

ORIGINAL

1 EXECUTIVE SESSION
2 MONDAY, DECEMBER 14, 1981
3 U.S. Senate
4 Senate Finance Committee
5 Washington, D.C.

6 The meeting was convened, pursuant to notice, at
7 2:13 p.m. in room 2221, Dirksen Senate Office Building,
8 Hon. Bob Dole (chairman) presiding.

9 Present: Senators Dole, Packwood, Roth,
10 Danforth, Heinz, Wallop, Durenberger, Armstrong, Symms,
11 Grassley, Long, ~~Byrd~~ Bentsen, Matsunaga, Moynihan, Baucus,
12 Boren, Bradley, Mitchell and Glenn.

13 Also present: The Honorable John Chapoton,
14 Assistant Secretary for Tax Policy, Treasury Department;
15 Mr. Robert Lighthizer, Chief Counsel; Mr. Mark McConagay,
16 Chief Counsel, Joint Tax Committee; Mr. Bob DeArment,
17 staff.

18 The Chairman. First, Senator Packwood would like
19 to make an announcement.

20 Senator Packwood. As some of you know, I have
21 circulated a letter asking that the so-called "port user
22 fee" bill, which has come from the Environment and Public
23 Works Committee -- which is really a tax -- be referred to
24 this Committee. There are 28 co-signers of the letter of
25 request for referral to this Committee so far. And I
just wanted to thank the members at least of this Committee
that are on it, which are: Danforth, Roth, Heinz, Armstrong,
Long, Baucus and Matsunaga. And say that if anybody else

1 who is not yet on it and wants to be on it before it is
2 finally and fully circulated, I would be happy to add your
3 names to it.

4 Senator Durengerber. I may add my name to it.

5 Senator Moynihan. Mr. Chairman, may I raise a
6 constitutional point of order? The Constitution specifically
7 provides the right as granted to Congress to states to
8 impose these on tonnage. The Committee on Environment and
9 Public Works has reported out a bill of which I am a
10 co-sponsor which only and specifically enables the state
11 governments to do what the Constitution provides them the
12 right to do. In no sense is it a tax. And I think it would
13 be a misfortune to insist that it is.

14 Senator Packwood. It is the authority -- no matter
15 how you classify it or call it -- for the ports to levy
16 a tax. I didn't say it is a tax. But it's to levy a tax.
17 And I think that's exactly what they are doing. And if you
18 start looking at their plans, already, you can call it
19 tonnage -- it is going to be a disproportionate tax.

20 Senator Moynihan. Well, I certainly hope that a
21 clear national interest in producing coal ports -- ports of
22 sufficient draft -- that we can compete in the world market
23 for the export of coal is not defeated by regional interests
24 that are much too regional.

25 The Chairman. Senator Long.

Senator Long. Mr. Chairman, this may be the last
meeting of our Committee, And assuming that to be the case,
I just want to express the gratitude of myself and other

1 members of this Committee to Ed Hawkins who came here and
2 served us in a very dedicated, devoted fashion. He came
3 from one of our major law firms in this country. And he came
4 here at great sacrifice to make his counsel available to this
5 Committee and throughout the Senate. And he served as our
6 tax counsel while the Democrats were in the majority. And he
7 stayed on and served as minority counsel. And I think that
8 we owe him a debt of gratitude for serving here. And I
9 deeply appreciate his service. I think I speak for the
10 full Committee when I say that. Thank you very much, Ed.

11 The Chairman. Thank you, Senator Long. We
12 certainly join in that statement.

13 Now we have a rather full agenda. Has the agenda
14 been passed out? Yes. I see it.

15 I might say in addition to the first phase that
16 we have three House bills that will be coming over according
17 to the Chairman of the Ways and Means Committee -- coming
18 over to the Senate tomorrow. The Black Lung Benefits Revenue
19 Act, miscellaneous tax provision, and Miscellaneous Revenue
20 Act of 1981.

21 I think what we will do in an effort to try to
22 complete the agenda, is go through the printed agenda first,
23 starting with Senate amendments. The first being an
24 amendment by Senator Armstrong.

25 But before we do that, let me indicate that on the
26 24th of November I inserted a statement in the record which
27 indicated -- as we had done in the past on this Committee --
28 that if there were a number of amendments that were not

1 controversial or we had had hearings in the Finance Committee
2 and involved no real revenue loss, were not opposed by
3 Treasury or by the Committee, that we would try to accommodate
4 those Senators who had such amendments. And report them --
5 either attach them to a House bill or perhaps a Committee
6 amendment -- that we could deal with a House passed bill
7 before this session adjourns, which I understand from
8 Senator Baker will be on Wednesday afternoon.

8 So in line with those guidelines, we have had the
9 Committee staff working with Treasury and the Joint Tax
10 Committee and with various Senators' staffs, and we have
11 come up with, as I understand it, 13 amendments that are not
12 controversial, no real revenue loss, on which they have had
13 hearings. And I would say that they break down to just about
14 50-50 as far as parties are concerned. And I would hope
15 that we could go through these amendments where there is no
16 dispute on the balance of the agenda. And then if there are
17 other members who wish to present amendments, we would be
18 happy to entertain a discussion of those amendments.

18 But I would again suggest that we intend to
19 accommodate those Senators who have non-controversial
20 amendments. One way to disrupt that would be to offer some
21 controversial amendments.

21 Senator Packwood. Mr. Chairman.

22 The Chairman. Yes.

23 Senator Packwood. Since this list was presented,
24 I have cleared with the Treasury one portion of the energy
25 credit amendment. It had three portions. They are opposed

1 to two portions of it, but they will accept the third. And
2 when we get to number 14, I would like to add that. I think
3 it is non-controversial.

4 The Chairman. They had hearings on it?

5 Senator Packwood. Oh, they had hearings, yes.

6 The Chairman. Well, let's start with number 1.

7 Mr. McConaghy. The first item -- actually this is
8 kind of in two pieces -- but the first item listed here would
9 deal with changes that Treasury has agreed they will make by
10 regulations. Senator Armstrong's amendment would make sure
11 that those are made because he would put them in the statute.
12 And I think the two changes in regulation 1 deals with
13 repair and maintenance. Under the old regulations, the IRS
14 had said that, for instance, if everybody that goes over
15 to a vacation home must work eight hours a day. Treasury
16 felt that as long as the principal person was working, that
17 should be sufficient.

18 The second one dealt with the position in the
19 former regulations that dealt with saying that you could only
20 have one principal trade or business -- one principal place
21 of business. Treasury, on that one, had agreed that they
22 would revise those regulations to say that with respect to
23 each trade or business that the taxpayer had, he could have
24 a principal place of business. And I think Senator Armstrong
25 would codify those two changes in the statute itself.

26 Senator Packwood. Could I ask a question? Was
27 this the bill we had where the National Education Association
28 testified and they raised a point that you and I thought was

1 a valid point? And is it covered in this? I can't recall.

2 Senator Armstrong. This item appears on the
3 second page under H.R. 4961, taken together to cover the
4 points that were contained in S. 31, which was the bill in
5 which we had the hearing. And I will be frank to say I am
6 not sure whether or not the points that the NEA raised are
covered. Let me check that.

7 (Pause)

8 Senator Packwood. Mark may be able to remember.

9 Mr. McConaghy. I think, Senator Packwood,
10 Senator Armstrong was also interested in two other amendments.
11 Perhaps they would be taken up when we get into the bill
12 itself. One is to get rid of the requirement that you
13 can't count a fair rental tool -- a family member as being a
14 rental. That constitutes something other than personal
use. Senator Armstrong's amendment would reverse that.

15 Senator Armstrong. That's correct. But I think
16 the response to Senator Packwood's question is that taken
17 together, the items on page 1 and page 2 together constitute
18 S. 31, which was the bill that we had before us. Now
19 refreshing my recollection, the issue that the NEA raised was
20 school teachers using an office in their home.

21 Senator Packwood. School teachers using an office
22 in their home, as I recall.

23 Senator Armstrong. Exactly. And that is not
covered in here.

24 The Chairman. Am I to understand that the first
25 item has had no objection by Treasury? Is that correct?

1 Mr. Chapoton. Yes, Mr. Chairman. I would like a
2 clarification on the first item. The question is whether
3 you can have an office in your home. And the answer is "yes."
4 And as I understand it, it is intended -- if it's the
5 principal place of business. That's correct. It cannot be
6 the secondary place of business. That is my understanding.
7 And the question that Senator Packwood raised is whether or
8 not that should be broadened as NEA and others suggested to
9 cover a secondary place. But it's my understanding that in
10 its present form, as it appears here, that that is not
11 included.

12 We would be concerned because that raises the
13 administrative problem of how much effort is in the second
14 place of business.

15 Senator Armstrong. I understand that. I am
16 not disagreeing with this approach. I am just saying that
17 the other questions remain to be considered at another time.
18 And perhaps adopted later.

19 Mr. Chapoton. I might just say for the Committee's
20 information that I finally received, this morning, the set
21 of regulations that would provide these. As you know, we
22 said that we needed legislation on the rental to a family
23 member. We could not handle that. We could handle these
24 others by regulations. Those regulations -- no matter what
25 happens here -- will be published this week.

The Chairman. Senator Armstrong, are you satisfied
with the amendment?

Senator Armstrong. Yes.

1 The Chairman. Any objection to item number 1?

2 (No response)

3 The Chairman. Without objection. Item number 2
4 is brought by Senator Baucus. Tax court judges' survivors
5 annuities with technicals. Mr. McConaghy.

6 Mr. McConaghy. This amendment deals with the
7 change to the annuities for survivors of tax court judges,
8 essentially to bring it more in conformity with the treatment
9 of survivors annuities that are there for other Federal
judges.

10 It also deals with three or four technical matters
11 that the Tax Courts themselves asked for. Such as, permitting
12 or allowing the Tax Court to designate somebody who is a
13 retired judge as a senior judge, allowing the special trial
14 judges to handle cases of general jurisdiction under
15 \$5,000.00. And two or three other technical amendments. So
16 it combines the change dealing with annuities for survivors
17 of Tax Court judges with three or four technicals that the
Tax Court themselves has proposed.

18 The Chairman. Any objection from the Treasury?

19 Mr. Chapoton. No objection.

20 The Chairman. And hearings have been held on this
21 proposal?

22 Mr. McConaghy. Yes.

23 The Chairman. Senator Baucus, do you have
24 anything to add?

25 Senator Baucus. I think it has been covered. No
objection. A \$50,000.00 only revenue loss.

1 The Chairman. Without objection, then, number 2
2 will be agreed to.

3 The next amendment Senator Bentsen -- state judges
4 deferred compensation plan.

5 Senator Bentsen. Mr. Chairman, this is one on
6 which hearings have been held. I know of no objection by
7 Treasury. It is very narrowly defined to take care of
8 judges. And where they have had mandatory plans, section 457
9 was set up really to clarify the application on optional
10 plans. This is a situation where the state legislature meets
11 every two years, and does the appropriation every two years.
12 And if we didn't have this clarification, you would have a
13 situation where as soon as you had vesting, you would have
14 full income declared and they would have to pay taxes on it,
15 as I understand. And we are trying to avoid that.

16 The Chairman. There have been hearings held.
17 Treasury, do you have any objections to this amendment?

18 Mr. Chapoton. No, we don't, Mr. Chairman,
19 and Senator Bentsen. We have worked with the representatives
20 of the state and the state of Maryland also had some
21 concerns.

22 We did think, I might add, after reviewing this
23 situation very thoroughly that it would be good for this
24 Committee to consider the possibility of broadening this
25 approach, not limit it to judges. And we would suggest that
this be considered next year.

26 Senator Bentsen. Next year, you say?

27 Mr. Chapoton. Yes, sir.

1 Senator Bentsen. That would be fine, Mr. Chairman.
2 But for the moment, I would like to see us move along on
3 this.

4 The Chairman. Right. Any objection to this
5 amendment?

6 (No response)

7 The Chairman. If not, it is agreed to.

8 Mr. Chapoton. Mr. Chairman.

9 The Chairman. Yes.

10 Mr. Chapton. If I might interrupt, the point was
11 made that this covers only elected judges. We would think
12 it might be better to go ahead and cover appointed judges
13 as well. It covers appointed judges to fill a remaining
14 elective term, but we might, at this point, go ahead and
15 broaden it to cover all state judges.

16 Senator Bentsen. I see no objection to that.

17 The Chairman. All right. Without objection, that
18 change was made.

19 Number 4, Senator Chafee, technical conforming
20 amendments for business development companies.

21 Senator Packwood. He couldn't be here today but
22 he asked me to make sure this was brought up and considered.

23 The Chairman. Mark.

24 Mr. McConaghy. This does make a change. It's a
25 minor change, I believe. And that is that in 1980, the
Small Business Incentive Act permitted an alternative form
of regulation to be allowed for these regulated investment
companies. And this change proposed by Senator Chafee

1 would permit the flow through of the mutual fund treatment,
2 meaning not taxing the fund itself, if those organizations
3 went ahead and used this alternative method of regulation.
4 It takes part of his bill -- Senator Chafee's bill -- which
5 is S. 1304.

