

1 EXECUTIVE COMMITTEE MEETING ON PROPOSED TAX REFORM ACT OF  
2 1986

3 WEDNESDAY, APRIL 16, 1986

4 Committee on Finance

5 Washington, D.C.

6 The committee met, pursuant to recess, at 9:45 a.m. in  
7 Room SD-215, Dirksen Senate Office Building, the Honorable  
8 Bob Packwood (chairman) presiding.

9 Present: Senators Packwood, Dole, Roth, Danforth,  
10 Chafee, Heinz, Wallop, Durenberger, Armstrong, Symms,  
11 Grassley, LONG, Bentsen, Matsunaga, Moynihan, Baucus, Boren,  
12 Bradley, Mitchell, and Pryor.

13 Also presnet: Roger Mentz, Assistant Secretary for Tax  
14 Policy, Department of the Treasury; Richard Darman, Deputy  
15 Secretary of the Treasury.

16 Also present: Bill Diefenderfer, Chief of Staff; David  
17 Brockway, Chief of Staff, Joint Committee on Taxation; Randy  
18 Weiss, Deputy Chief of Staff, Joint Committee on Taxation;  
19 John Colvin, Chief Counsel; Bill Wilkins, Monority Chief  
20 Counsel; Mary Frances Pearson, Tax Counsel, Majority;  
21 Greg Jenner, Tax Counsel, Majority; Paul Strella, Tax  
22 Counsel, Majority; Barbara Groves, Jeff Gates, Karen Phillips,  
23 Tax Counsel, Minority; and Susan Taylor, Executive Assistant.

1 The Chairman. The hearing will come to order, please.

2 We are going to take up the pension issue today. It had  
3 been my hope that we could take up the foreign provisions  
4 this afternoon and vote, but there will be an objection  
5 registered to meeting. We can meet and discuss. We will not  
6 be able to vote.

7 So unless we were rapidly to wrap up pensions today -- and  
8 I think that is unlikely -- and get on to foreign, we will  
9 have to schedule that sometime else. It is still my  
10 intention to start voting on bonds tomorrow to discuss  
11 insurance and capital gains in the afternoon, and to vote on  
12 the individual provisions, the individual tax provisions,  
13 that we discussed yesterday on Friday morning. Of course,  
14 there will be no vote on Friday afternoon.

15 But today we are starting on pensions. There has been  
16 good activity, and I know there are some amendments, and the  
17 draft is open for amendments.

18 Senator Long. Mr. Chairman, I don't want to create  
19 discord, but I am the only Democrat here, and I don't have  
20 any proxies. I am not seeking any, but in view of the fact  
21 that this is an enormously important bill, I have no choice  
22 but to suggest with the absence of a quorum that if my  
23 crowd can't either show up or send a proxy then I am going to  
24 have to insist that we get some of them in here.

25 The Chairman. We have seven. That is a quorum.

1 Senator Long. Seven is a quorum to meet here? Let me  
2 look at this rule.

3 The Chairman. It is, isn't it? Seven is a quorum for  
4 adopting amendments.

5 Senator Long. Well, does the rule require there be one  
6 on the minority?

7 The Chairman. I don't know. Take a look.

8 Senator Long. I believe it does.

9 Mr. Wilkins. Senator Long, if you look in that rule book  
10 on Page 2, Rule 4, that is the applicable rule.

11 Senator Long. Pardon me?

12 Mr. Wilkins. On Page 2, Rule 4.

13 The Chairman. "Except as provided in subsections B and  
14 C, seven members, including not less than one member of the  
15 majority party and one member of the minority party shall  
16 constitute a quorum for the conduct of business."

17 Senator Long. Well, that problem has been cured now, Mr.  
18 Chairman. Because I was going to say if I had to represent  
19 the Democrats all by myself, I was going to vacate myself --

20 (Laughter)

21 Senator Long. -- just because I feel that I can't  
22 represent Democrats adequately if I am sitting here all by  
23 myself and don't even have a proxy to support my position.  
24 But now I have two able Senators to back up my judgment. I  
25 am satisfied.

1 The Chairman. Senator Heinz.

2 Senator Heinz. Mr. Chairman, thank you very much.

3 I have an amendment that I want to offer to the pension  
4 section of the bill. It is a fairly complex amendment. It  
5 represents a lot of work with the Administration, with the  
6 Committee staff, your staff, Mr. Chairman, with most of the  
7 people who would be affected by the pension section. We have  
8 worked very closely with industry. We have worked closely with  
9 labor. And, specifically, as background, the amendment is  
10 supported not only by the Administration but by the Chief  
11 Executive Officer Group, the ERISA Industry Committee, the  
12 Association of Private Pension and Welfare Plans, a large  
13 number of major insurance companies, the AFL-CIO, the UAW,  
14 AARP and the Older Women's League, and that is to name just  
15 a few.

16 And the reason I mention that is not to say that the  
17 members should not look at the specifics or the merits of the  
18 amendment, but to illustrate that there is a true breadth  
19 of support for the amendment.

20 The Chairman. Could I expand on that?

21 Senator Heinz. Yes, Mr. Chairman.

22 The Chairman. Because you and Senator Chafee have done  
23 a magnificent job in the hearings that you have held and the  
24 efforts that you have made on the pension reform. I am going  
25 to encourage adoption of your amendments. I think there are

1 improvements on the draft.

2 But this is an issue, and you don't have this very often,  
3 but there is a genuine philosophical issue as to whether or  
4 not you are going to try to make the pension plans of this  
5 country less discriminatory. And I don't mean that in a  
6 racial sense. I mean that in an upper income, lower income  
7 sense. Whether you are going to try to encourage faster  
8 vesting for low and middle income workers.

9 And the provisions of Senator Heinz are, among others,  
10 supported by the National Council of Senior Citizens, the  
11 American Association of Retired Persons, the American  
12 Association of University Women, the American Nurses  
13 Association, the National Council of Churches, the National  
14 Council of Senior Citizens, the National Federation of  
15 Business and Professional Women, the National Women's  
16 Political Caucus, the United Auto Workers, the AFL-CIO, the  
17 Airline Pilot's Association and the CEO Group, which is,  
18 as those who are familiar with that know, that is a group of  
19 about 20 to 25 major companies that are supporting the tax  
20 reform bill.

21 This has broad-based support for his amendment. But it  
22 is a philosophical amendment as to whether you are going to  
23 keep the pension code basically the way it is or whether you  
24 were going to try to make it slightly less discriminatory and  
25 a little more broad based, and, frankly, tilting toward

1 lowered, a little bit more -- it will never be preferential  
2 in their direction, but tilted a little bit more in favor  
3 of lower and middle income employees.

4 Senator Heinz. Mr. Chairman, I thank you. I don't want  
5 to unnecessarily take the time of the Committee to go into  
6 extended detail, but I do think the amendment deserves some  
7 discussion, particularly as not all members of the Committee  
8 are here.

9 You are quite right. This does go out of about a year,  
10 year and a half's work that Senator Chafee and I have put  
11 in together. We have worked closely with just about every  
12 group you can name. There are actually some groups we didn't  
13 name between us.

14 And the product of those efforts reaching back to last  
15 fall was that Retirement Income Policy Act. There have been  
16 hearings on the bill both in the House and Senate. You  
17 borrowed, and I am glad you did, Mr. Chairman, generously  
18 from our ideas in the Committee print.

19 During the course of the last six months, we have  
20 attempted both to improve upon our original version, and the  
21 amendment that I am offering attempts to do that.

22 Essentially, my amendment eases up on some of the  
23 tightening on the 401(k) and 403(b) plans in your package.  
24 We respond to the concerns that the excise tax on withdrawals  
25 could discourage savings and unfairly penalize early retirees.

1           We provide a clarification of the coverage rules that is  
2 acceptable to the business groups supporting us. And in a  
3 minute, I am going to ask John Colvin to run through the  
4 details of the amendment.

5           What I would like to really conclude with is by saying  
6 simply that the Chairman's package, as it is now or as it  
7 would be in the event our amendment is adopted -- and I am  
8 advised Senator Durenberger is a co-sponsor of the amendment  
9 as well -- makes some very important changes in pension  
10 policy for people who are going to need pensions 20 and 30  
11 years from now.

12           A research firm, ICF, Incorporated, has done a major job  
13 taking a look at what your package, Mr. Chairman, would do for  
14 retirees in the future; vesting integration coverage and the  
15 restrictions on early distribution, which we would retain  
16 largely in tact with the adoption of the Heinz amendment;  
17 would increase average pension benefits by some 22 percent  
18 30 years from now. And that is because in part of the  
19 regularization and the indexation of the base amounts, the  
20 \$7,000.00, whatever we decide it will be, for the combined  
21 401(k) IRAs or the defined benefit and defined contribution  
22 limit. We have indexed those, as well, to the Social Security  
23 wage base so that they are not rendered inoperative or  
24 non-sensical by inflation over this extended period of time.

25           And I think even more important is that the legislation

1 would increase the number of individuals receiving pensions  
2 by some 17 percent.

3 And two things would happen as a result of that. One,  
4 the results would really make the distribution of the current  
5 \$44 billion a year in tax expenditures a lot fairer. We  
6 would ensure a broader pension coverage base of people  
7 actually covered.

8 And, secondly, from the standpoint of those of us who  
9 don't want the Social Security system to be the only vehicle  
10 people look to for support in their retirement years, we  
11 lessen, if we adopt either your proposal or your proposal,  
12 Mr. Chairman, as amended by my amendment, we will lessen the  
13 political pressure to have Social Security be more and more  
14 of the retirement income for a larger and larger group of  
15 people.

16 Many of us are strong supporters of the Social Security  
17 system. But that does not mean we believe it should be the  
18 vehicle which everybody depends on for most or all of their  
19 retirement income.

20 And the best way to reduce the pressures, the political  
21 pressures, on government for government doing more is to have  
22 a broad-based private pension system.

23 And I think that that is really a very important long-  
24 range goal for what we are trying to do here.

25 The Chairman. Senator Roth.



1 Senator Roth. I am very sympathetic to what the Senator  
2 from Pennsylvania is trying to do. It was my understanding --  
3 and I am not clear at this time what his amendment would do  
4 on the so-called 10-year averaging. Could you, please,  
5 elucidate on that aspect of the amendment?

6 Senator Heinz. Senator Roth, our amendment grandfathers  
7 individuals now 50 years or older and retains capital gains  
8 treatment for them under 10-year averaging. Perhaps staff  
9 would like to elaborate on that if there is much left to  
10 elaborate on that.

11 In a sense, we liberalized the Chairman's draft in that  
12 respect.

13 The Chairman. You have. And I am prepared to accept that  
14 amendment. I think it is a good amendment.

15 I am prepared to accept his total amendment. You weren't  
16 here when I said that. I complimented both you and Senator  
17 Heinz for the work you have done on this and the amendments  
18 that you have offered. And I think this particular one  
19 amendment in his whole amendment is a good provision.

20 Senator Heinz. Mr. Chairman, can we have the staff go  
21 through the amendment point by point because it is a complex  
22 and lengthy amendment?

23 Mr. Wilkins. On the 10-year averaging amendment, is the  
24 intent of the Heinz amendment to continue to permit long-  
25 term capital gains treatment for individuals who have attained

1 50 for pre-74 capital gains and go no further?

2 Senator Heinz. John?

3 The Chairman. Bill --

4 Mr. Colvin. I believe that is the intent of the  
5 proposal.

6 The Chairman. I couldn't hear the question, but I guess  
7 I heard the answer.

8 Senator Roth. But my question is with respect to the  
9 10-year averaging of lump sum payments; not capital gains.

10 Mr. Colvin. Senator Roth, I believe you are interested  
11 in a broader transitional rule than is provided in  
12 Senator Heinz's proposal.

13 Senator Roth. Yes. I would just like to point out that  
14 what we want is current law would continue to exist for all  
15 above the age of 50 in 1986. What we are talking about is  
16 10-year averaging at current tax rates.

17 My concern is that many middle class Americans have  
18 already placed large sums into thrift plans, pension plans,  
19 based on a given tax treatment. And now the proposal to  
20 change, I think, is unfair and certainly discourages working  
21 Americans to save, a factor that I think is critically  
22 important.

23 So I want to support what the distinguished Senator from  
24 Pennsylvania is doing, but I think it is important -- it had  
25 been earlier our understanding that this particular problem

1 would be taken care of as part of this amendment.

2 Senator Heinz. Senator Roth, how would you like to  
3 either modify or amend the proposal? What would you like to  
4 see done here? Do you have a --

5 Senator Roth. Yes. What we want to do is continue the  
6 current law. That is, 10-year averaging at current tax rates  
7 for all who are the age of 50 in 1986.

8 The Chairman. His amendment does that, doesn't it?

9 Senator Roth. No.

10 Mr. Colvin. Only with respect to certain pre-1974 --

11 Senator Roth. It was our understanding, Senator Packwood,  
12 that it was going to. This is a last minute change, as I  
13 understand it. We thought we had worked this out  
14 satisfactorily.

15 But it does seem to me, as a matter of equity, important  
16 that we continue. What we are asking is that this 10-year  
17 averaging rule continue to apply to those who have reached  
18 the age of 50.

19 The Chairman. Oh, I see. You are right. His was capital  
20 gains.

21 Senator Roth. That is correct.

22 The Chairman. My mistake.

23 Senator Roth. I would ask the distinguished Senator  
24 whether he would be willing to.

25 Senator Heinz. I have no philosophical problem with what

1 the Senator from Delaware is proposing.

2 But let me ask the staff: To what extent is there a  
3 revenue loss associated with Senator Roth's proposal?

4 Mr. Weiss. Senator Roth's proposal would reduce revenue  
5 by about \$500 million over the period relative to your  
6 amendment.

7 Senator Roth. We are talking about a question of fairness,  
8 a question of equity. Here we are trying to develop proposals  
9 that will encourage savings, thriftness, on the part of the  
10 American people, and then they put large -- these are working,  
11 middle class Americans who over a period of many, many years  
12 have been saving as provided under the law. And then all of  
13 a sudden we say we are going to change the rules on you.

14 Now if you want to change it prospectively, that is  
15 another matter. But I thought I heard the Committee early  
16 on saying that these changes shouldn't be retroactive.

17 All this is going to do is hit hard middle America,  
18 discourage savings and confidence in the whole process. It  
19 is not a question of funds. It is a question of fairness.

20 Senator Heinz. Senator Roth, as I say, your amendment  
21 is, I think, quite consistent with what we are trying to do.  
22 And I would modify my amendment to incorporate your proposal.

23 Senator Roth. Thank you, distinguished Senator. And I  
24 am happy to support his amendment, as modified.

25 The Chairman. Further discussion on the amendment?

1 Senator Grassley. Mr. Chairman?

2 The Chairman. Senator Grassley.

3 Senator Grassley. I heard the Chairman say that he was  
4 willing to accept this. If that is the case, then I  
5 discussed with the Chairman and members of the Committee my  
6 feeling about the cap should be \$12,000.00 instead of  
7 \$7,000.00. So I assume that now I should bring up an amend-  
8 ment to this.

9 The Chairman. On the 401(k)s and the 403(b)s?

10 Senator Grassley. Yes.

11 The Chairman. Yes.

12 Senator Grassley. All right.

13 Then I would propose -- I assume that this is Item Number  
14 1 under A, A-1, where it says "indexed, \$7,000.00 cap." I  
15 would have a cap of \$12,000.00.

16 Senator Heinz. Senator Grassley, a question, if I may.  
17 I assume that you are offering your amendment to either my  
18 amendment or to the underlying text of the bill.

19 Senator Grassley. Yes, yes.

20 Senator Heinz. They both have \$7,000.00 in it.

21 Senator Grassley. Yes.

22 Senator Heinz. So whatever we do, irrespective of the  
23 fate of the Heinz amendment, yours will apply, if I understand  
24 you on that.

25 Senator Grassley. Yes.

1 Now, Mr. Chairman, let me say that it doesn't take any  
2 debate to explain that I just happen to think the \$7,000.00  
3 is too low. On the other hand, I have accepted from -- even  
4 last year when we first started debate on this issue -- that  
5 there should be modification of the present law.

6 And I have talked in terms of \$10,000.00 to \$15,000.00  
7 as my feeling of where it should be. And so I have accepted  
8 \$12,000.00 as a point to ask the Committee to vote on because  
9 it is about half way between the range I was looking for the  
10 cap to be.

11 The Chairman. Let me ask a question, if I could. As I  
12 recall, 97 or 98 percent of the employees are under \$7,000.00  
13 on 401(k)s. There cannot be much of a revenue impact from  
14 going from seven to 12 in that case, is there?

15 Mr. Weiss. Going from seven to 12 relative to your  
16 proposal, Mr. Chairman, would lose about \$1.2 billion over  
17 the five-year period.

18 The Chairman. Is that right? With only three or four  
19 percent of the employees, it will lose that much money?

20 Mr. Weiss. That is what our figures show. There are  
21 enough people who contribute at that level and make  
22 significant contributions that the revenue change would be  
23 of that magnitude.

24 The Chairman. Mr. Secretary?

25 Mr. Mentz. Well, getting back to your introductory

1 remarks, Mr. Chairman, I think that once you get above  
2 \$7,000.00 or \$8,000.00, it is primarily the high-paid,  
3 highly compensated, people who are taking advantage of these,  
4 in effect, voluntary pre-tax plans, which is what a  
5 401(k) or a 403(b) plan is. It is an individual choice.  
6 Do you want to take the money in salary? Or do you want to  
7 put it into a tax deferred plan?

8 And if you choose the latter, you are not subject to tax.  
9 The funds grow and are tax exempt for the period of time  
10 it is in there. It could be 20 or 30 years until you retire.

11 Now the \$7,000.00 limit is basically designed to try to  
12 pick up as many lower and middle income people as possible.  
13 But once you get over that, you are favoring -- because it  
14 is voluntary, a person-by-person choice -- you are going to  
15 have much more of the higher paid people making that choice  
16 than the lower paid.

17 And I think that is the reason for the revenue loss. So  
18 in summary that -- the Administration would be opposed to  
19 Senator Grassley's amendment.

20 Senator Grassley. I would like to have the Committee  
21 think in terms of if present law is \$30,000.00 and we would  
22 go down from \$30,000.00 to \$12,000.00, it seems to me like  
23 that is a very significant drop. And it would also seem to  
24 me at the \$12,000.00 range you are not talking about helping  
25 highly compensated people, but you are talking about making a

1 program available for middle income people, middle income  
2 throughout their lives, working lives, I should say being  
3 able to maintain that standard throughout their retirement  
4 years.

5 That is the way I see \$12,000.00 versus \$7,000.00. And  
6 I see \$7,000.00 being punitive towards middle income people;  
7 not being able to maintain that standard of life throughout  
8 retirement.

9 The Chairman. Senator Pryor.

10 Senator Pryor. Yes, Mr. Chairman.

11 Does Senator Grassley's amendment touch on the 403(b)?  
12 Also, does it put a \$12,000.00 cap? Raise it from seven to  
13 12?

