8 Mr. Chairman. While Senator Roth's revenue offset in the
9 aggregate is sufficient to offset the cost of the amendment, in
10 1993 we do not believe that there will be a sufficient amount
11 of money to offset the cost of his amendment in 1993.

12 Senator Roth. But I think the Chairman's rules were from
13 1993 to --

14 The Chairman. Oh, no, 1992 and 1993 under the rules have
15 to be put together; and then from 1993 on. And if the estimate
16 is --

17 Senator Roth. Then I would be willing to delay the credit
18 for six months to take care of that problem.

19 The Chairman. Would Mr. Gutman respond to that?

20 Mr. Gutman. We would need, again, Mr. Chairman, to have
21 authority to be able to sort that out. But I do not -- We do
22 not have the numbers in front of us to be able to do those
23 kinds of calculations.

24 Senator Roth. As we did in other cases, I would be
25 willing, of course, to give the authority to the Staff to

1 resolve that problem.

2 The Chairman. Senator Baucus.

3 Senator Baucus. Just a couple of quick questions here that
4 go to the repeal under the exemption, I guess it is back to a
5 rigid foam. The idea is that, what, Senator Roth, that rigid
6 foam insulation would be, what, taxed now at a higher rate?

7 Senator Roth. It would be subject to --

8 Senator Baucus. No. What is the revenue estimate
9 breakdown between rigid foam insulation and methyl bromide?

10 Senator Roth. We have not yet been able to get those
11 figures. But I think it is fair to say that between 1993 and
12 1997 it should --

13 Senator Baucus. Is that about half, a quarter? Do you
14 have any idea what proportion of the revenue?

15 Senator Roth. We have gotten no figures.

16 Senator Baucus. Second question. You know, there is a
17 major insulation use for rigid foam insulation. It is very
18 helpful to colder climates. It is a good insulator. I am
19 curious what affect this amendment would have on rigid foam
20 insulation and potential substitutes for insulation.

21 Senator Roth. Well, under current law rigid foam is taxed
22 at the reduced rate of 25 cents per pound through 1993. This
23 rate is only 2 to 5 percent of what it would be based on these
24 substances ozone depleting percentage. Again, it seems to me
25 that from the standpoint of equity there should be a level

1 playing field and we should treat all similarly situated
2 substances alike. That is the reason we included this as part
3 of the --

4 Senator Baucus. Yes, but my thought though is that they
5 are not all alike. They are not all alike. Because that foam
6 has a very high insulation affect. It is very useful as an
7 insulator. My understanding is that it will take at least a
8 year to develop substitutes for rigid foam insulation.

9 Senator Symms. Mr. Chairman?

10 The Chairman. Yes, Senator Symms.

11 Senator Symms. Just one quick question. Is this amendment
12 limited to one car per person or will this mean that somebody
13 can set up a business on the Mexican border and start
14 processing cars --

15 (Laughter)

16 Senator Symms. -- for \$100 a piece and get a tax credit
17 somehow? Because I mean if you have this high enough, I can
18 assure you we are going to -- I have helped Senator Roth in the
19 past. There is a problem. If he gets it high enough you will
20 get every clunker in the whole western hemisphere will end up
21 in the United States.

22 (Laughter)

23 Senator Roth. I do not think that the \$100 will end with
24 that kind of recruitment.

25 Senator Symms. But is it intended it is more like one per

1 person?

2 Senator Roth. Well, we have no limit in it at this stage.

3 The Chairman. Let me state --

4 Senator Roth. Volume would really help the problem.

5 The Chairman. I urge the members to vote against the
6 amendment. It is a well meaning amendment, but if we start
7 down that I do not know where we will stop insofar as stopping
8 or encouraging recycling.