6 The Chairman. Any revenue loss?

7 Mr. McConaghy? No. The revenue loss doesn't have
8 any effect on budget receipt.

9 The Chairman. Any objection by Treasury?

10 Mr. Chapoton. No objection, Mr. Chairman.

11 The Chairman. And hearings have been held?

12 Senator Armstrong. Mr. Chairman, I just want to ask a
13 question. I have no objection but I'm -- in reading the
14 write-up, I don't understand why we don't permit this same
15 treatment to business development companies that have less
16 than 100 stockholders.

17 Mr. McConaghy. I think, Senator Armstrong, that
18 there are some people, including Treasury, that wanted to
19 look at that. I think they felt that as long as these
20 organizations are regulated in some fashion then certainly
21 we would accept or honor that regulation treatment and allow
22 the flow through to occur. To the extent they weren't
23 regulated at all, meaning under the Investment Company Act
24 of 1940 or under this alternative method, there is a
25 question as to whether or not there should be flow through
treatment in that case.

Back in 1940 or so, there were problems with the
people who put these together, essentially taking excessive

1 amounts off of the investments that they made. And that gave
2 rise to the Investment Company Act of 1940. That required
3 there be 100 shareholders. The change that was made in 1980
4 provided an alternative to that rather than to register under
5 the Investment Act of 1940. But it provided that alternative
6 only where it could qualify under the Investment Company Act
of 1940 which would be 100 shareholders.

7 This accepts that change for the alternative
8 registrations. And it kind of says, I think, that if they
9 are regulated under one or the other, we certainly will
10 accept that and allow the flow through to go through.

11 Mr. Chapoton. I might add, Senator, that the --
12 when you lower the limit, you are really into the question
13 of whether they ought to have complete flow through
14 treatment like Subchapter S corporations. And, indeed, they
15 are asking for what might be a reasonable broadening of
Subchapter S, which is sort of another question.

16 Senator Armstrong. But that's exactly what came
17 into my mind, is that we have no corresponding requirement
18 for Sub S corporations. And this, in fact, as I understand
19 it -- you could use a Sub S corporation for this purpose
20 except you would run afoul of the passive income.

21 Mr. Chapoton. That's probably correct. I think
22 this Committee will be considering the possibility of
broadening Sub S on that regard for everybody.

23 Senator Armstrong. Mr. Chairman, this is
24 obviously not the time to go into it in greater detail. And
25 I certainly have no objection to this provision.

1 The Chairman. Without objection, number 4 will be
2 agreed to.

3 Number 5, Senator Danforth, modification require-
4 ments for furnished form W-2 to terminated employees.

5 Hearings have been held on this, I understand.
6 There is no revenue loss.

7 Mr. McConaghy. That's correct. Mr. Chairman, I
8 think this just codifies with the regulations the way they
9 are presently.

10 The Chairman. The Treasury supports this?

11 Mr. Chapoton. Mr. Chairman, I have just learned
12 that it does codify the regulations. It's a reasonable
13 idea. We did support the idea. I just found out that is in
14 the regulations. I am a little puzzled as to why we are
15 codifying the regulations, but if it's good enough for the
16 regulations, obviously, we have no objections.

17 The Chairman. Any objections?

18 (No response)

19 The Chairman. Mr. Danforth, do you want to speak?

20 Mr. Danforth. No.

21 The Chairman. Without objection.

22 Number 6, Senator Matsunaga, voluntary
23 withholding of state tax for certain fishermen.

24 Senator Matsunaga. Mr. Chairman, that should
25 read "seamen," not "fishermen." I think they got
26 confused. It should be "seamen."

The Chairman. All right.

Senator Matsunaga. Mr. Chairman, now here we have

1 a case of taxpayers wanting to have their taxes withheld
2 from their wages, but where the Federal Government forbids
3 it. The Federal law presently allows seamen to have Federal
4 income tax withheld on an elective basis, but Federal law
5 presently prohibits withholding for state income tax. The
6 rationale behind by prohibition is to prevent over
7 withholding where several states might seek to tax their
8 seamen.

8 My proposal allows withholding for state tax
9 only where one state can lay claim to taxing a seaman's
10 wage. That is where the seaman is engaged on a vessel
11 buying between ports within the same state. Withholding
12 would be voluntary at the seaman's election.

13 Hearings were held on May 22 of this year. And
14 the proposal has no revenue effect on the budget. I move
15 its adoption.

15 The Chairman. Any objection from Treasury?

16 Mr. Chapoton. No objection, Mr. Chairman.

17 The Chairman. Any other explanation, Mr.
18 McConaghy?

19 Mr. McConaghy. No.

20 The Chairman. Any objection to number 6?

21 (No response)

22 The Chairman. If not, it would be agreed to.

23 Number 7, a one year extension of existing
24 exemptions for certain fishermen. Senator Mitchell.

25 Senator Mitchell. Thank you, Mr. Chairman. This
is legislation that will correct an unemployment tax problem

1 which has plagued fishing vessel operations in Maine and
2 several other parts of the country. It will standardize the
3 tax treatment of fishing vessel employees so that the
4 treatment will be the same in terms of self-employment as
5 for Social Security tax and for income tax withholding
6 purposes.

7 It was agreed to by the Senate last year in
8 conference. This provision's life was limited to 1981.
9 This will extend it through calendar year 1982 with one
10 minor modification, which is that it would not exempt from
11 unemployment tax coverage those persons who are members of
12 collecting bargaining units since they are, obviously, not
13 self-employed.

14 The Chairman. Any objection from Treasury?

15 Mr. Chapoton. We did not object to extending it for
16 another year. Senator Mitchell, I thought we had discussed,
17 but I thought we had dropped the non-applicability of the
18 extension to collective bargaining units. In other words,
19 the extension would apply to everyone, just like it did in
20 1981?

21 Senator Mitchell. Well, I am not aware of that
22 discussion, Mr. Secretary. I would be glad to discuss that
23 with you following this.

24 Mr. Chapoton. Okay. We would prefer that it would
25 be across the board, just the way it was done in 1981.

The Chairman. Well, if there's some problem maybe
we can pass over it while you discuss it.

Senator Mitchell. Perhaps we could do that, Mr.

1 Chairman.

2 The Chairman. Number 8, Senator Moynihan, rollover
3 of gain on FCC ordered disposition of broadcast property.

4 Senator Moynihan. Mr. Chairman, very briefly, in
5 1943 a provision was enacted which provides that when a
6 company is ordered to divest itself of a property by the
7 FCC, that the capital gains of that sale can be postponed
8 if it purchases another radio broadcasting station. At that
9 time, the FCC only dealt with radio broadcasting stations.

10 This would change that language to read, "radio
11 or television broadcasting station or newspaper." Since
12 that time, the FCC has been ordering the divestiture of
13 television stations and of newspapers. In 1975, the
14 Commission issued orders in which some seven small and
15 medium sized cities, where one company owned both the
16 newspaper and the television station, to divest itself of
17 one or the other. The Watertow Times has sold it -- in
18 New York state -- the television station,
19 and wishes to buy a newspaper and not another television
20 station somewhere else. This would permit it to do it.

21 It seems to be a First Amendment issue as well as
22 an issue of equity on the taxation.

23 Hearings have been held. Dr. Chapoton was kind
24 enough to say the Treasury supported this measure, when we
25 held hearings on our last tax bill, but wanted to keep it
26 off that clean bill we adopted in July.

27 I would like to note that this would apply to
28 transactions consummated after June 24. And I believe Mr.

1 Chapoton will support the measure.

2 The Chairman. Mr. Chapoton.

3 Mr. Chapoton. That's correct. No objection,
4 Mr. Chairman.

5 The Chairman. Any other explanation? I think
6 Senator Moynihan covered it.

7 Mr. McConaghy. Senator Moynihan, I had one
8 question. As we had written this up, it's effective on
9 January 1, 1980. That, we understand, takes care of a
10 rollover where there was a sale of a radio or TV investment
11 or reinvestment in a newspaper. You mentioned that date
12 June 24th. That's why I wasn't -- the hearing, I think,
13 was on that date.

14 Senator Moynihan. The effective date would be
15 June 24 when the bill was brought up. Whichever is the
16 most convenient.

17 The Chairman. Is there any objection to the
18 amendment?

19 (No response)

20 The Chairman. Hearings have been held, is that
21 correct?

22 Senator Moynihan. That's correct.

23 The Chairman. Without objection.

24 Number 9, exclusion of certain R and D expenditures
25 for capital expenditure limitation on small issued IDBs.

Maybe I could ask -- if it's all right with
Senator Moynihan -- the staff, since they have discussed
it, to give us the primary points.

1 Mr. McConaghy. Under present law, the
2 R and D expenditures are considered capital expenditures
3 whether or not they elect to be expensed or amortized. So
4 today if I have a small issue of industrial develop bonds,
5 I cannot expend more than \$10 million for capital
6 expenditures. Counted towards that, of course, are research
7 and development expenditures such as wages and supplies.
8 Normally, those are considered to be capitalized.

9 This proposal takes research wages and supplies
10 and says that they will not be capital expenditures counted
11 against the \$10 million small issue exemption.

12 The Chairman. Is that the way you understand it,
13 Senator?

14 Senator Moynihan. That is right, sir. The
15 purpose being -- the present rulings have the effect of
16 discouraging the high technology small firms, which is
17 exactly what we would hope to see more of. And I believe
18 Mr. Chapoton, the Treasury, supports that.

19 The Chairman. Mr. Chapoton.

20 Mr. Chapoton. That is correct. We wanted it
21 limited to the wages and supplies because that's where we
22 saw the problems. And so we have no objection to it.

23 The Chairman. Any objection to the amendment?

24 Mr. McConaghy. I assume, Senator Moynihan, that
25 the effective date -- we understand that you want it
effective with respect to expenditures made after the date
of enactment regardless of when the obligation itself was
issued.

1 Senator Moynihan. Yes. The answer is "yes."

2 Mr. Chapoton. No objection.

3 The Chairman. Without objection, number 9 would
4 be agreed to.

5 Number 10, Senator Packwood, reforest station
6 trust fund transfer provision.

7 Senator Packwood. There currently exists a trust
8 fund. The receipts from that trust fund are obtained from
9 tariffs on imported lumber. And they are used to guarantee
10 that the backlog of unreforested forest service lands will
11 be reforested. This simply changes the source of the funds
12 for that trust fund from the tariffs on imported lumber to
13 cutting fees on timber sold off of the forest service land.

14 The Chairman. Mr. Chapoton.

15 Mr. Chapoton. Mr. Chairman, as Senator Packwood
16 and I have discussed in the hearing on this matter, we are
17 traditionally opposed to earmarking additional -- the
18 trust fund concepts in matters such as this. But all this
19 does is change the funding of the trust fund, and it keeps
20 the same \$30 million per year limit so we have no
21 objection.

22 The Chairman. Any hearings? I want to make
23 certain that hearings have been held.

24 Senator Packwood. The hearing was held.

25 Senator Mitchell. At the hearing that you held,
I thought that you opposed that provision.

Mr. Chapoton. We did oppose. And it was the
basis, as I explained to Senator Packwood, as he asked me

1 directly, your opposition is based on the fact that you
2 don't like earmarking. I said that is correct. We do not
3 like earmarking. We would not like a growth in the trust
4 fund. That is answered; the same limit is put on it. So
5 the only thing we are discussing now is the logic of the
6 source of the funds. And we did not see any basis for
7 objecting to the switch in the source of the funds.

8 The Chairman. Mr. McConaghy, any other
9 comments?

10 Mr. McConaghy. No, I don't think so.

11 The Chairman. Any objection to the amendment?

12 (No response)

13 The Chairman. If not, number 10 would be agreed
14 to.

15 First of all, have we settled number 7, Senator
16 Mitchell?

17 Senator Mitchell. Yes, Mr. Chairman. I understand
18 that that has been resolved. And it's in the manner that
19 Mr. Chapoton indicated it would be acceptable to him.

20 The Chairman. Across the board?

21 Senator Mitchell. Right. Simply extended in its
22 present form for one more year.

23 The Chairman. All right. Number 7 will be agreed
24 to.

25 Number 11, Senator Symms, declaratory judgments
for special use evaluation. Mark.

Mr. McConaghy. Yes. This would provide for
declaratory judgments -- the first one in the second part of

1 this proposal in two cases. One is where there is presently
2 an extension for the payment of estate taxes to get that
3 extension, you have to have a certain percentage of your
4 adjusted gross estate, 35 percent, in closely held business
5 stock.

6 There is no way really, to get in to determine
7 whether or not you qualify. And Senator Symms' proposal
8 would be to establish a declaratory judgment procedure with
9 respect to whether or not an estate is eligible for a
10 deferment of state taxes under that provision. And the
11 computation of whether there has been an acceleration once
12 you have a deferral of the state taxes.

13 The second declaratory judgment would deal with
14 special use value. And it would provide a similar
15 declaratory judgment procedure that would determine the
16 fair market value of that specially valued property when
17 that value is the only unresolved issue in the estate.

18 The first part of this proposal deals with
19 what is termed a "second death provision." And that deals
20 with whether or not there is going to be a triggering or
21 an acceleration of the benefits from an extended payment.
22 It provides that where there is subsequent death -- in
23 to other words, a second death -- if property passes by
24 death to another heir or transferee, that there wouldn't be
25 a triggering of 6166 that would accelerate the payments.

So those are the three changes.

The Chairman. Mr. Chapoton.

Mr. Chapoton. Mr. Chairman, we have no objection

1 to this change. It makes a lot of sense.