14 The Chairman. I think in fairness, Chuck, you ought to.  
15 They are slightly different plans, but if you are going to  
16 raise one, you ought to raise the other.

17 Senator Grassley. Then I will accept the Chairman's  
18 judgment on that. I have only talked in terms of 401(k)s  
19 because that is what everybody else has talked about.

20 Senator Pryor. Well, you have mentioned 403(b), and I  
21 do have a fairly full-scaled amendment on 403(b) that I would  
22 like to have the privilege of offering when this is disposed  
23 of or at the appropriate time.

24 The Chairman. Senator Moynihan.

25 Senator Moynihan. Well, I just wanted to say that I



1 understood that Senator Pryor was going to do that. I  
2 understood that you had an amendment on the 403(b) which I  
3 think we should consider.

4 Senator Grassley. I would at this time like to include  
5 403(b)s, but that would not preclude what Senator Heinz  
6 wants to do at a future time, as far as I am concerned.

7 But I think the Chairman is right that at this point  
8 where you are thinking in terms of \$7,000.00 for both, if we  
9 are going to effect a change for one, we ought to effect the  
10 change for both.

11 Now you are approaching it from a different philosophy  
12 than the Chairman's proposal.

13 Senator Pryor. It would be my preference -- and, of  
14 course, you are free to offer an -- it would be my  
15 preference to, if I could, try to address the 403(b) issue  
16 entirely separately.

17 The Chairman. Why don't we consider his amendment?  
18 You have got other issues beside the cap, the \$12,000.00.

19 Senator Pryor. Yes, that is correct.

20 The Chairman. Why don't we consider his?

21 Senator Matsunaga. Mr. Chairman, is the Senator from  
22 Iowa proposing to retain the existing law, the current law?

23 The Chairman. No, \$12,000.00.

24 Senator Grassley. No. No. I am proposing amending  
25 Senator Heinz's amendment or the underlying legislation at

1 this point.

2 Senator Heinz. Now if I might just inquire of staff.  
3 As I understand Senator Grassley's amendment, which I by the  
4 way am quite sympathetic to -- in Senator Chafee's and my  
5 original bill, we had a higher cap than \$7,000.00. We had  
6 a \$10,500.00 cap. And once you get over about \$9,000.00,  
7 frankly, \$9,000.00 or \$10,000.00, there is not much revenue  
8 difference. So I am, if this goes to a vote, going to  
9 support you.

10 But I just want to clarify one thing. The Grassley  
11 amendment will apply not only to the 401(k) but also to  
12 403(b), and it would retain the indexation to the Social  
13 Security wage base. That is in the Heinz amendment. You  
14 would not change that.

15 Senator Grassley. Yes. And I want to clarify, because I  
16 know where Senator Pryor is coming from and I know of  
17 some legislation he is considering -- I don't want to  
18 prejudice for my part or his part any case that he will be  
19 making later on.

20 The Chairman. Further discussion on the Grassley  
21 amendment?

22 Senator Bentsen. Mr. Chairman?

23 The Chairman. Senator Bentsen. Who wants to talk?

24 Mr. Secretary?

25 Mr. Mentz. Mr. Chairman, let me just give you some

1 statistics. These come from an outside study done with  
2 respect to 1983 data on 401(k) plans. Contributions in  
3 excess of \$6,000.00 for participants earning less than  
4 \$30,000.00, less than one percent made contributions over  
5 \$6,000.00. For employees between \$30,000.00 and \$50,000.00,  
6 4.34 percent contributed over \$6,000.00. And for employees  
7 earning more than \$50,000.00, 25.82 percent contributed over  
8 \$6,000.00.

9 So I think these data make the point that once you get  
10 over that \$6,000.00, \$7,000.00 limit, you are in a very -- in  
11 a plan that very much favors the high paid.

12 Senator Grassley. I would suggest, not to detract from  
13 that, but to -- but I think that that is somewhat supportive  
14 of the purpose of my amendment. Now in six years on this  
15 Committee, we have been using the rhetoric of what is a  
16 middle income taxpayer in this country. And we have used  
17 the brackets \$20,000.00 to \$50,000.00. Now I am not sure  
18 I agree with that before I got on this Committee. I would  
19 think it is \$15,000.00 to \$30,000.00 or something.

20 But I am willing to accept it because we have been using  
21 that regularly throughout this Committee, and it is exactly  
22 that group that I am having my amendment -- that I want my  
23 amendment to apply to.

24 And I think what the Secretary said supports my reasoning  
25 behind the amendment.

1 The Chairman. Senator Symms.

2 Senator Symms. Well, Mr. Chairman, it seems like this is  
3 an underlying -- and the Chairman alluded to it earlier --  
4 that it is an underlying philosophical question here. Maybe  
5 \$30,000.00 is too generous.

6 In my opinion \$12,000.00 is too ungenerous or too stingy.  
7 Many of these people spend their entire working lives, they  
8 get their homes paid for, they get their children educated,  
9 and the last three or four years of their actual working  
10 life before retirement, they sock away some money in a  
11 retirement plan and that hope that they will be able to do  
12 that all the way through their life -- it gives people hope  
13 and aspiration to try to achieve and move up in the company  
14 and be a better employee and so forth.

15 And then all of a sudden Congress coming along and  
16 saying, no, we really don't want you to succeed in the  
17 American dream.

18 And I really question what it is we are doing here talking  
19 about \$12,000.00 and \$7,000.00. It seems to me like that  
20 there should be -- you know, we are disrupting this entire  
21 process.

22 And I really think that it is a mistake. And I would  
23 certainly vote for the Grassley amendment, but I think he  
24 ought to raise it up to \$20,000.00. At least have that  
25 incentive out there. What you are talking about doesn't cost

1 much money, but why are you going to have it so that the  
2 American people don't have that hope if they have the  
3 opportunity to make the American dream be a reality in this.

4 The Chairman. You know, you talk about the American  
5 dream. We are using the tax code for incentives. And when  
6 you are talking about people -- Steve, this has been abused,  
7 quite frankly, by very small, closely held corporations where  
8 their major partners or shareholders have been putting aside  
9 \$30,000.00 a month and using it, in my judgment, as something  
10 close to a tax dodge.

11 The tax code is not to be used to let the elegant live  
12 very exquisitely when they retire. It is, in terms of a  
13 broad based policy -- we are trying to find some additional --  
14 I don't want to say "alternatives." We have to face that  
15 problem -- some additional retirement benefits for lower and  
16 middle income people. Somehow, some way, the upper income  
17 people seem to find a way to take care of themselves.

18 Senator Bradley.

19 Senator Bradley. Mr. Chairman, I would like to address  
20 the basic question of the pension issue, and then I would  
21 like to get to the amendment offered by Senator Grassley.

22 Senator Symms said before we upset the apple cart, before  
23 we change the ways things are here, implying that the way  
24 tax policy affects pension law now is perfectly coherent and  
25 understandable and everybody has a full view of what the

1 policy is.

2 Senator Symms. I didn't say that. But this isn't going  
3 to be either, so let's don't --

4 Senator Bradley. Well, what I would like to do is just  
5 make the point -- a study done by Deloyt Haskins and Sells  
6 about pension tax policy. And this is their executive summary  
7 conclusion.

8 It says: "The necessary information to formulate national  
9 pension policy tax policy does not exist. Therefore, no one  
10 knows and can reasonably predict how smaller employers would  
11 respond to present tax proposals. Although enactment of  
12 several of the pending proposals would improve benefit  
13 delivery under existing plans, it could also reduce total  
14 coverage in the long run. Those who argue otherwise appear  
15 to be relying upon anecdotal evidence."

16 And then they go on to make the point that what you need  
17 is a comprehensive study of a large number of small employers.

18 The point here is simply that is how I believe we are  
19 legislating here -- based on anecdotal evidence. Because  
20 any kind of comprehensive analysis is not available.

21 And what I would like to -- and that focuses that onto  
22 the issue that Senator Grassley raises, which is whether an  
23 individual should be able to put away tax free over \$7,000.00.

24 And to make the argument that that is a middle income  
25 provision, to me, just flies in the face of the statistics

1 that the Secretary gave us just a few minutes ago.

2 I would like the Secretary, if you could, to give us  
3 those statistics again about what percent of the people who  
4 put away more than \$7,000.00 earn more than \$30,000.00 in  
5 income.

6 Senator Grassley. The Senator from New Jersey, there is  
7 not a single tax bill we have had up or a single discussion  
8 that we have had in this Committee in the last six years  
9 that hasn't described middle income Americans \$20,000.00 to  
10 \$50,000.00. Now I think that \$50,000.00 is awful high from  
11 my perspective and my constituency. But I am just accepting  
12 what everybody here inside the Beltway accepts as middle  
13 income Americans. And I am suggesting that they ought to  
14 save accordingly or have that right to save accordingly.

15 Senator Bradley. I would like to get the number from the  
16 Secretary and then make the point.

17 Mr. Mentz. Well, these are numbers for one employee. It  
18 doesn't count two-employee households --

19 Senator Bradley. I can't hear you, Mr. Mentz.

20 Mr. Mentz. I say these are statistics for just the  
21 salary of a particular employee. It doesn't count the  
22 one employee where another employee is making \$200,000.00.

23 But to give you those statistics again -- which I agree  
24 with you, Senator Bradley, make the point very vividly -- for  
25 employees that make less than \$30,000.00, less than one

1 percent, making contributions into a 401(k) plan in excess of  
2 \$6,000.00. Between the salary range of \$30,000.00 to  
3 \$50,000.00, which if you accept that is middle income --  
4 and perhaps you could debate it. Certainly in a two-earner  
5 family it may not be. But if you accept that it is, only  
6 4.34 percent make contributions in excess of \$6,000.00.

7 And for the range over \$50,000.00, your number is 25.82  
8 percent. And, clearly, that rises as you go higher so that  
9 when you reach \$100,000.00 or \$200,000.00 you are up way  
10 higher than 25 percent. I think that makes your point very  
11 vividly.

12 Senator Bradley. Well, I think that just underlines the  
13 Chairman's point really on a 401(k) plan above \$7,000.00. I  
14 mean this is a benefit --

15 Senator Grassley. And what you want to do is you want  
16 that four percent that will contribute more not to have that  
17 right and have a lower standard of living when they retire.

18 Senator Bradley. No, no, no.

19 The Chairman. I think we have beat this horse hard  
20 enough.

21 Senator Bentsen.

22 Senator Bentsen. I don't think I want to get into that  
23 fight. But let me just editorialize for just a moment here,  
24 because one of the things Bill Bradley talks on -- and I  
25 totally agree -- is that you don't have enough information on



1 which to base decisions around here.

2 I was Chairman of the Subcommittee on Pensions back in  
3 1974, and we shared jurisdiction with the Labor Committee.  
4 And we brought forth ERISA.

5 And I recall that one of the things they said was that  
6 we needed a \$.50 premium to ensure those pension funds that  
7 they wouldn't turn to dust on retirement. I said, well,  
8 why don't we just go for broke and double that and make it  
9 a dollar. Now it is far beyond that.

10 So there are changes that we have to bring about. But  
11 what I am looking at is that in 1982 under TEFRA we made  
12 major changes in pension. In 1984 under the Debt Reduction  
13 Act, we made major changes. Under the Pension Equity Act,  
14 we made major changes.

15 I wish at some time we would just sit down and take the  
16 time and exercise with care where we would arrive at some  
17 decisions that people could count on for a number of years;  
18 where every two years we are not putting all the lawyers to  
19 work to revise pension plans; where people would have a chance  
20 to count on something and say this is what I am going to get,  
21 and put my money in; I can reasonably expect it is going to  
22 be under this set of rules.

23 So that I just say to my colleagues in an aside. I hope  
24 sometime -- that may be too much to hope for -- but that we  
25 will try to do that. And that we remember that we have

1 jurisdiction in this and we share it with the Labor  
2 Committee, and that we exercise that kind of care and  
3 judgment.

4 Thank you.

5 Senator Danforth. Could I ask the Senator from Texas --  
6 I think you made a very interesting point, but what is the  
7 conclusion that you got from that?

8 Senator Bentsen. Jack, the conclusion is we are not  
9 doing a very good job of it. I will, obviously, have to vote  
10 on some of these amendments, and exercise my judgment. And  
11 my concern is that I really won't have the kind of background  
12 I should have to exercise that. It is an expression of  
13 frustration, I suppose, as anything else.

14 The Chairman. Senator Moynihan had his hand up first.  
15 And then Senator Durenberger.

16 Senator Moynihan. Mr. Chairman, just as a sort of  
17 benchmark statistic about middle income America, could Mr.  
18 Weiss or Mr. Colvin give us an estimate of what portion of  
19 American households have incomes between \$30,000.00 and  
20 \$50,000.00 and what proportions have incomes over \$50,000.00?

21 Senator Grassley. Would the Senator yield just for a  
22 comment from me?

23 Senator Moynihan. Sure.

24 Senator Grassley. I know what the Senator is after. I  
25 am going to agree with the answer you are going to get that

1 it is a very small number of people. I think it has been  
2 idiotic for six years to refer to middle income America at  
3 \$20,000.00 to \$50,000.00, but this Committee has continually  
4 done this.

5 Senator Moynihan. I don't disagree. I just think --

6 Senator Grassley. And so all I want to do is compare  
7 apples with apples; not apples with oranges. And I am playing  
8 by your rules; not my rules.

9 Senator Moynihan. I just want to get the facts. I just  
10 want to --

11 (Laughter)

12 Senator Moynihan. What proportion of American households  
13 have incomes over \$50,000.00?

14 Mr. Colvin. We are checking to see if we have that  
15 figure here.

16 Senator Moynihan. Would it be about four percent, five  
17 percent?

18 Mr. Weiss. In a minute I can find it, but it is probably  
19 in that vicinity. Probably about -- somewhere between 4 to  
20 6 million households with incomes over \$50,000.00.

21 Senator Moynihan. So that is about five percent?

22 Mr. Weiss. Right.

23 Senator Moynihan. So the middle is -- let's see, the  
24 top is five percent. What is the middle?

25 I mean the point is that when you have reached \$50,000.00,

1 you have got to the point where 95 percent of American house-  
2 holds have gone higher -- below.

3 I think it sometimes helps --

4 The Chairman. Senator Durenberger.

5 Senator Durenberger. Mr. Chairman, I want to explore  
6 just briefly part of Jack Danforth's question to Lloyd  
7 Bentsen.

8 I think our job here would be a lot simpler if we were  
9 voting on whether we are going to tax savings or tax  
10 consumption, and we just decided we weren't going to tax  
11 savings -- we wouldn't care whether it was 401(k)s or  
12 403(b)s or ERISAs or whatever.

13 But we could use a principle like that to help resolve  
14 the quandary. I find myself in a quandary on how to vote on  
15 this. I mean if four percent of the people are benefitting  
16 from my vote and it is going to cost \$1 billion to cast this  
17 vote in order to help out four percent of American house-  
18 holds, then I would like to ask myself what else do these  
19 four percent of these American households have to protect  
20 their income security that I also subsidize in some way.

21 But we could sit here forever, I suppose, asking those  
22 questions. I can't find a good way to come to an answer to  
23 this other than to say that the easy way out is to say I  
24 am all for savings; and I think we ought to subsidize savings  
25 and not subsidize consumption; and so I am going to vote for

1 Grassley or whoever comes along with 15 or 20 or something  
2 like that.

3 But I will be darned if I know how to go back home and  
4 justify that in terms of the constant critique that you put  
5 with everyday as the level of the rate of taxation on every-  
6 body in this country gradually rises as we are taking care  
7 of our own version of tax principle.

8 Now one question I do have that I don't think I have an  
9 answer to yet this morning is what happens on withdrawal under  
10 either the Heinz amendment, which I am co-sponsoring, or  
11 your original proposal?

12 The Chairman. I wonder if we might do this, though,  
13 because I would like to vote on the Grassley amendment.  
14 We will get back to the withdrawal because that question has  
15 been raised, but at the moment we are just on \$7,000.00 versus  
16 \$12,000.00 on the 401(k)s and the 403(b)s.

17 Senator Heinz. Mr. Chairman?

18 The Chairman. Senator Heinz.

19 Senator Heinz. I think Senator Durenberger raises a  
20 very good question, and it has really been touched on by  
21 Lloyd Bentsen and others. And there is no really clear  
22 answer to the question, but let me try two or three relevant  
23 factors.

24 The first is that any snapshot of what people are doing  
25 at one point in time can mislead you. Not all people who save

1 in excess of \$6,000.00 a year do it every year. There is a  
2 correlation with age and with income

3 And there is a pattern. And Senator Durenberger, in fact,  
4 referred to this when we were discussing another issue at  
5 another time. But once people get their kids through college,  
6 they begin to be able to put more money into IRAs or  
7 401(k)s or whatever.

8 And so although a small percentage of the American people  
9 may, in fact, be saving at less than \$6,000.00 a year in a  
10 401(k) or a 403(b), that doesn't mean that that is the only  
11 percentage of all the people who are going to benefit  
12 because they only go through a period of maybe between age  
13 45 and 50 and 60 and their retirement where they have the  
14 income where they can afford to save.

15 So that is a factor worth keeping in mind.

16 The Chairman. Let's try to vote on the Grassley  
17 amendment.

18 Senator Heinz. May I just make one other comment,  
19 Mr. Chairman?

20 The Chairman. Yes.

21 Senator Heinz. Secondly, for -- it is worth noting  
22 that a considerable portion of the savings that really is  
23 locked up for retirement purposes is, in fact, saved  
24 relatively later in people's life time. And that savings  
25 pool is absolutely vital to everything that actually takes

1 place in this country with respect to investment.

2 Finally, current law on 401(k)s is \$30,000.00 a year.

3 And we are taking that down to either \$7,000.00 or

4 \$12,000.00. It is a very major change, whether we adopt

5 the Grassley amendment or not.

6 And so anybody who is concerned about how they explain

7 when they go back home, you know, why they voted a

8 \$12,000.00 limit should say it was \$30,000.00. And maybe that

9 is not a bad response.

10 Thank you, Mr. Chairman.

11 The Chairman. Those in favor of the Grassley -- I think

12 we ought to have the Clerk call the roll on this.