9 He has asked for a roll call. Would you please call the
10 roll.

11 The Clerk. Senator Moynihan.

12 Senator Moynihan. No.

13 The Clerk. Senator Baucus.

14 Senator Baucus. No.

15 The Clerk. Senator Boren.

16 Senator Boren. No.

17 The Clerk. Senator Bradley.

18 The Chairman. No by proxy.

19 The Clerk. Senator Mitchell.

20 The Chairman. No by proxy.

21 The Clerk. Senator Pryor.

22 Senator Pryor. No.

23 The Clerk. Senator Riegle.

24 Senator Riegle. No.

25 The Clerk. Senator Rockefeller.

1 Senator Rockefeller. No.
2 The Clerk. Senator Daschle.
3 Senator Daschle. No response.
4 The Clerk. Senator Breaux.
5 Senator Breaux. No.
6 The Clerk. Senator Packwood.
7 Senator Packwood. No.
8 The Clerk. Senator Dole.
9 Senator Dole. No.
10 The Clerk. Senator Roth.
11 Senator Roth. Aye.
12 The Clerk. Senator Danforth.
13 Senator Danforth. No.
14 The Clerk. Senator Chafee.
15 Senator Chafee. No.
16 The Clerk. Senator Durenberger.
17 Senator Packwood. No by proxy.
18 The Clerk. Senator Symms.
19 Senator Symms. No.
20 The Clerk. Senator Grassley.
21 Senator Grassley. No.
22 The Clerk. Senator Hatch.
23 Senator Packwood. No by proxy.
24 The Clerk. Senator Daschle.
25 Senator Daschle. No.

1 The Clerk. Mr. Chairman.

2 The Chairman. No.

3 The Clerk. There is 1 Senator in favor, 19 are opposed.

4 The Chairman. All right.

5 Can we move along now?

6 Senator Chafee. Mr. Chairman?

7 The Chairman. Yes, Senator Chafee.

8 Senator Chafee. Can I note the hour is moving along and we
9 are under a limit of the time we can meet. Is that not the
10 case?

11 The Chairman. I think that has just been changed. I think
12 we have now been advised and I am reluctant to announce it.

13 (Laughter)

14 The Chairman. But the limitation has been raised.

15 All right. But let us do move along. We still have the
16 luxury tax, that I know Senator Chafee is very interested in.

17 Senator Chafee. Why don't we pretend we are under the
18 limitation?

19 The Chairman. Let us try. All right.

20 Are there further amendments to be offered?

21 Senator Symms. Mr. Chairman?

22 The Chairman. Yes, Senator Symms.

23 Senator Symms. Mr. Chairman, I just want to say that I am
24 not going to offer my amendment. I think most of the Senators
25 here today have give to the floor, it is my intention to offer

1 an amendment which would repeal the present requirement that
2 tax exempt bonds issued for publicly-owned high-speed intercity
3 rail facilities will receive an allocation under the State
4 private activity bond volume cap. And I hope my colleagues --
5 We will send you information on it so you can become aware of
6 it and we can further air this out on the floor. But I think
7 we should move this bill forward at this point.

8 The Chairman. Well, thank you very much.

9 Senator Dole.

10 Senator Dole. Could I just make the same reservation with
11 reference to Section 29. I think there are some things that
12 ought to be done in that area. I do not know how we are going
13 to pay for it, but I obviously reserve the right to offer an
14 amendment on the floor if we can find the revenue.

15 The Chairman. Of course.

16 Are there further comments?

17 (No response.)

18 The Chairman. If not, can we have a motion on the bill?

19 Senator Moynihan. I move we adopt the motion,

20 Mr. Chairman.

21 The Chairman. All in favor of the motion stated make it
22 known by saying aye.

23 (A chorus of ayes.)

24 The Chairman. Opposed.

25 (No response.)

1 The Chairman. Motion carried. Thank you.

2 I need the authority for the Staff and I want to withdraw
3 the amendment.

4 Mr. Gutman. We have two other clarifications,
5 Mr. Chairman.

6 The Chairman. All right.

7 Mr. Gutman. Senator Daschle, with respect to your
8 amendment do I understand that the AMT credit will be limited
9 by 50 percent, limited at 50 percent?

10 Senator Daschle. Yes.

11 Mr. Gutman. And also, we understand that CBO has not
12 finalized their cost estimates of Senator Rockefeller's coal
13 amendment and we ask that we have the drafting authority to
14 adjust the tax rates as necessary to ensure that the amendment
15 does not create any budget problems. Is that satisfactory?
16 And also general drafting authority as well, Mr. Chairman.

17 The Chairman. Now what I will need, as I advised the
18 members earlier, I need the authority to withdraw the amendment
19 and it will be immediately replaced with identical language in
20 a floor amendment.

21 It is a procedural necessity that we have this.

22 Senator Moynihan. Mr. Chairman, you have explained that to
23 us. You need a majority of the Committee to approve and I so
24 move.

25 The Chairman. All right.

1 The motion has been made, all in favor the motion as stated
2 to give the Chairman that authority, make it know by saying
3 aye.

4 (A chorus of ayes.)

5 The Chairman. Opposed.

6 (No response.)