2 I would like to voice the concern of the Tax Court.
3 And Judge Tannenwald is here if you would like to hear from
4 him. This concern is on the ever increasing load of the
5 Tax Court. They have got a backlog of some 40,000 cases.
6 We are concerned when we give them more work to do, such as
7 this bill would do. The extent of it is difficult to
8 predict, but I do want to express that very definite concern
9 of the Court.

9 The Chairman. Senator Symms.

10 Senator Symms. Well, thank you, Mr. Chairman.
11 And thank you, gentlemen. My understanding is that it
12 would only be 50 cases.

13 Mr. Chapoton. Section 2032(a) would probably not
14 be too many. I think there is some concern as to just how
15 many cases would be involved in the deferred payment of a
16 state tax, 6166 provision. I don't think the Court is
17 specifically objecting, but they certainly do have a very
18 real and legitimate concern.

18 The Chairman. Is there objection?

19 (No response)

20 The Chairman. Without objection, number 11 is
21 agreed to.

22 Senator Wallop, expansion of oil sale credits.
23 I understand there that Treasury would have no objection if
24 there were an amendment.

25 Senator Wallop. Basically, what we are trying to
do is simply do what Congress intended us to do when it passed

1 those energy credits before and the Congress did not know
2 about carogin in the hydrogenation process of oil shale
3 equipment.

4 There are some revenue estimates in here. And
5 I have got to say that they are, in my opinion, wildly
6 overstated in what appears to be possible to happen because
7 there are, right now, only five projects that exists.
8 Union Oil Company has one -- \$150 million over the next
9 three years. And the credit amount total would be \$15.
10 Tosco and Exxon has made \$3 million and mostly in
11 engineering expenditures. And Chevron will be made after
12 1983. The Rio Blanco project will be made after 1983. And
13 Occidental will be made after 1983. And it says, "of the
14 above projects, it looks as if Union, Occidental, may make
15 the affirmative commitment base. And Tosco thinks they
16 will. So the Chevro and Rio Blanco projects probably won't
17 qualify for any of the credits. And that would substantially
18 reduce these revenue estimates, which are apparently
19 acceptable anyway.

20 Mr. McConaghy. Senator, also eliminating it to
21 1981 and 1982 could cut down the --

22 Senator Wallop. Yes. That was the intent in the
23 first place. Something happened in that process and it
24 does confuse the affirmative commitment base later on.

25 Mc. McConaghy. These are based on 1983 and 1982
and they are higher than if you had it as you agreed to,
1981 and 1982.

The Chairman. Mr. Chapoton.

1 Mr. Chapoton. We have no objection as limited,
2 Mr. Chairman.

3 The Chairman. Limited to 1981 and 1982.

4 Mr. Chapoton. Right. I might say that our
5 review of the situation when it was passed suggested that
6 this might be in order. We do have concerns about
7 extending the credits, generally, but this is a different
8 situation.

9 Senator Bradley. Mr. Chairman.

10 The Chairman. Senator Bradley.

11 Mr. Chapoton. As I have discussed there must be
12 an affirmative commitment. That requirement is in the law
13 and would still be imposed.

14 The Chairman. Right.

15 Senator Bradley. Is this now limited to 1981 and
16 1982?

17 The Chairman. Yes.

18 Senator Wallop. They are due to expire in 1981,
19 I think. It is limited to 1981 and 1982.

20 Senator Bradley. So that the revenue losses of
21 \$32 million in 1983 and \$22 million in 1984 will not take
22 place.

23 Senator Wallop. They will not take place. It is
24 not likely that the amounts in 1981 and 1982 would be as
25 high as stated.

Senator Bradley. Does Treasury agree with that?

Mr. Chapoton. I'm sorry, Senator Bradley.

Senator Bradley. Would you agree on this issue

1 as provided if there was a revenue loss in 1983 of \$32
2 million and in 1984 of \$22 million? As the amendment is
3 presently written, will those revenue losses occur?

4 Mr. Chapoton. That was our estimate. Yes, sir,
5 we did agree with those estimates.

6 Mr. McConaghy. Senator Bradley, I would like to
7 answer that. The amendment originally that applied to 1982
8 and 1983 would not --

9 Senator Wallop. Actually, it originally applied
10 to 1981 and 1982. Something happened in that process to get
11 it to 1982 and 1983.

12 Mc. McConaghy. If it did apply to 1982 and 1983,
13 as it was drafted, it would not have permitted an affirmative
14 commitment to allow the credit to it. However, if you
15 would go back and apply it to 1981 and 1982, then the
16 question is whether you also picked up affirmative commit-
17 ments within that period and allow the credit, if the
18 expenditure is subsequently made, up through 1991, like the
19 basic legislation, or whether you don't adopt that affirmative
20 commitment rule. It would depend on how you came out --
21 there would be a difference in revenue.

22 Mr. Chapoton. Let me interject. I misspoke
23 a minute ago, I believe. The affirmative commitment rule
24 would be -- it would be reversed. It would be limited to
25 these two years or the affirmative commitment rule would not
26 apply. That was the arrangement, I believe.

27 Senator Bradley. Does this mean that you have
28 changed your position on other energy tax credits?

1 Mr. Chapoton. No, sir, it does not.

2 Senator Bradley. Well, I don't know really what
3 the difference between this tax credit and a lot of other
4 energy tax credits that are under review right now is.

5 Mr. Chapoton. The only difference that Senator
6 Wallop may have, from my own standpoint -- the only
7 difference was what Congress attempted to do in 1978.

8 Senator Wallop. It was clear from the record that
9 we had tried to do this. This was a conference committee
10 change in effect. It took place in the early hours of the
11 morning and nobody realized that that had happened. But it
12 was clear that our attempt in the oil shale world was to do
13 just what we are seeking to do here.

14 Senator Bradley. Does it mean that investments
15 won't be made unless this change is there?

16 Senator Wallop. It pretty well does mean that,
17 yes.

18 Senator Bradley. Does Treasury agree?

19 Mr. Chapoton. Yes, sir.

20 Senator Bradley. If they will make the
21 investments --

22 Mr. Chapoton. We have had long discussions with
23 the groups and they are making that point. Yes, sir. We
24 have not made an independent investigation of that.

25 Senator Bradley. What's your view of the tax
credit for passive solar?

Mr. Chapoton. We have a proposal as you know,
Senator Bradley. Tentatively. We haven't spelled out the

1 details of it where we want to cut back on energy credits.
2 Either phase them out quicker than they are now phased out.
3 But we have had long discussions with many groups involved
4 that point out to us with merit that they have made
5 commitments on the basis of the availability of the credits,
6 in keeping with the commitment of Congress in 1978 and
7 1980. And we are reevaluating the breath of our proposal
8 in view of those discussions.

9 Senator Bradley. These were commitments that
10 were made?

11 Mr. Chapoton. Financial commitments that were
12 made by investors and businesses in reliance upon the law.

13 Senator Bradley. What was the commitment by the
14 Congress?

15 Mr. Chapoton. That the credits would be, in effect,
16 as stated. And that our proposal would ask Congress to cut
17 back on that commitment. Commitment may be the wrong word,
18 but cut back on the allowance of the credits as authorized
19 under the law. We had a change proposal, but we had stated
20 that we are reviewing the extent to which we will request
21 a reduction in the credits in future years because of our
22 discussions with effected taxpayers.

23 Senator Bradley. I have trouble distinguishing
24 between this kind of tax credit and other forms of tax
25 credits. And if the policy is to say no tax credits, the
free market is going to do it all, I mean those are the
ground rules. But if the argument is that some tax credits
are okay and some tax credits aren't, then I think that you

1 really have to produce the economic justifications for the
2 tax credits, which I don't see forthcoming here.

3 Senator Wallop. Well, Bill, I don't quarrel with
4 that except that this was plainly an oversight on the part
5 of Congress and part of the intent of it. Dealing with a
6 piece of technical equipment that we just weren't expert
7 enough to define correctly when we passed that oil shale
8 credit in the first place.

9 Senator Bradley. That is precisely the problem
10 of providing a tax credit for passive solar energy. You
11 can't define clearly enough what it is. That's what you are
12 up against whenever you try to write tax credits for various
13 energy forms that change over time.

14 Mr. Chapoton. Well, Senator Bradley, in the
15 legislative history under this provision it does discuss
16 giving a credit for equipment to bring oil developed from
17 shale to the refinery. This is an expense in that chain.
18 I mean this equipment is an expense in that chain. And for
19 that reason, we did not object if Congress wanted to
20 revalidate the statement in the legislative history at that
21 time.

22 But, as I have stated before, we had serious
23 question about the desirability of energy credits in
24 general.

25 The Chairman. All right. As I understand, there
is objection by Treasury of the amendment as modified, which
was the original intent of the author of the amendment. It
does reduce revenue loss to less than \$10 million. Is that

1 correct?

2 Mr. McConaghy. That is correct, Mr. Chairman.

3 The Chairman. That may or may not be real as
4 outlined in my statement of record, but it is defined with
5 a couple of other amendments.

6 I would guess if there is some objection we
7 should -- if there is no objection by Treasury and there is
8 no objection on the Committee, we will just vote on it.

9 Senator Bradley. Well, I would be recorded in
10 opposition.

11 The Chairman. Any other objections?

12 (No response)

13 The Chairman. If not, let the record show that
14 Senator Bradley's vote was negative.

15 Number 13, Senators Danforth and Moynihan, trade
16 adjustment assistance. Mr. Gingrich.

17 Mr. Gingrich. Mr. Chairman, under current law,
18 workers are eligible for trade adjustment assistance if the
19 Secretary of Labor determines that increased imports
20 contribute importantly to the injury to the firms, which
21 result in unemployment.

22 Under the changes to the program made by the
23 reconciliation bill, the causation standard is to be
24 changed to a substantial cause standard. That is, a cause
25 which is important and not less than any other cause. This
26 amendment would simply extend current law through the
27 remaining life of the program, the end of FY 1983.

28 The Chairman. As I understand, it really doesn't

1 make that much difference since there is not much money
2 available in any event. Is that correct?

3 Mr. Gingrich. Yes, sir.

4 The Chairman. Any comments from any of the
5 Senators?

6 Senator Bentsen. Yes. I would like to comment on
7 it.

8 The Chairman. Senator Bentsen.

9 Senator Bentsen. Mr. Chairman, I recall when the
10 Administration was testifying on the ominous Budget
11 Reconciliation Act. That they were talking about reducing
12 benefits, but they were also talking about substantially
13 increasing training. As I recall, it was at the figure of
14 \$112 million for 1982. But because the Administration was
15 late in its presentation and perhaps not forceful enough,
16 the Appropriation Committees came in with about \$24 million;
17 substantially below the \$112 million. So although I
18 supported the Administration in what they initially did, I
19 strongly disagree with a reduction in training.

20 We have got a situation in this country where we
21 have not done what has to be done for mature workers in
22 developing job skills. And, particularly, when businesses
23 are phasing down. And we are not matching the competition.
24 We are not doing anything like what the Germans and the
25 Japanese are doing, some of our most successful trade
26 competitors.

27 I am going to go along with Senators Moynihan
28 and Danforth because with this continuation of the current

1 standard, perhaps it will help make up for the fact that the
2 Administration is not pushing as much as I think they should
3 for the increase in the training.

4 But I would strongly urge the Administration to
5 rededicate its efforts and carry through on what it initially
6 said: that it was going to support in skill training for
7 people who are losing their jobs because of foreign
8 competition and because of imports coming into this
9 country.

10 The Chairman. Senator Moynihan.

11 Senator Moynihan. Well, I thank Senator Bentsen,
12 and totally agree with him, as I believe Senator Danforth
13 does. We just hope this is an indication of this Committee's
14 views to the Administration.

15 The Chairman. Senator Danforth.

16 Senator Danforth. Mr. Chairman, I have a statement
17 for the record since I think this has been pretty well
18 discussed.

19 STATEMENT OF SENATOR DANFORTH

20 Senator Danforth. Mr. Chairman. Senator Baucus
21 and I are very proud of our attorney's fees bill and grateful
22 to you for your support throughout this legislative endeavor.
23 Senator Baucus began considering this issue during the
24 Ninety-Sixth Congress, and has been essential to the progress
25 of the bill. He and his staff have been kind enough to let
me participate in this effort. Senator Baucus and I have
incorporated some of the suggestions offered by the witnesses
before my subcommittee and Judge Tannenwald of the Tax Court

1 in one clarifying amendment which we would like to offer at
2 this time.

3 The following changes have been included in our
4 amendment:

5 1. We have included an "exhaustion of remedies"
6 provision to be sure all taxpayers exhaust their administra-
7 tive remedies before proceeding to court. The backlog of the
8 Tax Court is a source of considerable concern to this Com-
9 mittee, and Senator Baucus and I agree that requiring a tax-
10 payer to pursue his or her administrative appeals would be an
11 improvement to this legislation. The Committee report must
12 include language to permit a taxpayer to remove himself from
13 the administrative appeals process if the issue is one that
14 can only be resolved by litigation (such as, a conflict with
15 the circuits).

16 2. The maximum penalty that can be assessed
17 against a taxpayer for bringing a frivolous or groundless
18 action is increased to \$2,500. This award is only appropriate
19 if the taxpayer has filed suit merely for delay or is
20 pursuing a frivolous appeal. Current law provides for a
21 \$500 penalty to be awarded at the discretion of the Tax
22 Court if a taxpayer is filing a lawsuit merely for delay.