13 Clerk, call the roll on the Grassley amendment.

14 The Clerk. Mr. Dole?

15 Senator Dole. Nay.

16 The Clerk. Mr. Roth?

17 Senator Roth. Aye.

18 The Clerk. Mr. Danforth?

19 Senator Danforth. Aye.

20 The Clerk. Mr. Chafee?

21 Senator Chafee. Aye.

22 The Clerk. Mr. Heinz?

23 Senator Heinz. Aye.

24 The Clerk. Mr. Wallop?

25 Senator Grassley. Aye, by proxy.

1 The Clerk. Mr. Durenberger?  
2 Senator Durenberger. Aye.  
3 The Clerk. Mr. Armstrong?  
4 Senator Armstrong. Aye.  
5 The Clerk. Mr. Symms?  
6 Senator Symms. Aye.  
7 The Clerk. Mr. Grassley?  
8 Senator Grassley. Aye.  
9 The Clerk. Mr. Long?  
10 Senator Long. Aye.  
11 The Clerk. Mr. Bentsen?  
12 Senator Bentsen. Aye.  
13 The Clerk. Mr. Matsunaga?  
14 Senator Matsunaga. Aye.  
15 The Clerk. Mr. Moynihan?  
16 Senator Moynihan. No.  
17 The Clerk. Mr. Baucus?  
18 (No response)  
19 The Clerk. Mr. Boren?  
20 (No response)  
21 The Clerk. Mr. Bradley?  
22 Senator Bradley. Nay.  
23 The Clerk. Mr. Mitchell?  
24 Senator Long. Aye, by proxy.  
25 The Clerk. Mr. Pryor?



1 Senator Pryor. Aye.

2 The Clerk. Mr. Chairman?

3 The Chairman. Aye.

4 Senator Moynihan. Did the Chairman vote aye?

5 The Chairman. I voted aye.

6 The Clerk. Sixteen yeas, two nays.

7 Senator Moynihan. Mr. Chairman, I was asking --

8 Senator Long. Senator Mitchell wants to vote no. Record  
9 me aye.

10 The Chairman. Are there other unrecorded votes?

11 Senator Bradley. Am I recorded?

12 The Chairman. What is the vote? Senator Dole is no.

13 What is the vote?

14 The Clerk. Fifteen yeas, three nays.

15 The Chairman. Passed.

16 We are now on the Heinz amendment.

17 Senator Matsunaga. Mr. Chairman?

18 The Chairman. Senator Matsunaga.

19 Senator Matsunaga. I have an amendment to offer to the  
20 Heinz amendment.

21 Mr. Chairman, I must say and I will commend Senator Heinz  
22 and the Chairman for the gallant effort in improving upon  
23 the original Chairman's proposal, and improvement, for  
24 example, in the area of 401(k)s. However, the changes  
25 proposed still would do violence to existing plans. In the

1 coverage, for example, the Ways and Means Committee in the  
2 House reviewed the issue and agreed that it needed more  
3 study before changes were to be enacted. And the Treasury  
4 is presently studying the issue. And that study is not due  
5 until July 1 of this year.

6 And then truly it is unclear how the line of business  
7 criteria would be applied to employers utilizing fair  
8 cross-section tests. It is just utterly impossible to  
9 determine how Treasury will interpret them.

10 We really don't know what we are doing here. As a  
11 matter of fact, in his introductory remarks Senator Heinz,  
12 the offerer of the amendment, said this is such a complex  
13 issue, complex proposal, that it will take years before we  
14 really understand what effect it is going to have.

15 As a matter of fact, I raise the question: Do we know  
16 yet what the recent reform in 1982 and 1984 -- whether or  
17 not they are working. We don't know yet. And here, again,  
18 after all the changes in 1982 and 1984, we are proposing more  
19 changes. And we find that because of the constant changes,  
20 plans are being dissolved during the four-year period. The  
21 last four-year period, we have had a 300 percent termination  
22 of plans.

23 And, as a matter of fact, just in half a year, we had  
24 6,215 terminations as compared to 4,536 terminations in  
25 1981. And there has been a constant increase over the years

1 as opposed to establishments.

2 Now establishing new plans in 1982, there were 28,000.  
3 In 1983, 22,000. In 1984, down to 12,000. And 1985, even  
4 less because of the constant change in the laws as they  
5 pertain to pensions and retirement.

6 And I am afraid that the original intent of establishing  
7 privately supported pension plans will be a thing of the  
8 past if we continue to make these changes. So my proposal,  
9 Mr. Chairman, I think -- copies have been distributed -- would  
10 retain present law by and large and in areas the Heinz-  
11 Packwood amendment have adopted by original proposal, and the  
12 original proposal has been distributed to members.

13 And in my amendment to the Heinz amendment, I delete  
14 those amendments which I had initially proposed to the  
15 Packwood proposal because of the inclusion within the Heinz  
16 amendment.

17 Senator Heinz. Senator Matsunaga, would you yield on  
18 just a point of parliamentary inquiry?

19 Senator Matsunaga. Yes.

20 Senator Heinz. Are you amending -- your amendment would  
21 also amend the underlying Packwood proposal, too, if it was  
22 adopted, irrespective of the fate of my amendment. What is  
23 your intention there?

24 Senator Matsunaga. Yes. It would completely amend the  
25 Packwood proposal.

1           Senator Heinz. So it is an amendment both to my  
2 amendment and to Senator Packwood's underlying proposal.

3           The Chairman. And the Chair will accept it as that.

4           Senator Matsunaga. Because as I understand it, your  
5 amendment --

6           The Chairman. I mean accept the fact that he is amending  
7 both provisions.

8           Senator Heinz. All right.

9           Mr. Chairman, I just want to say I strongly oppose this  
10 amendment. Let me give you one reason of why I oppose it.

11           Our -- Senator Packwood's amendment, if we are  
12 successful in amending it, but almost in any event, is  
13 aimed at trying to ensure that 10, 20, 30 years from now  
14 there is broader pension coverage under our pension laws.  
15 We don't want to see our present pension system get any  
16 more top-heavy than it already is. And there is every  
17 reason to believe it will stay top-heavy unless we make some  
18 of these changes in the integration coverage vesting rules.

19           Let me give you one example on integration. There -- we  
20 had in the Aging Committee testimony from an individual who  
21 had worked a number of years, in excess of 10 years, as a  
22 relatively low-wage employee for a large national firm, and  
23 who had been contributing -- for whom the company had been  
24 contributing as part of a pension program. This woman retired  
25 at age 65. She thought she was going to get some kind of a

1 pension. She found that due to the fine print in the  
2 company's plan her Social Security benefits, because they  
3 were \$400.00 a month or some relatively low level -- she was  
4 not a high-income person -- integrated her out of any pension.

5 So here is someone to whom the company had been  
6 contributing nominally and who got absolutely no pension  
7 benefits because the company rules provided for the  
8 integration, the offset, if you will, of the pension by  
9 Social Security payments.

10 That is outrageous. And if your amendment is adopted --  
11 and you may or may not be aware of that situation -- we will  
12 continue to permit that kind of absolutely outrageous,  
13 irresponsible pension planning to continue.

14 And I don't say that is your intent, but that will be  
15 the effect.

16 Senator Matsunaga. Well, the Senator may be right.  
17 However, what I am saying here is that much more time and  
18 attention needs to be given a major change such as that  
19 proposed by the Senator from --

20 Senator Heinz. Let me just say --

21 Senator Matsunaga. What I am saying is that retirement  
22 savings policies should be considered separately from  
23 a tax bill which is driven by the needs to raise revenue  
24 in order to reduce the tax rate. So that we are guided not  
25 so much by what is the best policy, but we are trying to keep

1 the tax package revenue neutral. And we attempted to make  
2 amendments in law which hasn't had the chance to prove  
3 itself.

4 And I ask the Senator, for example: Do we know if the  
5 top-heavy rule enacted in TEFRA in 1982 is working as  
6 intended?

7 It seems to me that we have been moving too fast, too  
8 much. And it is for that reason I am proposing the amendment  
9 to retain much of the existing law so that we will have time  
10 to study, time to see the effects, and not remove the  
11 incentive for development of further plans on a voluntary  
12 basis to take care of employees who otherwise would have to  
13 be taken care of by the government on welfare.

14 And I understand -- well, the Senator's staff had  
15 initially proposed that we delete from my amendment the  
16 retention of the current law governing permissible integration  
17 with Social Security. We might consider that later, but  
18 right now my proposal with the Senator's proposal would  
19 basically retain present law. And that is my proposal.

20 Senator Symms. Would the Senator yield for a question?

21 The Chairman. No. Mr. Secretary and then Senator  
22 Durenberger.

23 Mr. Mentz. Well, I first want to strongly agree with the  
24 Senator from Hawaii that we should not do anything that is  
25 not thought through and carefully studied. And I think what

1 we are trying to do -- and certainly the Administration's  
2 approach, and I believe it is the intention of every member  
3 of this Committee -- is to very carefully study and  
4 legislate responsibly and not purely as a matter of picking  
5 up revenue or -- I just don't think that is the focus of  
6 really any of our proposals or the Chairman's proposal.

7 But let me explain the reason why it is important, indeed  
8 essential, to consider changes in the pension area of the  
9 tax law as part of tax reform. The tax system provides a  
10 very significant tax benefit for qualified pension plans.  
11 And that has been in our system for a long time. But it is  
12 a very major tax expenditure, if you want to look at it  
13 that way.

14 Now in a fundamental tax reform where you are looking  
15 really at every area of the code and trying to winnow out  
16 the provisions that don't make as much sense in a world that  
17 has a lower tax rate and fewer deductions and a more  
18 neutral system, I think you have to look at the pension  
19 system.

20 And I think Senator Heinz is exactly right that we have  
21 got to look and make sure we are getting what we are paying  
22 for in terms of the cost to the Federal Government. Do we  
23 have a system that is providing the pensions where it ought  
24 to be provided, to lower and middle income people? And are  
25 we spending too much? Is it costing too much?

1 I think it clearly is costing too much in the 401(k)  
2 area. And even with Senator Grassley's amendment, I think  
3 there is still a major improvement from current law.

4 But the bottom line is this area has been studied.  
5 Senator Heinz has studied it and his staff and Senator  
6 Chafee very intensively. The Treasury has studied it  
7 intensively in coming up with Treasury 1 in November of 1984.  
8 Intensive work has been going on ever since then -- Joint  
9 Committee has been deeply involved. Staffs of the Senate  
10 Finance Committee, both majority and minority, as well as  
11 the Ways and Means staff.

12 So this isn't something that has just sort of come up  
13 all of a sudden. This is an area that has been given a lot  
14 of attention.

15 Can we study it more? Sure. Can we maybe get some new  
16 ideas? Possibly.

17 But I don't think we should withdraw because it hasn't  
18 been studied enough. If we take that approach, we will never  
19 correct these imbalances.

20 The Chairman. Senator Durenberger and then Senator  
21 Symms.

22 Senator Durenberger. Mr. Chairman, I agree with Roger  
23 that John Heinz is right on this issue. And I think he is  
24 practically always right on these pension issues. I think you  
25 are practically always right on these pension issues also.



1 Sparky is almost always right. This just happens to be  
2 one of those cases where I think at least on one issue that  
3 all of us care a lot about, and that is the issue of  
4 economic equity -- the fact that 85 percent of workers in  
5 this country who are covered in medium and large retirement  
6 plans are now required to work 10 years before earning a  
7 right to a pension is something that all of us have dedicated  
8 a lot of time here to try to change.

9 And one of the problems with the amendment from the  
10 Senator from Hawaii is he retains the concept of 10 year  
11 vesting, and the Senator from Pennsylvania does not. And  
12 that is a terribly important contribution to economic  
13 equity because a large number of those 85 percent of  
14 the workers are women.

15 And so for that reason, Mr. Chairman, I co-sponsor  
16 John Heinz on that amendment.

17 Senator Matsunaga. If the Senator will yield. If I  
18 were to delete that provision pertaining to vesting, will the  
19 Senator then support my amendment?

20 Senator Durenberger. No. I would probably find another  
21 reason not to support it.

22 (Laughter)

23 The Chairman. Senator Symms.

24 Senator Symms. Well, Mr. Chairman, I think this is really  
25 an issue that I, frankly, haven't made up my mind yet as to

1 how I wish to vote on it.

2 But the question I would like to ask of both the  
3 Secretary and to Senator Matsunaga, and Senator Heinz, if  
4 they would care to speak on it: Have any studies been done  
5 of how many Americans will not be on pensions if the Heinz  
6 proposal passes? I mean is the incentive -- I know the  
7 discrimination factor is -- I think everyone finds where it  
8 gets top-heavy that is a little unfair, but that incentive  
9 causes people to make pensions available for their  
10 employees.

11 How many people won't have the opportunity to have a  
12 pension system if the proposals to take away some of this  
13 incentive to people to set them up -- I would like to know  
14 those answers.

15 The Chairman. Steve, that is a question you will never  
16 be able to answer. How many people would make the decision  
17 to put in a pension plan if they themselves can deduct  
18 \$30,000.00 and wouldn't do it if it is \$10,000.00 despite  
19 the fact that 99 percent of their employees would be under  
20 \$10,000.00?

21 Senator Heinz. Steve, can I attempt to respond to you?

22 Senator Symms. Certainly. I want to hear Senator  
23 Matsunaga, and Senator Heinz and the Secretary. I would like  
24 to know. I think that is a pertinent question to help me  
25 make up my mind on how I want to vote on this issue.

1           If we are going to push millions of Americans off of the  
2 private pension system by adopting the Heinz amendment,  
3 then the effect of the Heinz amendment won't turn out to be  
4 what we are intending to do.

5           Senator Heinz. On that point, I totally agree that if  
6 the effect of anything we are doing, either in the Packwood  
7 proposal, my amendment, what Senator Matsunaga or anybody  
8 wants to do, is to encourage employers, whether they be  
9 small or large, from having, setting up pension plans,  
10 whether they be 401(k)s, private non-profit setting up  
11 403(b)s, defined benefit, defined contribution plans, any  
12 of the myriad of kinds of retirement savings plans, I would  
13 oppose it because we need to encourage employers, particularly  
14 service employers who typically do not have defined benefit  
15 or defined contribution plans and small businesses, which  
16 are the other groups that have not set up much in the way of  
17 pension plans.

18           I would be adamantly opposed to it. We don't want in  
19 the name of equity to kill off the establishment of pension  
20 plans.

21           I believe it is fair to say that the proposals we have  
22 here in vesting, integration and coverage have been ironed  
23 out with the various business groups and that as a whole  
24 they -- and maybe in largest part -- feel none of this is  
25 going to either cause any of them to cancel any of their

1 pension plans or in any way affect the establishment of new  
2 pension plans.

3 What we do know is that taken as a whole, based on a study  
4 done by a major pension research firm in town, ICF, that  
5 we would have approximately 17 percent more people drawing  
6 pensions from pension plans 30 years from now as if we  
7 didn't make these changes that Bob Packwood and I are  
8 proposing.

9 We have, in particular, as part of this made even  
10 simpler and better the so-called simplified employment plans,  
11 the SEPs. That is where I think you are going to see the  
12 greatest growth in pension plans for the small employer, for  
13 the service business.

14 The biggest problem that we have with pension delivery  
15 is that most employers who don't have pensions aren't  
16 wealthy enough to be able to put in contributory pension  
17 plans. It adds to their cost. And we don't want to place  
18 any burdens on them.

19 And this legislation does not place any burden, does not  
20 require any employer, does not make it tougher for any  
21 employer to set up a pension plan.

22 Indeed, there were some concerns I had that some of the  
23 changes we have in the original 401(k) plan would discourage  
24 the setting up and participation of employees in 401(k)s.

25 I think, Steve, as a whole, that if you are concerned

1 about anything we are doing here that is discouraging pension  
2 plans, we wouldn't have the kind of support we have from the  
3 business community and from various pension planning groups  
4 that have supported this proposal.

5 The Chairman. If I might comment on this.

6 I can think of few things that -- if Senator Matsunaga's  
7 amendment succeeds -- because I know where the push is  
8 coming from it. This is not an issue that is unstudied.

9 Here is what happened: The House hit the pension  
10 industry very, very hard by, what, \$27 billion, John?

11 Mr. Colvin. About \$13 billion over the five-year  
12 period.

13 The Chairman. And we hit it at about six?

14 Mr. Colvin. That is correct.

15 The Chairman. They came, the pension industry, and  
16 complained to me about the House bill was going to undo  
17 pension plans, it did not have integration, it did not have  
18 any of the things that Senator Heinz has put in it, and if  
19 we just put those in, they would support this.

20 Now then what has happened? And I think there was a  
21 conflict of interest almost. Some groups who have very  
22 highly paid executives have come and bleated and bled  
23 to want to keep the present law to protect their own pensions.

24 And I don't think they, frankly, give a damn about the  
25 pensions of their unintegrated employees. And I find it

1 bordering on hypocritical after they came and pleaded that  
2 we take care of what they regarded as the odious provisions  
3 in the House.

4 And now we pass the Matsunaga amendment, we are back to  
5 current law, and we lose another \$6 or \$7 billion.

6 There are going to be few votes in this Committee where  
7 you have got a clear distinction in terms of philosophy.  
8 And I will say again the groups that are opposed to the  
9 Matsunaga amendment and support the Heinz amendment: The  
10 National Council of Senior Citizens, the American Association  
11 of Retired Persons, the American Association of University  
12 Women, the American Nurses Association, the Council of  
13 Churches, the National Council of Senior Citizens, the  
14 Business and Professional Women's Club, the National Women's  
15 Political Caucus, the United Auto Workers, United Church of  
16 Christ, the AFL-CIO, the Airline Pilot's Association.

17 We are trying to make a pension system in this country  
18 that will give us some cushion when we get to 1995 and  
19 2000 and 2005 and the demographics start to turn heavily  
20 against Social Security because of a tremendous of retirees,  
21 and a relatively smaller number of people employed.

22 And in order to do that, you don't take care of just the  
23 princes of privilege who can afford to take care of  
24 themselves, whether they have the benefit of a tax deduction  
25 or not. You are only going to do it if you can take care of

1 the people in this country who are making \$12,000.00,  
2 \$15,000.00 and \$18,000.00 and will be putting tremendous  
3 pressure for dramatic increases in Social Security if they  
4 don't have some alternative.

5 And the Matsunaga amendment would deny them that  
6 alternative.

7 Senator Bentsen. Mr. Chairman?

8 Senator Matsunaga. Mr. Chairman, on the point that the  
9 Chairman made I think might be misleading the members of the  
10 Committee. The Heinz amendment would cost \$2.3 billion. The  
11 Matsunaga amendment would cost \$200 million. That is all.  
12 To say that the Matsunaga amendment is going to cost \$2.6  
13 billion is misleading.

14 The Chairman. But you keep the present law.

15 Senator Matsunaga. No. But I am offering an amendment  
16 to the Heinz amendment. The Chairman is a co-sponsor of the  
17 Heinz amendment, which costs --

18 The Chairman. And your amendment is to keep current law?

19 Senator Matsunaga. In certain provisions.

20 The Chairman. Well, in almost all of them.

21 Senator Matsunaga. Well, yes, on all of current law, but  
22 I am getting to the point that the Senator just made. The  
23 Chairman just said that my amendment will cost \$2.6 billion,  
24 which is misleading because I am offering an amendment to  
25 the Heinz amendment which the Chairman co-sponsored, which

1 would cost \$2.4 and mine only \$200 million.

