

EXECUTIVE SESSION

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THURSDAY, APRIL 27, 1978
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United States Senate,
Committee on Finance,
Washington, D.C.

The Committee met, pursuant to notice, at 10:05 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (Chairman of the Committee) presiding.

Present: Senators Long, Talmadge, Ribicoff, Byrd, Gravel, Bentsen, Hathaway, Moynihan, Curtis, Hansen, Dole, Roth, Laxalt and Gravel.

The Chairman. The Committee will come to order.

The first order of business is where we left off at the previous meeting with Senator Dole's proposal involving a resolution on oil imports.

Mr. Cassidy. Mr. Chairman, Senator Dole's resolution, S. Con. Res. 73, it is explained in Attachment A which is before you, and the text of the resolution is included in Attachment A.

Under present law, Section 232 of the Trade Expansion Act of 1962, the President can, in the interests of national security, adjust imports of any article.

Currently under present law, there are import fees imposed

1 on crude petroleum and on refined petroleum products, 21
2 cents per barrel of oil and 63 cents per barrel in general
3 on refined petroleum products.

4 In addition to the fees, there are tariffs on oil of
5 between 5 and 10 cents a barrel, depending on the specific
6 gravity of the oil. In the Energy Tax Bill which is now in
7 conference, there is a provision which was adopted by the
8 Committee on Finance which would prohibit the President from
9 exercising his authority under 232 with respect to imports
10 of crude oil, except in situations of war, hostilities,
11 et cetera..

12 However, the President, under that amendment, could
13 impose fees on refined petroleum products.

14 The Senate Concurrent Resolution introduced by Senator
15 Dole expresses the sense of the Senate that an import fee on
16 imported oil should not be imposed by the President of the
17 United States as a way to reduce imports of crude oil.

18 The Chairman. Mr. Dole, do you want to speak to your
19 resolution, or shall we hear from the Treasury?

20 Senator Dole. I think, just to make it clear, I have
21 two resolutions. One is to impose a fee; the other is not
22 to impose the fee.

23 We have a chance to express ourselves either way this
24 morning. I am not sure which one I will offer first. Those
25 who want to impose a fee have a right to vote for that

1 proposition. Maybe we could hear from Treasury first.

2 The Chairman. Let us hear from Treasury. Who is here
3 to speak for the Treasury?

4 Senator Dole. If they are for the fee, I could offer
5 one for.

6 Mr. Cassidy. This is Deputy Assistant Secretary Junz
7 of the Treasury Department.

8 Ms. Junz.. Sir, as you know, the Assistant Secretary
9 last week and the Administration feels strongly that the
10 President needs to have this flexibility, and we would like
11 to see it reserved.

12 Senator Hansen. I am sorry; I did not hear you.

13 Ms. Junz.. I said, the Assistant Secretary last week
14 explained to the Committee that the Administration feels very
15 strongly that the President does need this flexibility and
16 we would like to see it preserved. I am ready to answer any
17 questions you may have on the details.

18 Senator Hansen. Mr. Chairman, if I understand the obser-
19 vations by the Treasury representative, it is that the Presi-
20 dent would like to preserve the flexibility that present law
21 affords him, am I right?

22 Ms. Junz. Exactly.

23 Senator Hansen. You are not saying whether he wants the
24 fee or whether you do not, is that right?

25 Ms. Junz. That is right.

1 The President has not made any decisions on this matter
2 at all.

3 Senator Danforth. Mr. Chairman, it is my understanding
4 that this resolution would have no binding effect at all,
5 but would simply state the position. Is it the Senate or
6 the Congress, that is a matter of policy, that the fee should
7 not be imposed. Is that right?

8 Senator Dole. Right.

9 Senator Danforth. It would, in no way, reduce the
10 discretion of the President but would simply be a policy
11 statement.

12 Ms. Junz. I believe that if the Administration decided
13 an import fee were needed, it would wish to explain why that
14 was so, and would find it difficult, really, to get the
15 cooperation, if you decided not to do this.

16 Senator Danforth. Not as a matter of law, though. It
17 is a matter of being able to explain it to the public. You
18 might have a more difficult time if the Congress had a
19 different view on the policy.

20 Ms. Junz. Exactly. If the President decided to go this
21 way, he would clearly not do so lightly, and we would need to
22 have all the information necessary for this deliberation.
23 We feel that it would be useful for him if we were free to
24 do so, if we had a resolution from the Congress.

25 Senator Dole. I do not take issue with anything you

1 stated. We do have a report which indicates, and the comment
2 made by Senator Ashley, that there is no doubt in my mind
3 if we do not move on the crude oil tax that they will close
4 the import fee. Tom Ashley said, he reports the Administra-
5 tion has the import fee plan just about ready.

6 I cite that to indicate that I think there is to some
7 merit to expressing, as Senator Danforth has indicated, just
8 a sense of the Congress that we oppose the imposition of an
9 import fee.

10 I understand that there is some reason, maybe justifica-
11 tion, for properly applying pressure to the Congress to
12 enact the COET equalization tax. There is some feeling
13 around that this is something that the President has con-
14 sidered and could impose within a short time.

15 Ms. Junz. Well, sir, I think the information does not
16 quite accord with the facts. While it is true, as you know,
17 that the President, in his press conference, did say in the
18 absence of appropriate legislation, he might have to consider
19 the administrative fashion, and I think that clearly prepara-
20 tory work to look at all the actions that would be possible,
21 but no final options papers have gone to the President as
22 yet.

23 Senator Dole. I am going to propose the one that is
24 outlined as the first order of business, opposing the imposi-
25 tion of the fee. It just seems to me -- I know it would

1 generate a considerable amount of money, \$12 million to
2 \$15 million a year. It is not cost-effective, according to
3 my staff's estimates. It would cost \$150 to \$250 to save a
4 barrel of oil with the \$5 import fee.

5 We learned, under President Ford's Administration, that
6 imposition of the fee did not reduce imports. He found out
7 the will of the Congress very quickly when he attempted to
8 increase the import fee. It seems to some of us that what
9 we would do if we added another \$5 or \$4 or \$6, we send a
10 clear signal to the OPEC countries that we are willing to pay
11 more for oil.

12 It just seems to me that since we have not been able to
13 resolve the issue yet in the conference, that this reminder
14 is only proposed because there had been some discussion at
15 high levels that they are about to impose an import fee. I
16 do not want to quarrel with the Administration unduly; that
17 is the problem.

18 This Committee voted, ten to six, to scrap the author-
19 ity, with certain limitations. I would just as soon have a
20 vote on that.

21 Senator Moynihan may have an amendment to my resolution.

22 Senator Moynihan. Mr. Chairman, our amendment really
23 reflects the concerns of those regions in the country which
24 import refined petroleum products as well as -- and Senator
25 Ribicoff is a co-sponsore and Senator Hathaway, we have passed
it around. The three paragraphs simply say if there is not to

1 be a fee on crude oil equalization tax, neither should there
2 be import fees on refined petroleum products.

3 Finally, before imposing additional import fees, the
4 President should hold open public hearings to assess and
5 mitigate such fees on the economic well-being of affected
6 regions, because there is a great regional imbalance in the
7 use of imported products of this kind, and I believe Senator
8 Dole finds this acceptable.

9 Senator Dole. Yes.

10 Senator Moynihan. He does.

11 If I may say one other thing before going on, I have
12 supported the President's program from the beginning. I
13 believe the crude oil equalization tax is a wise tax, and I
14 will support it to the end, which hopefully will be a happy
15 end in your Committee, about which we read such pleasant
16 things in the Washington Post this morning.

17 Senator Long. I do want to try to cooperate with the
18 President to try to do something effective about this situa-
19 tion.

20 Senator Ribicoff?

21 Senator Ribicoff. Mr. Chairman, as you know, I have
22 supported, in Committee and in conference and on the Floor,
23 a whole galaxy of taxes, but here, this import fee would
24 have a disastrous consequence for New England and I assume
25 for New York and other areas.

1 The New England Economic Research Office estimates that
2 the likely impact on the region for the first three years of
3 the import fee would be \$1.27 billion with the figure rising
4 to \$2.6 billion for the first five years. New England is
5 heavily dependent on imported oil.

6 In 1976, 79 percent of New England oil demand and 23
7 percent of the petroleum requirements were direct product
8 imports, and 69 percent of New England's distillate fuel oil
9 is from the foreign market. There are not any significant
10 energy resources in the region and we are more dependent on
11 oil than any other areas.

12 71 percent of all New England's buildings are heated by
13 oil and 74 percent of the population heats with oil.

14 In Connecticut, 72 percent of the population, 2.2 million
15 people, depend on oil for space heating and energy prices in
16 New England are 31 percent higher than the country as a whole
17 and since the OPEC embargo, the price of fuel is tripling,
18 heating oil has increased to the rate of 150 percent.

19 It seems to me that before there should be any action
20 by the President to impose an import fee, there should be
21 an opportunity for hearings to determine the question of
22 impact on a regional basis.

23 I am for increasing the price of oil and oil products,
24 but there should be a sense of equality. There should be a
25 proper, equal sharing of the burden, but I think it is wrong

1 to put the entire burden on certain sections of the country,
2 so I do support both the Moynihan and the Dole proposals.

3 Ms. Junz. I wonder if I might speak to this point as
4 well as a couple of points raised by Senator Dole before.
5 First of all, on the distribution on the regional impacts
6 of the possible import fee, of course, the Administration
7 would attempt to see that it was distributed equally through-
8 out the nation, and this could be done by various means.

9 First of all, it would be possible, initially, to levy
10 an increased import fee on crude oil only. This would cause
11 no direct increases in the price of imported products such
12 as residual and distilled fuel oil used in New England.

13 If later it should become necessary to impose import
14 fees upon products also, one could use the entitlements service
15 and one could also, if we could get the energy bill passed,
16 use the credit system which would exempt residential as well
17 as hospital schools from increases in the price of heating
18 oil so that I think that the Administration wants to make an
19 attempt to assure, in whatever way possible, that the burden
20 would fall equitably across the country.

21 Secondly, there was a question about what the reaction
22 of OPEC would be if we raised the price of imported oil
23 domestically. We have, in fact, in all of our discussions
24 with OPEC nations last year when we attempted to avert and
25 successfully did so in the world price of oil, We have to face

1 the questions about why our domestic price was so much lower
2 than the world price was and, in fact, certainly a number of
3 the OPEC nations would welcome our beginning to move the
4 domestic price towards the world price.

5 We still would fight very hard to prevent increases in
6 the world oil price. Those effects would fall on other
7 nations. We happen to be together with Canada, the only
8 nation that have domestic prices below the world price.

9 Senator Ribicoff. Mr. Chairman, what troubles me -- I
10 am not an expert in this whole question of oil. There are
11 experts around here.

12 My understanding here is that there is no way that the
13 current entitlement program could accommodate a \$5 or \$6
14 per barrel import fee.