23 3. The effective date of this legislation has been
24 changed to all Tax Court, District Court and Court of Claims
25 tax filings after June 1, 1982. The effective date in our
original bill was after December 31, 1980, and applied only
to Tax Court cases. By delaying the effective date 6 months,
we intend to give the Tax Court time to establish guidelines

1 for the award of attorney's fees in tax cases. We expanded
2 the coverage of the legislation to all tax litigation to
3 discourage forum shopping. If we had not included this
4 provision, a taxpayer who paid the amount in controversy and
5 went to District Court would be judged by different standards
6 in his attempt to get attorney's fees than a taxpayer who
7 filed suit in Tax Court. Senator Baucus and I felt this was
8 an undesirable result so we approved the following change.

9 4. The current sunset provision within our
10 original bill is January 1, 1991. This provision has been
11 moved forward to June 1, 1987 to force Congress to evaluate
12 the operation of this provision more quickly.

13 This legislation is very important to all tax-
14 payers and I am glad to be a part of its enactment. This
15 bill gives a taxpayer the right to collect attorney's fees
16 and other related costs if he or she can show the
17 government's position is unreasonable. This is an important
18 safeguard against a sometimes arbitrary Internal Revenue
19 Service, and it should demonstrate to the people of the
20 United States that Congress is sincere in its effort to
21 protect them from groundless harassment by government
22 agencies.

23 The Chairman. Without objection, number 13
24 would be agreed to. As I understand that since this was
25 typed, Senator Packwood has had a discussion with the
26 Treasury on an amendment which hearings have been held. And
27 which has no real revenue loss. Is that correct?

28 Senator Packwood. Yes. And it's a relatively

1 simple, Mr. Chairman.

2 In Oregon, the state of Oregon gives tax credits
3 to banks if they will make weatherization and other con-
4 servation loans to homeowners. Under the present law, if the
5 homeowner takes one of those loans, although, of course, they
6 have to pay it back, they are not entitled to the Federal
7 energy credit. This amendment would say that they would be
8 eligible for the Federal energy credit. And I believe the
9 Treasury agrees with this amendment.

10 Mr. Chapoton. Yes. Senator Packwood, there were
11 three parts to this originally, both of which the other
12 two would involve, in effect, either tax exempt financing
13 and a credit. We objected strongly to any change in those
14 rules. This involves a local grant and we would not object
15 to that.

16 The Chairman. As I understand from the staff,
17 this is non-controversial. No real revenue loss?

18 Mr. McConaghy. That's correct, Mr. Chairman.

19 The Chairman. Without objection, the amendment
20 would be agreed to.

21 Now I would like to turn, if we could, before we
22 consider other -- Senator Bradley.

23 Senator Bradley. Is your plan to consider the
24 House amendments before additional Senate amendments?

25 The Chairman. Right. What I wanted to do now --
if we might move to a discussion of item number 16, Black
Lung Benefits Revenue Act of 1981.

Mr. McConaghy. The black lung bill that the House

1 has, H.R. 5159, is summarized in item P, and with a
2 comparison sheet. What it does is increase the excise tax
3 on coal by doubling the amount. And also changes the number
4 of provisions dealing with interest rates. And brings that
5 trust fund under the Internal Revenue Code. I think the
6 comparison sheet at the very end we might go through. The
7 first of which shows present law is \$.50 per ton on coal
8 mined underground or \$.25 per ton on surface mining, or
9 lessor of that or 2 percent of the sales price. As you can
10 see in the right hand column under the House bill, those
11 amounts would be doubled.

12 On obligations of the trust fund, the changes
13 essentially are that certain claims, because of liberaliza-
14 tion of the rules, that have been previously denied -- they
15 have been reconsidered and they have been approved. They
16 are not obligations today of the trust fund. And the bill
17 would say that they do become obligations of the trust fund
18 and not the producer.

19 In addition, on obligations of the trust fund,
20 present law provides that when someone decides that he is
21 eligible for those amounts that there is a lump sum benefit
22 as well as a monthly benefit in the future. This bill would
23 continue that payment for the future, monthly. But it would
24 say that the lump sum doesn't come until it has been
25 adjudicated that that person is eligible for trust fund
benefits.

On interest rates, there are two changes. One is
that today the trust fund goes ahead and starts the benefit

1 with respect to the person that has black lung if it's
2 determined that the operator -- there is a responsible
3 operator, then he has to repay that trust fund. That
4 repayment is at 6 percent interest. The change under the
5 bill would provide that the interest rate will be -- that
6 the operator has to repay to the trust fund will be at 15
7 percent in 1982. And then the general interest rate that
8 applies to tax deficiencies.

9 In addition to that, when the trust fund doesn't
10 have the money to pay benefits, it turns around and borrows
11 from the general fund. And the House bill, H.R. 5159, would
12 change the rate at which interest is charged to the trust
13 fund when it borrows from the general fund to a rate which is
14 equal to the current average market yield on outstanding
15 obligations of comparable duration. The comparable duration
16 is really the change there.

17 And the last change on black lung in the H.R.
18 5159 is the provisions under the Internal Revenue Code of
19 1954. H.R. 5159, as I understand it, does not provide for
20 the benefit side.

21 The Chairman. Senator Heinz has an interest in
22 this particular bill. I just had Mark McConaghy go through
23 and explain its provision. And I was about to ask him --
24 Mark, as I understand, the House intends to act, at least
25 the House Ways and Means Committee -- in the full House
tomorrow on the tax side. Is that correct?

Mr. McConaghy. That's correct. One of the bills
on the suspension calendar on the House.

1 The Chairman. It is my understanding that hearings
2 were held this morning.

3 Senator Heinz. No, Senator. It is in two parts.
4 The tax part is in our jurisdiction. The benefit parts are
5 in the Human Resources Committee division. Senator Hatch
6 intended to hold hearings. I don't know if as of this
7 moment he has completed those hearings. He may very well
8 have. And subsequent to those hearings, it's my under-
9 standing he will report out of the Human Resources Committee
the benefits portion of the bill.

10 It would be my suggestion, Mr. Chairman, that the
11 Committee adopt a procedure that as soon as the House bill
12 is received at the desk that it be referred to the Committee.
13 But that we take action today, if this would be proper, to
14 go on record as reporting it back forthwith so that it would
15 be in order for Senator Hatch to offer his Committee's
provisions and amendments to that bill.

16 The Chairman. I think we might have another
17 procedure that might work. Mr. Lighthizer.

18 Mr. Lighthizer. Senator, could I suggest that we
19 report out a clean Senate bill identical to the House bill;
20 put it on the calendar. And then when the House bill comes
21 over, it will automatically go on the calendar and it won't
22 require unanimous consent then to bring it up because it
won't be at the desk, it will be on the calendar.

23 Senator Heinz. That would be acceptable.

24 The Chairman. Senator Long.

25 Senator Long. Mr. Chairman, some years ago I was

1 involved in this legislation. And I was Chairman of the
2 Senate Conferees at a time when we agreed to it. What has
3 shocked me since that time is that the spending from the
4 fund has had no regard whatever to the amount of money
5 raised by it. I thought when we put that tax on that that
6 was supposed to pay for it. But the spending from the fund
7 fund -- it has gone willy-nilly. And I don't think there
8 has been any program where there has been more spending with
9 less connection to the proving of the needs. You've got all
10 kinds of situations where people presume to have black lung
11 just because they happened to have been near a mine. I
12 have one example of where a man was killed because his head
13 was crushed by a rock. And the assumption was that because
14 he had worked in or near a coal mine, he is assumed to die
15 of black lung even though his head was crushed by a rock.
16 And, obviously, he didn't die of black lung.

17 I am dismayed that this compromise doesn't do more
18 to take a look at these old claims because I think a lot of
19 them are excessive. But as I understand it, the bill
20 perceives only assumptions that there will no longer be any
21 need to borrow from the general funds after 1985. And I
22 would like to suggest that after 1985, we repeal the
23 authority to borrow from the treasury. That being the case,
24 that we'd finance these black lung benefits to tax. That's
25 the idea of it. Doubling the tax to finance the benefit.
And I would like to hope at some point this won't be
just regarded as an open end to call on the general
Treasury.

1 The Chairman. Mr. McConaghy.

2 Mr. McConaghy. Senator Long, it would be in the
3 surplus on a yearly basis through the 1980s. But there is
4 a deficit in there that has been accumulated. And the
5 surplus you pick up in 1981 through 1985 will not be enough
6 to offset the deficit that now exists.

7 Senator Bentsen. What kind of a surplus is that?
8 What kind of a deficit do you now carry? Because I
9 certainly agree with Senator Long that there has been some
10 abuses in it.

11 Senator Long. If we had had this same type
12 provision just to take it out of the deficit on Social
13 Security, by now, we would probably owe about \$5 trillion.
14 And it just seems to me as though if we are going to pay for
15 it, we ought to go ahead and pay for it. But I don't think
16 we ought to leave the open end to just pay anything they
17 want to pay and come back to it later on to double it again.

18 Mr. McConaghy. Mr. Chairman.

19 Senator Bentsen. What is that deficit that has
20 been carried? And how much have they indebted to general
21 revenues?

22 Mr. McConaghy. For 1981, Senator Bentsen, it is
23 estimated that the fund has spent a total of \$789 million.
24 And the collections for that year will be \$237. That leaves
25 a net deficit of \$552 million. For 1978, the deficit was
\$719 million. For 1979, \$401 million. For 1980, \$536.
And it is estimated, as I say, for 1981 that it would be
\$552.

1 The doubling of that tax certainly does produce
2 for the future, a surplus, but not enough to offset these
3 old deficits.

4 Mr. Stern. As I understand it, the proposal dealt
5 with new borrowing authority. And according to the tables
6 that were supplied by the Administration, no new borrowing
7 authority will be necessary after 1985 because on a year by
8 year basis, the amount taken in will be equal to or exceed
9 the amount that is spent.

10 Mr. McConaghy. As to new borrowing authority,
11 that is absolutely correct.

12 Senator Long. Well, according to these estimates,
13 no new borrowing authority will be needed. Then I would
14 like to propose that this measure be amended to say that
15 after 1985, there will be no new borrowing authority. The
16 whole idea is to pay for it. All right. I am willing to
17 pay for it, but I just don't think that we ought to leave
18 it open ended just to keep borrowing more and more money.

19 Senator Heinz. Mr. Chairman, I don't have any
20 particular objection to that but I want to know if it causes
21 any parliamentary problems with the House.

22 Mr. Lighthizer. Senator, all we have to do is
23 have a companion bill. It does not have to be identical.

24 The Chairman. The House has taken some step in
25 that direction, hasn't it, Mr. McConaghy? Or it will as far
as the trust fund is concerned?

 Mr. McConaghy. Yes, they have.

 The Chairman. It is my understanding that what we

1 have here is a very delicate compromise. I had a call from
2 the Vice President on Saturday with reference to legislation.
3 I met with Secretary Donovan. When you have the
4 Administration, the United Mine Workers, and Carl Perkins
5 all on the same platform it is shakey at best.

(Laughter)

6 The Chairman. I can't see anything wrong with
7 this amendment. I think it is a good amendment. I'm not
8 certain whether Congressman Perkins would share that view,

9 Senator Long. Well, the reason that the thing is
10 bankrupting the Government is that --

11 The Chairman. If you just walk through a coal
12 mine, you are eligible for benefits.

13 Senator Heinz. Mr. Chairman, the black lung trust
14 fund has been around for a while. It is not entirely new.
15 And I think that given the fact over the last five years,
16 six years, there have been large deficits -- but we have
17 the opportunity, with this legislation, to put the fund on a
18 sound fiscal foundation. It wasn't that way last year, or
19 the year before. And whether it's Congressman Perkins or
20 the Congress institutionally, this is something that has been
21 broke, metaphorically as well as figuratively for several
22 years, and the Administration, as a result of negotiations
23 between the UMW and the operators, managed to find a
24 solution that all could live with. As I say, I think
25 Senator Long's amendment is a good amendment. I just want to
be sure that it doesn't upset an apple cart which we all
want to see succeed. Because I know the Senator from

1 Louisiana feels that anytime you get coal operators to go
2 on record in favor of doubling their tonnage tax that some-
3 thing quite useful has been achieved. And I don't think any
4 of us would want to upset that apple cart.

5 Senator Long. You and I know the consumer is
6 going to pay for this. I mean this is going to be passed onto
7 the consumer in the price of the coal. Consumers all over
8 the country will pay for it. And all I am saying is that
9 I was lead to believe that if we vote to double the tax, that
10 that is going to pay for the program. And according to the
11 estimates it will for the future benefits. And I would like
12 to urge that we just amend the bill to say that hereafter
13 you won't have the borrowing authority. That is, after 1985.

14 Senator Heinz. Mr. Chairman, may I just inquire
15 of the Senator from Louisiana -- are you saying that there
16 won't be any new borrowing authority or are you saying
17 it has to be out of debt by 1985?

18 Senator Long. Oh, no, I am not saying you have
19 to be out of debt. We are just saying that wherever they
20 stand in 1985 -- that they won't have new borrowing authority
21 after that. Is that what you understand, Mr. McConaghy?