2 The Chairman. I thought you said you were offering to the  
3 Chairman's draft also.

4 Senator Matsunaga. At least you would admit to that?

5 The Chairman. No.

6 Senator Matsunaga. You would concede to that?

7 The Chairman. I thought you were offering this to the  
8 draft also. To both Senator Heinz's amendment and the  
9 draft to change and go back to current law.

10 Senator Matsunaga. Well, the Heinz amendment, of course,  
11 would change your initial proposal. It is a substitute, is  
12 it not?

13 The Chairman. The Heinz amendment is an addition. There  
14 are some areas of mine, quite a few areas, it doesn't change.

15 Senator Long. I'd like to ask a question.

16 Senator Symms. I never got an answer to my question.

17 Senator Long. My understanding is the Chairman favors  
18 the Heinz amendment.

19 The Chairman. Yes.

20 Senator Long. Well, the Heinz amendment costs \$2.4  
21 billion. That is what I am told.

22 Senator Matsunaga. That is correct.

23 Senator Long. So if the Matsunaga amendment runs up  
24 the cost by \$200 million, all right, so the Chairman said,  
25 well, the extra \$200 million, I guess, is the straw that



1 breaks the camel's back.

2 But the bale on which the straw was added was the  
3 part the Chairman sponsored.

4 Senator Symms. Well, Mr. Chairman, I still want to get  
5 back to my question. And my question is this: Senator  
6 Heinz made a stab at answering it, and I would like to hear  
7 from Senator Matsunaga and from the Treasury. I want to know  
8 if in people's own self interest under current situations that  
9 they set up more pension plans because they think there is  
10 something in it for them. That is the way small business  
11 mentality is going to work. There is nothing wrong with that.  
12 It is in people's own self interest.

13 If they think they can set up a pension plan and they  
14 ask to include six or seven of their employees in a small  
15 company, and they can put some money away for their own  
16 retirement, they are willing to be generous with their  
17 employees. And you get more people in the pension plan.

18 I want to know if the Heinz amendment -- I don't care  
19 about all the names of the groups. I didn't hear any  
20 businesses that say if the Heinz amendment passes or the  
21 Packwood proposal whether there would be more incentive for  
22 businessmen to set up pension plans or less. That is what I  
23 am trying to get at.

24 Senator Matsunaga. If the Senator will yield, I would  
25 be happy to respond to his question.

1 Senator Symms. Yes.

2 Senator Matsunaga. Now if the Heinz amendment passes  
3 without the Matsunaga amendment, I will predict that the  
4 number of plans being terminated will accelerate. As you  
5 well know because of the changes we have made in the pension  
6 laws in the past four years, we have had terminations  
7 exceeding 300 percent. In 1981, we had terminations of  
8 4,500. In 1982, 5,000. In 1983, 7,000. In 1984, 9,000.  
9 And in six months of 1985, 6,000. That would mean over  
10 12,000.

11 And the formation of plans because of the changes in the  
12 law -- TEFRA, et cetera -- in 1984, we had 28,000 form,  
13 these establishments of new benefit plans. In 1983, down  
14 to 22,000. In 1984, down to 12,000. And if we pass the  
15 Heinz amendment without the Matsunaga amendment, the small  
16 businesses and the plans, mostly from small business  
17 regardless of what the Senator from Pennsylvania says about  
18 the big businesses, the small businesses have been very  
19 active in this area. And they will terminate their plans  
20 and get a high cost of legal fees. They have got to pay  
21 lawyers. And then uncertainty because of the change of the  
22 laws. Probably, we won't have --

23 Senator Bradley. Mr. Chairman, how do the Elks stand  
24 on this?

25 The Chairman. How do the what?

1 Senator Bradley. The Elks.

2 The Chairman. The Elks. Well, I think they are with  
3 the Lions.

4 Senator Heinz. Mr. Chairman, the name of my amendment  
5 has been taken in vein by my friend, the Senator from  
6 Hawaii.

7 I want to make something clear. First, there is very  
8 broad business support for this amendment. Supported by the  
9 ERISA Industry Committee and maybe supported by the Elks,  
10 Bill Bradley. And it is supported by the Association of  
11 Private Pension and Welfare Plans, to name a couple of the  
12 umbrella groups.

13 They wouldn't be supporting this if half of what the  
14 Senator from Hawaii has said is true. But more importantly,  
15 if you want to really talk substance and you want to get into  
16 the details of why there have been termination of pension  
17 plans, the answer is because the way ERISA is written when  
18 a company builds up a surplus because they have done a good  
19 job funding it, the only way they can get their assets back  
20 is because the present law is flawed and we can't get at it  
21 just in the Finance Committee because we shared jurisdiction  
22 with Human Sources -- is they terminate the plan to get the  
23 surplus assets back.

24 That has been the largest single reason by far for the  
25 termination of pension plans. I just hope that we defeat the

1 Matsunaga amendment. My understanding is the Administration  
2 opposes the Matsunaga amendment; supports the Heinz amendment.  
3 And I hope we can --

4 Senator Symms. Senator, do they support your amendment  
5 because they fear H.R. 3838 and the Packwood original  
6 proposal or because -- I mean they think your amendment is  
7 half way between Matsunaga's amendment and -- do you see  
8 what I am saying?

9 Senator Heinz. Yes, I do. The business groups would  
10 like to see the Heinz-Packwood as amended proposal become  
11 law.

12 Senator Symms. Over current law?

13 Senator Heinz. Over current law.

14 The Chairman. Clerk, call the roll.

15 Senator Matsunaga. Mr. Chairman?

16 The Chairman. Senator Matsunaga.

17 Senator Matsunaga. Before we take a vote, upon the  
18 urging of my colleagues on this side, I wish to modify my  
19 amendment to delete Item Number 4, that is, to retain current  
20 law with respect to minimum vesting requirements, and Item  
21 Number 7, with regard to retaining current law governing  
22 permissible integration with Social Security.

23 So these are the two provisions which my colleagues have  
24 recommended that I delete from my amendment so that they  
25 can support my amendment. And I so modify my amendment.

1           The Chairman. The Senator has the right to amend his  
2 own amendment.

3           The Clerk will call the role on the amendment as amended.

4           Senator Symms. Mr. Chairman, Treasury never answered  
5 my question.

6           The Chairman. I don't think Treasury knows an answer  
7 to your question.

8           Mr. Mentz. I thought you wouldn't notice.

9           (Laughter)

10          Mr. Mentz. I just wanted to mention some statistics.  
11 In terms of applications for new qualified plans versus  
12 termination application, they are running about two to one in  
13 favor of initial applications. In other words, there are more  
14 than twice the number of new plans being created in 1984  
15 and 1985 as have been terminated in those years. Forty-one  
16 thousand in 1984 versus 20,000, for example.

17          On reason why the revenue estimates, I believe -- one  
18 reason why the revenue estimate for Senator Matsunaga's  
19 amendment is relatively modest is that it is not expected  
20 that there will be a huge amount of plans terminated.

21          There may have been that criticism, Senator Symms,  
22 leveled against the President's original proposal. We went  
23 pretty far, and we did stir up quite a hue and cry. I think  
24 you are correct, Mr. Chairman, that the Ways and Means  
25 Committee also created a fair stir. But certainly the Heinz

1 amendment, I think, really goes in the right direction and  
2 is fairly mild.

3 I disagree with Senator Matsunaga. You are not going to  
4 see a major termination of plans as a result of that  
5 amendment.

6 (CONTINUED ON NEXT PAGE)

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1           The Chairman. The clerk will call the roll on the  
2 Matsunaga amendment, as modified.

3           The Clerk. Mr. Dole?

4           Senator Dole. No.

5           The Clerk. Mr. Roth?

6           Senator Roth. No.

7           The Clerk. Mr. Danforth?

8           Senator Danforth. No.

9           The Clerk. Mr. Chafee?

10          Senator Chafee. No.

11          The Clerk. Mr. Heinz?

12          Senator Heinz. No.

13          The Clerk. Mr. Wallop?

14          (No response)

15          The Clerk. Mr. Durenberger?

16          The Chairman. No (by proxy).

17          The Clerk. Mr. Armstrong?

18          (No response)

19          The Clerk. Mr. Symms?

20          Pass.

21          The Clerk. Mr. Grassley?

22          The Chairman. No (by proxy).

23          The Clerk. Mr. Long?

24          Senator Long. Aye.

25          The Clerk. Mr. Bentsen?

1 Senator Long. Aye (by proxy).

2 The Clerk. Mr. Matsunaga?

3 Senator Matsunaga. Aye.

4 The Clerk. Mr. Moynihan?

5 Senator Moynihan. No.

6 The Clerk. Mr. Baucus?

7 Senator Pryor. No (by proxy).

8 The Clerk. Mr. Boren?

9 Senator Boren. Aye.

10 The Clerk. Mr. Bradley?

11 Senator Bradley. Aye.

12 The Clerk. Mr. Mitchell?

13 (No response)

14 The Clerk. Mr. Pryor?

15 Senator Pryor. Aye.

16 The Chairman. I want to check something. Staff has  
17 told me to vote Senator Mitchell "no," but I want to make  
18 sure. All right. Mitchell is "No."

19 The Clerk. Mr. Chairman?

20 The Chairman. No.

21 The Clerk. Eight yeas; eleven nays.

22 The Chairman. The motion is defeated.

23 The clerk will call the roll on the Heinz amendment;  
24 and then there will be further amendments coming up on  
25 403(b) and some other issues.



1 The Clerk. Mr. Dole?  
2 Senator Dole. Aye.  
3 The Clerk. Mr. Roth?  
4 Senator Roth. Aye.  
5 The Clerk. Mr. Danforth?  
6 Senator Danforth. Aye.  
7 The Clerk. Mr. Chafee?  
8 Senator Chafee. Aye.  
9 The Clerk. Mr. Heinz?  
10 Senator Heinz. Aye.  
11 The Clerk. Mr. Wallop?  
12 (No response)  
13 The Clerk. Mr. Durenberger?  
14 The Chairman. Aye (by proxy).  
15 The Clerk. Mr. Armstrong?  
16 Senator Armstrong. Aye.  
17 The Clerk. Mr. Symms?  
18 Senator Symms. Aye.  
19 The Clerk. Mr. Grassley?  
20 (No response)  
21 The Clerk. Mr. Long?  
22 Senator Long. Aye.  
23 The Clerk. Mr. Bentsen?  
24 Senator Long. Aye (by proxy)  
25 The Clerk. Mr. Matsunaga?

1 Senator Matsunaga. Aye.

2 The Clerk. Mr. Moynihan?

3 Senator Moynihan. Aye.

4 The Clerk. Mr. Baucus?

5 Senator Pryor. Aye (by proxy).

6 The Clerk. Mr. Boren?

7 Senator Boren. Aye.

8 The Clerk. Mr. Bradley?

9 Senator Bradley. No.

10 The Clerk. Mr. Mitchell?

11 Senator Mitchell. No.

12 The Clerk. Mr. Pryor?

13 Senator Pryor. Aye.

14 The Clerk. Mr. Chairman?

15 The Chairman. Aye. And Mr. Grassley, "Aye" by proxy

16 this time.

17 Senator Bradley. Mr. Chairman?

18 The Chairman. Wait a minute, please.

19 The Clerk. Eighteen yeas; two nays.

20 The Chairman. Adopted. Now, I told members I have to

21 recognize them in the following order: Senator Pryor and

22 then Senator Chafee.

23 And then, do you have an amendment, Senator Bradley?

24 Senator Bradley. Yes, I do.

25 The Chairman. Let's start with Senator Pryor.

1 Senator Pryor. Thank you, Mr. Chairman. Are we ready,  
2 Mr. Chairman?

3 The Chairman. We are ready, and Senator Pryor has an  
4 amendment. It is Pryor, Chafee, Bradley, Danforth, and  
5 Boren. All right. Go ahead, David.

6 Senator Pryor. Mr. Chairman, and my colleagues, this  
7 amendment relates to 403(b); and what this amendment would  
8 attempt to accomplish is to keep the present law on 403(b),  
9 Retirement Programs.

10 Since 1942, the 403 programs have affected only the  
11 nonprofit institutions: educational institutions, charitable  
12 organizations, the Red Cross, the Boy Scouts, colleges,  
13 universities, public schools, etcetera.

14 We feel that, Mr. Chairman, there should be no penalty  
15 for a withdrawal. We also feel that there should be an  
16 encouragement for savings and not a penalty for savings.

17 We also sense that there should be no limitation  
18 whatsoever for the amount of money that an individual could  
19 put into this program.

20 These are not like 401(k)s to a large extent where there  
21 might be a business organization with a 401(k) where the  
22 organization has a tax incentive--the business has a tax  
23 incentive--to contribute to the employees' retirement fund.

24 These areas of our economy have no incentive to  
25 contribute. There is no tax incentive for these nonprofit

1 organizations to be a part of the employees' retirement  
2 system.

3 So, one, with all due respect to the chairman's proposal,  
4 there was a \$7,000 limit proposed by the chairman. It was  
5 amended by Senator Grassley on the vote about 30 minutes ago,  
6 and there is now a \$12,000 limit.

7 And my amendment simply would do this, Mr. Chairman:  
8 It would be to erase the limit, strike the penalty for early  
9 withdrawal, and go to the present law.

10 And I have some tables or some poll indication of what  
11 would happen if we inserted a penalty clause in here, should  
12 the committee desire.

13 I think most of the people are very aware of these  
14 noncharitable organizations and the way they do business;  
15 and I am very hopeful that the committee will see my point  
16 of view.

17 The Chairman. Let me address myself to this, if I might.  
18 I don't feel as strongly on this as I did on the last one;  
19 but in the chairman's draft, the first issue that they raised  
20 when they talked to me several months ago was discrimination.

21 They wanted to be able to continue the discrimination--  
22 and again, let me emphasize that I am not using that in a  
23 racial sense--but universities, Boy Scouts, YMCAs--had a  
24 professional clerical concept.

25 They awarded their highly paid, long-term professionals

1 on a different basis than their normal clericals.

2 That is a discrimination we have outlawed for all other  
3 businesses. They can't do that; but they said that they  
4 were unique. And having talked to enough members, frankly  
5 I realized they were going to win that vote.

6 So, they get to continue to discriminate.

7 The second thing they wanted to do was to be able to  
8 put in more than the maximum amount in their years getting  
9 close to retirement. As I recall, Paul, we left that in  
10 the bill.

11 Mr. Strella. Right.

12 The Chairman. Now, the question is: We have a \$12,000  
13 limit now because of the Grassley amendment. Are 403(b)s  
14 --universities, the YMCAs, Boy Scouts--so uniquely different  
15 that their highly paid--and again, when we are talking about  
16 people putting in over \$12,000--their highly paid people  
17 should be exempt from that limit when the discrimination  
18 can still continue and when they can indeed go over that  
19 limit when they are approaching their later years?

20 I am hard-pressed to find that they are so different  
21 and have so many people in that category that we should go  
22 above the \$12,000.

23 Senator Pryor. Mr. Chairman, in the present law, as  
24 in your proposal, there is a limit placed of 20 percent of  
25 that individual's salary that he can put into this retirement

1 fund. Twenty percent is your proposal. Twenty percent is  
2 the present law. And my proposal is simply to keep the  
3 present law and take out the penalty of 15 percent that you  
4 have proposed.

5 Let me, if I might, Mr. Chairman, cite a very brief  
6 statistic, and the source is Terrence and Associates Research  
7 Study, the poll taken March 1986.

8 If the penalty remains in the law-- Or if the penalty  
9 is put in the law, which is a new provision, we are talking  
10 about a massive number of people in the 35-year age category  
11 who are going to drop out of this program.

12 Now, where are they going to go? Well, they may go to  
13 Social Security. They may go to some other program; but  
14 they are going to drop out.

15 It also affects to a great degree those people in the  
16 category of, say, 45 or let's say 50 years of age to 54 and  
17 55 who maybe have their children about educated by then or  
18 maybe their home is paid for, who want to go ahead in those  
19 last years and put as much as they can--no more--once again,  
20 of 20 percent of their salary into the program.

21 And the other consideration I would like to raise for  
22 my colleagues is that I truly don't think that we are talking  
23 about a great revenue loss.

24 One, should we remove the penalty and take the cap off?  
25 Therefore, I propose this amendment, and I hope we will vote

1 on it.

2 The Chairman. Further discussion?

3 Senator Heinz. Mr. Chairman?

4 The Chairman. Senator Heinz?

5 Senator Heinz. I hope our colleagues will reflect on  
6 what we have done to help 403(b)s in the last vote. We did  
7 two things.

8 We adopted the Grassley amendment which increased the  
9 limitation from \$7,000 to \$12,000; and secondly, we put in  
10 what I call a "catch-up" proposal for employees with 15 or  
11 more years of service. We give them an additional annual  
12 deferral of \$3,000, subject to a lifetime limit of \$15,000  
13 to provide for an annual deferral of some 50 percent and a  
14 lifetime limit of \$30,000.

15 And I honestly don't know where my good friend from  
16 Arkansas gets his statistics. I find it difficult to  
17 believe that there would be the kind of terminations he  
18 has described.

19 As I understand your proposal, David, you basically want  
20 to take out the penalty tax, the purpose of which is to  
21 prevent premature distributions.

22 It seems to me we want to encourage people to save for  
23 retirement income purposes, not simply to do it as a  
24 convenient way to save for a car or a house or a college  
25 education.

1 I think your statistics are wrong. If my information is  
2 correct, they are wrong.

3 I hate to oppose my good friend's amendment, but I do.

4 Senator Pryor. Let me answer my friend from  
5 Pennsylvania by saying that, one, since 1942 this system  
6 has worked well. It has been an inducement to get people  
7 of quality into the private sector here into this area, or  
8 you might call it public employee sector--we could.

9 And thirdly, we do not know in the 403(b) program of  
10 any abuses of any significant nature which would justify a  
11 change in the present law.

12 Therefore, I propose that we maintain, or retain, I  
13 should say, the present law. And we think it is fair, and  
14 I so propose it.

15 The Chairman. I think the issues are clear.

16 Senator Bradley. Mr. Chairman?

17 The Chairman. Let me ask Treasury and then Senator  
18 Bradley. Does Treasury have an opinion?

19 Mr. Mentz. Yes. We agree with Senator Heinz that 403(b)  
20 with the \$12,000 and sweetened with that modified catch-up  
21 rule really permits a person who has got his kids educated  
22 and he doesn't have the high expenses, he can make those  
23 catch-up contributions.

24 We think you really shouldn't go any further.

25 The Chairman. Senator Bradley?



1 Senator Bradley. Mr. Chairman, this is a kind of a  
2 tough issue. I can see the argument that you have made  
3 and the Treasury has made and the efforts that you have made.

4 At the same time, I think if you look at it in the  
5 context of the bill, it is pretty hard to say that you are  
6 going to give 31,000 people who have intangible drilling  
7 costs an annual subsidy of \$28,000 and give breaks to timber  
8 and give breaks to certain kinds of industries when they  
9 have rapid depreciation; and then say, no, to the teachers  
10 and to the policemen and everybody else.