15 The entitlements program has not worked, at best, and
16 then, of course, I am afraid that having this increase would
17 disrupt the petroleum marketplace. There is enough dissatis-
18 faction with the entitlements program around the country
19 anyway with the conflict between regions. Maybe this could
20 be worked out if there were hearings and we could go into it.
21 But I think that we have a very difficult problem, and I think
22 that there is an obligation, certainly, to have hearings before
23 there would be an imposition on anything so major and so vital.

24 Senator Hansen. Mr. Chairman?

25 The Chairman. Senator Hansen.

1 Senator Hansen. Mr. Chairman, if I recall correctly,
2 more than a year ago, when the President first proposed the
3 COFT tax, he had two basic ideas in mind, one that by raising
4 the price of oil there would be reduced demand reflecting
5 the normal signals from the marketplace. Obviously, the
6 impact that this extra price would have on many people was
7 deeply disturbing and, as a consequence, along with the
8 approach that was made to dampen demand was added the second
9 observation of the rebate so as to make certain that that
10 burden, that increased cost, would be shifted away from those
11 in median and lower incomes.

12 The thing that I have to find most unreal about the
13 proposal today is it fails significantly to address the prob-
14 lem of supply. I think that most people realize that someday
15 we will do what other nations throughout the world have done,
16 and that is treat oil and gas like some other commodity. If
17 we want more of it, we pay more for it. It is just that
18 simple.

19 As a matter of fact, right today, you can buy natural
20 gas right from Canada and from Mexico at not too much above
21 \$2 a thousand cubic feet.

22 There are those in this country who subscribe to the
23 idea that wherever the regulated price of natural gas may be
24 set, everything is going to go up to that price. That is not
25 true.

1 There will never be -- we will never get the last drop
2 of oil out of the ground in this country; we will never get
3 the last cubic foot of gas out. I will tell you why.

4 Other alternate sources of energy will come into play
5 and when their price is less than the price of extracting the
6 last drop of oil out, that is when you will forget about
7 oil.

8 We dropped using whale oil a long time ago because
9 petroleum was cheaper. It is just that simple and I just
10 have to think that the COET tax is not realistic. Thank you.

11 Senator Bentsen. Mr. Chairman?

12 The Chairman. Senator Bentsen?

13 Senator Bentsen. Mr. Chairman, I have been less than
14 enthusiastic about the COET tax and do not know if it is going
15 to pass out of the Committee but I do think we ought to try
16 to let the President have some of his options on this thing.
17 We have not resolved COET within the Finance Committee.

18 I understand the concern of the Senators for equity in
19 the price of energy across the country. I have long felt that.
20 I have long felt that the rest of the country ought to pay
21 what we pay for natural gas, for example.

22 So, to the extent that we can work for equity, I want to
23 do that. But even though this does not mandate the President
24 to do anything, as Senator Danforth has properly stated it,
25 nevertheless, it is a strong recommendation to the President.

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1 I frankly prefer to see his options kept open and see
2 if he cannot work out with, whatever he might do, the things
3 that would bring about equity across the country as suggested
4 by the representative from Treasury.

5 The Chairman. Let me state my views for whatever it
6 may be worth. It may not change the vote here, but I would
7 just as soon have it on the record.

8 It seems to me that we should go to world market energy
9 prices. That is what the President has been trying to do with
10 the COET tax.

11 If he uses his power, it is because he cannot get the COET
12 tax. Maybe he would use it as a lever to get the COET tax.

13 I am not just trying to say that you ought to help -- it
14 need not be done in a way that makes the rich rich at all.
15 You could do it, if you wanted to, in a way that spreads the
16 wealth of the nation a little more evenly by giving everybody
17 in the nation a tax credit to make an investment in energy
18 so that the poor man would get the same break as the man at
19 the top of the ladder. Let the poor man have a double dip;
20 it is all right with me.

21 But the money ought to go back in to getting more energy
22 or into conserving more energy. It should not just be
23 rebated where there is a tax on gasoline and the fellow starts
24 across the country to do more travelling, or whatever.

25 So, if we could work out a way where we raise some money

1 and put it into more energy, I think it would help.

2 Of course, I would favor deregulation. I could not
3 bring it about. I have done all I can, backing Mr. Bentsen
4 and Mr. Pierce and those who share our views on that. It
5 was about the last stand by those who want to produce more
6 energy.

7 We have to find some way to put the pieces together.
8 We either conserve more, or produce more, or convert some
9 plants, something that is going to help the problem.

10 Now, it seems to me that if we cannot do anything else,
11 the President might use this thing as a lever to try to get
12 the Congress to act. I am in the minority in that respect.
13 I tried to keep the COET in the bill long enough to put a
14 package together sufficiently attractive that I hope a majority
15 could vote for it. I could not get that far.

16 I know I am in the minority. I really think we should
17 lead the President to whatever power he has to move something.
18 He is in a very difficult situation.

19 That being the case, the only thing I think I could do
20 is vote against this whole thing that, insofar as we might
21 have some level to bring something about, that this might
22 contribute something to it.

23 The last thing on earth I want to do is penalize any
24 part of the country. I voted for amendments to spread the
25 impact of these energy bills where New England, for example,

1 would not be crucified. I do not want anybody to be
2 adversely affected, and I do not think the Administration
3 does either. I think if they can, they will try to spread
4 the burden.

5 Having said that, I am ready to vote.

6 Senator Dole. I do not quarrel with the Chairman. I
7 think you have it right. If the import fee was imposed, then
8 there would be the leverage to get us to accept COET or
9 keep the import fee. I do not think that is a choice that we
10 have to make.

11 It is not a question of the President. He has a diffi-
12 cult job.

13 I remember when President Ford wanted to impose the
14 import fee, the members of this Committee voted to strip him
15 of that authority. It was done, and I guess we learned
16 under President Ford that that was not a very successful way
17 to reduce imports. It did not have that impact at all. It
18 did not do anything for the New England states. It did not
19 do much else for President Ford that I can remember.

20 Maybe we are going to help the President here by voting
21 not to do this.

22 The Chairman. Let us vote.

23 Call the roll.

24 Mr. Stern. Is this on the Moynihan substitute? What
25 is the vote on?

1 Senator Dole. It is on the Dole resolution, as modified
2 by Moynihan.

3 Mr. Stern. Mr. Talmadge?

4 Senator Talmadge. No.

5 Mr. Stern. Mr. Ribicoff?

6 Senator Ribicoff. Aye.

7 Mr. Stern. Mr. Byrd?

8 Senator Byrd. Aye.

9 Mr. Stern. Mr. Nelson?

10 Senator Bentsen. No, by proxy.

11 Mr. Stern. Mr. Gravel?

12 Senator Gravel. No.

13 Mr. Stern. Mr. Bentsen?

14 Senator Bentsen. No.

15 Mr. Stern. Mr. Hathaway?

16 Senator Hathaway. Aye.

17 Mr. Stern. Mr. Haskell?

18 Senator Bentsen. No, by proxy.

19 Mr. Stern. Mr. Matsunaga?

20 Senator Matsunaga. Aye, by proxy.

21 Mr. Stern. Mr. Moynihan?

22 Senator Moynihan. Aye.

23 Mr. Stern. Mr. Curtis?

24 Senator Curtis. Aye.

25 Mr. Stern. Mr. Hansen?

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1 Senator Hansen. Aye.

2 Mr. Stern. Mr. Dole?

3 Senator Dole. Aye.

4 Mr. Stern. Mr. Packwood?

5 (No response)

6 Mr. Stern. Mr. Roth?

7 Senator Dole. Aye, by proxy.

8 Mr. Stern. Mr. Laxalt?

9 Senator Laxalt. Aye.

10 Mr. Stern. Mr. Danforth?

11 Senator Danforth. Aye.

12 Mr. Stern. Mr. Chairman?

13 The Chairman. No.

14 (Pause)

15 Eleven yeas, six nays. The yeas have it.

16 Well, let us move onto the next one. H.R. 7320, a bill

17 to revise miscellaneous timing requirements of the revenue

18 laws. Who is going to explain that to us?

19 Mr. McConaghy. This bill, Senator Long, was developed

20 from recommendations by the American Bar Association, the

21 AICP and local Bar Associations.

22 Senator Talmadge. May we have order, so we can hear?

23 Mr. McConaghy. The bill deals with different timing

24 requirements under the Internal Revenue Code, such as filing

25 Subsection S and various other minor timing matters.

1 The revenue loss is negligible.

2 In the hearings held by Senator Byrd's committee they
3 made various recommendations to amend the bill in three
4 different ways. Two of the amendments deal with Subsection
5 S election and the third amendment deals with certain
6 corporate liquidations under Section 337.

7 The amendments are outlined on the page that you have
8 in front of you. The first one deals with the Subsection S
9 and the time for making the election. Under present law, in
10 order for Subsection S election to be effective for the
11 taxable year, you must file the election during a limited
12 two-month period.

13 Senator Talmadge. Will you suspend at that point until
14 we have order in the room? All conversations will cease.
15 Our visitors are reminded that you are guests of the Committee.
16 We cannot operate unless we can hear each other explain our
17 views and explain this bill.

18 Proceed.

19 Mr. McConaghy. The Subsection S election must be filed,
20 under present law, during a two-month limited period of time;
21 from November; basically, when you have a calendar year tax-
22 payer, you must file an election between December 1st and
23 January 31st.

24 The bill expands this time period to include the entire
25 preceding year and, in case of newly formed corporations, it

1 extends the 30-day period after January 1 and makes it a
2 75-day period. It is to permit a long period of time for
3 taxpayers to make elections rather than this limited two-
4 month period.

5 The first amendment that has been proposed would allow
6 existing corporations to get the benefit of the 75-day
7 rule which would apply to newly-formed corporations. In
8 other words, both new corporations and existing corporations
9 would be able to have 75 days after the taxable year begins
10 to make the election.

11 The second amendment would deal with what shareholders
12 have to consent to the election. The shareholders that are
13 shareholders at the time the election is made, or the share-
14 holders who are shareholders at the start of the taxable
15 year.

16 The amendment would basically provide that you look to
17 the shareholders at the time that the election is made and
18 that any additional shareholders, or change in shareholders,
19 prior to the time of the taxable year begins has to affirma-
20 tively refuse to consent in order to break the election. It
21 is kind of a trap for the unwary, and this would say that the
22 Subchapter S election is effective if all of the shareholders
23 at the time the selection is made consent, and if you have
24 new shareholders coming in prior to the start of the taxable
25 year, those shareholders would have to affirmatively refuse to

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1 consent in order to break a Subchapter S election.

2 Senator Talmadge. Are there any questions?

3 Are there any objections to agreeing to the amendments

4 recommended by the certified public accountant?

5 If not, the amendments are agreed to.

6 Any objection to reporting the bill as amended?

7 Mr. McConaghy. There is another amendment that deals

8 with corporate liquidations. Basically, present law provides

9 that in the case of corporate liquidations under Section 337,

10 if a plan of liquidation is adopted by the corporation and

11 then within 12 months the corporation sells assets and

12 distributes the proceeds to the shareholders, there is no

13 tax at the corporate level and only a tax at the shareholder

14 level.