22 Mr. McConaghy. That's what I understood,
23 Senator.

24 Senator Long. According to the estimates, they
25 can live within that. Isn't that right?

Mr. McConaghy. If the Administration's benefit
side would go through then it is their estimates that with
this tax that they would not need new borrowing authority

1 after 1985.

2 Senator Long. Now we know that they have got
3 a potential of making great savings in this thing if they
4 would come down to the extent that some of us would like to
5 see it. But even if they don't, as I understand it, this
6 would cover it.

7 The Chairman. I certainly share the view
8 expressed by Senator Long. This is really a tax increase.
9 There are not too many reforms in the package. There is
10 still no review at all of claims approved prior to enact-
11 ment. And in my visit with Secretary Donovan, I told him
12 that I didn't feel that it was a very sound piece of
13 legislation. But if, in fact, it did by increasing the
14 tax and if, in fact, it did have an agreement, if they
15 were going to finally make it solvent that I would certainly
16 try to support the Administration. So I see no objection
17 unless there is some objection to Senator Long's amendment
18 to report the Senate bill with that amendment.

19 Senator Moynihan. Mr. Chairman, this is the
20 first major tax increase of 1981. I thought you were going
21 to say revenue enhancement. It's a flat out tax increase.

22 The Chairman. It's a flat out tax increase, yes.

23 Senator Moynihan. Would it be out of order to ask
24 how much the tax increase is?

25 Senator Heinz. It would not.

Senator Moynihan. Curiously, the subject has
not arisen. It doesn't matter, of course.

Senator Heinz. The deep mine coal goes from \$.50

1 to \$1.00 a ton.

2 Senator Moynihan. That I can read. How much is
3 the tax increase? How much will the Treasury take in and --

4 Senator Heinz. Maybe we should ask the Treasury
5 about that.

6 Senator Long. He gave us a number. I guess we
7 would have to double it.

8 Mr. McConaghy. It is in the material, Senator
9 Moynihan, but it would increase the amount in 1982 by
10 \$193 million. The increase in tax would pick up an
11 additional \$299 million in 1983; \$313 million in 1984;
12 \$327 in 1985 and so forth.

13 The Chairman. But I might add that the only
14 reason for the tax increase is that we are having the same
15 resistance from those that have plundered the system so
16 far to refuse any benefit reform. So the only alternative
17 is a tax increase. It's not the way this Senator would
18 propose that we do it, but I know how much influence
19 Congressman Perkins has.
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1 The Chairman. Is there any objection to reporting
2 the Senate bill with the long amendment, as outlined by
3 Mr. McConaghy?

4 (No response)

5 The Chairman. Without objection, that will be done.
6 Now we will move to -- I know Senator Glenn is here waiting
7 to discuss an amendment, and maybe others who did not comply
8 with the guidelines set out. Maybe you can just make your
9 statement now, John, so we don't hold you up. It is S. 1888,
10 one that Senator Symms and I understand eight other members
11 of the committee have an interest in, one which the Treasury
12 objects to and one which, if adopted, would be really the
13 amendment just approved.

14 Steve, do you want to proceed or is it all right
15 for Senator Glenn?

16 Senator Symms. I would be happy to yield to
17 Senator Glenn.

18 Senator Glenn. Thank you very much, Mr. Chairman,
19 and Senator Symms. I thank the committee for giving me this
20 opportunity to speak with you about Senator Symms' bill,
21 S. 1888. I support 1888 very strongly because its core
22 provision reverses the retroactive application of revenue
23 ruling 81-225. The retroactivity came as a major blow to
24 people who purchased the so-called wraparound annuities this
25 year, and their surprise and disappointment is certainly
understandable. Number one, the retroactivity changes the
rules in midstream. It taxes on earnings from annuity
contracts that have traditionally been deferred in accordance

1 with long-standing tax law principles. And, number two, no
2 notice was given to the affected parties. Previous Revenue
3 rulings in this area had been all applied prospectively, not
4 retroactively.

5 Equally important, no one could have anticipated the
6 IRS's action in 81-225 by examining these previous rulings
7 because they are based on completely different theories.

8 Number three, the costs appear to somewhat
9 outweigh the benefits or certainly come close to it. While
10 reversing the retroactive effect of 81-225 will cost the
11 Treasury approximately 10 million, it is quite likely it will
12 cost the companies involved nearly that amount just to comply
13 with the ruling. And this entire cost, of course, would be
14 a deductible business expense, and so it gets to be very
15 uncertain as to whether Treasury would really realize
16 anything out of this if the companies are forced into this
17 kind of an analysis immediately.

18 If the ruling is overturned in the courts, as many
19 tax advisors think it could be, Treasury would in fact lose
20 the funds originally paid by the annuity purchasers. In
21 fact, it may well be impossible for the companies involved to
22 comply with 81-225, particularly in the time period that they
23 would have to do so between now and as of the end of January
24 as I understand it, because to do so, to comply, would require
25 them to recalculate on a day to day basis the earnings
generated by every contract holders mutual fund shares. The

1 shares are not segregated in a manner permitting this kind of
2 calculation to be made, and so literally whole computer
3 programs would need yet to be developed to enable them to
4 comply with this. So in view of these facts, it would be
5 unfair -- perhaps even pointless -- to apply 81-225
6 retroactively. And I would urge the committee to adopt this
7 legislation that will reverse this retroactivity.

8 I would add that time is of the essence in this
9 because for the companies to comply they would have to be
10 starting immediately to comply with the law and get these
11 programs all run out by the end of January, as I understand
12 it. And if we wait for committee action until after the
13 post-holiday period, they already will be committed with all
14 of those expenses that entails, at least with one company,
15 an estimate of up to \$5 million to set up the computer
16 programming to comply with this. So it appeared to gain very
17 little to go through with this IRS ruling, and it would gain
18 very little out of it, would cause a great deal of problems
19 for the companies, all of which their expense, of course,
20 would be deductible. And so I very strongly support S. 1888.

21 The Chairman. Well, I know there are probably
22 three or four other amendments in the same category where
23 objections have been raised, whether we want to get into all
24 those at this time or not, but I wanted to give Senator Glenn
25 an opportunity to be heard.

1 As I understand, Treasury is opposed to this
2 amendment. Is that correct?

3 Mr. Chapoton. That is correct, Mr. Chairman.

4 The Chairman. Is there any way this could be worked
5 out to accommodate the Senators involved?

6 Mr. Chapoton. Well, Mr. Chairman, as I explained
7 when this matter came up in the subcommittee hearing, we do
8 not regard the ruling as unfairly or retroactive. It was a
9 1980 ruling which made it clear that the wraparound type
10 annuity would cause a problem, did not yield a deferral. The
11 Securities and Exchange Commission recognized that that
12 ruling might apply to this new type of offering that was then
13 being made, and required all offerings to be stickered, giving
14 the investor notice. I do not have those with me, but some
15 of those stickers say that if the IRS took an interpretation
16 consistent with the 1980 ruling that no deferral would be
17 permitted and investors are advised to seek their own counsel.
18 In issuing the ruling, as I have stated before, all rulings
19 are retroactive and prospective unless the Commission
20 exercises his discretion to make them prospective only.

21 In this case, the Commission exercised the
22 discretion to be prospective from January 1, 1981, recognizing
23 the fact that there were some aggressive firms that, in
24 spite of the existence of the 1980 ruling and in spite of the
25 SEC's sticker to take a more aggressive position, other

1 taxpayers did not. So we assumed everyone was on notice from
2 January 1, 1981. Indeed, everyone was on notice since that
3 date. That is the date of the effective date of the ruling.

4 Senator Bentsen. Mr. Chairman, if I might comment
5 on this. Secretary Chapoton and I discussed this at some
6 length in the hearings, and I opposed the position of
7 Treasury in making this retroactive. And I think it was
8 highly speculative as to whether or not the ruling was going
9 to come out this way.

10 You are talking about a rather contrived approach
11 I think in using the public access approach. The other
12 situation where in other variable annuities backed by mutual
13 funds, you had another situation where at least three of them
14 had been sanctioned. And those situations, I am not sure
15 that they were retroactive or not or whether they were
16 prospective. I think the least that could be done under this
17 situation is to make it prospective.

18 Mr. Chapoton. Senator, the 1980 ruling that I
19 referred to was totally retroactive as well. We had a
20 situation here that twice this year we had recommended that
21 the Congress take a good look at what is happening here.
22 The wraparound investment type annuity is using the law
23 applicable to annuities to permit short-term or long-term
24 deferral of income tax on investment type income. The Service
25 has issued I believe three rulings now, the 1980 being the one

1 before the September 24, 1981 ruling. Concern was expressed
2 about the deferral obtained under these rulings because
3 indeed -- it is a point we have made -- if deferral should be
4 obtained for investment income, you should not have to use an
5 insurance company to do it. It should be available to all
6 taxpayers and Congress should reverse that matter. And that
7 was addressed in the 1980 ruling. And as I stated, taxpayers
8 clearly -- the companies were clearly on notice with the IRS
9 -- that that really might apply to this type of annuity, and
10 the SEC so concluded, and we use that date as the date on
11 which everyone had to be on notice. The ruling could have had
12 an earlier effective date than that, but from January 1 we
13 knew that taxpayers had to be on notice because every
14 prospectus was stickered.

15 The Chairman. Well, if I could suggest, I know
16 there are two or three other members who have like amendments,
17 but there may be some controversy, and I guess we have to make
18 a judgment in a few minutes whether we want to jeopardize the
19 amendments we have just adopted by adopting those that are
20 controversial. In the meantime, if we could delay a decision
21 on that and move on to the few other House bills. We
22 certainly appreciate Senator Glenn.

23 Senator Symms. Mr. Chairman, I might just say
24 before we go off this that I would hope that there might be
25 some way that before we get through with this mark up the

1 Treasury could just take another look at it. I think there
2 are 11 members of this committee that thought that this
3 retroactivity is the key to this thing just because of the
4 end of the year ending. And it just seems to me like that it
5 will be unfortunate if we cannot reach some kind of an
6 accommodation on this. But it is like you told me earlier
7 today at lunch. And we have got 11 sponsors on the committee,
8 but we do not have Don Regan on it. And I know the facts.
9 So we will have to see if we can't work it out. But I sure
10 feel like this would be a mistake if the committee does not
11 act on it. But I would like to do it in concert with
12 Treasury because I think it is in their best interest.

13 Senator Glenn. Mr. Chairman, I thank you very
14 much for letting this come up now. And one thing I would
15 like to stress, and I hope that the committee can see fit to
16 take action on this before we go out, before we adjourn,
17 because if this is left to hang over, the time required on
18 the companies means that they have to go ahead and commit a
19 number of millions of dollars to all of these computer
20 studies and runs right now unless action is taken on this
21 before we go out. They would be up against a time deadline
22 that would not let this come up after the first of the year
23 and still do them any good. So I hope the committee can see
24 fit to take their action on this just as soon as possible.
25 And I thank you very much for letting me come in out of order.

1 The Chairman. Thank you, Senator Glenn. We will
2 see if we can work out something. If not, we will call you.

3 We have two other items on the agenda, plus the
4 additional amendments. I understand Senator Bradley is
5 working on a study amendment with Treasury that may be
6 acceptable. Senator Roth has a separate resolution which he
7 would like to have acted on by the committee.

8 We turn now to H.R. 4717, on page 2 of the agenda.

9 Mr. McConaghy. Mr. Chairman, it is item number 15.
10 It contains three provisions in it. The first deals with
11 LIFO recapture. Presently, because of a change that was made
12 in the Windfall Profit Tax Act, there would be recapture on
13 liquidations, and that recapture would be on the LIFO reserve.
14 The provision that is contained in H.R. 4717 would extend or
15 at least postpone that from going into effect for one
16 additional year. So that that LIFO recapture provision that
17 is scheduled to go into effect at the end of this year would
18 be postponed and would go into effect December 31st, 1982.

19 The Chairman. Could I just ask as a matter of
20 general information, the House will act on this proposal
21 tomorrow. Is that correct?

22 Mr. McConaghy. That is correct. H.R. 4717 is
23 scheduled for the suspension calendar tomorrow.

24 The Chairman. And it has been approved by the Ways
25 and Means Committee?

1 Mr. McConaghy. It has, yes, Mr. Chairman.

2 The second part of H.R. 4717 deals with the
3 carryback of net operating losses. Presently, there is a
4 general rule that allows losses to be carried back three
5 years and forward 15 years; however, there is a special
6 provision with respect to banks and certain thrift
7 institutions, savings and loans. It will allow them to
8 carry back their losses 10 years and carry them forward five
9 years.

10 FNMA, the Federal National Mortgage Association,
11 is not eligible under this present law for that 10-year
12 carryback and 5-year carry forward. It is under the general
13 rule which allows a carryback of 3 years and a carry forward
14 of 15. The change that was made by the House would permit
15 FNMA to have a 10-year carryback of its net operating losses
16 and a 5-year carry forward.

17 The House did provide an amendment to the original
18 proposal, and it said that that 10-year carryback and 5-year
19 carry forward would not be available for the sale or
20 exchange of mortgages or securities or other evidences of
21 indebtedness, but it would allow the 10-year carryback and
22 the 5-year carry forward for so-called operating losses,
23 those that do not result from the sale or exchange of
24 mortgages or securities.

25 The Chairman. That did limit the possible loss of

1 revenue to what, 14 million?

2 Mr. McConaghy. Yes, Mr. Chairman. Otherwise,
3 there could have been a sale of those securities which could
4 be carried back immediately and create a revenue loss perhaps
5 as high as 500 million.