7 The Chairman. Motion carried.

8 Now we will move on to the extender bill.

9 Senator Chafee. Mr. Chairman?

10 The Chairman. Yes, Senator Chafee.

11 Senator Chafee. I would like to put in a statement if it
12 could be accepted, Mr. Chairman.

13 The Chairman. Without objection that will be done.

14 Senator Moynihan. I move we adopt the measure.

15 The Chairman. Which one?

16 Senator Moynihan. The mark.

17 The Chairman. The Chairman's mark on the extenders is what
18 he is speaking to.

19 Yes, Senator Dole.

20 Senator Dole. Mr. Chairman, I have no objection to that
21 but I have been discussing with Senator Grassley maybe one
22 modification. I noticed we continue the self-employed health
23 deduction of 25 percent through 1992. I am talking about the
24 self-employment deduction.

25 The Chairman. The 25 percent deduction.

1 Mr. Gutman. The 25 percent deduction is in the extender
2 bill and was extended for 18 months along with the others,
3 Senator Dole.

4 Senator Dole. But what I would like to do, if there is no
5 objection, is to use the 45-day IRS tax processing rule
6 included in the House energy bill, which raises \$250 million
7 over four years, and to increase that self-employed health
8 deduction to whatever percentage level can be accommodated by
9 that \$225 million in 1993.

10 Mr. Sessions. Senator, I believe, and Mr. Cohen can
11 comment on this, I believe that the revenue from the 45-day
12 rule counts as an outlay reduction which cannot be used to pay
13 for an extension of the tax or further increase of the tax
14 deduction for the self-employed.

15 Dr. Cohen. That is correct, yes.

16 The Chairman. Dr. Cohen, can you comment on that?

17 Dr. Cohen. That is absolutely correct.

18 The Chairman. It sounded like a good idea to me until I
19 ran into this.

20 Senator Dole. So it is not available for that purpose?

21 The Chairman. It creates a 60 vote point of order does it
22 not?

23 Dr. Cohen. Yes. Outlay sayings cannot be used to pay for
24 a revenue loss without incurring a 60 vote point of order.

25 The Chairman. Yes. All right.

1 Senator Breaux. Mr. Chairman?

2 The Chairman. Further comment? Yes, Senator Breaux.

3 Senator Breaux. I would like to -- Oh, I am sorry.

4 Senator Dole. If we could use whatever surplus is left in
5 the bill, the energy bill, to raise that percentage, would that
6 add the same problem?

7 Dr. Cohen. These are separate bills, Senator.

8 The Chairman. Well, the problem I have got --

9 Dr. Cohen. So you would not want to be using the surplus
10 from the one bill to pay for another bill because they are
11 going to come up at different times.

12 Senator Dole. The surplus in this bill?

13 Dr. Cohen. Right.

14 Senator Dole. Isn't there also a surplus in this bill?

15 Dr. Cohen. There is virtually no surplus in this bill,
16 Senator.

17 Mr. Sessions. Senator, as I was describing earlier there
18 is in effect a \$12 million surplus.

19 Senator Dole. No, that is not enough.

20 The Chairman. We just do not have it, Bob.

21 Senator Breaux. Mr. Chairman?

22 The Chairman. Yes, Senator Breaux.

23 Senator Breaux. Mr. Chairman, I would just like to direct
24 our colleague's attention and also the staff to the luxury tax
25 repeal. On the first page at the bottom we are repealing the

1 tax on boats, airplanes, jewelry, furs and we are indexing
2 automobiles.

3 On line 2 below that we are repealing the diesel fuel tax
4 exemption for motor boats which raises \$144 million. Now when
5 we, along with Senator Chafee and a number of colleagues,
6 introduce the repeal of the luxury tax on boats, we looked for
7 an offset to pay for it in that industry; and we came up with
8 requiring people who own boats to pay diesel tax, which they
9 were not required to pay for now.

10 Now I am concerned that as a matter of equity, airplanes,
11 jewelry, fur and automobiles are not contributing anything to
12 repealing the luxury tax on those industries, and yet boats is
13 the only one under this proposal that is paying anything that
14 is contributing to the repeal of everybody else. I am just
15 concerned from a matter of fairness that it seems like the boat
16 industry is being required to pay the tab for all the other
17 industries that we are repealing the luxury tax on them.

18 I kind of felt that we were talking about getting an offset
19 within each industry that would pay for the repeal of the
20 luxury tax in those industries.

21 The Chairman. Well, Senator, we tried to the degree we
22 could. But I must say it is not easy reaching out to pay for
23 these in the aggregate.

24 Senator Breaux. Mr. Chairman, if I may ask the following
25 question, it seems like the bottom line on the next page is

1 that there is \$325 million that is assets over and above what
2 we need to pay for these items.

3 Mr. Gutman. Senator, let me explain that. We have
4 displayed the repeal of the luxury excise taxes in a number of
5 ways.