15 Of course, that does require that the plan of liquidation

16 be adopted and that the assets are sold and the proceeds are

17 distributed twelve months after that time.

18 In the case of involuntary conversion, such as a fire,

19 in many cases there is no plan adopted by the corporation

20 because they have not anticipated it before the conversion

21 and this case does not qualify under present law for this

22 treatment of having no tax at the corporate level and only a

23 tax at the shareholder level.

24 Under present law in that case, if they do not have a

25 plan of liquidation adopted, there is a tax both at the

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1 corporation level and at the shareholder level.

2 The bill changes this result as to involuntary conver-
3 sions and eliminates the tax at the corporate level if a
4 plan is adopted within 60 days after the conversion, in
5 other words, a fire, or whatever it may be.

6 The proposed amendment in the bill would extend that
7 12-month period during which you have to distribute assets
8 for liquidation of a claim against either an insurer or a
9 condemnation authority until the claim is liquidated in for
10 60 days thereafter.

11 Under present law, you have 12 months to sell and distri-
12 bute down to shareholders where you have a claim against either
13 an insured or a condemnation authority. This proposed amend-
14 ment would give you a period of time until the claim is
15 liquidated, if that happens to be after the 12 months, and then
16 for 60 days after.

17 Senator Byrd. May I ask a question, Mr. Chairman?

18 The Chairman. Yes.

19 Senator Byrd. As I understand it, the amendment which is
20 recommended by the American Bar Association, it would apply
21 only to involuntary conversion.

22 Mr. McConaghy. That is correct, sir.

23 Senator Byrd. Using it as a tax-planning tool would be
24 remote, since God has control over taxpayers, but the tax-
25 payers do not have any control over God. The amendment is

1 limited to proceeds from involuntary conversion. It does
2 not extend to other matters, such as legal claims that may
3 go beyond the 12-month period. It is only the involuntary
4 conversion aspect.

5 Mr. McConaghy. That is correct.

6 Senator Byrd. It seems to me that what the American
7 Bar Association recommends is reasonable. I understand
8 Treasury may have a different view.

9 Senator Hansen. I would ask, when we speak of involun-
10 tary conversions, the final stand that Senator Byrd is
11 recommending, he is alluding to the effect that the weather
12 may have.

13 Mr. McConaghy. Fire, theft, or something like that.

14 Senator Hansen. It would also be the situation where
15 condemnation takes place; is that not known as an involuntary
16 conversion and this same law would apply in that situation?

17 Mr. McConaghy. Under the proposed amendment, yes, for
18 extending.

19 Senator Hansen. Suppose a road goes through a person's
20 farm or something?

21 Mr. McConaghy. That is correct.

22 Senator Hansen. I am ready for the question.

23 The Chairman. Is there any objection?

24 Mr. Halperin. The Treasury has objected to this. We
25 are concerned about the extension of the philosophy of this

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1 original proposal. Section 337 went in the law originally
 2 to get consistent treatment between the sale at the corporate
 3 level where you would have had two taxes under prior law
 4 and what people tried to do before 337 was passed. They
 5 would liquidate the assets and have the sale take place at
 6 the shareholder level where they would only have one tax and
 7 that led to a lot of litigation as to whether the corporation
 8 or shareholders really made the sale.

9 So 337 came in and said, you get one tax at the share-
 10 holder level regardless of how you do it. Under this amend-
 11 ment, the tax at the shareholder level can be delayed beyond
 12 the period where it would have been imposed had the share-
 13 holders sold their stock and liquidated the corporation and
 14 sold the assets, so it is a departure from the original
 15 philosophy and getting consistency.

16 We have gone kind of full circle and we now have a more
 17 favorable situation. if you make the sale at the corporate
 18 level because there the tax can be delayed beyond the 12-
 19 month period.

20 Senator Talmadge. Only 60 days, is it not?
 21 Mr. Halperin. Sixty days beyond liquidation. The
 22 claim from the state comes in --

23 Mr. McConaghy. At the time the payment is liquidated,
 24 it would be 60 days.

25 Mr. Halperin. If there is a delay in the combination,

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1 then the tax is delayed until that time.

2 Senator Gravel. If there is no money received, why
3 should the person have to go borrow the money to pay it while
4 it is in litigation, or while it is delayed?

5 Mr. Halperin. If the corporation liquidating the
6 assets are taken into account, taking into account the value
7 of the assets at the time the corporation liquidated --

8 The Chairman. I would just as soon leave that provision
9 out if Treasury is opposed to it. If no one is interested
10 in that particular provision, I think we should leave it
11 out.

12 Is there something else that needs to be suggested?

13 Senator Byrd. The only question, Mr. Chairman, if it
14 is reasonable, if the corporation is not able to receive the
15 insured's proceeds, why should they pay a tax on proceeds
16 that they do not receive?

17 The Chairman. What is your opinion about that?

18 Mr. Halperin. Of course, the implications of that go
19 far beyond the bill because there would be lots of other
20 situations where you would pay tax on the value of claims
21 that you are not able to collect if the corporation had not
22 been liquidated. The shareholders would be taxed on the value
23 of the assets distributed, whether or not they could all be
24 turned into cash.

25 I understand the concern, but this is getting at it and

1 is picking it up in a particular situation.

2 Senator Byrd. This does not apply only to the involuntary
3 conversion. We are talking about an act of God, not what
4 the taxpayer might have done or the corporation might have
5 done.

6 Senator Gravel. Which means, if you had your barn
7 destroyed or had a highway that went through and your property
8 was condemned that you may not have received the benefits of
9 that, but, because of that, you would have to go to the bank
10 and borrow money to pay taxes. I do not think the philosophy
11 is impaired.

12 You have a consistency that you pay a tax and hopefully
13 it will just be one tax, which is what the Administration is
14 for. But I agree with Senator Byrd. To me, this sounds like
15 it has merit. I think we excessively punish the innocent
16 party since we did not initiate it.

17 Senator Hansen. Mr. Chairman, one other situation that
18 I grant is not all that prevalent throughout the country but,
19 nevertheless, does exist, I am on the energy committee and
20 oftentimes within national parks are found end holdings and
21 sometimes there will be a legislative taking and other times
22 condemnation. In the action, in the failure to arrive at a
23 willing basis to agreement, and not too often -- I mean, not
24 too infrequently -- there may be a delay between the time a
25 person knows, unequivocally, that the government is going to

1 acquire his property yet he has not gotten any money.
 2 We have had a few cases that I recall where the situation
 3 has gone on for three or four years and the poor taxpayer is
 4 caught in a bind. He cannot sell to anyone else. The
 5 government has declared its intentions through one means or
 6 another to take the property away, yet he has not received
 7 any money.

8 So I would support Senator Byrd philosphically on this
 9 point, and it is fair and it seems to me that we ought not
 10 to deny it.

11 Senator Bentsen. Mr. Chairman, what we are striving
 12 for is equity here. I understand Treasury's concern, but
 13 suppose you have this claim and it is not settled. How do
 14 you know what the taxes are going to be at that point?

15 Mr. Conaghy. There is a procedure, Senator Bentsen,
 16 where you can set up a trust mechanism and, in effect,
 17 distribute the claim within that 12-month period into that
 18 trust mechanism that really holds the claim. And when it is
 19 finally settled and distributed uot, practitioners have
 20 indicated that that mechanism is somewhat impratical, and
 21 if they undervalue the claim when it is distributed, then
 22 there is going to be, to the extent of the difference, what
 23 the claim is.

24 You have ordinary income tax instead of capital gain, and
 25 they object to that. So there are two objections to that

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1 trust mechanism,

2 Senator Byrd. I favor the principles of the Treasury
3 Department, which is to adhere to -- I think it is a good
4 principle, but I just wonder whether we are being reasonable
5 not to grant some leeway to a taxpayer who does not receive
6 the funds, he has not received the funds, the insurance
7 company has not paid him, he does not know what he is going
8 to get from the insurance company or from the condemnation
9 suit.

10 Senator Gravel. Plus he has to go borrow the money.
11 That costs money. He is going to deduct that from his taxes
12 so Treasury is going to lose in any event, and the Treasury
13 can borrow at a better rate than individuals can. I do not
14 see that there is any net gain to our governmental society
15 by doing this.

16 Is it not really that you are forcing the individual
17 onto an accrual method rather than on a cash method, which
18 is really what this would do? This would turn it into cash.

19 When a person gets his money, he pays his taxes, but
20 you would force him, under the accrual method, for an apparent
21 gain to the Treasury, which I do not think that gain is there
22 in the long run.

23 Mr. Halperin. Ordinarily, they would be placed on what
24 you might think is an accrual method. In the case of
25 corporate liquidations, I can understand the concerns expressed

1 here. I think that we are worried about the fact that the
2 original proposal can be pushed one step at a time. I think
3 that it is important to make clear that you are limiting
4 your concerns to the involuntary conversion. But the next
5 step that comes along --

6 Senator Byrd. That is all we are speaking to.

7 Mr. Halperin. The next step we will hear about is
8 people who had contingent claims at the time they liquidated
9 or sold their assets, and one of the assets of the corpora-
10 tion has this contingent claim against somebody which is not
11 collectible at that point.

12 Senator Byrd. That is not involved.

13 Senator Bentsen. They face up to that by making volun-
14 tary conversion. That is how you answer that. I am just
15 speaking of the involuntary, where a fellow has a fire.

16 Senator Gravel. Certainly a record can be made very
17 clear on this. I am sure the IRS is not without tools and
18 rule-making power to guarantee that this is not going to
19 happen. I would hope, Mr. Chairman, that we would leave it
20 in.

21 The Chairman. Let me make this suggestion, gentlemen.
22 I think the suggestion is meritorious. We have a bill here
23 that was passed and sent to us by the House,

24 As far as I know, Treasury would be willing to go along
25 with everything that the House sent us, except this first

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1 amendment -- is that right?

2 Mr. Halperin. Yes, sir.

3 Mr. McConaghy. Except two amendments on Subchapter S.

4 The Chairman. Is that two?

5 Mr. McConaghy. Actually two.

6 The Chairman. Two. All right.

7 There are two amendments proposed by the American Bar

8 Association that we can add to this and still have the

9 Treasury support of the bill as it stands. While I have no

10 doubt that this provision has merit, if we add this to it,

11 we have the Treasury objection to this section, and it is

12 likely to sit there on the calendar and not move.

13 I would just think that it would be better, personally,

14 just to leave off this amendment that we are discussing now.

15 If you want to, put it on a bill that is going to have some

16 controversy to it anyway. Coming along with the tax reform

17 bill, you can add that item on there. Since we are going to

18 have to argue about it and have a knock-down drag-out fight

19 anyhow before we do the tax reform bill, we could debate on

20 that one.

21 But if you put it on this, here is a bill that could

22 go through on the consent calendar, and it is not going to

23 go through on the consent calendar. It is going to have to

24 wait its turn with all of the other objected-to bills.

25 That being the case --

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1 Senator Bentsen. For clarification purposes, is this
2 last one amendment, was it not in the House bill that came
3 over?