11 You have to step up to the bar and make the tough choice.  
12 So, Mr. Chairman, on this one I am afraid I am going to  
13 have to go with Senator Pryor, although I recognize that, in  
14 a perfect world, everyone would be treated the same.

15 The Chairman. Further discussion?

16 (No response)

17 The Chairman. If not, the clerk will call the roll on  
18 the Pryor amendment.

19 The Clerk. Mr. Dole?

20 Senator Dole. Aye.

21 The Clerk. Mr. Roth?

22 (No response)

23 The Clerk. Mr. Danforth?

24 Senator Danforth. Aye.

25 The Clerk. Mr. Chafee?

1 Senator Chafee. No.  
2 The Clerk. Mr. Heinz?  
3 Senator Heinz. No.  
4 The Clerk. Mr. Wallop.  
5 Senator Symms. Aye (by proxy).  
6 The Clerk. Mr. Durenberger?  
7 Senator Durenberger. No.  
8 The Clerk. Mr. Armstrong?  
9 Senator Armstrong. Aye.  
10 The Clerk. Mr. Symms?  
11 Senator Symms. Aye.  
12 The Clerk. Mr. Grassley?  
13 Senator Pryor. Aye (by proxy).  
14 The Clerk. Mr. Long?  
15 Senator Pryor. Aye (by proxy).  
16 The Clerk. Mr. Bentsen?  
17 Senator Pryor. Aye (by proxy).  
18 The Clerk. Mr. Matsunaga?  
19 Senator Matsunaga. Aye.  
20 The Clerk. Mr. Moynihan?  
21 Senator Moynihan. Aye.  
22 The Clerk. Mr. Baucus?  
23 Senator Pryor. Aye (by proxy).  
24 The Clerk. Mr. Boren?  
25 Senator Pryor. Aye (by proxy).

1 The Clerk. Mr. Bradley?

2 Senator Bradley. Aye.

3 The Clerk. Mr. Mitchell?

4 Senator Mitchell. Aye.

5 The Clerk. Mr. Pryor?

6 Senator Pryor. Aye.

7 The Clerk. Mr. Chairman?

8 The Chairman. No.

9 Senator Pryor. Senator Boren is "Aye" by proxy, and  
10 Senator Baucus "Aye" by proxy, Mr. Chairman.

11 Senator Matsunaga. Mr. Chairman, am I recorded?

12 The Clerk. Yes, you are.

13 Senator Matsunaga. Thank you.

14 The Clerk. Fifteen yeas; four nays.

15 The Chairman. The amendment is adopted.

16 Senator Chafee?

17 Senator Chafee. Mr. Chairman, my amendment retains the  
18 present law for the treatment of the Federal employees'  
19 pensions. I think we are familiar with what is proposed by  
20 the chairman.

21 First, let's take the way the situation works now. We  
22 have got to remember that Federal employees pay for their  
23 pensions with their after-tax dollars.

24 In other words, they have no 401(k)s. They are not in  
25 a system where the employer pays for it all, as happens in

1 so many private pension plans.

2 The employee makes his contributions with after-tax  
3 dollars. Now, the way the present system works is that, for  
4 up to three years to the extent that they are recovering  
5 their contribution, they are not taxed.

6 And as a result of that system, many--and I would say  
7 most--Federal employees who are planning to retire work out  
8 a system whereby, in those first three years, they have  
9 other income come in at the lower bracket, whether it is  
10 the maturing of an IRA or whether it is bonds maturing--  
11 people have come to me and spoken to me about how they have  
12 purchased bonds that matured during the years that they  
13 expect to retire--sales of real estate or whatever it might  
14 be.

15 Now, what the proposal of the chairman's is is that  
16 in 1987, half of their contributions would be taxable, not  
17 all of them; and in the next year, 1988, it would all be  
18 taxable--the income they have--but there is a system of  
19 proportioning it based on their life expectancy.

20 Is that right, Mr. Mentz?

21 Mr. Mentz. That is my understanding, Senator.

22 Senator Chafee. That is right. And this, to me, is  
23 very unfair. First of all, it makes the change in the rules  
24 just as these people are coming to the realization of their  
25 benefits; and they have made their plans, and it is just not

1 right to do it as proposed.

2 So, Mr. Chairman, what is going to happen under this  
3 proposal--whether it is yours and, of course, clearly under  
4 the House proposal where there is no phase-in, although the  
5 chairman's proposal talks of a three-year phase-in--it is no  
6 three-year phase-in as I see it.

7 It is a current law in 1986, but this bill doesn't take  
8 effect until 1987; half in 1987 and then it fully matures in  
9 1988.

10 So, Mr. Chairman, I think we are better off going to  
11 the present law, sticking with it. The Treasury is going to  
12 get its money back--the first three years if it isn't all  
13 recovered, then it becomes taxable.

14 And in the out years, anything beyond the three years,  
15 their entire pension is either taxable or those who haven't  
16 recovered their contributions. I presume there is some kind  
17 of a proportionality in those out years.

18 The Chairman. Discussion?

19 Senator Durenberger. Yes, Mr. Chairman.

20 The Chairman. Senator Durenberger?

21 Senator Durenberger. I got interested in this provision  
22 originally, being on the Governmental Affairs Committee; and  
23 I have a fair amount of sympathy for the argument involved  
24 here. But I also have a curiosity about the dollars that  
25 are involved.

1 I wonder if someone can tell me that, if this amendment  
2 were adopted, how much money would be left in this category  
3 called "Pensions," or how would I identify what I have done  
4 with all my votes here today, if this amendment were adopted?

5 Mr. Weiss. The whole benefit and pension title started  
6 out at an increase of \$5.9 billion, and then there were  
7 about \$2 or \$3 million --

8 Senator Durenberger. The chairman increased it by  
9 \$5.9 billion?

10 Mr. Weiss. The chairman started out increasing it by  
11 \$5.9. Then, about .2 or .3--\$200 to \$300 million--the other  
12 day; and then the Heinz amendment has modified that, and  
13 with the Pryor amendment, it is about \$3.2 billion.

14 So, there has been a loss of about \$3.4 billion roughly  
15 from the \$5.9. So, there is about \$2.5 billion left.

16 So, if Senator Chafee's amendment were to pass, that  
17 would cost \$7.4 billion. So, there would be approximately  
18 a loss of \$5 billion in the title, if that amendment prevails.

19 The Chairman. Senator Symms?

20 Senator Symms. I just want to ask a follow-on question  
21 to Senator Durenberger's question. I have a lot of sympathy  
22 for what Senator Chafee's amendment speaks to.

23 In other words, what Senator Chafee is saying is that  
24 he doesn't want to have them paying taxes on the same money  
25 twice. Is that right?

1           The Chairman. Let me ask him so I can make sure I  
2 understand.

3           Senator Symms. My question, and maybe the chairman  
4 can answer it, is: How is a private pension treated or a  
5 non-Government pension treated, and then how is a Government  
6 pension treated?

7           Mr. Weiss. The general rule for employee contributions  
8 --this is for both private and Government plans--is that  
9 they are essentially prorated over the receipt of the pension.

10          So, if an individual retires and say they have a 15-year  
11 life expectancy, that employee contribution is credited over  
12 each of the 15 years in a uniform way so that, during each  
13 of those 15 years, the employee gets some credit for the  
14 fact that tax had already been paid on that employee  
15 contribution.

16          Now, there is a special rule that says if the employee  
17 contributions are sufficiently small, relative to the entire  
18 pension, so that the employee can recover that whole employee  
19 contribution within the first three years that the pension is  
20 received, then in effect those employee contributions are  
21 counted against the first year or two or three years worth  
22 of pension payments.

23          So, they are entirely tax free, and then --

24          Senator Symms. Is that for private?

25          Mr. Weiss. This is for private or Government. And then,

1 the remainder of the pensions received during the individual's  
2 lifetime are fully taxable.

3 So, it turns out that this special rule is largely used  
4 by Government pensions because they are the ones for which  
5 employee contributions are likely to be smallest relative to  
6 the total pension, in those subset of cases where there are  
7 employee contributions.

8 Now, the chairman's proposal really doesn't change the  
9 total amount of pensions that are taxed. It changes the  
10 timing.

11 Instead of having it tax free during the first year or  
12 two and then fully taxable thereafter, it simply eliminates  
13 this special three-year rule so that the credit for the  
14 employee contributions would be spread out over the whole  
15 lifetime of the individual, rather than being given in the  
16 first two years.

17 Senator Symms. They would get it, though?

18 Mr. Weiss. Yes, but they certainly would get credit; and  
19 the total amount of taxable income, if you will, over that  
20 individual's lifetime would not be changed by the chairman's  
21 proposal. It is a timing issue.

22 Senator Symms. What we are talking about more than  
23 anything, then, is actually an accounting change.

24 Mr. Weiss. That is correct.

25 Senator Symms. In other words, you are trying to get the



1 law written so that the Government gets the money sooner.

2 Mr. Weiss. That would be the effect of the amendment.

3 It would spread out the credit that is given for these  
4 employee contributions over the individual's lifetime,  
5 rather than just giving it in the first three years.

6 Senator Symms. So, then the chances are maybe some of  
7 them won't live out the entire time, and the Government  
8 benefits from that?

9 Mr. Weiss. No, because there is always sort of a settle  
10 up when the employee dies so that they always get credit for  
11 any employee contributions they have not yet recovered.

12 Senator Symms. On the taxes?

13 Mr. Weiss. That is right.

14 Senator Durenberger. Isn't the reality, though, that  
15 this is more than an accounting issue? I mean, there is at  
16 least a reason for a lot of Federal employees who can retire  
17 early to retire early and take advantage of current law?

18 Mr. Weiss. Oh, certainly. I guess timing is important.

19 Senator Durenberger. I mean, there is a tax advantage.

20 Mr. Weiss. Yes. That is right. I mean, it is certainly  
21 a tax advantage to be able to pay taxes later rather than  
22 earlier.

23 Senator Durenberger. And that advantage is fairly  
24 substantial, is it not, for a lot of employees?

25 Mr. Weiss. It can be substantial. That is correct.

1 Senator Durenberger. Pardon?

2 Mr. Weiss. Yes, it can be.

3 Senator Durenberger. And it affects how many people  
4 who might be eligible for early retirement? Do we know that?

5 Senator Chafee. No, no, no. I don't think that is  
6 accurate to say that it encourages early retirement. I  
7 don't think that is accurate.

8 Certainly, if we adopted the chairman's proposal, there  
9 would be a rush for retirement because the chairman's proposal  
10 would not affect those who retire this year. That is my  
11 point.

12 Senator Durenberger. Oh.

13 Senator Chafee. That is right.

14 Senator Durenberger. But the House is going to force  
15 --I am trying to guess--I am trying to get the dimensions--  
16 It is certainly going to substantially encourage early  
17 retirement from a substantial number of Federal employees,  
18 particularly higher level employees.

19 Senator Chafee. Absolutely. And therefore, the immediate  
20 drain on the pension fund during the period we are talking  
21 about--the five years--will be --

22 Senator Durenberger. Very substantial.

23 Senator Chafee. Very substantial.

24 Mr. Weiss. To really do that calculation, you would also  
25 have to know how their pension benefit would change if they

1 didn't retire early, because if they stayed in the Government  
2 longer, their pension would be higher.

3 So, that would be a counterbalancing influence, and it  
4 is hard to make a general statement about the effects of  
5 this provision, given the structure of the way the pension  
6 system works.

7 Senator Chafee. But also one further point briefly, Mr.  
8 Chairman. I think it goes more into dollars. I think what  
9 we are going to see is we are going to lose a lot of extremely  
10 able people who are essential to the functioning of this  
11 Government, if we encourage this early retirement on their  
12 part through the passage of legislation as is in the chairman's  
13 package and of course even more so in the House package.

14 I just hate to see us lose those people.

15 The Chairman. The Secretary and then Bill Armstrong.

16 Senator Armstrong. Just a question, Mr. Chairman. Your  
17 proposal, which Senator Chafee seeks to amend, puts the  
18 Federal employees on the same basis as private pension  
19 recipients?

20 The Chairman. No. As I understand it, to the extent  
21 that you would have private pensioners who paid after-tax  
22 dollars, they also have the same privilege right now that  
23 Federal employees have. Right?

24 Mr. Mentz. That is right.

25 Mr. Weiss. That is correct.

1 The Chairman. And my amendment changes it for both.

2 Senator Armstrong. I understand that, but my point is  
3 that if Senator Chafee's amendment passes, does it relate  
4 only to --

5 The Chairman. Federal employees but not private?

6 Senator Chafee. No, no.

7 The Chairman. I don't know. It applies to both?

8 Senator Chafee. We just retain present law, and present  
9 laws applies to everybody.

10 Senator Armstrong. Thank you.

11 Senator Chafee. But it mostly affects Federal employees  
12 because, as Mr. Weiss mentioned earlier--and also Federal  
13 employees are in a unique situation in that they have to  
14 contribute heavily toward their pensions. And many pensions,  
15 as you well know, don't. The company pays it all.

16 That isn't true, as we all know, with Federal pensions.

17 The Chairman. Mr. Secretary?

18 Mr. Mentz. I think that it is important to recognize here  
19 that the general rule for taxation of annuities, whether  
20 provided through a qualified plan or otherwise, is that  
21 whatever amount the annuitant pays, whether it is through a  
22 pension plan or purchasing an annuity from an insurance  
23 company, he gets that back pro rata over the life of the  
24 annuity.

25 That is the general rule. So, in effect, there is a

1 recognition of income in a sort of uniform basis over the  
2 employee's life span.

3 The three-year rule is a sort of an exception and a  
4 somewhat irrational exception to that provision. Every tax  
5 reform proposal that I can recall changes the three-year  
6 rule, goes away from it; and it does involve significant  
7 revenue, but I think the real issue here is transition.

8 I think that the House proposal would have the very  
9 unfortunate effect of compelling Federal employees particularly  
10 and maybe some private employees, too, to retire prematurely  
11 in order to get the benefit of the three-year rule.

12 The chairman has provided a transition rule for 1987,  
13 and I believe that there is a way of working out a  
14 transitional rule that goes a little bit further than that  
15 without any loss of revenue.

16 But I think the major point here is that we have got to  
17 get ourselves in a fundamental tax reform context; we are  
18 trying to get things more on a level playing field. We  
19 have got to get away from the three-year rule.

20 The three-year rule makes it possible for an employee, in  
21 a year in which he is getting all of his contributions back  
22 tax free, he can do all kinds of other transactions and he  
23 would be running up the rate brackets, starting from zero;  
24 and it really opens avenues of tax planning that are really  
25 inappropriate.

1 But again, I think the issue is transition. I think  
2 that is where we can maybe improve the proposal a little bit  
3 without losing the \$7.5 billion that this amendment would  
4 cost.

5 The Chairman. Further discussion?

6 Senator Mitchell. Mr. Chairman?

7 The Chairman. Senator Mitchell?

8 Senator Mitchell. Mr. Chairman, I would like to express  
9 my support for Senator Chafee's proposal.

10 Mr. Mentz, while you have accurately described the  
11 policy considerations, it is my understanding that they are  
12 less relevant as to private pensions because there the  
13 employee is less likely to have contributed a significant  
14 portion to it.

15 Is that not correct?

16 Mr. Mentz. That is right, Senator Mitchell. I think  
17 the trend has certainly been toward noncontributory pension  
18 plans.

19 Senator Mitchell. Yes. So, while it is true that the  
20 general policy is as you stated, nonetheless in practice and  
21 increasingly in practice, it is an irrelevant consideration  
22 as to the private employee because they are not contributing  
23 in any event; and so therefore, what you are saying is you  
24 are going to apply a general rule, but since the circumstances  
25 of the two categories are so different, you in effect have a

1 separate situation.

2 And that, I think, is the justification for Senator  
3 Chafee's proposal.

4 The Chairman. Further discussion on the Chafee proposal?

5 (No response)

6 The Chairman. If not, all those in favor say "aye."

7 (Chorus of ayes)

8 The Chairman. All opposed, "No."

9 (No response)

10 The Chairman. The ayes have it. Next was Senator  
11 Bradley. Senator Bradley?

12 Senator Bradley. Mr. Chairman, I am prepared to raise  
13 this at this time or later, depending on what you would like.

14 It relates to the subject that we dealt with just a  
15 few minutes ago in the Heinz amendment. And it gets to the  
16 question more precisely of the 401(k)s and tries to get back  
17 to your original proposal.

18 I know the concern of Senator Grassley, and I have talked  
19 to him about this amendment, which I couldn't get to you  
20 before the meeting because we didn't make the decision.

21 Essentially, what the amendment would do would be allow  
22 401(k) \$12,000 that you can put away up to \$50,000 of income,  
23 which takes care of the middle-income question, takes care  
24 of the issue that was raised by Senator Grassley; and then  
25 from \$50,000 in income to \$100,000, it would ratchet down

1 so that when you got to \$100,000, a person could put away  
2 \$7,000 in income.

3 The Chairman. It is kind of a curve like this?

4 Senator Bradley. That is right.

5 The Chairman. If you made \$50,000, you could put away  
6 more than if you made \$100,000?

7 Senator Bradley. That is right. In other words, it  
8 is a middle income proposal, and it would obviously save  
9 some revenue, and it addresses the very concerns that Senator  
10 Grassley had stated.

11 In addition to that, I would state explicitly that I  
12 would certainly keep your vesting because I think the five  
13 year vesting is very important, and I would keep your  
14 integration proposal because I think that is very important.

15 Now, I can wait to offer this, or I can offer it now.

16 The Chairman. You are changing just that one provision  
17 then?

18 Senator Bradley. I am changing that one provision, but  
19 I am including --

20 The Chairman. I would suggest offering it now because  
21 we have enough members here, and I think it is an easily  
22 understandable proposition. And we might as well vote on  
23 it.

24 Senator Bradley. That is fine with me. I would like  
25 to offer it in a form that included the vesting and the



1 integration, but the issue that is different is the ratcheting  
2 down from \$12,000.

3 The Chairman. So, in essence, all we are voting on in  
4 substance is the ratcheting down from \$50,000 to \$100,000,  
5 going from \$12,000 to \$7,000 in contributions?

6 Senator Bradley. That is true.

7 The Chairman. Discussion?

8 Senator Matsunaga. Not discussion, but a question, Mr.  
9 Chairman.

10 Now, if one earns \$100,000, that means --

11 Senator Bradley. That you can put away \$7,000 tax free.

12 Senator Matsunaga. Not \$12,000 plus \$7,000?

13 Senator Bradley. No, not \$12,000 plus \$7,000. No.

14 It would go 12, 11, 10, 9, 8, 7. That is 60, 70, 80, 90,  
15 100.

16 Senator Chafee. Mr. Chairman, I would just like to  
17 briefly ask Treasury: What are the policing problems in  
18 connection with this?