6 The third part of that bill, H.R. 4717, requires
7 information returns with respect to safe harbor leases to be
8 filed by January 31st, 1982, so that we can get information to
9 determine whether revenue and what is going on.

10 The Chairman. I think that provision is
11 necessary or at least it would be very helpful to Treasury as
12 we assess the impact of the leasing provision, because it is
13 controversial, as Mr. Chapoton learned last Thursday.

14 Mr. Chapoton. That is correct, Mr. Chairman. We
15 are going forward with a regulation and a form to request the
16 same information, whether or not this is put in the law.

17 The Chairman. Is there any discussion of any of
18 these provisions from the members?

19 (No response)

20 The Chairman. If not, Mr. Lighthizer, how do you
21 suggest we handle this? The House bill has not yet been
22 passed.

23 Mr. Lighthizer. Mr. Chairman, the committee can
24 agree to hold the House bill at the desk and authorize you
25 to offer an amendment which would include all of the items

1 that the committee has agreed to today. And that presumably
2 could be done on Wednesday, or tomorrow, if the bill comes
3 over early enough.

4 The Chairman. Maybe before we make that judgment
5 we should consider the other House bill which has about,
6 what, seven provisions?

7 Mr. Lighthizer. Yes, sir.

8 Mr. McConaghy. The other House bill is H.R. 4961.
9 It is item 14 on the sheet. It does contain seven provisions,
10 the first of which deals with the vacation homes, or the
11 family rental tax. Senator Armstrong's amendment prior to
12 this time dealt with codification of certain regulatory
13 requirements. The House's present law does provide, if I
14 rent to a family member, that counts, even though it is
15 rented at fair market value.

16 The House bill changes that somewhat by saying
17 that if I rent it to a family member or to a co-owner, and
18 that family member or co-owner uses it as his principle
19 residence, that the time will now count as personal use as
20 long as it is rented for fair market value.

21 I think that Senator Armstrong had an amendment
22 that he raised before which would go beyond that and say that
23 any time there is a full-fare rental value to a member of the
24 family or co-owner it would not count as personal use, and it
25 would get rid of the requirement contained in the House bill

1 which provides that result only if the family member is using
2 it as his principle residence.

3 The House also made their changes effective for
4 taxable years beginning after December 31st, 1981. And I
5 think Senator Armstrong also had an amendment to go back to
6 the date that that provision was put in, which was 1976.

7 Senator Armstrong. Mr. Chairman.

8 The Chairman. Senator Armstrong.

9 Senator Armstrong. I don't know what motivated
10 the selection of the date December 31, 1981, but that does
11 not make any sense whatsoever because the whole purpose of
12 this provision is to go back and do with greater precision
13 what I am sure Congress intended in the first place.

14 In hearings, I think we have clearly established
15 that it was never the intent of the Congress to impose the
16 so-called family rental tax, that is, to disallow these
17 deductions on rental property which is rented to family
18 members. Congress has on several occasions put riders on
19 appropriation bills, preventing the implementation of this
20 tax provision. I have forgotten how many times, but two or
21 three times that comes to mind immediately. And so
22 obviously the correct date would be December 31, 1975. I
23 cannot imagine that we would repeal this provision, which
24 got in there by accident anyway, for the future and leave it
25 on the books for the past so that somebody could go out and

1 fish around on tax returns and require as a result of audits
2 some payments under this unwise, and in my view, unintended
3 provision of the tax bill. So I would hope that we would
4 take the date 1975 and just in effect wash it off the books.

5 The Chairman. Mr. Chapoton.

6 Mr. Chapoton. Well, Mr. Chairman, if I might say,
7 as you know, Senator Armstrong, we do not like retroactive
8 changes. People have filed their returns. I think we can
9 assume correctly that most people have filed their returns in
10 accordance with the laws that then existed. And we will be
11 requiring people to file amended returns, to go back and seek
12 refunds. I know people don't mind it if they seek refunds,
13 but some people will get the message and some people will not
14 get the message. It would have definite administrative
15 problems.

16 In addition, I would point out that if the deductions
17 were not allowable, then there will be greater deductions
18 allowable in the future because their bases will not have been
19 reduced in the property by the deduction that was not
20 allowable. So it seems to me that if we start from this
21 point forward, the Congress puts the rule -- it was a very
22 clear rule, to the contrary, in the past -- Congress now puts
23 in the rule that it thinks it is correct where full
24 deductions will be available on the house. What we are
25 talking about is depreciation on the building. It is really

1 a question of when that deduction is going to be available.
2 And I think we ought to start to change the law for the
3 future.

4 Senator Armstrong. Well, Mr. Secretary, correct my
5 recollection if I am in error, but it is my belief that the
6 testimony before this committee did establish pretty clearly
7 that this has not been implemented; that for the most part,
8 taxpayers are not complying with it. And that the real reason
9 this came to light in the first place was as a result of some
10 audits, where it was the attempt of agents to impose this
11 really in a way that was surprising I think to most tax
12 practitioners and also to members of this committee.

13 So I would have real doubt that we have got a lot
14 of taxpayers who have failed to take these deductions. And in
15 any case, even if that were true, the reverse of what you
16 just said would apply. In other words, it is not going to
17 change the amount of tax liability that will ultimately be
18 owed by any taxpayer. It is only a question of when. So
19 what I am saying is lets let sleeping dogs lie. If somebody
20 has not taken the deduction in the past, it is available to
21 them in the future. But if they have taken it, I would hate
22 to leave in the law a provision which would in effect permit
23 somebody to go back and audit their return and have a big
24 rhubarb over what is a small amount of money, but I think
25 quite a large principle.

1 Mr. Chapoton. I recognize the merit in what you
2 are saying. I think part of our concern is where the
3 sleeping dogs are right now. The law I think is quite clear.
4 So that a tax advisor would have had to advise them when the
5 deduction was not available in the early year. When we amend
6 this, tax advisors will definitely have to go back in many,
7 many cases and tell their clients to file amended returns.

8 So I think we are both trying to reach the same
9 result, that we don't go back and affect earlier years. I
10 would think it would affect fewer taxpayers if we start from
11 this point forward.

12 And I must always point out that there are a lot
13 of taxpayers out there who comply with the law, who do try
14 to do their best as it is written. When this happens, we are
15 sort of rewarding, in some cases, those who have taken an
16 aggressive position again.

17 Senator Symms. I wish you would use that same
18 logic on that wraparound annuity spot.

19 Mr. Chapoton. It is the same logic.

20 The Chairman. While they are discussing it with
21 staff, if we could go on.

22 Mr. Chapoton. Mr. Chairman, also again to discuss
23 the principal residence point, Mark, is that involved in this
24 amendment?

25 Mr. McConaghy. That is involved with Senator

1 Armstrong's amendment.

2 Mr. Chapoton. Well, I guess I should wait.

3 The Chairman. Go ahead.

4 Mr. Chapoton. Well, I thought maybe I ought to
5 get to Senator Armstrong. We would definitely oppose making
6 the amendment apply to anything other than the principal
7 residence. We would be very concerned if beach houses,
8 vacation homes, that type of thing, could be leased to family
9 members. It is just too much possibility for abuse. We
10 think that the pendulum would swing far too far the other
11 way if we do that.

12 The Chairman. Lets go on to b while they are
13 discussing that.

14 Mr. McConaghy. All right. The second part of that
15 bill deals with attorney's fees or the award of attorney's
16 fees in tax cases. There is a substitute by Senator
17 Grassley and Senator Baucus that we can pass out that is
18 very much similar to what the House did.

19 Under present law, attorney's fees are permitted
20 to be awarded in tax cases in the District Court and the
21 Court of Claims, but not in the Tax Court. The substitute
22 and the House bill provide that attorney's fees will be
23 awarded and permitted in the Tax Court as well as the District
24 Court and the Court of Claims. It provides that they would
25 be awarded where the position of the United States is

1 unreasonable. The changes made to the House bill are on the
2 right side. This one is identical to the House bill, except
3 that it provides the taxpayer has to explicitly carry the
4 burden of showing that the position of the United States was
5 unreasonable.

6 The second item would be a change from the House
7 bill, and it deals with the issue of whether or not somebody
8 that is not a party to the proceeding is entitled to
9 attorney's fees. The House bill does provide that if someone
10 is an attorney or an accountant for a 501(c)(3) organization,
11 and it goes to assist the taxpayer with respect to tax
12 litigation, then attorney's fees could be awarded to the
13 attorney who represents that 501(c)(3) organization, even
14 though he is really not a party to the proceeding.

15 The substitute essentially allows awards only if
16 the individual attorney or the other costs involved is of a
17 party who is a party to the proceeding; however, it is made
18 clear that few awards can be split between co-counsel or
19 some other counsel that is furnishing advice, such as one
20 that is representing the 501(c)(3) in assisting this
21 particular taxpayer.

22 The limitations provided in the House bill say
23 that fees and awards and costs cannot be awarded in excess
24 of \$50,000, and the substitute lowers that cap to \$25,000.
25 Essentially, the other changes, there is a minor change with

1 respect to multiple actions. It really is a change only
2 that it would provide something specifically in the statute
3 rather than the committee report.

4 Number 8 is a change from the House bill dealing
5 with who pays these fees and awards. The House bill,
6 obviously, they come under the General Fund. Under the
7 substitute, if the taxpayer prevailed and the Service was
8 unreasonable, the cost would be paid by the Agency -- in
9 other words, the Internal Revenue Service -- to the taxpayer.

10 The termination date has been changed so that
11 under this substitute, there would be a termination on
12 June 1st, 1982. The starting date has been changed a little
13 bit so that it would be effective for cases filed in the
14 District Court, Tax Court, Court of Claims after June 1st,
15 1982. And there is one change in the penalty provisions.
16 The House bill says that if the taxpayer has a frivolous or
17 groundless position or is bringing his action just for delay,
18 then the amount that can be assessed against the taxpayer
19 that is doing it was increased to \$5,000. The substitute
20 would increase that amount to \$2500.

21 The Chairman. Again, I am wondering. You have
22 just gone through a comparison of H.R. 4961 in the Baucus-
23 Grassley substitute. As I understand, the changes are not
24 that hard. But we do not want to get the whole thing caught
25 up with something the House would not accept. Did you have

1 any discussion on the House side with this, Mark?

2 Mr. McConaghy. I am sorry, Mr. Chairman.

3 The Chairman. Have you had a chance to discuss
4 this substitute with anybody on the House side?

5 Mr. McConaghy. I have had a chance to discuss
6 some of the provisions, not all of them, Mr. Chairman. I
7 think the one that would trouble the House more than any
8 would be that the Agency itself has to pay the fee award
9 and that the Sunset is out in 1987 rather than earlier for a
10 chance to review it prior to that time. I think those would
11 be the two that they would be most concerned with.

12 Senator Grassley. Mr. Chairman.

13 The Chairman. Senator Grassley.

14 Senator Grassley. I think as a practical matter,
15 at least on the Sunset provision, if we don't have them
16 beyond 1984 there is not much point in the bill because of
17 the long appeal process. We won't hardly have a test of it
18 by 1984.

19 The other one, on the Agency itself, I think the
20 whole process by which various bills in the House, or in
21 the Senate, that have tried to have the citizen recapture
22 lawyer's fees have made it applicable against the Agency
23 because part of the process here is to make the Agency more
24 responsible. In this particular case, the tax Agency; in
25 the case of an OSHA piece of legislation, the Department of

1 Labor. But we kind of need that sort of pressure brought to
2 bear it seems to me if we are going to accomplish our goal.

3 The Chairman. I don't quarrel with the purpose,
4 but I just quarrel with -- I don't quarrel with that. But if
5 we are going to get the rest of these amendments passed, we
6 cannot get hung up on one where we may have some difficulty.
7 Maybe the House would accept this proposal.

8 As I understand what we would hope to do is to hold
9 the House-passed bill at the desk and authorize the Chairman
10 to offer amendments we can agree on in one of the House-
11 passed bills. And that is why I asked Mr. McConaghy the
12 question. I would not want the 29 provisions to go down
13 because of some changes in one, but certainly we have a right
14 to make the changes.

15 Senator Baucus. Mr. Chairman, I understand
16 that the bills are very similar but for this extension date.
17 And, frankly, that date does not make that much difference I
18 don't think.

19 No, I have not spoken directly with House members
20 to know the degree to which they would object, but the bill
21 is very similar in every other regard. And I personally, as
22 a matter of judgment, do not regard that differences as all
23 that essential. And I think, therefore, that we accept it.

24 The Chairman. Does Treasury have any objection
25 to the amendment, the Grassley-Baucus amendment?

1 Mr. Chapoton. The principle objection we would
2 have is the point that Senator Grassley makes, when it would
3 come out of the Agency's budget. That means the Internal
4 Revenue Service's budget. I assume it means Internal
5 Revenue Service and not Justice. Well, it would be Internal
6 Revenue Service in the Tax Court. And I would just point out
7 that it is the question of whether the purpose of the amendment
8 is to give taxpayers access to the Court or is it to
9 penalize the Internal Revenue Service? And even if we want
10 to penalize the Internal Revenue Service, if there is some
11 thought of that, I think we should keep in mind that this
12 comes out of the overall budget and we are affecting an agency
13 that has a severe budgetary problem now. And whether we want
14 to do that, I would seriously question.