4 Mr. McConaghy. That is correct. The proposed amendment
5 was on it. There was an amendment to the bill as it came
6 over to the corporate liquidation provisions, but this
7 additional amendment --

8 Senator Bentsen. This question on involuntary conver-
9 sions was not a part of the House bill?

10 Mr. McConaghy. It was a part of the House bill,
11 basically to say that when you have involuntary conversion
12 if you had not had a plan adopted beforehand, you are not
13 going to be penalized, basically, with a double tax. We will
14 give you 60 days after the involuntary conversion to adopt
15 a plan. That was in the bill.

16 Senator Bentsen. Treasury is not objecting to that?

17 Mr. McConaghy. They are not.

18 Senator Gravel. Speaking to the point you raised, I
19 think there is some validity to it, but I think we have to
20 recognize -- and I have another instance where a prior
21 issue was raised on something non-controversial and it was
22 pulled out. Now it is coming back to the Committee and the
23 arguments, as I see it, are abundantly clear that we should
24 dispatch it the first time.

25 It was the bureaucracy who misunderstood the issue. We

1 have just heard the best shot of the Treasury. I think I
2 understand the issue well enough. If they want to insist on
3 making a controversial find -- but we understand the issue.
4 Let us vote this out. If they want to delay it, it is up
5 to them. Otherwise, it will come back and we will spend
6 another twenty minutes on it.

7 The Chairman. We have plenty of bills sitting out there
8 being delayed as it is now. I would like to put some out
9 there that will sail on through on the consent calendar.
10 I think this one would do that, if you left this one provision
11 out of it.

12 Then I would suggest, if you want to fight on this one,
13 we debate this one on some bill when we are going to have to
14 take on those who do not agree with us anyway,

15 Senator Gravel. That makes so much baggage on a bill
16 it will probably never go anywhere. This has a little bit of
17 suction. It might pull itself through.

18 The Chairman. Then you hang an amendment to it, and it
19 will be objected to. I have been on both sides of that fence.
20 I know, on occasion, when I thought I had something all
21 clear that would sail right on through without objection and
22 some fellow would go hang an amendment on there that would
23 cause the Treasury to oppose it and put it in the prospect of
24 either not passing or the President vetoing it.

25 I would get so mad I would want to fight somebody with my

1 fists. Here is something with no objection at all. Now
2 somebody got it all loused up that puts controversy into it.
3 They should have saved that for a controversial bill. That is
4 how it seems to me.

5 It does not mean that much to mean if the bill sits
6 there. I guess eventually we will get the job done.

7 Senator Byrd. Could I ask the Treasury a question? As
8 I understand it, what you mentioned a moment ago, Treasury
9 does not really object to this particular provision. You
10 only object to the fact that it might be used to expand it
11 in the future, but you do not object to this particular
12 provision?

13 Mr. Halperin. Senator Byrd, it is very hard to object
14 to this one on a policy ground or a matter of logic. What
15 has happened with this particular section, it has been moving
16 one inch at a time for fifteen or twenty years. We have lost
17 sight of why we got into this in the first place.

18 I think that the correct treatment perhaps originally
19 was to have a tax at the corporate level, even though they did
20 distribute corporate assets to shareholders. The Supreme
21 Court held otherwise, and the Congress confirmed that in 1964
22 and we moved one step at a time from that point, and this
23 amendment, one could argue, if one wanted to be totally tech-
24 nical about it, even that the original proposal was not con-
25 sistent with it, because they did not take the opportunity to

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1 have this sale at the shareholder level because the fire
2 caught them when they were not looking. We did not take
3 that position.

4 We thought it was fair to have one tax at the corporate
5 level. But I am concerned about finding one equitable
6 position to move further.

7 The Chairman. Let us just vote on the amendment, to
8 see if you want it in the bill.

9 Those in favor of adding this amendment to the bill,
10 say aye.

11 (A chorus of ayes.)

12 The Chairman. Opposed, no?

13 (A chorus of nays.)

14 The Chairman. Let's have a show of hands. Those for
15 it, raise your hands?

16 (A show of hands.)

17 The Chairman. Those opposed?

18 (A show of hands.)

19 The Chariman. The amendment will not be added. Please
20 understand, as far as I am concerned, put it on some other
21 bill. It is all right with me. I just would hope that this
22 bill would get by.

23 Senator Byrd. I think that the consensus of the Com-
24 mittee is it probably should be enacted.

25 The Chairman. Is there any objection to reporting the

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1 bill?

2 Senator Curtis. Mr. Chairman, I am in favor of report-
3 ing it and I do not want to bring up anything else at this
4 time, but it may develop later on that I would offer an
5 amendment that would not be controversial that I might want
6 to raise a question, should it be applied to this bill.

7 Senator Bentsen. Mr. Chairman, I would like to urge
8 Treasury to see if they could not come up with some answers
9 for this problem that we have brought out that will put
10 limitations on us.

11 Mr. Halperin. We will take another look at that and
12 see if we can come up with something satisfactory.

13 The Chairman. With that understanding, we will order
14 the bill reported.

15 This next item we have down here is temporary suspension
16 of duty on insulation.

17 Mr. Cassidy. Mr. Chairman, this is Senator Hathaway's
18 bill. It is described on Appendix C of the materials in
19 front of you.

20 It would suspend, until June 30, 1979, the duties on most
21 favored nation imports of boric acid, rock wool, and glass
22 fibers, all materials used in making insulation. The materials
23 primarily come from Turkey, in the case of boric acid, which
24 gets duty-free entry no matter what because it is a beneficiary
25 developing country under the system of preferences. Mineral

1 wool and glass fibers primarily come from Canada, although there
2 is a small amount of imports from France. The annual revenue
3 loss is estimated to be about \$1.7 million.

4 During the consideration of the tax energy bill, the
5 conferees agreed to an identical position and the Adminis-
6 tration has no objection to this measure.

7 Senator Dole. If I could ask one question, is the
8 purpose of this to take care of the story that I read last
9 night that there is defective insulation because they cannot
10 get this material? Will this help that along?

11 Senator Hathaway. Yes, it would.

12 Senator Dole. It is not fireproof? It is burning up?

13 Senator Hathaway. The price of insulation has gone up.
14 They only have three principal manufacturers of insulation
15 in the country.

16 Senator Bentsen. They are operating at full capacity?

17 Senator Hathaway. In many regions, like the northeast,
18 they are not getting enough. We already passed this through
19 the Senate. It is in conference now. Actually, the confer-
20 ees have tentatively agreed to it. There is some doubt that
21 we will ever go back in conference again.

22 Mr. Cassidy. Boric acid is used primarily to make
23 cellulose fire retardant.

24 Senator Dole. It sounds like a good idea.

25 Senator Bentsen. It sounds like a good idea to me. The

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1 way the cost of housing has gone up, and these plants are
2 operating at full capacity.

3 The Chairman. All in favor of the bill say aye?

4 (A chorus of ayes.)

5 The Chairman. Opposed, no?

6 (No response)

7 The Chairman. The ayes have it,

8 Mr. Stern. This is a Senate numbered bill. If you
9 do want to act on it, you would put it as an amendment.

10 Senator Gravel. I have a bill that you can amend.

11 The Chairman. Can you suggest a House bill that we
12 might want to approve and report out with this amendment?

13 Mr. Stern. Senator Gravel?

14 Senator Gravel. No, I have chanted my mind. Do not
15 touch it.

16 Mr. Stern. There is a bill pending before the Committee
17 whose text has actually been enacted, a minor tariff bill
18 relating to sheets.

19 Senator Dole. You could wrap it up in that.

20 Mr. Stern. There may be some relevance to insulation.

21 The Chairman. Can we take a bill?

22 That bill has already become law, has it not?

23 Mr. Stern. Yes, sir.

24 The Chairman. Could we take a bill that the House has
25 sent us that the House would like to see passed and add our

1 amendment on that?

2 Senator Curtis. Why do you not take the one you just
3 acted upon? The Administration is not opposed to this one.

4 Mr. Stern. One bill that comes to mind is the Inter-
5 national Trade Commission Authorization bill that the Ways
6 and Means Committee has reported and the House will be acting
7 on shortly.

8 Senator Gravel. Is that not controversial?

9 Senator Ribicoff. There will be a difference in amount.

10 Mr. Stern. There will be differences otherwise between
11 the two Houses.

12 The Chairman. Senator Curtis suggested since the Admin-
13 istration is not opposed to the bill we just voted to report
14 that we simply add this one to that bill, if there is no
15 objection.

16 Mr. Stern. This is the one on the timing requirements?

17 The Chairman. Yes. If there is no objection, we will
18 just add it to that bill. Without objection, agreed.

19 Senator Bentsen. Mr. Chairman, I would like to bring
20 up something on behalf of Senator Haskell. His bill, S.
21 2753 that involves student loans, and we extended the mora-
22 torium on the forgiveness of student loans so they would not
23 be declared income to those students, we did that in the '76
24 Act and that moratorium is expiring. You have a situation in
25 states like Colorado where students will go into areas where

1 they are needed and render their professional services. For
2 example, a young doctor and nurse who might be willing to
3 serve in a position in a rural area. In those cases, those
4 loans are forgiven, and I would like to see the moratorium
5 extended so that is not declared income to that student.

6 We want to continue to encourage them to do that. I
7 present that on behalf of Senator Haskell this morning.

8 Senator Hansen. One question, if I may ask Senator
9 Bentsen, this provision would apply where a student who has
10 benefitted from a student loan goes into an area and responds
11 to a real need that otherwise would be denied the professional
12 service?

13 Senator Bentsen. That is right. More or less a public
14 service.

15 Senator Curtis. Change his loan into a grant and the
16 grant is not taxable.

17 Senator Bentsen. That is a fair statement.

18 The Chairman. I am willing to act on this bill but I
19 would like to take the next item first, if you would permit
20 us. We have this item -- it will only take a few minutes --
21 the authorization on the U.S. Trade Commission. Let us dispose
22 of that, then we will deal with the one you want as the next
23 order of business.

24 Senator Ribicoff is very anxious on the Trade Commission.

25 Mr. Cassidy. The authorization of appropriations for the

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1 U.S. International Trade Commission for fiscal '79 is
2 described in Attachment D which is before you. The Finance
3 Committee must, pursuant to the amendments made by the Trade
4 Act of '74, must authorize appropriations for the ITC. We
5 must report authorizations of appropriations before May
6 15th, which begins on October 1, 1978.

7 The House Ways and Means Committee has ordered a report
8 of an authorization for \$12,813,000. It is now on the House
9 calendar. We expect it sometime later this week, or on
10 Monday. The Commission has asked for \$13,113,000 for FY
11 '79. The House reduced that amount by \$300,000, however, the
12 report gives no explanation whatsoever for the cut.

13 During hearings last week before the Subcommittee on
14 International Trade, the Commission requested the full amount
15 of their budget request, which is \$13,113,000.

16 Senator Ribicoff. I think they deserve it. They have
17 been a very conservative commission on spending. They have
18 been very, very busy and they have been doing a very good
19 job.