19 It seems to me that it raises some difficulties.

20 Mr. Mentz. We think it would be administrable, but  
21 obviously, a little bit more complex than just a straight  
22 limit. You would have to wait until the person's income  
23 was fully determined for the year in order to know what the  
24 limit was.

25 And I don't know what you would do if he contributed in

1 excess of the limit. Perhaps we should have a provision to  
2 get the funds out of the plan.

3 Senator Chafee. I suppose this is a difficult question,  
4 but does anybody have a revenue estimate off the top of  
5 their head?

6 Mr. Weiss. Senator Chafee, it would seem that this  
7 would get a good proportion of the money from Senator  
8 Grassley's amendment back, but I am just not sure how much  
9 it would be. I would say the majority of it.

10 Senator Bradley. The number was \$1.2 billion over five  
11 years--Senator Grassley's?

12 Mr. Weiss. That is right.

13 Senator Bradley. So, this is a \$1 billion amendment,  
14 let's say.

15 The Chairman. Senator Symms and then Senator Durenberger.

16 Senator Symms. If I understand this amendment correctly,  
17 I think the way this works is that those people that make  
18 \$50,000, \$60,000, \$70,000, \$80,000, and \$100,000 are the  
19 ones that will be making the decisions in the companies  
20 whether or not there is going to be a pension plan for the  
21 employees.

22 And this would take away any incentive for the higher  
23 paid people who would be the ones in the leadership making  
24 the decision. It would just kill the lower income people  
25 from ever having an opportunity to have a pension plan, in

1 my view. It is totally opposite of the incentive reward  
2 system that our whole society is based on.

3 I hope this amendment will be rejected.

4 The Chairman. Senator Durenberger?

5 Senator Durenberger. Mr. Chairman, I was a reluctant  
6 supporter of lifting the cap, only because of the dollars  
7 involved and the equity involved; but I think if I support  
8 Senator Bradley on this, then I am voting contrary to my  
9 vote which was in support of a \$12,000 limit.

10 I think Steve is correct. This is, as usual, an  
11 ingenious approach to the Tax Code, which the Senator from  
12 New Jersey is becoming famous for; and it is just another  
13 way to stop these plans at \$7,000.

14 If we have made the decision to go to \$12,000, I think  
15 we should oppose this amendment.

16 The Chairman. Further discussion on the amendment?

17 (No response)

18 The Chairman. Those in favor of the Bradley amendment  
19 will say --

20 Senator Bradley. Mr. Chairman, could we have a roll  
21 call?

22 The Chairman. Oh, a roll call. The clerk will call the  
23 roll on the Bradley amendment.

24 The Clerk. Mr. Dole?

25 (No response)

1 The Clerk. Mr. Roth?  
2 (No response)  
3 The Clerk. Mr. Danforth?  
4 (No response)  
5 The Clerk. Mr. Chafee?  
6 Senator Chafee. Aye.  
7 The Clerk. Mr. Heinz?  
8 (No response)  
9 The Clerk. Mr. Wallop?  
10 Senator Symms. No (by proxy).  
11 The Clerk. Mr. Durenberger?  
12 Senator Durenberger. No.  
13 The Clerk. Mr. Armstrong?  
14 (No response)  
15 The Clerk. Mr. Symms?  
16 Senator Symms. No.  
17 The Clerk. Mr. Grassley?  
18 Senator Symms. No (by proxy)  
19 The Clerk. Mr. Long?  
20 (No response)  
21 The Clerk. Mr. Bentsen?  
22 (No response)  
23 The Clerk. Mr. Matsunaga?  
24 Senator Matsunaga. No.  
25 The Clerk. Mr. Moynihan?

1 Senator Moynihan. Aye.

2 The Clerk. Mr. Baucus?

3 Senator Baucus. No.

4 The Clerk. Mr. Boren?

5 (No response)

6 The Clerk. Mr. Bradley?

7 Senator Bradley. Aye.

8 The Clerk. Mr. Mitchell?

9 Senator Mitchell. Aye.

10 The Clerk. Mr. Pryor?

11 Senator Pryor. No.

12 The Clerk. Mr. Chairman?

13 The Chairman. Aye. And Senator Dole, "Aye," and

14 Senator Roth, "No."

15 The Clerk. Seven yeas; nine nays.

16 The Chairman. The amendment is defeated.

17 Now, let me tell you what we are going to do. We have  
18 two more amendments yet. Senator Danforth has one; he is  
19 next. Senator Mitchell has one.

20 And we have a vote. We will go as long as we can. It  
21 is a vote on cloture on the Hobbs Act.

22 Senator Danforth?

23 Senator Danforth. Mr. Chairman, this is a real quickie,  
24 and it involves Section 501(c)(18).

25 The Chairman. What are those?

1           Senator Danforth. Section 501(c)(18) is a provision of  
2 the code which exempts Federal income tax from a few pension  
3 funds--they are about three in number.

4           The Chairman. Oh, yes. These are union funds, aren't  
5 they?

6           Senator Danforth. They are union funds. They are  
7 exempt from taxation-- They exempt from taxation trusts  
8 created before June 25, 1959, so they are very old, which  
9 form a part of a pension plan funded exclusively by  
10 contributions from employees which meet specified  
11 qualifications.

12           Prior to 1982, the IRS treated employee contributions to  
13 the fund as deductible, but a revenue ruling was issued in  
14 1982 which declared earlier rulings obsolete and began to  
15 deny deductions to these employee contribution funds.

16           Under the amendment, a participant in a Section 501(c)  
17 (18) pension plan would be permitted to make annual deferrals  
18 of up to \$7,000 under the plan on a before-tax basis.

19           Under the amendment, the cap on the employees elective  
20 deferrals under a cash or deferred arrangement would be  
21 reduced dollar for dollar by the employee's before-tax  
22 deferrals under the Section 501(c)(18) pension plan.

23           An employee's annual IRA deduction limit would be  
24 reduced dollar for dollar by the employee's before-tax  
25 deferrals under Section 501(c)(18) pension plan and under a

1 cash or deferred arrangement in excess of \$5,000; and I  
2 would hope nobody would ask me to explain further what  
3 this amendment is.

4 (Laughter)

5 The Chairman. Senator Danforth did send me a letter  
6 about this amendment before. It is a very unique situation.

7 The revenue effect has got to be negligible at the most,  
8 I would assume.

9 Does Treasury have any objection?

10 Mr. Mentz. No, I do not.

11 The Chairman. Any objection to the amendment?

12 Senator Danforth. Could we adjust the numbers in the  
13 amendment to reflect previous actions we have taken today,  
14 on the Heinz and on the Grassley amendments?

15 The Chairman. Say that again.

16 Senator Danforth. In other words, what I have just  
17 read has certain dollar floors on it--dollar ceilings on  
18 it. Could we adjust those dollar ceilings to reflect other  
19 dollar ceilings?

20 The Chairman. Is there objection?

21 (No response)

22 The Chairman. Without objection, it is so amended, and  
23 the amendment is adopted.

24 Senator Danforth. Mr. Chairman, could I raise one other  
25 point? Again, it will take only one minute.

1           The Chairman. Senator Mitchell has got a point that  
2 will take a minute, too. And Senator Baucus has got a  
3 minute; and we have about seven or eight minutes.

4           Let me take them in the order, in fairness. Senator  
5 Mitchell?

6           Senator Mitchell. Mr. Chairman, actually, I have two,  
7 each of which will take about a minute.

8           Senator Danforth. That is what I just said.

9           Senator Mitchell. I beg your pardon?

10          Senator Danforth. I just said I have a second that will  
11 take another minute.

12          Senator Mitchell. Oh. This amendment, Mr. Chairman, will  
13 permit employers to elect to use an alternative  
14 nondiscrimination test for employee benefits which are  
15 offered separately or as part of a cafeteria plan.

16          The nondiscrimination test under this amendment would  
17 be a stricter nondiscrimination test than is now in the bill,  
18 either in the chairman's original proposal or the Heinz  
19 amendment.

20          The reason for it is that in certain circumstances, it  
21 may be preferable for an employer, when several different  
22 types of employee benefits are offered, under those  
23 circumstances, the benefit-by-benefit nondiscrimination  
24 test is not as workable.

25          And while the amendment would actually permit less



1 discrimination, it would provide more flexibility in the  
2 variety of benefits that can be offered. I understand that  
3 both Treasury and Joint Tax do not object to the proposal.

4 The Chairman. Treasury doesn't object?

5 Mr. Mentz. That is correct.

6 The Chairman. Joint Tax doesn't object?

7 Senator Durenberger. Well, I am bothered when Treasury  
8 doesn't object. Is that right that this is more flexible  
9 in 125 and other kinds of plans?

10 Senator Mitchell. Yes, that is right.

11 Senator Durenberger. More flexibility?

12 Senator Mitchell. Right.

13 The Chairman. Is there objection?

14 (No response)

15 The Chairman. Without objection.

16 Senator Mitchell. Mr. Chairman, my second amendment,  
17 which is even shorter, is under the law now fishermen are  
18 treated as self-employed individuals under tax laws for  
19 purposes of Social Security, workers' compensation, and  
20 unemployment compensation.

21 This amendment would make it clear that fishermen are  
22 to be treated as self-employed for purposes of eligibility  
23 to set up Keogh pension plans.

24 The Chairman. Any estimated cost on this?

25 Senator Mitchell. I don't have one, Mr. Chairman. I am

1 sorry.

2 The Chairman. Randy, any idea what this would cost?

3 Mr. Weiss. This should be very small. It is certainly  
4 less than \$50 million.

5 The Chairman. Is there objection to the amendment?

6 (No response)

7 The Chairman. Without objection. Senator Baucus?

8 Senator Baucus. Mr. Chairman, two very quick amendments.

9 First is an asset diversion amendment where the employer  
10 would have an election to either take the one percent  
11 recapture excise tax or zero excise tax if the overfunded  
12 portion of the plan, when he terminates his plan, recovered  
13 through an ESOP.

14 My whole point here is to encourage employers who want  
15 to terminate overfunded plans to provide the alternative to  
16 apply for ESOP for their employees. That helps stimulate  
17 employee ownership and so forth.

18 The Chairman. It is a good amendment. I would recommend  
19 acceptance. Is there objection?

20 Mr. Mentz. Yes.

21 The Chairman. Treasury objects?

22 Mr. Mentz. Yes.

23 The Chairman. All right. Why?

24 Mr. Mentz. If I understand your amendment correctly,  
25 you are talking about the termination of a qualified

1 retirement plan and an elimination of the ten percent penalty  
2 tax if the funds are redirected into an ESOP. Is that right?

3 Senator Baucus. That is correct.

4 Mr. Mentz. I don't find any particular logical  
5 connection between the termination of a pension plan and--  
6 The termination of a pension plan is generally the kind of  
7 thing that this committee is trying to discourage and  
8 discourage it with a ten percent penalty.

9 I don't follow. I don't get the rationale for permitting  
10 that to happen without penalty by redirecting funds into an  
11 ESOP.

12 The Chairman. What we don't want is to encourage  
13 diversions where the money goes out of a pension plan and  
14 into a take-over pot or to some other non-employee purpose.

15 He is saying if it goes to an ESOP, which is an employee  
16 purpose, that that would be an exception.

17 Mr. Mentz. I still object.

18 The Chairman. Further discussion?

19 (No response)

20 The Chairman. Is there objection to the adoption of  
21 the amendment?

22 (No response)

23 The Chairman. It is adopted.

24 Senator Baucus. Mr. Chairman, this is even quicker. I  
25 hope Treasury doesn't mind.

1 This is basically to direct the Treasury to approve and  
2 publish master plans for any 401(k) provisions by May 1, 1987.  
3 A boilerplate master plan.

4 The Chairman. Treasury?

5 Mr. Mentz. A proposed master 401(k) plan by May 1, 1987?

6 Senator Baucus. Correct.

7 Mr. Mentz. We may have a lower limit in there than  
8 \$12,000 in our master plan, you understand.

9 (Laughter)

10 Senator Durenberger. No objection.

11 (Laughter)

12 Senator Baucus. But the main point is that a lot of  
13 companies just don't want to spend the attorneys' fees to  
14 put together a complicated plan. It seems to me that there  
15 should be some boilerplate master plan.

16 The Chairman. You can suggest that by May 1, 1987.

17 Mr. Mentz. I think we can, Senator.

18 The Chairman. Without objection, it is adopted. Go.

19 Senator Danforth. Mr. Chairman, the question that I  
20 would raise relates to penalties on early withdrawals from  
21 pension plans.

22 I don't have an amendment to propose, but I would  
23 appreciate it if the Treasury and the Joint Committee think  
24 it is a good idea if they could maybe work something up by  
25 way of an amendment, the point being that the penalty system

1 that we now have is overly punitive for early withdrawals  
2 --a 10 percent and 15 penalty. It tends to be regressive,  
3 and the question is whether we can develop an amendment  
4 which would establish as its goal a penalty that  
5 approximates the value of the deferral.

6 Mr. Mentz. We support you on that, Senator Danforth.  
7 We think a flat penalty--a 15 percent penalty--is in some  
8 cases unfair; and if we can target it more to the value of  
9 the deferral, I think it would be an improvement.

10 Senator Danforth. Could we, Mr. Chairman, tentatively  
11 agree to this concept and ask Treasury if it could develop  
12 an amendment?

13 The Chairman. What I would suggest is that Treasury  
14 draft the language so we can take a look at it first. It  
15 sounds all right, and I don't think there is any objection  
16 to the concept, once you get the language.

17 Mr. Mentz. Let me just say this. It is a question of  
18 how complex you want to make it versus how true to that  
19 concept you want to be, and I think maybe --

20 Senator Danforth. A rough approximation?

21 Mr. Mentz. Yes. I was going to suggest that. Let's  
22 try not to get perfect exactness --

23 Senator Danforth. A rough approximation. It is simple.

24 The Chairman. Let me make an announcement and slight  
25 change.

1           There has been an objection to our voting this  
2 afternoon. We will still meet and go over the foreign  
3 tax provisions and discuss amendments and vote on them  
4 tomorrow, but there will be no votes this afternoon.

5           We are adjourned, and we have a vote on the floor.

6           (Whereupon, at 11:50 a.m., the meeting was recessed,  
7 to be reconvened this same day, April 16, 1987, at 2:00 p.m.)  
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## AFTERNOON SESSION

(2:35 p.m.)

1  
2  
3 The Chairman. The committee will come to order, please.

4 As I indicated earlier, we will consider amendments today  
5 but not vote, and we will stack the votes. We may try to do  
6 them tomorrow if we can finish the bond section first, and I  
7 have a feeling we might be able to do the bond section sooner  
8 than all morning.

9 But in any event, we are open for amendments this  
10 afternoon on the Chairman's draft. We have been through it  
11 once already in terms of discussion, so I don't think we need  
12 to walk through step-by-step-by-step again for the whole  
13 thing.

14 Amendments. Senator Moynihan?

15 Senator Moynihan. Mr. Chairman, I guess the amendment  
16 I would want to propose -- we talked about it the other day --  
17 is with respect to the foreign tax credit on the cross-border  
18 loan. I don't know if you want to hear the argument on it.

19 The Chairman. I want to ask Treasury, or let me ask  
20 Senator Chafee, is this the same amendment you were thinking  
21 of offering on cross-border loans?

22 Senator Moynihan. I think they are thinking of tran-  
23 sition rules, aren't they?

24 Senator Chafee. Go ahead.

25 The Chairman. All right, yours is a straight out. Yes,

1 his is a transition. Thank you.

2 Go ahead, Pat.

3 Senator Moynihan. My amendment, Mr. Chairman, would  
4 simply be to keep current law. The arguments are threefold:  
5 They are, first, that this would effectively put American  
6 banks out of these transactions, this trade, for the simple  
7 reason that Japan, the UK, and France and Germany have  
8 provisions which make it possible to take a credit against  
9 domestic taxes or taxes paid abroad on these loans. And  
10 perhaps that ability for our banks and the President's and  
11 others, the argument is that these loans will cease to be  
12 made.

13 If they cease to be made, it certainly raises the  
14 question of how useful a static estimate of revenue gain  
15 would be, on the grounds that the activity will cease and  
16 therefore any revenue now foregone will not be there to be  
17 picked up.

18 The Chairman. Does Treasury have an opinion?

19 Mr. Mentz. Yes, we do, Mr. Chairman. I expressed it  
20 the other day, but I would be glad to restate it.

21 Senator Moynihan. I wonder if I could just go through  
22 the three points and then get Treasury's view.

23 Mr. Mentz. Oh, sure. I didn't mean to interrupt.

24 The Chairman. No, that was my fault. Go ahead, Pat.

25 Senator Moynihan. Mr. Secretary --



1           The Chairman. I can't remember if he's in trouble when  
2 you say that, or is he not in trouble?

3           Senator Moynihan. No. No.

4           Mr. Mentz. Well, he's confusing me now. Now I don't  
5 know whether it's a hard fast ball or a slow pitch.

6           (Laughter)

7           Senator Moynihan. The first point is that, with the  
8 revenue, this effectively will close out American financial  
9 institutions from these loans because they will be competing  
10 with other institutions that are just as capable and have the  
11 credit, and therefore the loans won't be made.

12           The second proposition is that, to an indeterminate  
13 degree -- in my case, I don't know that, but we are told that  
14 a very considerable portion of these loans in effect finance  
15 American exports. That is the reason they are made. If  
16 somebody wants to buy something here, they borrow the money  
17 from here to buy it. And we have certainly been sensitive to  
18 the idea of competitiveness in exports.

19           I just don't know. I am not a banker, and I don't know  
20 what proportion -- I don't know if anybody does. But the  
21 people who come to see us argue that in considerable measure  
22 this is the case; obviously, in some measure.

23           Lastly, this has to do with the Treasury's own initia-  
24 tive, the Baker Initiative, of increasing or maintaining --  
25 I don't know how you want to describe it -- the flow of loan

1 funds to those 15 countries, which range from developed  
2 countries like Argentina to very less developed like Sierra  
3 Leone, but there is a specific 15. And I would argue that  
4 this certainly can't help the Treasury initiative, and I am  
5 told it will harm it.

6 So, Mr. Secretary?

7 Mr. Mentz. Well, Senator Moynihan, I would just like to  
8 report that Secretary Baker is in France at the moment, but  
9 we did hear from him, in fact this morning, and he was highly  
10 complimentary of the sort of transitional relief that I had  
11 described the other day and that I believe Senator Chafee will  
12 be offering, particularly with respect to his own initiative.  
13 I think it is his conclusion, and indeed the Treasury's  
14 conclusion, that the allowance of a three-year period to  
15 change loans in the 15 countries, for lenders to rearrange  
16 them, with new borrowers -- it could even be with different  
17 countries, different interest rates -- all of that effectively  
18 being covered with a three percent increase in credits per  
19 year.