6 The Chairman. Well, let me comment though. I do not think
7 you have the \$325 million.

8 Mr. Gutman. We do not. That is right.

9 The Chairman. Don't you have to deduct the \$313 million
10 from the \$325 million and doesn't that then leave you \$12
11 million?

12 Mr. Gutman. That is correct. To satisfy the budget act
13 the bill has to be revenue neutral 1993 through 1997. So in
14 order to satisfy that requirement and avoid a point of order on
15 the floor there is really only \$12 million excess in the
16 legislation.

17 Senator Breaux. I mean as a practical matter suppose
18 Senator Chafee and I had not offered the diesel tax for boat
19 owners, we would still be in that number one line?

20 Mr. Gutman. The bill would be down then. I mean, it could
21 have been displayed as a net number, boat tax repeal and the
22 offset for the diesel tax in the same way that, for example,
23 the employer-provided parking was done in the last table. Then
24 you could have had a separate line that would have showed the
25 cost of the other repeal of the luxury taxes.

1 This is simply a question of how it was displayed, Senator
2 Breaux. But I think it has always been understood that the
3 diesel fuel was being used to pay for the repeal of the boat
4 tax.

5 Senator Breaux. Well, isn't it also paying for the repeal
6 of the jewelry, the furs, the airplanes?

7 Mr. Gutman. No.

8 Senator Breaux. Where are they coming from?

9 Mr. Gutman. There is not enough money in the diesel fuel
10 to do that, sir.

11 Senator Breaux. Let me ask a question. Where is the
12 repeal of the fur tax being paid from?

13 Mr. Gutman. Out of the other general revenues that are in
14 the bill.

15 Senator Breaux. And where is the jewelry tax being paid
16 from?

17 Mr. Gutman. The same thing.

18 Senator Breaux. And where is the airplane tax being paid
19 from?

20 Mr. Gutman. The same thing.

21 Senator Breaux. Where is the boat tax being paid from?

22 Mr. Gutman. Well, it was always displayed as an offset to
23 the boat tax. The diesel fuel was always thought of as an
24 offset to the boat tax.

25 Senator Breaux. But is it a correct statement to say that

1 of all the repeal of the luxury items the only industry that is
2 offsetting it by paying additional revenues is the boat
3 industry?

4 Mr. Gutman. Yes.

5 The Chairman. All right.

6 Senator Rockefeller. Mr. Chairman?

7 The Chairman. Yes.

8 Senator Rockefeller. I do not mean to hold this up.

9 The Chairman. All right, Senator Rockefeller.

10 Senator Rockefeller. I was completely prepared on the
11 basis of furs, boats, jewelry, the rest of it, and just casting
12 3,000 or 4,000 West Virginian gas workers out by whim, Section
13 29 for those in the audience who might be interested, that is
14 getting gas the tough way, through tight sands, until I heard
15 Senator Dole say that he was interested in trying to work this
16 out.

17 I wondered, Senator Dole, if you felt there might be some
18 prospect on Section 29. It does not make much difference.
19 This thing is going to pass. But it makes a hell of a
20 difference to me.

21 Senator Dole. I pledge my cooperation, Senator
22 Rockefeller. I hope there is some way to work it out. We need
23 to find a revenue source. But certainly I have an interest in
24 trying to be helpful.

25 The Chairman. Well, I have a Section 29 as far as my own

1 State. I have a number of companies very much involved in
2 Section 29 on tight sands.

3 Senator Rockefeller. I will vote in favor then,
4 Mr. Chairman, in the hopes that there might be something worked
5 out later on.

6 Senator Daschle. Mr. Chairman?

7 The Chairman. All right, Senator Daschle.

8 Senator Daschle. I will be real brief. I would just call
9 attention to the Committee that the solar and geothermal tax
10 credit, of course, is not in this extender package because we
11 made it permanent in the energy bill.

12 The only concern I have is that if the energy bill at some
13 point does not get all the way through the legislative process
14 we will not have an extension for solar and geothermal and I
15 would hope that the Committee would be prepared to revisit that
16 particular issue at some point.

17 The Chairman. Let me state to you, Senator, that if we run
18 into that kind of a problem I will do what I can to help you in
19 conference.

20 Senator Daschle. Thank you.

21 Senator Baucus. Mr. Chairman?

22 The Chairman. Yes, Senator Baucus.

23 Senator Baucus. Mr. Chairman, I would like to join Senator
24 Dole and Senator Rockefeller with respect to some modification
25 of Section 29. I understand the reasons for the repeal, but I

1 also think that there are arguments for some changes to the
2 taxpayers bill.