20 As you know, this is a commission that has a close
21 relationship with the Committee on Finance, and I would
22 recommend that we authorize the full amount, Mr. Chairman.

23 The Chairman. All in favor, say aye.

24 (A chorus of ayes.)

25 The Chairman. Opposed, no?

(No response)

The Chairman. The ayes have it.

Now we will take Senator Haskell's bill.

Mr. Stern. Mr. Chairman, procedurally, since the bill is pending in Committee, as soon as the bill is referred to the Committee, in effect, you are favorably reporting it, and we will prepare a report.

The Chairman. Without objection, agreed.

Now, let us talk about Senator Haskell's.

Mr. McConaghy. In 1973, the Internal Revenue Service ruled that the cancellations of student loans is taxable income under these programs. The programs are basically set up where they loan money and if a person such as a nurse or teacher, would go in an area and perform services over a period of years, like five years or ten years, one-fifth or one-tenth for each year of the loan would be cancelled and the Service ruled that there was a quid pro quo, they felt, and it was a taxable income.

The '76 Act proposed a moratorium and required a scholarship study of the whole area and the Act also provided that the loans cancelled through 1978 would not be taxable. This bill, S. 2753, extends the date for four years, through 1982.

I do not think Treasury is opposed to it.

Senator Hansen. You say Treasury is not opposed?

Mr. McConaghy. I do not believe so.

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1 The Chairman. How does Treasury feel about that bill?

2 Mr. Halperin. We do not object to the extention. The
3 description handed out to the Committee indicates that the
4 bill, which deals with the armed forces health professional
5 scholarships has been extended with respect to students
6 entering the program through September 3, 1979. I think this
7 bill has basically the same effect, although, for consistency
8 purposes, it might be better or acceptable to use the same
9 language.

10 We would hope that this issue would be studied. Congress
11 has asked that it be studied and we are looking into it and
12 the Joint Committee will be looking into it.

13 So, pending a study, we have no objection to extending
14 it.

15 The Chairman. Without objection, it is recommended.

16 Does this have to be on the House bill?

17 Mr. McConaghy. Yes, I think so.

18 The Chairman. What House revenue bill can we put this
19 on?

20 Senator Bentsen. Mr. Chairman, he was hoping that it
21 could be offered as a committee amendment to H.R. 9251 which
22 now has passed here and is on the Senate calendar, as I under-
23 stand it.

24 Mr. Stern. That is the bill that extends, among other
25 things, the Section 911 treatment. The bill is on the

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1 calendar.

2 The Chairman. If there is no objection, why do we
3 not agree that we will approve this as an amendment and let
4 the Senator offer it with the support of the Committee when
5 the bill comes up.

6 Senator Gravel. Mr. Chairman, could I give notice that
7 the next item is Senator Curtis' and after that, could we
8 take up the 2 percent tax on foundations? I think that some
9 members wanted notice so that they could come back to the
10 notice. Would that be satisfactory to you, Mr. Chairman, that
11 after Senator Curtis, if I could bring the 2 percent tax on
12 foundations?

13 The Chairman. Yes.

14 Senator Curtis. Mr. Chairman, before I call up the next
15 one on the list, I would like to ask a procedural question.

16 What is the status of H.R. 8419? The Committee acted
17 on it, I think.

18 Mr. Stern. 8149 has been ordered favorably reported.
19 But we have not completed the report yet.

20 Senator Curtis. I just want to say to the Chairman, I
21 did not want to go through the procedure of placing a hold
22 on it. That is sort of an adversary thing. But if that
23 could be delayed three, four, five days. It is a matter of
24 language; it does not change the bill.

25 Mr. Stern. Is it all right that the bill be reported

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1 and you still want Floor action on it?

2 Senator Curtis. I want a chance to look at some of the
3 language before it is taken up on the Floor. Just do not
4 take it upon the Floor for a week or so.

5 The Chairman. All right.

6 Senator Curtis. Now, Mr. Chairman, if I could have
7 the attention of the Committee, I will explain what this item
8 is.

9 Prior to 1968, there was no limitation on the issuance
10 of tax-free industrial bonds. At the time the law was
11 changed, first by regulation and then Congress took some
12 action.

13 The matter that I am talking about relates to some of
14 those old bonds. Under the practice followed by the Treasury
15 Department over the years, a bond issue could be refunded.
16 Many circumstances arise that they need to refund.

17 On November 4th of last year, the Treasury ruled that
18 these bonds could not be refunded as tax-free industrial
19 bonds.

20 I questioned that, but that is not what we have raised
21 here. I think that if that change in substantive law was
22 made, it should have been made by Congress, but what we are
23 asking for in S. 2943 is a transition rule.

24 The Treasury rules that they are out. There were trans-
25 actions in various stages of completion relying on the law.

1 Some of them are very close, just ready to pass the check.
2 There were others in different circumstances.

3 But it has been the practice of the Congress in such
4 matters to provide a transition rule. We did it when indus-
5 trial development bonds were first curtailed.

6 What we are arguing for here this morning is a transi-
7 tion rule on those situations where they were about to
8 complete and the Treasury, by regulation, said
9 you cannot refund those bonds that had been --
10 were issued as industrial development bonds.

11 The Chairman. Does Treasury have a position?

12 Mr. Samuels. The Treasury Department strongly opposed
13 S. 2943. We think it is important to understand the purpose
14 for action in December was essentially to prevent private
15 industrial corporations from issuing new tax-exempt debt.
16 We thought we were implementing the intention of the Congress
17 in 1968 that said tax exempt debt should be issued to provide
18 schools, fire houses, city halls. It should not be issued
19 to enable private companies to build facilities.

20 Let me make a point --

21 Senator Curtis. They were not eliminated entirely.

22 Mr. Samuels. They were not eliminated entirely, that is
23 correct. They were permitted for certain kinds of public
24 interest facilities.

25 Senator Curtis. Like any kind. There was a dollar

1 limitation.

2 Mr. Samuels. \$5 million or \$1 million.

3 These refundings that Senator Curtis referred to essen-
4 tially resulted in any company that had issued a bond before
5 1968 that was tax-free having the right to issue an additional
6 amount of bonds that were tax-free, and just those companies.
7 It did not result in any new plant being built. It essen-
8 tially was an interpretation of a loophole in the regulations.
9 It was ambiguous. It would permit these companies to issue
10 additional tax-free debt.

11 There was no benefit whatsoever to any state or local
12 government from these issuances. Indeed, the state and local
13 governments and the municipal finance offices of America
14 urged Treasury to act when it did and urged it to act with
15 the effective date that we chose.

16 Senator Curtis. What was that date?

17 Mr. Samuels. The effective date was November 4, 1977.
18 If bonds have been issued before November 4, 1977 the Treasury
19 was not going to challenge, or at least preliminarily we have
20 taken the position that we are not going to challenge the tax-
21 free nature of those bonds. But if the bonds had not been
22 issued by November 4, 1977, we said you cannot proceed to
23 issue those bonds.

24 Senator Curtis. What was the December 1 date?

25 Mr. Samuels. December 1 was the date that the regulations

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1 were actually published. I can explain, if you would like,
2 the reason for why we used November 4 as the effective date.

3 Senator Curtis. All right.

4 Mr. Samuels. About, I would say, the last week in
5 October and the first week in November, the phones at the
6 Treasury Department began to ring --

7 Senator Curtis. When?

8 Mr. Samuels. The last week in October and the first
9 week in November, from investment banking firms all around
10 the country, law firms all around the country, and from
11 officers of municipal finance groups and associations repre-
12 senting states and local governments, telling us that there
13 was an avalanche of debt that was coming to market shortly.

14 This debt was all industrial development bonds, all
15 corporate debt, no benefit to any state or local government.
16 It was going to disrupt the market and they thought that we
17 ought to know something about it, we ought to do something
18 about it, plug up this loophole in the regulations,

19 A very important point is to be made here.

20 Senator Curtis. What do you refer to as the loophole?

21 Mr. Samuels. The loophole is the provision of the
22 regulations that was interpreted to permit corporations that
23 had had tax-exempt debt before 1968 to issue tax-exempt
24 debt after 1968 indefinitely.

25 Senator Curtis. That had been the procedure through all

1 the years.

2 Mr. Samuels. No, sir. That regulation had been in
3 effect for seven years, but it was only at the beginning of
4 1977 that this loophole either was exploited or seen.

5 Senator Curtis. The refunding is usually when the bonds
6 mature.

7 Mr. Samuels. Usually when the bonds mature, these
8 transactions were issuance of bonds before the bonds matured.
9 The purpose of the issuance being to extend for 20 or
10 25 years this tax-exempt debt that the private industrial
11 company had, not building any new facility and not benefitting
12 the state or local government.

13 It is important, in addressing your bill specifically,
14 to know that the entire financial community knew, first of
15 all, knew that the practice was inconsistent with Congressional
16 intent and the bill that Senator Ribicoff introduced and which
17 was passed by the Congress in 1968. Nobody has argued, to
18 date, that these companies should continue to be able to
19 issue tax-exempt debt when other companies cannot and there
20 is no benefit to the state or local government.

21 What we were saying, if you are going to start us down
22 this road, let us complete it. Let us finish the issuance
23 of these transactions.

24 Generally, that has a lot of appeal, that approach.
25 Certainly, when the Treasury changes the law, someone has

1 closed a transaction, they are entitled to finish that
2 transaction. Similarly, if they spend a lot of money on the
3 transaction in reliance on that regulation, in my judgment
4 they should be able to finish the transaction, see the
5 consummation. It would be an added part of their loss.

6 Senator Curtis. You are agreeing with the idea that
7 there should be a transition ruling?

8 Mr. Samuels. Let us say in this case, this case is
9 different. The Treasury, in June of 1977, announced that
10 these regulations were going to be changed. Everybody in
11 the financial community knew they were going to be changed.
12 They acknowledged they knew it. They acknowledged that what
13 they were doing was inconsistent with the statute.

14 Nonetheless, they proceeded with their transactions,
15 taking the risk under the knowledge that the Treasury did not
16 think this was an appropriate reading of the statute or the
17 regulations. Essentially they gambled.

18 Senator Curtis. What was the date of the Treasury
19 release, according to your version, notified that it was
20 going to be changed?

21 Mr. Samuels. Everybody knew the regulations were going
22 to be changed.

23 Senator Curtis. I did not ask that. What was the date
24 of your release?

25 Mr. Samuels. November 4th, three days after we began

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1 to receive calls from the Federal Reserve Bank, among
2 others.

3 Senator Curtis. That was the first notice?

4 Mr. Samuels. No, sir. That was the first notice of
5 the date. Everybody knew we were going to change it. Nobody
6 knew when the date would be. That was the first notice.

7 Senator Curtis. You did have a news release?

8 Mr. Samuels. November 4th.

9 Senator Curtis. Your first news release?

10 Mr. Samuels. Yes, sir.

11 Senator Curtis. According to your statement, you say you
12 did change the law.

13 Mr. Samuels. No, sir. I think we clarified the law.
14 But you write the law.

15 Senator Curtis. I think you are right in the first
16 instance.

17 Here is something that was taxed in a certain manner over
18 a period of years which changed. You say you clarified it, but
19 so far as the taxpayers are concerned, the law is changed. It
20 is different.