20 And then after that, and this is a slight difference,  
21 after that, for those Baker 15, after the three year period  
22 there would be a full grandfather. So that if there were a  
23 loan in place that went beyond the 10 years, it would be  
24 fully grandfathered. Therefore, if the loan was 15 years,  
25 for example, it would go for the separate; the more favorable

1 treatment would be for the full 15 years.

2 So I really think that the author of the Baker Initiative  
3 has pretty well agreed that this is an acceptable proposal.

4 And just to get the merits of it, very briefly, the issue  
5 on cross-border loans is whether interest that is paid should  
6 be completely exempt from tax, or whether there should be a  
7 further subsidy. And what the Chairman is saying and what the  
8 Treasury is supporting is, at least after we get through the  
9 transition period, a total exemption is enough; we don't have  
10 to go further; we don't have to go to a greater subsidy. And  
11 indeed, if we stay with that, we adopt the Chairman's  
12 proposal, our system would be somewhere in the middle of the  
13 developed countries. It would be somewhat less favorable  
14 than in the UK; somewhat, just slightly less favorable, than  
15 Japan; about the same or more favorable than France and  
16 Germany, and more favorable than Switzerland.

17 So we are coming from the extreme back to the middle of  
18 the pack, and I think on an ongoing basis, after we get  
19 through these transitional issues, that is really where the  
20 United States ought to be as a tax policy matter. That is  
21 the reason that the Treasury supports the Chairman in his  
22 proposal, with the transitional relief that I believe Senator  
23 Chafee will be offering.

24 The Chairman. Further discussion?

25 Senator Chafee. Mr. Chairman?

1 The Chairman. Senator Chafee?

2 Senator Chafee. As the Secretary mentioned, I do have  
3 an amendment which deals with the transition rule.

4 I guess the question that I have is the same one that  
5 Senator Moynihan raised; namely, what is this going to do to  
6 our banks trying to compete in the overseas loans? Is this  
7 going to be harmful to them? Obviously none of us want that.

8 Sure, we have seen our banks get into some trouble, but  
9 on the other hand they have made money overseas, too, and  
10 this is an industry just as sure as exporting telecommunica-  
11 tions equipment is an industry.

12 I just don't know the answer to what the effect of this  
13 change will be; namely, the President's proposal as modified  
14 by the Chairman's proposal.

15 Mr. Mentz, obviously you are coming at it from a biased  
16 point of view, but what do you say to the arguments of the  
17 banks that say to us that this is going to be extremely harm-  
18 ful to them in their competitive position? Forget the  
19 transition rule, let's assume that that is in there.

20 Mr. Mentz. All right. I certainly try not to be coming  
21 at it from a biased point of view, Senator Chafee. I really  
22 do think that my job is to try to give you an honest count.  
23 And if a provision doesn't make sense from a tax policy  
24 standpoint, I think I will be frank to tell you, even if it  
25 is against where we are trying to go.

1           But on this one, I think my judgment is that what will  
2 happen is, as you say, forgetting the transition, there will  
3 be some situations where a U.S. bank is not doing business  
4 in a particular foreign jurisdiction -- and that is all we  
5 are talking about; we are not talking about U.S. banks that  
6 have a branch in London or a branch in Hong Kong or what have  
7 you. That is not part of this debate at all. It is only a  
8 cross-border loan; that is, where there is no business  
9 presence of the bank in that jurisdiction.

10           There will be some jurisdictions where there will be a  
11 high withholding tax that we are not able, by treaty pressure  
12 or otherwise, to bring down to five percent. And if that  
13 happens, then there will be some loans not made into those  
14 jurisdictions on an ongoing basis. There will be a rearrange-  
15 ment, and some of the banks, U.S. banks, will be lending more  
16 into other countries where the withholding rate is lower or  
17 where they have a presence so that they don't have this issue  
18 of cross-border loans, and you will have some slight  
19 rearrangement of the world financial system.

20           I don't think that that is going to be any major  
21 dislocation. I think it will happen gradually and, just as  
22 some of the other aspects of this bill are going to cause  
23 some change and some shifting, it is not a radical change that  
24 is going to all of a sudden make U.S. banks or U.S. exporters  
25 noncompetitive. That is my judgment.

1 Senator Chafee. I don't have the statistics right in  
2 front of me, but the banks told me -- I think you and I  
3 discussed this, Mr. Mentz -- that in 1970, of the 25 largest  
4 banks in the world, or let's take the 15 largest banks in  
5 the world, something like 12 of them were U.S. And now, of  
6 that same group, three are U.S. In other words, the compe-  
7 tition is coming on extremely strong. The Japanese banks,  
8 oddly enough, are right in there. And I don't know why.

9 But as in all of these things, I think we want to be  
10 extremely cautious, because it is an industry that employs  
11 Americans.

12 Why have our banks declined in proportional strength  
13 worldwide?

14 Mr. Mentz. I think that is hard to say. I think it  
15 is probably a combination of factors. It is really not just  
16 banks, Senator Chafee. I think if you look back --

17 Senator Chafee. Manufacturing industries, surely.

18 Mr. Mentz. Sure. If you look back in the late 1950s  
19 and early 1960s, the subsidiaries of United States business  
20 were strongly predominate in Europe and the rest of the world  
21 as well. I think it really is not so much what are we doing  
22 wrong, but other countries and other businesses are catching  
23 up.

24 Japan obviously is somewhat of a special case, because  
25 there is very strong governmental interest and support of

1 industry there. I think there is sometimes even a partner-  
2 ship between them, or kind of a partnership. But putting that  
3 to one side, I think it is just a kind of natural growth of  
4 some of these other organizations.

5 The Chairman. How much also would it be the limitation  
6 in this country on interstate banking and on banks and  
7 securities? We have a number of limits that do not apply to  
8 most other banks, and as the whole economy of the world has  
9 grown, they were in a greater position to move into a variety  
10 of things as opposed to our banks.

11 Mr. Mentz. I think that is right. There are certainly  
12 non-tax factors. Probably non-tax factors are the  
13 predominate reason.

14 Senator Moynihan. A point of information: The French  
15 banks have been nationalized, have they not?

16 Mr. Mentz. Temporarily.

17 Senator Moynihan. I mean are they still nationalized?

18 Mr. Mentz. They are now, yes.

19 Senator Moynihan. So they can afford to make profit and  
20 loss judgments that a private bank couldn't. Maybe they  
21 won't, but --

22 Mr. Mentz. That is right.

23 Voice: Just a \$1 billion handshake.

24 (Laughter)

25 Senator Moynihan. Now just wait a while.

1 (Laughter)

2 The Chairman. You have no idea what that just sealed.

3 Further discussion on Senator Moynihan's amendment, which  
4 we will vote on, of course, tomorrow? I think we may vote  
5 right now on something.

6 Are you done, Pat, with that?

7 Senator Moynihan. Yes.

8 The Chairman. Why don't we go on to one more amendment.  
9 Obviously we are going to go and vote in a second, but why  
10 don't we go on to one more amendment. I think, John, yours  
11 might be relevant at this stage.

12 Senator Chafee. All right, Mr. Chairman.

13 My amendment, as the Secretary said, modifies the  
14 Chairman's proposed transition rule. What it does, it  
15 grandfathers all loans to residents of countries not subject  
16 to the Banker Initiative, and of course those are 15  
17 countries. And we have a 10-year period beginning with the  
18 effective date of the new rule. So it is 10 years thereafter.

19 With respect to loans to residents of the 15 countries  
20 subject to the Baker Initiative only, this permits the loans  
21 to be rolled over, rescheduled, and so forth, and as long as  
22 the total amount of foreign taxes creditable on an annual  
23 basis with respect to such loans held by a given lender  
24 does not exceed the dollar amount creditable with respect to  
25 loans held by such lender on November 16 of '85.



1 It increases the dollar amount of the overall lender-  
2 by-lender limitation by three percent per year -- those are  
3 in paragraph two.

4 That is about it, Mr. Chairman. There are several other  
5 provisions. I have circulated it. Basically it is a slower  
6 transition than is provided in your proposal.

7 The Chairman. This is the \$1.2 billion loss?

8 Mr. Brockway. That is correct.

9 Senator Moynihan. Mr. Chairman, could I?

10 Senator Chafee, in view of the position of the Treasury  
11 in its openness to these transition rules, I guess I would  
12 like to suggest that I won't ask for a rollcall vote, but I  
13 would like to join Senator Chafee in the transition.

14 The Chairman. Well, we are not going to take any vote  
15 just yet.

16 Senator Moynihan. But I am just making the point that  
17 we will think we see them.

18 Mr. Mentz. Does that mean you are withdrawing your  
19 amendment?

20 Senator Moynihan. I am going to ask for a voice vote.

21 Mr. Mentz. All right, I see.

22 The Chairman. Oh, let's see, a voice vote? Now let's  
23 count: one-two-three-four-five -- no, we had better not even  
24 do that this afternoon.

25 Senator Moynihan. No, I mean tomorrow.

1           The Chairman. Mr. Secretary, you want the Chafee  
2 Amendment quite badly, is that right?

3           Mr. Mentz. Yes. You have stated it quite accurately.

4           The Chairman. And you are willing to swallow the  
5 \$1.2 billion loss for the sake of the country?

6           Mr. Mentz. Yes. I would rather swallow the 1.2 than the  
7 1.9, or whatever it is, and also I would rather keep my job  
8 with the Treasury Department for a while.

9           (Laughter)

10          The Chairman. Well, I think, again, Senator Chafee has  
11 been good about circulating the amendment, and I think every-  
12 one knows what it is without further discussion on it. We  
13 are having no votes this afternoon.

14          Further discussion on the Chafee Amendment?

15          (No response)

16          The Chairman. Further amendments to consider? We have  
17 a vote going right now.

18          Senator Chafee. I am not trying to cut anybody else  
19 off, but I do have one more that we are fairly familiar with,  
20 and that is on page 83, the five percent withholding that we  
21 have discussed here a great deal.

22          There is not much I can say that I haven't said before  
23 on it. I just feel that what we are doing is shutting off a  
24 whole area of potential lending for not only American industry  
25 but the U.S. Government. I don't see the sense at all to it.

1           We went through this battle, Mr. Chairman, as you recall,  
2 when we cut back from the 30 percent. And at that time, as  
3 I mentioned the other day, we had an alternative route to  
4 that borrowing, not for the Federal Government, for the U.S.  
5 Treasury obligations, but at least U.S. industry could go  
6 via the Netherlands Antilles route. That route has been cut  
7 off now. So, if we put on this five percent, we are cur-  
8 tailing the ability of U.S. industry and the U.S. Government  
9 to borrow in the Eurodollar market. I think it is a great  
10 mistake.

11           The Chairman. Senator Bentsen?

12           Senator Bentsen. If I may comment on that, I strongly  
13 support Senator Chafee's views on the imposition of the  
14 five percent tax. I think what we must do is continue to  
15 encourage capital coming into the country and trying to keep  
16 these interest rates low. I think this is counterproductive  
17 and I hope that we won't do that.

18           I would like to hear the Secretary's comments on the  
19 five percent tax, if that is all right.

20           Senator Chafee. Mr. Chairman, just briefly, I gave the  
21 wrong page on that -- we are in 103.

22           Mr. Mentz. Senator Bentsen and Senator Chafee, the  
23 Treasury Department strongly agrees with each of you. We  
24 have sought as sort of a national policy from Administration  
25 to Administration -- it doesn't matter whether it is

1 Democratic or Republican -- to have an access to the Euro-  
2 dollar market for U.S. borrowers and indeed the Federal  
3 Government as well. That access has been preserved since the  
4 early to mid-'60s one way or another. For a while we had a  
5 direct exemption as we have currently. We had a direct  
6 exemption in the early '70s for a couple of years. Most of  
7 the rest of the time it was through --

8 The Chairman. Let me interrupt you a second, Mr.  
9 Secretary.

10 Mr. Mentz. Sure.

11 The Chairman. We have a rollcall vote on the McClure  
12 motion to table the Melcher Amendment to the Hydro Relicensing  
13 Bill. Let me ask if other members who are here have amend-  
14 ments that they want to present this afternoon.

15 Senator Bentsen. I do.

16 Senator Moynihan. I could do it in 30 seconds, Mr.  
17 Chairman.

18 The Chairman. You can mention it in 30 seconds?

19 Senator Moynihan. Yes, Mr. Chairman. I will propose an  
20 amendment to ease somewhat the provisions on foreign invest-  
21 ment corporations that are provided on page 100, number 8, in  
22 the Chairman's bill.

23 Mr. Mentz. Well, I don't want to drone on. I will just  
24 stop and say I support Senator Chafee and Senator Bentsen. I  
25 think it is consistent with our policy for 25 years, and we

1 ought to stay there.

2 The Chairman. Lloyd, what other amendment do you have?

3 Senator Bentsen. I have a very minor one, I think. It  
4 is a unique case, as I understand it, where MCA, in this  
5 instance, a company here, owns a subsidiary in Canada which  
6 in turn owns a subsidiary in the United States, which in turn  
7 sends dividends upstream, does not get its 85 percent credit  
8 on dividends, and in effect ends up paying a double tax.

9 I don't think that was the intent, and if Treasury  
10 agrees I hope that we can make a correction of that.

11 Mr. Mentz. We do agree. This is a strange situation  
12 where, if you have a subsidiary that has got effectively  
13 connected income, and then it has got a U.S. company in the  
14 middle, you don't get, effectively, the credit for the U.S.  
15 tax. That is something that has been wrong with the tax law  
16 for a long time. I am glad you have taken the initiative to  
17 change it.

18 The Chairman. Any other? Senator Bradley?

19 Senator Bradley. Mr. Chairman, I have an amendment that  
20 will deal with the Virgin Islands. Without getting into the  
21 details, the present law, if we are going to allow any tax  
22 havens, which I think is a debatable point and maybe we  
23 shouldn't, to the extent that we do, I don't think we should  
24 prejudice the Virgin Islands against Guam or Puerto Rico,  
25 and therefore I would be offering amendments that would

1 clarify that.

2 The Chairman. Senator Bentsen has a number he wants us  
3 to consider.

4 Senator Bentsen. The other one is a question on the  
5 80/20 rule. I would like to talk to Mary Frances, if you  
6 would address that. I think we have a problem there. I  
7 believe it could be worked out. Would you comment on it?

8 Ms. Pearson. Yes, Senator. I would like to work with  
9 your staff on that proposal.

10 Senator Moynihan. And you are working with our staff on  
11 this FIC provision?

12 Ms. Pearson. Yes, Senator.

13 The Chairman. Well, let's recess now and come back here  
14 about 3:20. If anybody is here, we will go on until about  
15 4:00. If not, we will simply adjourn the meeting at that  
16 time.

17 (Whereupon, at 2:59 p.m., the meeting was recessed.)

18 AFTER RECESS

19 (3:20 p.m.)

20 The Chairman. Let's continue on and see if there are  
21 any more members that want to discuss possible amendments  
22 they may want to bring up tomorrow. I shouldn't say  
23 tomorrow, because I want to do bonds first, but depending if  
24 we finish bonds.

25 Senator Danforth? We are on the foreign tax provisions,

1 and we are not having any votes this afternoon. What I have  
2 asked the members to do, if they had amendments -- and  
3 Senator Chafee has offered one, and Senator Moynihan did --  
4 if they had any amendments that they want to offer, to at  
5 least discuss them so that we can get the discussion behind  
6 us and won't have to plow too much ground again when we get  
7 to voting.

8 Senator Danforth. All right.

9 The Chairman. And if members don't have any further  
10 amendments, why, we will go a few minutes and then quit.

11 Senator Danforth?

12 Senator Danforth. Mr. Chairman, I do have an amendment  
13 or two. First, with respect to dual-resident corporations.

14 Dual resident corporations are corporations that are  
15 established pursuant to tax treaties with the United Kingdom  
16 and Australia. The proposal before us alters the treatment  
17 of these dual resident corporations and, as I understand it,  
18 taxes these corporations that are owned by a U.S. corporation  
19 differently from a corporation owned by a UK corporation or  
20 an Australian corporation.

21 It is my understanding that this change that has been  
22 proposed is a violation of tax treaties that we have entered  
23 into with the United Kingdom and Australia.

24 Also, it is my understanding that it would adversely  
25 affect U.S. corporations doing business in the UK or

1 Australia.

2 I am told that the Joint Committee has revenue estimates  
3 that the change would pick up some revenue. However, the  
4 projections of the Joint Committee don't factor in the  
5 possibility, almost certainty, of retaliation by the United  
6 Kingdom and by Australia against the United States if we were  
7 to so change the law.

8 Further, I am told that the Joint Committee assumed that  
9 the maximum U.S. tax rate would be 35 percent. And if it  
10 is anything over 35 percent, by virtue of what we are doing  
11 with this bill, then the revenue from the proposal would be  
12 lost.

13 So, I am wondering, given the fact that it is a question-  
14 able revenue pickup, and given the fact that it is a clear  
15 violation of U.S. treaty obligations with the United Kingdom  
16 and with Australia, whether we should pursue this.

17 Mr. Brockway. Senator Danforth, I guess there are  
18 several points there. The proposal deals with corporations  
19 that -- essentially I think it is the UK, but also it would  
20 be Australia -- where they are structured that they are both  
21 resident in the United States because it is incorporated in  
22 the United States, typically Delaware, and it also managed  
23 and controlled in the United Kingdom, and they say it is their  
24 resident corporation.

25 What this is dealing with is a corporation set up to



1 acquire a U.S. business, in most situations, where you do  
2 the borrowing through this dual resident corporation. This  
3 dual resident is included in the U.S. consolidated return,  
4 and so the losses generated by the borrowing offset are  
5 averaged with profits in the United States, and offset the  
6 tax on that. They are also included in the United Kingdom  
7 consolidated return, so the same losses also reduce taxes over  
8 there, effectively giving a significant tax benefit to the  
9 borrowing to acquire the U.S. company.

10 As structured, the proposal would apply to multinational  
11 groups that are owned ultimately by foreigners rather than  
12 U.S. multinational groups.

13 Treasury raised the issue that this might be a violation  
14 of the nondiscrimination rules, and I think, in looking at  
15 it, our reaction was that the appropriate way to draft it,  
16 and probably the appropriate conceptual way, is not to turn  
17 on who the ultimate owners were but to structure the proposal  
18 so that it would apply where the dual resident corporation  
19 was included in the return of a foreign corporation that was  
20 not a controll-form corporation -- that is, where the losses  
21 were both claimed for U.S. purposes and also claimed for  
22 foreign purposes where that foreign income would never be  
23 subject to tax.

24 I think if it is structured that way, it probably would  
25 not be a treaty violation. Certainly in form it would not be.

1           But going to the revenues on the proposal, the proposal  
2 does in fact take into account a variety of behavioral changes  
3 into effect. As to whether or not foreign governments will  
4 in fact retaliate, I am not quite sure. If they would, I  
5 am not sure if that would raise revenue or lose revenue for  
6 the United States.