3 The Chairman. I understand that.

4 Senator Baucus. Thank you, Mr. Chairman.

5 Senator Dole. Mr. Chairman?

6 The Chairman. Senator Dole.

7 Senator Dole. As I understand it, once we adopt this that
8 completes action on everything here today.

9 The Chairman. That is correct.

10 Senator Dole. First, I want to make the point that
11 airplanes, the total cost over five years is only \$3 million
12 but I do believe the Senator from Louisiana makes a good point.

13 Secondly, I think the one thing lacking -- We are having
14 negotiations, Democrats, Republicans, House members, Senators,
15 and the White House on a package that would take care of not
16 only what we were discussing today but also other matters
17 including weed, and seed, and also enterprise zones.

18 The problem is going to be when all this leaves here there
19 is nothing left for enterprise zones. I do not see any way to
20 pay for it and I do not see any immediate way to get it before
21 the Committee.

22 So I will hope that we will have that opportunity on the
23 floor sooner or later if we can come together on what kind of
24 enterprise zone package we want. I think the Chairman has
25 pointed out in some areas there are a lot of excesses and I do

1 not disagree with the Chairman.

2 But if we can work that out it seems to me it is still in
3 our interest to try to put a package together rather than try
4 to fight off amendments on four or five or two or three
5 different bills and make that work on only one bill; and
6 secondly to indicate the administration's interest in trying to
7 get a package, and trying to get enterprise zones because there
8 is a need for immediate action on this particular piece in
9 cities like Los Angeles and others.

10 The Chairman. Thank you, Senator.

11 Senator Chafee. Mr. Chairman?

12 The Chairman. Yes.

13 Senator Chafee. Mr. Chairman, briefly I want to thank you
14 for your support on getting rid of the luxury tax, particularly
15 going back to the January 1 date.

16 Secondly, since I have been here we have twice wrestled
17 with luxury tax, getting rid of them, and I just hope we do not
18 go down that path again. It has been a total disaster in every
19 respect and I just hope this is the last time we will see
20 luxury taxes imposed, so-called luxury taxes.

21 The Chairman. Thank you.

22 Senator Packwood. Mr. Chairman?

23 The Chairman. Yes, Senator Packwood.

24 Senator Packwood. I apologize. This just came from
25 Senator Domenici and I remember he has talked to others about

1 it in the Joint Committee estimates. That is exempting from
2 the luxury tax on automobiles cars that have to be customized
3 for the disabled.

4 Mr. Gutman. That is correct. That is in the mark, Senator
5 Packwood.

6 Senator Packwood. It is in the mark?

7 Mr. Gutman. Yes, it is.

8 Senator Packwood. Thank you.

9 Senator Moynihan. Mr. Chairman?

10 The Chairman. Yes, Senator Moynihan.

11 Senator Moynihan. As you know, as everybody present knows,
12 not perhaps all our guests, we have in fact gone through these
13 extenders very carefully. We know these provisions. I would
14 wish we could make more permanent. But in any event we have
15 very much, I think we have unanimous accord on the proposal and
16 if no one wants to talk further, I would like to move that we
17 adopt the legislation for the extension of the expiring
18 provisions.

19 The Chairman. So the motion is to report out the extenders
20 as a Committee amendment to H.R. 3040?

21 Senator Moynihan. I so move, sir.

22 Senator Baucus. Second.

23 The Chairman. All right.

24 All in favor of the motion stated make it known by saying
25 aye.

1 (A chorus of ayes.)

2 The Chairman. Opposed.

3 (No response.)

4 The Chairman. Motion carried and reported out.

5 Mr. Gutman. Mr. Chairman, do we have the authority?

6 The Chairman. We gave you the continued authority for the
7 Staff to work it out.

8 (Whereupon, the meeting was adjourned at 12:02 p.m.)

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C E R T I F I C A T E

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2 This is to certify that the foregoing proceedings of an
3 Executive Committee Meeting, of the Committee on Finance,
4 United States Senate, held on June 16, 1992, were transcribed
5 as herein appears and that this is the original transcript
6 thereof.

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10 _____
11 WILLIAM J. MOFFITT
12 Official Court Reporter

13 My Commission Expires April 14, 1994.
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UNITED STATES SENATE
COMMITTEE ON FINANCE

Executive Session

Tuesday, June 16, 1992 - 8:30 AM
SD-215 Dirksen Senate Office Building

A G E N D A

- I. Title XIX of H. R. 776, the "Comprehensive National Energy Policy Act".
- II. Luxury taxes, and extension of certain expiring provisions.