21 If the Congress chose to provide a transition rule,
22 in this instance, what would you have to say about the date?

23 Mr. Samuels. That is a difficult question, since we
24 generally believe in transition rules to protect persons who
25 are acting in good faith reliance on regulations, not when they

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1 know they are going to change.

2 Senator Curtis. You are surely not saying that every-
3 body acted in the absence of good faith?

4 Mr. Samuels. I am saying that everybody who acted knew
5 the regulations were going to be changed. They just did not
6 know the date.

7 Senator Curtis. Or what the change was.

8 Mr. Samuels. They knew what the change was. They knew
9 what the change would be, or otherwise, they would ~~not~~
10 be rushing to market.

11 Senator Curtis. I am talking about those who did not
12 rush. I am talking about normal business transactions.
13 Because you believed that some of them rushed in, you are
14 taking a position contrary to the interest of all taxpayers
15 and you are setting a very bad precedent for application to
16 the Internal Revenue Code.

17 Mr. Samuels. No, sir, we were not reacting to just
18 attack those persons who were rushing to market. That is not
19 what our intention was.

20 What had happened, between \$3 to \$5 million of these
21 bonds were going to be sold within a very short period of
22 time, something like a week or two weeks. That would have
23 disrupted the tax-exempt market, and what our concern was
24 was keeping that market steady and available and open to the
25 local governments, and that was the local governments concern.

1 And we felt that we had to act on November 4th because of
2 this large volume, and the rumors were that they were trying
3 to beat the deadline, beat the Treasury. We do not know
4 whether that is right or not.

5 Senator Curtis. I do not know whether it is. I am
6 also convinced that there are many transactions that, in the
7 normal course of things, would not have been seeking refund-
8 ing.

9 Mr. Samuels. Yes, sir. Even those began when they knew
10 the regulation was going to be changed. In June we announced
11 that the regulation would be changed.

12 Normally, it takes at most a month or two months, some-
13 times three months, for these deals to close. If they began
14 in June or July, they knew very well that they were beginning
15 at a time when they were relying on a regulation to be changed.

16 Senator Curtis. You are telling us that your first
17 release was on November 4th.

18 Mr. Samuels. That was the release announcing the effec-
19 tive date of the change. In June, we announced that they were
20 going to be changed.

21 Senator Curtis. What did that announcement contain?

22 Mr. Samuels. It contained a statement to the effect --
23 I do not have it with me. I can supply it for the record.
24 Essentially it said that the relevant subsection of the
25 regulations governing the refunding of industrial development

1 bonds and the tax consequences to the issuer and user was
2 a regulations project of the service that was under review.

3 Senator Curtis. In other words, what you are saying is
4 that you announced that it was under review?

5 Mr. Samuels. Yes, but everyone in the bond community
6 knew that Congress and the Treasury did not intend to allow
7 these companies who were lucky enough to have tax-exempt
8 financing before '68, because maybe they had built their
9 plant before '68 and their competitor across the river built
10 in 1972. Treasury and the Congress could not have intended
11 the companies who built before '68 to have indefinite tax-
12 exempt financing, which was the reading being given to the
13 regulations -- the reading the financial community was giving
14 to these regulations.

15 They knew we were going to cut this off.

16 Senator Curtis. I think you changed the law by regula-
17 tion. That is not the issue here this morning. The issue
18 is, when the change was made, what was the status of those
19 cases that were closed?

20 Mr. Samuels. In the normal course, when taxpayers are
21 relying on a regulation and do not think that the regulation
22 is going to be changed and they spend a lot of money, we have
23 an obligation to permit them to proceed with that action or
24 make them whole for their loss. Those are the people wearing
25 the white hats, if you will. What these people were wearing

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1 was charcoal grey to black. They knew very well that this
2 regulation was going to be changed. They also knew --

3 Senator Curtis. By your own testimony, you are telling
4 us that they knew it was under review and you announced your
5 change November 4th. I do not want to cut the Treasury off,
6 but I would like to hear from staff.

7 The Chairman. Senator Hathaway?

8 Senator Hathaway. In light of what was said by Senator
9 Curtis and the Treasury, it seems to me that the cut-off
10 date should be modified. November 4th, they certainly knew
11 then, and not December 1st that you have in your memo,
12 and then, under iii that you have at the end as a condition,
13 it seems to me that that is not that great of a reliance, if
14 they have only taken that step. The corporation obligation
15 to make payment, they just had a vote of the corporation that
16 they are going to go ahead and do this, that does not show
17 enough reliance that that should be included as a condition,
18 although i and ii before that should be.

19 It is just that we change the ii to before November 5th
20 and leave out iii. I have an amendment here.

21 Senator Curtis. I have some alternate language for iii.

22 Senator Hathaway. Would that meet with Treasury's
23 approval?

24 Mr. Samuels. That makes it more acceptable to Treasury.
25 We still oppose the bill.

1 Let me point out that i does not show much reliance.
2 Very often i talks about getting the approval of the local
3 governing bodies. A lot of the press has asked why the local
4 or state government would even concede or agreed to issue
5 the date. There is nothing in it for them and indeed, it
6 hits them; the more debt there is outstanding, the higher the
7 interest rates they have got to pay. And a lot of eyebrows
8 have been raised as to why the states and localities would
9 even agree to these transactions.

10 But, in any event, you go to them frequently very early
11 on in the transaction and you say, will you agree to the
12 issuance of this particular debt and they say, yes, we will,
13 for reasons that are sometime not clear.

14 When they agree to that, no money has been spent, it is
15 at a very early stage in the transactions. And we think to
16 go to any kind of an effective date that would say if the
17 local governing board had approved the bond resolution, we
18 would be going to a very preliminary stage in the transaction
19 before a substantial amount of money had been expended.

20 To be sure, in some transactions, you do all of your
21 work and then you go to the local board and you assume whether
22 they issue the bonds, but that does not seem to be a very
23 prudent way to proceed from a businessman's point of view.

24 Senator Curtis. I wonder if staff could tell us what
25 this alternative language is. Would it narrow it down?

1 Mr. McConaghy. This language, Senator Curtis, would
2 substitute the iii. The substitution basically would be
3 corporation obligated to make payments to the governmental
4 unit for payment of debt service on obligations to be
5 refunded approved by -- and the change here -- by its board
6 of directors or by any committee thereof empowered to take
7 action of that nature.

8 Senator Curtis. That is more narrow than the original
9 language, is it not?

10 Senator Hathaway. Are you agreeing to back up the
11 dates of November 4th?

12 Senator Curtis. Yes.

13 Mr. Samuels. Let me state another factor, that every
14 corporation that had issued a pre-1968 industrial development
15 bond thought about this transaction. That may be an over-
16 statement. Almost everyone thought about this or considered
17 it.

18 That was a very attractive opportunity, and we think that
19 iii would essentially result in every corporation that had
20 issued a development bond before 1968 would be able to issue
21 additional industrial bonds for 25 to 30 years, whatever
22 their term, because the boards had considered it.

23 Senator Curtis. Would the staff comment on that substi-
24 tute language?

25 Mr. McConaghy. I think it is a little bit tighter than
the language in the original bill, the iii language that you

1 have as a substitute.

2 Senator Curtis. I wonder if we could have a vote on the
3 date?

4 Senator Hathaway. I think you tightened it up enough
5 to suit me. If you will take back-dating it to November
6 4th, I have no objections.

7 Senator Curtis. Could we have a vote?

8 The Chairman. You are talking about voting on the
9 Senate bill?

10 Senator Curtis. Yes.

11 The Chairman. Those in favor of the Curtis bill, say
12 aye.

13 Senator Curtis. With the Hathaway-suggested amendment.

14 The Chairman. All in favor, say aye.

15 (A chorus of ayes.)

16 The Chairman. Opposed, no?

17 (No response)

18 The Chairman. The ayes have it.

19 Mr. Stern. This is a Senate-numbered bill. The question
20 is, what do you want to do with it as an amendment.

21 Senator Curtis. I think it should go on some bill.

22 What does the staff have to suggest?

23 Mr. Stern. There are other bills in Committee as well
24 as three tax bills on the Floor. If you want a new bill you
25 have not acted on -- for example, there is a bill --

1 The Chairman. Let me suggest -- I do not think this
2 amendment is going to pass on the consent calendar. Treasury
3 will still oppose the bills.

4 Mr. Samuels. Yes, sir, Mr. Chairman. In fact, we do
5 not think that the language in iii -- I have just had an
6 opportunity to read it -- is really significantly tightening
7 at all. It is still our position that in virtually every
8 industrial development bond issued before '68 will be able
9 to be refunded, to the detriment of state and local govern-
10 ments.

11 The Chairman. Here is what I would suggest, Senator
12 Curtis. In view of the fact that this bill is not going to
13 pass on the consent calendar with Treasury objection that
14 you offer the amendment to one of these bills. When we
15 clear it, we are going to call up this bill that has Section
16 911 in it. It has to do with the workers overseas, and we
17 are going to call up, when we can, the Technical Corrections
18 Bill.

19 And so, with regard to this, I would think that if the
20 Committee approved your bill with the understanding that it
21 would have to be offered to one of the House-passed bills,
22 you could offer it with the support of the committee on one
23 of the bills where we are going to have to have a debate
24 anyway. We will have to have some votes, and offer it on one
25 of those.

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1 Senator Curtis. Inasmuch as the Committee has approved
2 it, it would be offered as a Committee amendment?

3 The Chairman. Right.

4 Senator Curtis. All right. I will conform with the
5 Chairman's suggestion.

6 Mr. Chairman, I have one other little item.

7 The Chairman. Senator Gravel wanted to call up.

8 Senator Gravel. This is on the tax on foundations. We
9 have presently a 4 percent tax. This was initiated in 1969
10 as part of the total reform package we had on foundations.

11 The year before last, I believe, the Senate passed
12 legislation that would change that tax from 4 percent to 2
13 percent. The original rationale for the 2 percent was to
14 cover the cost of administration.

15 We subsequently found that the cost of administration is
16 considerably less than 2 percent, so the recommendations
17 and the request of the foundation would be to lower it down
18 to what the original intent was, to cover the cost of adminis-
19 tration, and thereby permit this money to go to charitable
20 purposes.

21 We have 50 co-sponsors, Mr. Chairman, in the Senate.
22 As I stated, we passed it once in the Senate. It fell out
23 in the Conference. The House has now passed a bill, H.R. 112,
24 and so if we could pass H.R. 112 here, then it would go to
25 law because there would be no need for a conference. So I

1 would hope that we could reaffirm the decision that we have
2 already made before.

3 I understand Treasury does not oppose this. It would
4 be a loss of revenue, but the Treasury recognizes that the
5 purpose of the revenue was to pay the cost of administration.
6 They now have experience on what that cost is, and that cost
7 can amply be recovered with the 2 percent tax.