7           The argument that taxpayers have made is that, if we  
8 apply this to U.S. controlled groups, that we don't collect  
9 any revenue, they say that all this borrowing will continue  
10 to be in the U.S. corporation. I gather they are also saying  
11 if we apply it to foreign multinationals, or the UK adopted  
12 a similar rule, we would also lose revenue on that.

13           So, essentially, they are arguing that somehow for both  
14 U.S. multinationals and the UK multinationals, in both cases  
15 the UK would pick up the revenue rather than the United  
16 States, where the deduction is taken in both countries. I  
17 just don't think that can be true. It is either somewhat a  
18 revenue pickup from both jurisdictions -- which I think is  
19 what our reaction is on this, and we did take into account  
20 that we wouldn't pick up all of the revenue; part of the  
21 revenue would go to the UK.

22           But essentially it is just a rule saying that in these  
23 situations where the foreign multinational is acquiring a  
24 U.S. business, that you couldn't take the tax deduction both  
25 in the United States and in the United Kingdom at the same

1 Senator Danforth. Mr. Mentz. do you have any comment  
2 about this, especially on the possibility of retaliation or  
3 the likelihood of retaliation by the UK?

4 Mr. Mentz. Well, I think this is a tough one. I would  
5 observe that the discrimination argument under the treaty,  
6 the U.S./UK Treaty, is certainly a problem with the proposal  
7 as drafted. I think it clearly would be a violation of our  
8 treaty.

9 If it is drafted the way Mr. Brockway suggests, I think  
10 that is a much more artful way of doing it and would certainly  
11 improve the argument. But the argument on the other side  
12 could still be made, I think, that in substance it is the  
13 same.

14 In any case, you certainly run the risk of the UK saying,  
15 "Well, we are going to have the same provisions for a U.S.  
16 controlled company. We are not going to allow the interest  
17 deduction," which I believe is a concern that a number of  
18 U.S. companies at least have expressed to us, and I assume  
19 they have to you as well.

20 Whether that is a good or bad tax policy is not an easy  
21 call, frankly.

22 Senator Danforth. Well, let me ask you this: Do you  
23 agree with the Joint Committee's revenue projections?

24 Mr. Mentz. About point-two? \$200 million?

25 Senator Danforth. Yes.

1 Mr. Mentz. Yes, we do.

2 The Chairman. Let me make an announcement about  
3 tomorrow -- Steve Symms has just asked, and some others.

4 We will start voting on bonds in the morning. We will  
5 not have a vote tomorrow on the Canadian-U.S. fast-track  
6 free-trade agreement. If we finish bonds, we will go on to  
7 the foreign tax provisions and see what votes we can take  
8 care of then, but we will do bonds first.

9 Senator Long. When are we going to vote on the  
10 Canadian fast-track?

11 The Chairman. We have to vote no later than the 23rd,  
12 and I reconfirmed that with the Parliamentarian again, both  
13 the House and the Senate Parliamentarian, about an hour ago.  
14 So we will probably have it on the agenda no later than -- I  
15 hate to do it on Friday or Monday -- probably Tuesday.

16 Senator Long. Well, let's see, when is the last day  
17 we could vote on that?

18 The Chairman. Wednesday.

19 Senator Long. I would hope the Chairman wouldn't wait  
20 until right up to the very last possible minute. Assuming we  
21 can be here, or either here or represented by proxy, maybe  
22 we could go to it on Friday or Monday.

23 The Chairman. Well, I have had a lot of complaints when  
24 we vote Friday afternoons or Monday mornings. That is a hot  
25 topic, whether people want to be here in person or not.

1           If we set it for Tuesday, nobody is going to fillibuster  
2 it, and we will get a vote. But I think people are more  
3 likely to be here in person Tuesday morning than Monday  
4 afternoon, even though they know we have votes on Monday  
5 afternoon.

6           Senator Long. Well, if you wait until Thursday that the  
7 Canadians get it, they don't have the votes, do they? That  
8 is about the size of it. When is it that the clock runs out?

9           The Chairman. Wednesday night, I think, the clock runs  
10 out.

11          Senator Long. Well, I would certainly hope that it will  
12 be brought up, that the Chairman wouldn't move this thing so  
13 late that there is some doubt about whether we have the right  
14 to act at all.

15          The Chairman. No, I have no intention of simply  
16 postponing it and postponing it, and suddenly the 23rd runs  
17 by and we haven't acted, because we have to act positively or  
18 the approval is granted, if we take no action.

19          Senator Long. My impression was if we don't do anything,  
20 that silence gets consent.

21          The Chairman. That is correct.

22          Senator Long. So we have to vote, I would think, and  
23 hopefully we would vote. I guess Tuesday is all right if we  
24 can do that.

25          The Chairman. It would be my hope we can do it Tuesday

1 morning.

2 Senator Long. All right.

3 Senator Baucus. Mr. Chairman?

4 The Chairman. Senator Baucus?

5 Senator Baucus. If I might inquire, why are we waiting  
6 until Wednesday to vote?

7 The Chairman. It was at the request of the President.  
8 No, not Wednesday, but he requested that we not vote tomorrow.  
9 And as a matter of courtesy, my staff talked to his staff and  
10 indicated we would put it off.

11 My inclination is to do it Tuesday. I don't think much  
12 is going to change between Tuesday and Wednesday.

13 Senator Long. Could we have a definite agreement that  
14 we will vote Tuesday? It seems to me if we are going to vote  
15 Tuesday, we could let everybody know so they will make their  
16 plans.

17 The Chairman. Russell, I will give the notice. It is  
18 my intention at the moment to vote Tuesday morning. The  
19 President has the right to withdraw it if he wants. It turns  
20 out the Parliamentarian says he doesn't have to leave it in  
21 there. He can withdraw it and resubmit it the next day, and  
22 the time starts to run again from the time of resubmission.

23 Senator Long. I understand that, and I don't challenge  
24 that for a second. But I do think, Mr. Chairman, it is all  
25 right with me if the Administration wants to do all they can

1 to bring pressure to bear on Senators, and the Canadian  
2 Ambassador can do all he wants to do, and all the rest of  
3 them.

4 But I just think, in the end, it is the committee itself  
5 that ought to do its job. So I hope the Chairman is  
6 sensitive to that.

7 The Chairman. Let me assure you again that it is not  
8 my intention to deny the committee a right to vote. As a  
9 matter of courtesy to the President, on a matter that he  
10 regards of great, significant international importance, when  
11 the President requests that we postpone the vote while he  
12 has a chance to see what he can do, I am willing to grant that  
13 request.

14 Senator Danforth. Mr. Chairman?

15 The Chairman. Senator Danforth?

16 Senator Danforth. Back to the dual-resident corpor-  
17 ations. Let me ask the Administration this:

18 Mr. Mentz, do you see any reason for changing existing  
19 law? If we have two treaties, and this is something that is  
20 designed to benefit American businesses doing business abroad,  
21 and the two countries involved are the UK, which is our friend  
22 in Europe, and Australia, is there any pressing reason why we  
23 should change existing law?

24 Mr. Mentz. To tell you the truth, I have never done a  
25 dual-resident company transaction with Australia; I have done

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1 a number of them with the UK. I believe that is, by far, the  
2 more important of the two.

3 Senator Danforth. Right.

4 Mr. Mentz. Right now, the dual-resident arrangement  
5 permits a very attractive way of financing acquisitions by  
6 U.S. companies into the UK, or by UK companies into the U.S.  
7 Now, it is a two-way street: one way benefits us, and the  
8 other way benefits the UK.

9 What we are attempting to do here is to say, "Well, in  
10 the case where it benefits the UK or the UK parent, we don't  
11 want to allow those interest deductions. And you shouldn't  
12 feel so bad about it, UK company, because you are getting  
13 group relief for them in the UK anyway."

14 That is not unlikely to provoke a similar response from  
15 the UK.

16 Senator Danforth. So we are back to square-one.

17 Mr. Mentz. Yes, we are kind of back to square-one.

18 Senator Danforth. So in other words, we are saying that  
19 it is true that we have negotiated treaties and entered into  
20 treaties with these two countries, and the purpose of those  
21 treaties was to foster a different kind of business relation-  
22 ship with them than with other countries; but basically, what  
23 we are doing in the Finance Committee is to say that that was  
24 all a mistake.

25 Mr. Mentz. Well, this is more than a treaty. This is



1 a matter of internal UK law that permits a non-UK company that  
2 is managed and controlled in the UK to be entitled to group  
3 relief, which is the same as the consolidated return, the  
4 same concept as in the United States. It is that fairly  
5 unusual provision that you don't find in many other countries  
6 that enables this link-company or dual-resident company to  
7 effectively get deductions in both jurisdictions.

8 I guess the way to look at it, Senator Danforth, is  
9 do we think it is a good idea to leave it the way it is, with  
10 both jurisdictions allowing deductions, for all cases? Or  
11 do we want to eliminate it across the board? Because I think  
12 it is not unlikely that the UK will react if we take action.

13 Senator Danforth. Right.

14 Mr. Mentz. When I started off, I said this is a tough  
15 one. I am not sure what the answer is on that. We don't  
16 really have a real firm position on that, Senator.

17 Senator Danforth. Well, in other words, if I were  
18 interested in offering an amendment, I might receive a  
19 favorable nod from the Administration?

20 Mr. Mentz. I will have to think it over over the  
21 evening.

22 Senator Danforth. All right.

23 Can I raise one or two other questions, Mr. Chairman,  
24 which are of enormous complexity?

25 The Chairman. Certainly.

1           Senator Danforth. One has to do with foreign investment  
2 companies.

3           Now, the House has dealt with this problem and has  
4 created something called a "passive foreign investment  
5 company."

6           Mr. Mentz, would you agree that the provision in the  
7 House bill is a little bit on the unwieldy side?

8           Mr. Mentz. Yes, I would, and I understand that  
9 Senator Moynihan has been working on an amendment with staff  
10 and Joint Committee. Is that right, Mr. Brockway?

11          Mr. Brockway. Well, he has been working at the staff  
12 level; I am not sure what will happen with the amendment.

13          Mr. Mentz. Anyway, Senator Moynihan mentioned it before  
14 he left a few minutes ago, that it would tidy it up quite a  
15 bit.

16          Senator Danforth. All right. I would be interested in  
17 looking at whatever ideas Senator Moynihan has. This is one  
18 interest I have, and I did want to alert you, Mr. Chairman.

19          And then, finally, there is the question of the domestic  
20 loss recapture provision, particularly the situation where  
21 a company has net income from foreign sources but an overall  
22 domestic loss. In that case, the company will have paid  
23 foreign income taxes for which a credit will not be allowed.

24          Now, this is a proposal that would cost revenue. I think  
25 it is a matter of equity, but it is also a matter of revenue.

1 And I understand the problem we have with this bill, but the  
2 question is whether there should be an amendment to rechar-  
3 acterize subsequent domestic income as foreign-source income  
4 to the extent of the prior domestic loss, so we can recognize  
5 the tax credit that was not allowed because of the domestic  
6 loss.

7 Do you understand the issue?

8 Mr. Mentz. Yes, I do. This is sometimes referred to  
9 as "the black hole," when a U.S. company has U.S. losses and  
10 foreign income, and the foreign income bears foreign tax,  
11 there is no U.S. tax because of the U.S. loss which absorbs  
12 the income. And the foreign tax credit is a foreign tax  
13 credit carryover.

14 When the U.S. company turns around and begins making  
15 domestic profits, at that point the foreign tax credits are  
16 not available because there is no foreign source income which  
17 is necessary in order for the foreign tax credit limitations  
18 to apply, to provide the credit.

19 The idea of it is, if you look at it in terms of two  
20 years, in the first year you have a domestic loss, and the  
21 next year domestic income, and you have foreign income in the  
22 first year, in that case you will be denied a foreign tax  
23 credit, because it will carry over to the second year, and in  
24 the second year you won't have any foreign income. Whereas,  
25 if it was all combined into one year, you would be even in the

1 U.S.-- no loss, no income. You would have the foreign income  
2 and the foreign tax, and you would get the benefit of the  
3 credit.

4 So, conceptually this approach has merit. It is the  
5 opposite side of an amendment which was enacted in 1976,  
6 involving overall foreign losses, where the same type of  
7 recapture or recharacterization of the income, in that case  
8 from foreign to domestic, in this case it would be domestic  
9 income recharacterized as foreign, so that the foreign tax  
10 credit mechanism works more correctly.

11 That concept seems to me to be right, seems to the  
12 Treasury to be right, in both cases. The major problem that  
13 we have with it and that you run into in this bill is that  
14 I believe the revenue cost is something on the order of  
15 \$2 billion, I believe.

16 Is that about right?

17 Ms. Pearson. That is correct.

18 Mr. Mentz. So this is one where it is kind of hard to  
19 separate policy from revenue. But nevertheless, I think the  
20 price tag is the most discouraging aspect of this proposal.

21 Senator Danforth. But as a matter of policy -- in fact,  
22 I have just been handed an article you once wrote on the  
23 subject.

24 Mr. Mentz. I have a feeling that some other things that  
25 I have written are going to come back to haunt me as we go

1 through this.

2 (Laughter)

3 Senator Danforth. I didn't realize it when I asked the  
4 question.

5 Mr. Mentz. When was that, in 1978?

6 Senator Danforth. I don't know, but I do know you said,  
7 "There are a number of deficiencies in the overall foreign loss  
8 recapture provisions as set forth in section 1032 of the Tax  
9 Reform Act of 1976, and in particular, this approach fails  
10 to afford parallel treatment to U.S. losses."

11 You do believe as a matter of policy it is something that  
12 should be corrected, but the question is whether or not -- the  
13 revenue?

14 Mr. Mentz. That's right, Senator Danforth, and I think  
15 the Treasury was on record on that even before I came.

16 Senator Danforth. And it is \$2 billion over five years.  
17 Is that right, Dave?

18 Mr. Brockway. If you exactly mirrored the rules we have  
19 for foreign loss recapture, it would be 1.7, which is a  
20 situation where you limit it to 50 percent of your income a  
21 year. If you did it fully, it would be \$2 billion, exactly.

22 Senator Danforth. Mr. Chairman, I would at least like  
23 to reserve the possibility of offering that amendment,  
24 although I understand the revenue problem.

25 Senator Long. Mr. Chairman, I am compelled to go to

1 another committee meeting at 4:00, but I wonder if staff  
2 might explain to us what this allocation of interest matter  
3 is at this point? I think you need a blackboard to explain  
4 that.

5 Senator Baucus. That would be good. I was just going  
6 to discuss that, too. I have an amendment on allocation of  
7 interest expense, too.

8 Senator Long. Might I ask if we could bring that  
9 blackboard in from behind us? Mr. Wilkins, do you think the  
10 blackboard might best illustrate how this thing works?

11 Mr. Wilkins. Yes, I think when you discuss this area it  
12 helps a lot to have pictures of the corporations and the  
13 relationships.

14 Senator Baucus. And I might suggest that when we come  
15 to this, Mr. Chairman, we might also have some diagrams for  
16 the committee.

17 The Chairman. What I would like to do, as this is longer  
18 than a 15-minute explanation, I think, if you are going to a  
19 meeting at 4:00, and, Senator Baucus, I know you want to  
20 mention that one other amendment, don't you, on the American  
21 citizens overseas?

22 Senator Baucus. Right.

23 The Chairman. And I have a 4:00 meeting. I would just  
24 as soon not start down the road on the sourcing. That is a  
25 difficult one, on the allocation of interest.

1 Senator Long. Do you want to discuss it tomorrow, or  
2 when?

3 The Chairman. Well, we are going to start on bonds in  
4 the morning, and we will go on bonds until we finish it. If  
5 we finish it in the morning, we will move back to this  
6 section.

7 Senator Long. But I have this thing by the Treasury  
8 Department. It has some charts in it which would be simple  
9 enough to put on a blackboard. It is my impression with  
10 something like that that someone needs to stand up in front  
11 of the chart and explain it to us.

12 The Chairman. Let's take the one that Senator Baucus  
13 has to discuss.

14 Senator Baucus. Mr. Chairman, I have four.

15 The Chairman. All right, go.

16 Senator Baucus. One that I will not discuss is in this  
17 area, the allocation of interest expense, and it is compli-  
18 cated. But I do have an amendment in that area.

19 Second, at the appropriate time I will bring up an  
20 amendment concerning the treaty override for re-insurance  
21 excise tax. I firmly believe that we are providing a loophole  
22 for Lloyds of London.

23 The Chairman. Is this the one-percent?

24 Senator Baucus. It is the one-percent. I doubt that  
25 I will propose increasing the excise tax. I think my

1 proposal will be simply to maintain the current law on the  
2 excise tax, on the amount of the tax, but to attempt to close  
3 the UK treaty loophole. That would be the second amendment.

4 The third will be addressed to the section 911 exclusion  
5 for American citizens who reside overseas and are therefore  
6 entitled under section 911 to an \$80,000 exclusion. My  
7 amendment will apply to Americans who reside in countries  
8 contrary to the President's Executive Order that the Americans  
9 should not be residing in that particular country. In this  
10 case it would be Libya.

11 Due to recent events, I may or may not offer the amend-  
12 ment; I may tailor it to recent events. There are some  
13 Americans who are living, as I understand it, in Libya not  
14 contrary to the Executive Order, and there are some living  
15 there contrary to the Executive Order. And I think any  
16 amendment crafted has to apply only to those who are living  
17 there contrary to the Executive Order.

18 It just seems to me that if some Americans are living  
19 in countries contrary to the President's Executive Order, they  
20 should not be entitled to an \$80,000 exclusion.

21 The fourth amendment is a very narrow one, it really  
22 applies to a particular company in Montana that is joint  
23 venturing with a mining company in Brazil. It is conforming  
24 with the Brazilian class to structure the company a certain  
25 way to suit Brazil law. Consequently, this company, Western



1 Energy in Montana, is running afoul of sub-part F. I am  
2 working with staff to creat a very narrow amendment which  
3 would amount to \$4 million, total. I hope we can work that  
4 out.

5 The Chairman. I appreciate very much you warning us  
6 ahead of time, so we can be prepared. And maybe some of them  
7 are acceptable.

8 Any others?

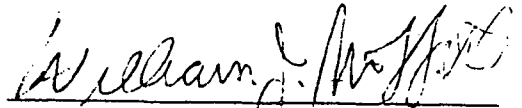
9 (No response)

10 The Chairman. If not, we are in adjournment until 9:30,  
11 when we will start on bonds.

12 (Whereupon, at 3:50 p.m., the meeting was recessed, to  
13 reconvene Thursday, April 17, at 9:30 a.m.)

C E R T I F I C A T E

This is to certify that the foregoing proceedings of a meeting of the Senate Finance Committee, Executive Session, held on April 16, 1986, was as herein appears and that this is the original transcript thereof.



WILLIAM J. MOFFITT  
Official Court Reporter

My Commission expires April 14, 1989.