15 The purpose of the amendment, having realized that
16 untenable positions or highhandedness, abusive conduct by an
17 agent will be I think effected whether or not it has to come
18 out of its budget.

19 Senator Moynihan. Mr. Chairman.

20 The Chairman. Senator Moynihan.

21 Senator Moynihan. Surely, the Secretary is correct
22 in that position. This committee should support him.

23 The Chairman. What is the pleasure of the
24 committee on this Baucus-Grassley substitute?

25 Senator Baucus. Mr. Chairman, I might suggest we

1 could adopt the substitute but with one change. The
2 provision is as to source of payment, so it would be the same
3 as the House bill anyway.

4 The Chairman. Would that remove your objection?

5 Mr. Chapoton. Drop 8 with that?

6 The Chairman. Yes.

7 Senator Baucus. Yes.

8 Mr. Chapoton. Drop 8, yes, sir.

9 Senator Baucus. I have no objection with that.

10 The Chairman. Is there any objection to making
11 that change?

12 (No response)

13 The Chairman. If not, the amendment will be agreed
14 to. We have four more before we can speed up the process:
15 tax accrual. I have no problem with that one. It is about
16 a \$150 million revenue loss. I would hope that we might
17 reserve judgment on that one.

18 Mr. McConaghy. The revenue, Senator Dole, is
19 larger than any provision that we have taken. It is 54
20 million in 1982, and going up to 150 million by 1986. This
21 deals with the accrual taxpayers with respect to a tax,
22 specifically, a franchise tax. In this case, lets assume he
23 is assessed on year one. The taxpayer who is on the accrual
24 basis rather than the cash deducts it in the year in which he
25 accrues it rather than when he pays it. So if I were a state

1 and I imposed a franchise tax, and the imposition was
2 January 1st, lets say, for the next year, I, as an accrual
3 basis taxpayer, would go ahead and accrue and deduct that tax
4 in year one. If the taxing jurisdiction decided to change
5 that date of accrual from January 1st, lets say, to December
6 31st, then an accrual basis taxpayer would be able to go ahead
7 and deduct it in the year prior to that, even though he hadn't
8 paid it, except that the Internal Revenue Code says "No,
9 that we won't let the states turn around and change their
10 assessment date of a deductible tax and then allow an
11 accrual taxpayer to go ahead and use that new assessment
12 date."

13 This bill would change that result under the Tax
14 Code and allow accrual method taxpayers to use the new
15 assessment date in certain cases. One case where the first
16 accrual of the tax occurred after the date that the
17 assessment -- California, or whoever, changed their assessment
18 date -- and, two, if they elected to accrue it, they would be
19 able to use the higher two amounts but not double up. But it
20 does create a revenue loss similar to what was just
21 apprised.

22 The Chairman. Does Treasury have a position on
23 this amendment?

24 Mr. Chapoton. No. We did not oppose this when
25 we testified on it. I believe this was on the House side.

1 We have no opposition.

2 The Chairman. You are not worried about the
3 revenue loss?

4 Mr. Chapoton. Well, I must concede the revenue
5 loss at that time where we thought they were lower than that,
6 it is slipping upward, but we thought the principle was sound.

7 Mr. Lighthizer. It is my understanding,
8 Mr. Chairman, that it basically just affects California at
9 this point. Is that right?

10 Mr. McConaghy. Yes. I think that is true. The
11 revenue certainly was based on the change in the California
12 franchise tax where the state decided to move the assessment
13 date from January to December 31st, whereby, permitting
14 obviously people who are --

15 The Chairman. Have we had hearings on the
16 amendment on this side?

17 Mr. McConaghy. No, we have not, Mr. Chairman.

18 The Chairman. Well, I just suggest we pass over
19 this amendment and go on.

20 Mr. McConaghy. The next item deals with personal
21 holding companies and it makes really two changes. Today,
22 there is a tax on the undistributed income of personal
23 holding companies, and there is an exception to what is a
24 personal holding company, and that exception applies to
25 people who are engaged in the lending or finance business

1 if they have business expenditures that is equal to 15
2 percent of the first \$500,000 of gross income, plus 5
3 percent expenditures on gross income between 500,000 and
4 1 million.

5 In determining whether someone is under the
6 exception as a legitimate "lending or finance company" and
7 therefore not included, you look at, under present law,
8 whether or not they make loans with maturities of not more
9 than 60 months. This bill would provide two changes. It
10 would say that we are going to look at loans that that lending
11 or finance business made up to 144 months, and it would also
12 make a tightening change on the other side and say that we
13 are going to require, however, that institution to have
14 expenses equal to 15 percent of the first 500 million and
15 then 5 percent of everything thereafter, not just 5 percent
16 of the next 500,000.

17 The Chairman. Is there any objection to that
18 amendment, Treasury?

19 Mr. Chapoton. No, we have no objection.

20 The Chairman. Any objection on the committee?

21 (No response)

22 The Chairman. Hearings have been held on the
23 provision, have they?

24 Mr. McConaghy. We passed a similar provision.
25 It was actually passed on the Senate floor I think a year ago.

1 It was part of our miscellaneous package, and it got dropped
2 out because there wasn't time to go to conference on it.

3 The Chairman. Is there any objection?

4 (No response)

5 The Chairman. If not, we have agreed to that. The
6 next is the additional postponement.

7 Mr. McConaghy. The next item deals with Section
8 382 which is net operating losses. Today, the rules under
9 the Code that we provided in 1976 are intended to click in
10 and will click in after the end of this year. I think that
11 we all feel we need additional time to look at what should be
12 the right rules, and as a result, this provision provides a
13 two-year deferral of the effective date of those changes.

14 The Chairman. Is there any objection to that from
15 the Treasury?

16 Mr. Chapoton. No objection. We think we need
17 deferral.

18 The Chairman. Is there any objection on the
19 committee?

20 (No response)

21 The Chairman. If not, that will be agreed to.

22 Mr. McConaghy. The next provision in that bill
23 deals with refunds dealing with an excise tax. Essentially,
24 it is a 10 percent manufacturing excise taxes. And on busses,
25 that was repealed in the Energy Act of 1978 for busses that

1 were sold after a certain date. And it also provided in that
2 Act conditions under which manufacturers were eligible to go
3 back and get a refund for the excise tax they paid on a bus
4 prior to that time. Under those requirements, one thing is
5 that the tax had to be paid over. This is intended to
6 liberalize the conditions that allow refunds. There is one
7 case at least that I know of where the taxpayer essentially
8 could not get a refund because he had not paid it over, and
9 he went bankrupt, or was close to bankruptcy. It is a case in
10 Pennsylvania. The school district is the one actually that is
11 going to end up with the refund. The school district being
12 the one that they sold the bus to.

13 The Chairman. Does the Treasury have any objection?

14 Mr. Chapoton. We have no objection. It clearly
15 was intended, and we suggested an amendment on the House
16 side, which was adopted, to be certain that the auditing of
17 the refund was monitored by IRS.

18 The Chairman. I understand that Senator Moynihan
19 and Senator Matsunaga have an interest in this particular
20 amendment.

21 Senator Matsunaga. Yes. We recommend adoption.

22 The Chairman. I appreciate that. Is there any
23 objection if it meets the guidelines set forth? There is no
24 real revenue lost.

25 Mr. McConaghy. Yes. There were no hearings on it

1 on the Senate side, Mr. Chairman.

2 The Chairman. Have there been hearings on the
3 House side?

4 Mr. McConaghy. Yes, there have.

5 The Chairman. Is there any objection to the
6 amendment?

7 (No response)

8 The Chairman. Finally, the unemployment
9 compensation.

10 Mr. Lighthizer. Mr. Chairman, the unemployment
11 compensation and SSI amendments basically are a conglomeration
12 of nine amendments in the nature of spending amendments that
13 change some of the reconciliation savings provisions that we
14 had, and we have not had hearings on any of them in this
15 committee, and indeed we have not really had a chance to
16 study them even at the staff level, Mr. Chairman. It is our
17 recommendation that they not be included since we have not --

18 The Chairman. Your recommendation is what?

19 Mr. Lighthizer. That we pass over them at this
20 time. There have been hearings on none of them and they are
21 in the nature of new spending items.

22 The Chairman. Could you briefly outline the
23 amendments for Senator Bradley?

24 Mr. McConaghy. Sure.

25 The Chairman. It is my hope that we might pass

1 over these also because I think we are going to get bogged
2 down here.

3 Senator Moynihan. Mr. Chairman, I was going to
4 say that the SSI provisions are something the Subcommittee
5 on Social Security would want to know what we are doing. We
6 do not know what these are.

7 The Chairman. Without objection, then we will
8 just pass over this.

9 Senator Grassley. Mr. Chairman, I am not going to
10 object, but I would like to make a couple of points. One
11 provision that is involved here is at the end of this year
12 presently the exemption for alien farm workers to have
13 unemployment compensation paid on their wages. That is going
14 to run out. Now we are talking about less than a million
15 dollars there. Now whether or not you want to reinstitute
16 that. It is under the Reed Act. The Reed Act has been
17 extended three times since 1954 when it was first enacted.
18 I am sponsoring the reenactment of it in the Senate. It is
19 true that we have not had hearings on it. So to the extent
20 in which you want to pursue that, I do not have any faults,
21 but I would like to suggest that the Reed Act extensions in
22 the past have been very noncontroversial, and it only allows
23 states to use it for alien farm workers. And I think there
24 are about 12 states that are involved. But they cannot do
25 that now since June the 3rd because that has run out with

1 hardly any fault. I would think that we would want to
2 reinstitute that if we are ever going to do it, if we are
3 going to do it at all.

4 The Chairman. I am not certain what the nine
5 provisions are. We may still be able to adopt some of the
6 noncontroversial ones if in fact there were a brief
7 conference.

8 Mr. DeArment. The two that probably would not be
9 controversial are the ones that Senator Grassley mentioned.
10 And I think that the Administration might support those two.
11 However, there are other provisions in here.

12 The Chairman. Well, we have not had hearings.
13 Have there been hearings on the House side?

14 Senator Grassley. On the Reed Act there has been
15 because I testified.

16 The Chairman. But I might suggest --

17 Senator Grassley. And there has been also on
18 the age, too, workers as well.

19 The Chairman. I might suggest that, if in fact
20 it is supported by the Administration, no cost involved or
21 not substantial cost, and they have had hearings on the House
22 side, we might take a look at that and maybe we could amend
23 it on the floor. Lets not do it now.

24 Senator Grassley. I just wanted to make the
25 point, Mr. Chairman.

1 The Chairman. Right. And I appreciate that.
2 That takes care of everything except we did not resolve the
3 retroactivity on the Armstrong amendment.

4 Senator Symms. Mr. Chairman, thank you. I had
5 another amendment, the Civil Fraud Penalty, which I have
6 agreed to drop. I just wanted to mention it, that it is
7 something I think we should get. The Treasury is not quite
8 ready now to take it on. I hope they will be able to review
9 it so on the next technical bill we can get that corrected.
10 And I also wanted to mention there were three more parts to
11 that 6166 I hope they can review for the next bill. And I
12 understand that there may be a misunderstanding from
13 Mr. Chapoton as to what he agreed to and what our amendments
14 stated. And it was not my intention to. I thought that we
15 had finally won the argument, but maybe we missed a point on
16 what we have agreed to here. So I do not want to leave the
17 Treasury thinking we have finessed them here on the committee.
18 So if you have a misunderstanding, maybe we ought to bring it
19 back up.

20 The Chairman. Could we first just take care of
21 Senator Armstrong's amendment.

22 Senator Symms. That would be fine with me. I
23 don't care if we get back to mine.

24 Senator Armstrong. Mr. Chairman, I think the issue
25 on this question of what date, we are agreed I believe on the

1 nature of the provision. And the question to refresh the
2 recollection of the committee is what date it goes into
3 effect.

4 The issue is whether or not we are going to permit
5 the deductibility of business expenses in connection with
6 rental units which are rented to members of your family. And
7 I have attempted in the few minutes since we talked about
8 this before to refresh my recollection, but I am not able to
9 find any known reference to this idea of disallowing the
10 deductibility of expenses in connection with such fair
11 market rentals to family members in the deliberations of the
12 Finance Committee or in the Committee Report or in the debate
13 on the floor of the Senate or the debate of the House. In
14 fact, I am advised to the contrary that that was simply not
15 the contemplation of the Congress. I am prepared to be
16 corrected on this.

17 Second, I am told that the regulations which
18 implemented this Act, which was passed in 1976, did not
19 really come out until 1980. And so that is all the more
20 reason it seems to me why, to go back and claim that people
21 who filed their tax returns prior to that date ought to have
22 to pay this, it seems to me like we are sandbagging when we
23 just should not do it.

24 Also, Mr. Chairman, I would hope that Secretary
25 Chapoton would go along with us on this in view of the fact

1 that the other two provisions, which are very closely related
2 to this and which have been tied together in all the
3 previous deliberations on this matter -- for example, when we
4 have offered riders on the continuing resolution, as I have
5 several times and which have been approved by Congress on
6 several occasions, several provisions have all been tied
7 together. Today, for the first time, the handling of those
8 provisions are separated, in that the two items that are on
9 the list as agenda item number 1 are given an effective date
10 of December 31st, 1975, and this one is treated differently,
11 in that the effective date is December 31st, 1981. And so I
12 just think it is flawed as it comes to us, Mr. Chairman, and
13 it would be completely within the spirit of what we are doing
14 here to make that date 1975, too, particularly since the
15 regulations came out in 1980.