8 Senator Curtis. I am very much in favor of what you are
9 proposing. Just pass the House bill as is.

10 The Chairman. What is the Treasury position?

11 Mr. Halperin. We support that amendment.

12 Senator Gravel. I commend the Treasury.

13 The Chairman. I am not for this, but I am going to let
14 the Committee vote on it. In all respect to my good friends
15 on the Committee who are for it, and I think you can probably
16 pass it without my vote, and that being the case, with a
17 minor protest, I will permit you gentlemen to vote this on
18 out.

19 All in favor, say aye?

20 (A chorus of ayes.)

21 The Chairman. Opposed, no?

22 (A chorus of nays.)

23 The Chairman. The ayes have it.

24 Senator Gravel. We thank the Chairman for his gracious-
25 ness.

1 The Chairman. I just want these people to know that
2 I am the one man in this Committee who voted against these
3 foundations.

4 Senator Curtis. Now, a related matter. In fact, I
5 have two very brief ones which I would like to have put on
6 some other bill and not on the one that we just approved.

7 Senator Bartlett of Oklahoma calls our attention to the
8 fact that he has, in his state, a home for the aged that is
9 operated as a truly charitable home -- Sand Springs, I
10 believe he called it.

11 It is operated by the Grand Lodge of Masons, Oklahoma.
12 If it were operated by a church or labor union or other
13 groups, they would have no problem, but here they are running
14 a totally charitable operation and what he is asking for is
15 to include from these organizations that can operate such an
16 institution, fraternal orders.

17 Is that a correct statement?

18 Mr. Pritt. Yes.

19 Senator Curtis. I believe Treasury finds no objection
20 to it.

21 Senator Gravel. I would support it also, Mr. Chairman.

22 The Chairman. What is the Treasury position in regard
23 to that amendment?

24 Mr. Halperin. Mr. Chairman, I did not know that it was
25 coming up today. We have taken the position of opposing this

1 amendment in the past and I think the consideration of
2 the definition of private foundations was clearly considered
3 a number of years ago in the '69 Act. There is no indication
4 that lines were improperly drawn at that point.

5 The problems that these institutions might face, they
6 were worried about the surtax, the Committee reduced it.
7 They were worried that a private foundation had to spend a
8 certain portion of its income, or percentage of its assets,
9 on charitable activities. That has been modified by the
10 Congress last year.

11 I would think that the other restrictions on private
12 foundations, the restriction on holdings of business by
13 private foundations, the restriction on political activities,
14 are important.

15 Senator Curtis. If you would yield, briefly. I beg your
16 pardon for not telling you in advance that I was going to
17 call this up.

18 In the 93rd Congress, the Treasury Department supported
19 similar legislation. Somewhere we have the letter from
20 Treasury.

21 Mr. Halperin. Was that for a complete exemption from
22 the private foundation provisions, or to modify some of the
23 impact of particular portions of it?

24 Senator Curtis. It was written by the Treasury in '73.
25 Do you recall, George?

1 Mr. Pritt. Senator, I think it was in regard to the
2 predecessor of S. 2825, which was more broadly drawn than
3 2825. They approved a more liberal bill than 2425 which you
4 are introducing now.

5 Senator Curtis. Senator Bartlett is under the impres-
6 sion that Treasury had no objection.

7 Mr. Halperin. I am not aware of that. It is possible,
8 certainly a number of years ago -- I note in '74, this
9 letter appears to be on the subject and there is an indica-
10 tion of the Treasury position at that time that would suggest
11 that the 4 percent tax could be reduced and there may be some
12 modification of the pay-out requirement under Section 4942.

13 Senator Curtis. That does not go to the question. This
14 is a question to allow fraternal organizations to operate
15 charitable institutions, just as we let labor unions and other
16 tax-exempt organizations.

17 I wonder if we could give Treasury a little time --

18 Senator Gravel. Could we take up this other matter?

19 The Chairman. With regard to that matter, that can be
20 offered as an amendment to the bill. The bill is not here at
21 the moment anyway, so between now and the time that the bill
22 is before us, we can discuss this with Treasury and get
23 Treasury's views in greater detail.

24 Senator Gravel. If I could just touch upon one that
25 deals with something that was before the Committee before as

1 a noncontroversial matter, but because of an HEW letter, we
2 decided to hold off on it, and that deals with fructose,
3 a type of sugar that comes in that is only manufactured in
4 Finland. They hope to set up a plant in the United States.

5 What it is is probably the sweetest stuff in the world.
6 It comes from bees and apparently does not compete with any-
7 thing in the United States.

8 The Chairman. Could I see that?

9 Senator Gravel. Yes, and there is a spoon, if you want
10 to taste it. It is made from bees honey in Finland and
11 presently it was coming into the country about 2,000 to 3,000
12 metric tons was used in pharmaceutical products.

13 As I say, it does not compete with anything. We are
14 talking about .1 percent of the sugar of the nation. It is
15 used in pharmaceutical products and other foods for the
16 simple purpose, we need something extremely sweet but it has
17 a low caloric content.

18 The Chairman. I did not know there was such a thing.
19 I was hoping that somebody would put something out like this
20 for a long time.

21 Some of my friends who are health food buffs think that
22 honey just has a lot more things in it that are good for
23 health than sugar. Former member George Smathers drinks tea
24 rather than coffee and he takes honey with the tea, to sweeten
25 the tea.

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1 Since I do not drink tea, if we had something like
2 this that you could sprinkle on your cereal in the morning,
3 that might get a few more vitamins than you do if you use
4 sugar.

5 I am not trying to harm the sugar industry.

6 Senator Gravel. They hope to set up a plant. What I
7 am asking, we approve legislation that would permit this to
8 be treated on a tariff basis, like sugar is presently treated,
9 like a saccharine, which it is not. It is not a sugar substi-
10 tute, and therefore it suffers a 50 percent tariff.

11 Nobody manufactures it in the United States so we are
12 unusually punishing the consumers of this product in the
13 United States, although they are very few, in an unjust
14 fashion.

15 I would hope that the Committee would grant this tariff
16 status as they have to sugar.

17 Maybe staff would want to amplify it.

18 The Chairman. What can you tell us about that?

19 Mr. Cassidy. The bill Senator Gravel is referring to is
20 5986. When it came up, and it had hearings, and the Committee
21 deferred action because of a letter from HEW opposing it.

22 They said, in light of the current controversy over
23 sweeteners and the fact, in their opinion, this had no
24 peculiar dietary characteristics --

25 The Chairman. That is debatable. Some people argue about

1 ad valorem.

2 This is only a temporary reduction until June 30, 1980,
3 at which time they believe they will have this plant built.

4 The staff recommends two things: first of all, that
5 we eliminate the reduction in duty on Communist-source
6 levilose; primarily from Finland. We would recommend to the
7 Committee that you conform the bill to the existing charge
8 on sugar. If you just wanted to do the duty, 2.9 cents per
9 pound, the total charge assessed on refined sugar, 6 cents
10 a pound.

11 The Chairman. Why not make it the same charge sugar
12 bears, 6 cents a pound?

13 Mr. Cassidy. 6.1 cents.

14 Senator Gravel. Is that what sugar bears?

15 Mr. Cassidy. Refined sugar, duty and fee.

16 Senator Gravel. I am not an expert on this.

17 Mr. Cassidy. That would cut the duties paid on levilose
18 in half.

19 Senator Gravel. When refined sugar comes into the
20 country, it actually pays more than the tariff on normal
21 sugar, on refined sugar. Is that what you are saying?

22 Mr. Cassidy. Slightly more.

23 The Chairman. Without objection, the bill will be so
24 modified.

25 Mr. Cassidy. Do you want to make it 6 cents a pound or

1 Vitamin C, whether it helps you with colds.

2 Mr. Cassidy. It is clearly debatable. The basic
3 point --

4 The Chairman. Anybody who thinks that honey is better
5 for you than sugar would challenge that.

6 Mr. Cassidy. The point the industry people make is
7 that this particular product, there is some evidence that
8 this particular product produces fewer cavities in people's
9 teeth than does regular sugar. That is also debatable.

10 At any rate, the bill itself would reduce the 1.987
11 cents per pound duty. Currently the duty is 20 percent ad
12 valorem if it is imported from a non-Communist country and
13 50 percent ad valorem if it is imported from a Communist
14 country.

15 At the time the bill was introduced, 1.987 cents was
16 the duty on sugar. At this time, the duty on sugar is
17 approximately 2.9 cents per pound and in addition, there is
18 a fee on refined sugar, and this is basically a refined sugar
19 product, of 3.1 cents, so the charge on refined sugar coming
20 into the United States is about 6.1 cents per pound.

21 So, if you were to make the duty of levilose 6.1 per
22 pound that would be equivalent to, oh, 1 percent rate of
23 duty, half the duty that they are now paying; if you were
24 to impose the tariff which is on sugar of 2.9 cents per
25 pound, that would translate into a rate of duty of 5 percent

1 10 percent which would be the rate?

2 Senator Gravel. Which would be lower?

3 Mr. Cassidy. It would be almost exactly the same.

4 It is easier to administer a percentage rate. Of course,
5 it depends on the price of the product the day it comes.

6 Senator Gravel. Make it a percentage.

7 The Chairman. Make it a percentage, 10 percent.

8 Mr. Cassidy. Until June 30, 1980, and that will cut
9 the rate of duty in half.

10 The Chairman. Any objection?

11 Senator Gravel. I want to be assured that is uniform.
12 That is what happens to all other refined sugar coming into
13 the United States. This will not be getting anything
14 special.

15 Mr. Cassidy. The 6 cents -

16 Senator Gravel. Whatever we decide, I do not want to
17 in the position that we are trying to get something special
18 that refined sugar does not get. I want to be sure they are
19 getting the same treatment.

20 The Chairman. They want to be uniform with refined
21 sugar.

22 Mr. Cassidy. One problem is that you have a fixed duty,
23 which is 2.9 cents. That probably will not change, but the
24 fee is adjusted every quarter by the President. It goes up
25 or down, depending on the domestic support.

1 The Chairman. Make it 10 percent.

2 Senator Curtis. Mr. Chairman, this matter is very
3 brief, but I would appreciate the attention of the Treasury
4 and the staff and the Chairman.

5 It has been a nightmare for a husband and wife in my
6 state who earned his money the hard way by working as a
7 laborer for a company and they had a pension plan and he left
8 the company, not far, and he made a rollover into the individual
9 retirement plan.

10 His total earnings, or his total benefits, was only
11 \$23,000. When he left the employment, the company suggested
12 that the life insurance that he have, they just take out for
13 that and pay it up for his life.

14 He did not understand the rules. The IRA was new. They
15 did not realize the nature of it. Then he took the rest of
16 the money to a local bank and they set up an IRA. They did
17 not catch the point.

18 When he went to file his income tax return, the local
19 lawyer discovered that when you have a pension fund turn over
20 to you and turned into IRA you have to put every penny in
21 there or you are subject to a heavy penalty and this poor
22 couple are subject to additional taxes for having paid a
23 life insurance bill of \$368 of \$3,800. It would be 16 percent
24 of their lifetime earnings.

25 When the matter was called to my attention, we went into

1 the situation rather in-depth. Did the Treasury, in this
2 particular case, have authority by regulation to do something?
3 I think there are cases, there are statutes, where something
4 is an unconscionable result, the Treasury could do it by
5 regulation.

6 There is no administrative relief. These people are
7 subject to a tax of \$3,800 which, I say, is 16 percent of
8 their whole lifetime earnings. The company that he worked
9 for did not tell him, the bank did not tell him. Nobody was
10 aware of this.

11 We have drawn a bill -- and I ordinarily am in favor of
12 bills in general language -- but we did not want to create a
13 loophole here, so this bill names the taxpayer and would
14 remedy this situation.

15 I cannot imagine that there would be any objection to
16 it. By paying off a life insurance policy in advance of
17 \$368, they incurred a penalty tax of \$3,800. They could very
18 easily arrange to pay that out of some other funds, but the
19 law was new, and it happened.

20 The Chairman. You want to make that, add it as an amend-
21 ment as a private relief bill, in effect? Name the individual?

22 Senator Curtis. There is a bill already drawn. Will
23 you tell us what it is?

24 Mr. Pritt. S. 2194 and it does exactly as you said.
25 It only applies to the one taxpayer. It specifies his name

1 and Social Security number?

2 Mr. Halperin. Mr. Chairman, it is obviously very hard
3 to come down against somebody who gets himself in this
4 situation. I think the problem of private relief bills --
5 I am sure this is not the only case where people thought
6 they were contributing their entire distribution into the
7 IRA and found out they were not.

8 The IRA provisions are very technical and there is a
9 large number of cases where we have discovered hardship being
10 imposed upon people, probably beyond what anybody ever intended
11 and I think that it would be better if this is conceded to be
12 a problem to take a look at what could be an overall solution.

13 I think if we start with one taxpayer, there has to be
14 a large number of others who are in similar situations and
15 it would seem to me to be unfair to pick out one for relief
16 and leave the problem uncorrected as to a number of others.

17 Senator Curtis. I think as the cases come here they
18 should have attention and probably at a later time, we can
19 write a general rule. I do not want to create a loophole.

20 At the same time, for having made an expenditure of
21 \$368, a perfectly legitimate object, to pay up his life
22 insurance, he is now taxed \$3,800.

23 Mr. Halperin. Is that in addition to what he would owe?
24 I take it that he would normally pay some tax as the money
25 came out of the individual retirement fund.

1 Senator Curtis. As I understand it, that is the
2 additional amount. 16 percent of his earnings.

3 I would like very much to get this approved and before
4 it finishes its complete course we can have general language.
5 I would not be adverse to that.

6 Mr. Halperin. It is a difficult road to follow of
7 trying to take care, on an individual basis, every person
8 who gets himself into trouble.

9 Senator Curtis. They did not get themselves in trouble,
10 Mr. Treasury, they did not do that at all. Here is an uncon-
11 scionable thing, taxing some money, \$3,800.

12 Mr. Chairman, do you have any questions?

13 The Chairman. It seems to me that a better approach
14 might be to make that a general proposition, to say that
15 the Treasury would have the authority to wave the tax or
16 the penalty in a case which works out to be a very grievous
17 miscarriage of justice by mere inadvertence or lack of
18 knowledge of the consequence on the part of the taxpayer.

19 In other words, where a person in good faith does some-
20 thing that he is not aware of the consequences of it, and
21 he runs in and makes \$300 and runs into a \$3,000 fine.

22 There is something that does not -- there is something
23 in the Constitution about cruel and unusual punishment, and
24 I think that is cruel and unusual punishment on a completely
25 legitimate transaction, for a \$300 profit, 1000 percent tax.

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Mr. Halperin. We have supported proposals which would give the IRS the authority to waive penalties in the case where people went into IRA's not realizing that they were not eligible for them because they were also in a qualified plan at the same time, and they can now get hit with a triple penalty.

We have supported legislation that would give IRS the authority to waive that penalty in appropriate cases. I think, if we had some time, we could take a look at whether we could extent that idea to these kinds of situations and try to come back as soon as we can with a proposal.

Senator Curtis. This is not a penalty. This is an additional tax.

The Chairman. Usually, the way we do business on this Committee is that we will pass a bill of general relief rather than a specific proposal when you had in mind a particular taxpayer. Admittedly, we all agree on that, and it does partake of the nature of a private relief bill. But anybody else with precisely the same situation, he should be treated the same.

That being the case, it would be better law if we simply drafted this as we have most of our legislation involving situations like this where we say in this type of situation that relief could be provided, or that it should be provided. It seems to me that this is the kind of thing, if

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1 discretionary, Treasury would provide the relief.

2 Is that a fair conclusion, Mr. Halperin?
3 Mr. Halperin. I would hope that that could be worked
4 out. I guess they would need to have some parameters. I
5 think it is reasonable to see whether a procedure can be
6 developed of people who unfortunately get in this situation
7 can be helped out.

8 Senator Curtis. You are dealing with retired people.
9 By the time that this is passed and they have a right to ask
10 for an administrative relief, then the Treasury says this
11 is a new regulation and it takes months to find out even what
12 the forms are to apply to it.

13 The Chairman. Senator --
14 Senator Curtis. Rather than grant authority to the
15 Treasury, I think this should be redrawn and lock it in with
16 dates and so on so it would be circumscribed to this particu-
17 lar case and it would still be general.

18 The Chairman. We have done that kind of thing before.
19 That is all right with me. But if you find anybody in the
20 country who is exactly the same situation during the same
21 general time period, he ought to be permitted to join in the
22 relief as well.

23 Senator Curtis. Yes.

24 The Chairman. That way we would not be discriminating,
25 benefitting one taxpayer and declining to do the same thing

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1 for others.

2 Mr. Halperin. What we could do as a matter of relief
3 is give the taxpayers some leeway in this kind of situation
4 to put that additional \$368 into the Individual Retirement
5 Account. What he needs is more time. We did not know he
6 had to, but he is told he has to.

7 Senator Curtis. I think that is a good suggestion.

8 Mr. Halperin. You need some leeway to allow that period
9 to extend.

10 Senator Curtis. Can we agree on language on that? It
11 does not have to be finalize right this moment, but, in other
12 words, you would approve legislation that would permit him
13 to restore the \$368 to the IRA account.

14 Mr. McConaghy. We would bring language that would
15 accomplish that within the parameters necessary.

16 Senator Curtis. I would accept that amendment.

17 Mr. Pritts. The problem with the timeframe here of
18 extending the 60 days or 90 days in which to act, in this
19 case, this happened in November of '75, so it would not be
20 very appropriate or attractive to change the statute to allow
21 that much time.

22 Mr. McConaghy. I think it could be done.

23 The Chairman. I would just suggest, Senator, that you
24 let the staff, in consultation with the Treasury, draft up
25 what they think would be the appropriate answer to the

1 problem and, at our next meeting, let's take a look at it.

2 As far as I am concerned, if you do it that way, I can
3 go for it. I do not see why anybody would want to vote
4 against it.

5 Senator Curtis. Can we have this understanding with
6 Treasury and staff that we might offer it as an amendment?

7 The Chairman. Yes.

8 Senator Curtis. Very well.

9 Senator Gravel. Mr. Chairman, just to take a brief two
10 minutes, I mentioned the last time that my purpose for
11 clearing -- I am interested in having the prototype ESOP
12 in Alaska. I want to sensitize the Committee to a plan which
13 we formulated in this report and I have given copies to all;
14 of the members and to the staff and to Treasury just to lay
15 out the points.

16 We would have legislation trying to give this the same
17 treatment as ESOPs. We would try to get legislation -- and
18 Mr. Lubick has already assured me that it would receive
19 investment tax credit. We want to define that.

20 We have, in this Committee, and the Senate has confirmed,
21 tax-exempt bonds for certain energy projects. I would hope
22 that since the projects involved here are energy projects also
23 that we extend that same consideration so as to properly launch
24 a GESOP and they would only go for energy projects, since we
25 already passed on that proposal.

1 That would be the Federal side. The state side would
2 be, of course, the state would guarantee the bonds additionally
3 and the benefits, of course, would be that we would then be
4 in a position to actually see what the revenue impact was
5 one way or the other, as to what the impact would be to
6 individual stock holders, what the debt situation would be,
7 what would be the attitudes of the individual people to the
8 free enterprise system and corporations and all of that, and
9 what would be the work habits of people as they begin to
10 experience that. What would be the impacts on welfare and
11 on social security?

12 And I would go for a percentage of the monies involved
13 that would accrued to this GESOP that this would go to a
14 study, so we would study this entire thing. The cost of the
15 study would be borne in here and then reported back to the
16 Congress in a timely fashion.

17 So I would just merely bring it up now and maybe my
18 colleagues will read this newsletter that I am sending out to
19 Alaskans and sensitizes us to this and hopefully look for
20 cosponsors on what I think would be a most unusual prototype.

21 We have 10 million people under ESOPs. That is a credit
22 to yourself, Mr. Chairman.

23 We have --

24 The Chairman. It is a credit to the Committee.

25 Senator Gravel. Very much.

1 We have 867 in Alaska. What I am essentially saying is
2 let us extend those 10 million people to an additional 430,000
3 people in one specific experiment with the GESOP, that the
4 results in two, three, four years to the Committee could be
5 a guideline as to how we should handle this entire free
6 enterprise system and the difficulties we have.

7 We know Social Security has deep problems. Welfare
8 has deep problems. If we could make people to a dependency
9 on the productivity of our nation rather than upon govern-
10 ment munificence, I think we would really accomplish some-
11 thing unusual.

12 I would hope my colleagues would look at this, and I
13 will approach them individual for co-sponsorship or look for
14 guidance from the Committee, or anybody, who would like to
15 give it.

16 Thank you, Mr. Chairman.

17 The Chairman. It was not on the agenda and I intended
18 that it would be but it is not there, but I had one for the
19 Committee to talk about, the waterways toll charge legislation
20 which is stopped at the desk.

21 In view of the fact that we do not have a quorum at this
22 point, I suppose that we might pass it over for now, but I
23 would like to alert members that we would like to talk about
24 it and if the bill is called up prior to that time, we might
25 try to poll the members to get their suggestions as to what

1 they think the best answer to that problem would be.

2 Senator Gravel. What was the time agreed on that? Is
3 that coming up next week?

4 The Chairman. As I understand it, it is expected to
5 be up in the middle of next week.

6 I personally -- I will not be here Monday. I will be
7 making a speech in Louisiana. We could meet Tuesday and
8 talk about it. Hopefully the Committee would not take a
9 position on it before the Senate meets.

10 I have been very pleased and I think most members have
11 by the fact that many times in this committee we manage to
12 resolve all of our differences and get together on things.

13 (Thereupon, at 12:05 p.m., the Committee recessed, to
14 reconvene on May 2, 1978.)

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