16 Mr. Chapoton. Well, Senator Armstrong, the
17 difference, in my view, is that the other two changes are
18 regulatory changes, were questions that were subject to
19 interpretative disputes. This change that you are talking
20 about, it is just quite clear in the law, where it says:
21 "For personal purposes by a taxpayer or any person who has an
22 interest in such unit or by any family member."

23 Senator Armstrong. I think that is correct. But,
24 Mr. Secretary, let me refresh your recollection of the history
25 of this. That is exactly the nature of the problem, is that

1 the statute does rather clearly reflects something which was
2 not contemplated by the people who supposedly wrote the
3 statute. Now that is a long-term problem of institutional
4 reform that some day we ought to look at. But even here today,
5 what we have adopted in this committee are a series of
6 amendments which are concepts, not statutory language. So I
7 am not arguing with that. And when I ticked off the fact
8 that it wasn't the intention of Congress, I referred to the
9 debate in the committee, the committee report and the floor
10 action. And I understand what you have just said is true;
11 however, the very reason that Congress has on a number of
12 occasions put riders on appropriation bills to prevent the
13 actual enforcement of this is because it was not in our
14 contemplation. And, Mr. Chairman, I would just also appeal
15 to the members of the committee by recalling that at least on
16 one occasion when I was prepared to offer a substantive
17 amendment to the statute as a rider to another bill, I was
18 told, no, that is not the way to do it because, after all,
19 that would get into the jurisdiction of the committee. It
20 would be better to have a committee hearing, and all you
21 really have to do is just put a rider on that says "none of
22 the funds contained herein shall be used to enforce this
23 provision of the Act." That will hold them up and freeze
24 the situation, prevent the enforcement of it. And it will
25 just be a ministerial duty to come back at a later time and

1 amend the statute. And that is what I thought we were doing
2 today.

3 In fact, I would also remind the Secretary that
4 about this time last year, on virtually the last night of the
5 session -- I have kind of forgotten the date, but I think I
6 got a letter from somebody over at the Treasury saying in
7 effect that they supported S. 31, which is exactly what we
8 are doing here, except it had the effective date of 1975.

9 So I made my case, Mr. Chairman. I would hope there
10 would be no objection to this because I think it is
11 consistent with what we have all repeatedly voted to do. And
12 it treats this section of the problem the same as we treat the
13 other two.

14 The Chairman. Could I ask the staff, is this a
15 new matter on the agenda or is this an amendment to an item
16 on the agenda?

17 Mr. McConaghy. This is listed under the
18 provisions of the House bill. It would be an amendment to
19 the House bill, one of the provisions in there, which is
20 14(a). It was not separately on the agenda.

21 Mr. Lighthizer. So it is not a new item.

22 Senator Bradley. So what we are discussing is
23 not item (a)?

24 Mr. McConaghy. It is item 14(a), Senator Bradley,
25 yes.

1 Mr. Lighthizer. On page 2.

2 Senator Bradley. It is the precise amendment that
3 was passed in the House?

4 Mr. Lighthizer. No. It is an amendment. What
5 is being discussed now, Senator, is an amendment.

6 Senator Bradley. So Senator Armstrong's
7 enlargement of this provision. It was different than the
8 House.

9 The Chairman. It has been approved.

10 Mr. Lighthizer. It will change the effective date
11 of that provision, yes, sir.

12 Mr. McConaghy. Senator Armstrong, were you
13 agreeing maybe not to change the other part of it dealing with
14 the principal residence?

15 Senator Armstrong. Is that an offer?

16 (Laughter)

17 Mr. Chapoton. I have stated our case on the
18 effective date point. As I think I said earlier, it is a
19 principle with us ordinarily. And other than that it is an
20 administrative question. The other point is certainly more
21 important to us, the principle residence point.

22 The Chairman. I agree with you on the principle
23 residence point. I do not agree with you on the other. Can
24 we work it out on that basis?

25 Mr. Chapoton. Yes, sir. That's fine with us.

1 The Chairman. Is that satisfactory?

2 Senator Armstrong. I think so. I am not sure
3 of what we have agreed to.

4 Mr. Chapoton. That the rental to a family member,
5 the exception for rental to family members would apply as in
6 the House bill only when the lessee is using it as his
7 principle residence.

8 Senator Armstrong. Yes. I would be willing to
9 leave as the House sent it over. And then we would put the --

10 Mr. Chapoton. Effective date back from the
11 origination.

12 Senator Armstrong. Right. I think that is an
13 admirable way to the solution.

14 Senator Bradley. Mr. Chairman, do we have any
15 idea as to how many returns that affects?

16 Mr. Chapoton. No, Senator, we would have no
17 idea. And I honestly cannot state whether they are
18 taxpayers. I assume they have been complying with the letter
19 of the law, and, as I said earlier, I think they would advise
20 us -- would have so advised them. But I just cannot say which
21 would require more amended returns.

22 The Chairman. Lets do it on that basis unless
23 there is some objection. Do you have your study amendment
24 worked out, Senator Bradley?

25

1 Senator Bradley. Well, I hope so. Yes. The
2 problem is oil supply disruption. It is damage to the
3 economy. What do you do? The traditional answer has been
4 price controls. For those of us who do not want price
5 controls, the alternative might be recycling of tax
6 revenues. In order to recycle tax revenues, you have to have
7 at least some study of how to do that. So this would require
8 the Treasury to do the study of appropriate fiscal monetary
9 policies in several supply disruption scenarios. It would
10 require them to report on the effect on tax revenues of an
11 oil supply disruption, and also examine the alternative
12 mechanisms of recycling through the personal income tax
13 system, social security, or various other kinds of
14 recycling mechanisms, and require them to report back by
15 April 1st with this study.

16 Mr. Chapoton. Senator, I believe you know this,
17 that the task force has been -- we would prefer not to have
18 it mandated legislatively, let me say, at the outset. The
19 task force has been directed to be set up. I do not know
20 how far along its efforts are. Treasury, DOE and OMB
21 task force. We would prefer that it be done without a
22 legislative mandate.

23 Senator Bradley. Well, there is no interagency
24 task force, and they are not making any progress on this.
25 And this has been eight months since that was the story that

1 was given. And the point is if we are going to have an
2 alternative means here, if we are going to know how to
3 recycle revenues, somebody in Treasury has to be thinking
4 about it. And to put it off on an interagency task force
5 just is not going to do the job.

6 Mr. Chapoton. Well, we have a lot of legislative
7 mandated studies now, and every time another one is put upon
8 us I raise the same point of resource problems at our end of
9 the street. I will just raise that point again.

10 Senator Bradley. Well, if there is this interagency
11 task force, can we put a date certain by which they should
12 report to Congress?

13 Mr. Chapoton. I would certainly prefer that, yes,
14 sir.

15 Senator Bradley. Mr. Chairman, that would be
16 all right with me.

17 The Chairman. Pardon?

18 Senator Bradley. Lets say that this interagency
19 task force that is already working on the problem must report
20 with the study by March 15th.

21 Mr. Chapoton. Could we at least have midyear or
22 even later in the year?

23 Senator Bradley. Fine. June 15th.

24 Mr. Chapoton. All right.

25 The Chairman. I was out of the room.

1 Mr. Chapoton. This would be just allowing the
2 task force that has already been directed to be cleared, and
3 I cannot state finally how it happened, but it would mandate
4 that their report be returned to Congress by June 15th.

5 The Chairman. Is there any objection? Senator
6 Durenberger?

7 Senator Durenberger. Yes. Mr. Chairman, I have
8 an amendment, I think a summary of which has been circulated.
9 It probably should have been on the agenda. It is a
10 mortgage revenue bond amendment. I will not regale my
11 colleagues with the housing problem in the country, except to
12 say the best illustration we have of the trickle down theory,
13 the access of low and moderate income in this country for
14 housing has trickled down to absolutely nothing.

15 Mr. Chairman, this is a problem we were well aware
16 of in June and July. I brought it up at that point at your
17 request. We kept it off of the bill. We have held hearings.
18 The State Housing Finance people were in here. They talked
19 about at least a half a dozen major problems with some of
20 the amendments in the mortgage revenue bond area. We have
21 discussed this with Treasury, Joint Tax Committee, the staff
22 of this committee. Treasury has moved on one of the primary
23 objections, the so-called 95 percent rule. We have caved in
24 on one or two of the others. And this amendment has four
25 parts to it, two which deal with multifamily housing, and

1 nearly unanimous changes as far as I can tell, in that area;
2 one with arbitrage and one which is a general provision. To
3 the best of my knowledge, after working awfully hard on this
4 issue, we have compromised what everybody in the community
5 believes to be an essential arbitrage percentage from down
6 from 1 - 1/4 down to a sliding scale from 1 - 1/16 at the
7 high side, 100 million, down to 1 - 1/8 for smaller issues.
8 And I think that hit that at about 30 million.

9 I would just remind everybody on this committee
10 that two-thirds of the members of this committee have been
11 and are authors, co-sponsors, of this legislation. People
12 number on both sides of the aisle. And time is running out
13 on us in all of these areas, and I would move the adoption
14 of that amendment.

15 The Chairman. As I understand, Treasury objects
16 to this rather strenuously. Maybe we can hear from
17 Treasury and then we can decide what we are going to do.

18 Mr. Chapoton. Looking at this list, we have been
19 over these proposed amendments with Senator Durenberger and
20 with outside groups as well. The one that most concerns us
21 is increasing the arbitrage limits, because we do not want to
22 expand this type of -- for a number of reasons, one of which
23 we do not want to expand this type of financing. An increase
24 in the arbitrage limits would have that effect. But, more
25 importantly, I think is the point that at a 1 percent

1 arbitrage spread, we think it is clear that all the expenses
2 of an issue, other than the administrative expenses of
3 operating the housing agency itself, will be covered. But
4 the expenses of the agency would have to be borne by other
5 funds, by contribution, by local funds, at some point. And
6 we think that is probably desirable, if that is required,
7 that it is probably desirable because it does have the effect
8 of putting a direct local interest in the project.

9 I might say that in many cases the 1 point will
10 cover all expenses, including the expenses of operating the
11 local agency.

12 The Chairman. Do you have objections to loss on
13 reserve liquidations?

14 Mr. Chapoton. No, sir. We can go along with that.

15 The Chairman. What about the definition of "low
16 or moderate income" and "duration reporting requirements"?

17 Mr. Chapoton. The definition of "low and moderate
18 income," we have no objection to that. The (b), duration of
19 targeting requirement, we would just point out that this
20 reduces the period. We are talking about multi-family
21 housing that is financed with tax exempt bonds. The
22 requirement now is that 20 percent of the housing, 20 percent
23 of the units, be for persons of low and moderate income for
24 20 years. Now, this would reduce it considerably. In line with
25 the reason for causing this reduction is that HUD is reducing

1 its financing requirements. But we would just point out the
2 period of financing, the period of HUD-supportive financing.
3 But we would point out that you would then be saying that you
4 could build a multi-family unit with tax exempt bonds and
5 provide low and moderate income housing for a much shorter
6 period of time. And it is just a question of whether we
7 ought to have tax exempt financing for multi-family housing
8 when it provides a very relatively short duration of housing
9 for a person of low and moderate income.

10 The Chairman. And you are opposed to that
11 provision?

12 Mr. Chapoton. Well, we would prefer not to have
13 that provision. But the one we certainly feel strongest
14 about is 1(a), the arbitrage limit.

15 The Chairman. Is there advantage, the Senator
16 from Minnesota, of adopting the provision where there is no
17 objection?

18 Senator Durenberger. No, there is no advantage
19 whatsoever. And I have heard this before and it is just
20 part of a philosophy to dump on somebody else like state
21 government. We have been doing an awful lot of that around
22 here the last year.

23 I wonder if Mark or somebody on joint tax who
24 started out with some of these similar notions that have been
25 running computers on the subject would have some

1 observations.

2 Mr. McConaghy. We have spent certainly a lot of
3 time, Senator Durenberger, going through arbitrage
4 calculations, and I think that when we first met with you and
5 with Treasury you asked us to determine at what point
6 arbitrage, in our judgment, would at least permit covering
7 the costs that are attributable to the issuance of those
8 bonds. And we went back and we ran all sorts of different
9 programs, and I think we concluded that at lower issues,
10 somewhere around 30 million or so, that there was a need for
11 more than a percent. And our best guess, confirmed by later
12 runs, was around a point and an eighth. At the topside,
13 around 100 million, as Mr. Chapoton has stated, if you take
14 the so-called "operating cost" out of the computation then
15 it does work at one. However, operating costs that at least
16 we were given by some organizations, including Minnesota, are
17 specifically attributable to that particular issue. If you
18 then include those, we think that somewhere around 1 - 1/16 is
19 under the programs that we ran with Minnesota costs is the
20 figure that you would need to cover those costs.

21 The Chairman. Again, I think we have to make the
22 same judgment. I don't know whether I am in favor of the
23 Durenberger amendment or not, but I do not have any amendments
24 in the other package. So I would be fairly objective about
25 the process. I guess the committee has to make a choice if

1 they in effect -- as I understand Treasury feels rather
2 strongly about this particular provision -- if we want to
3 place the other -- well, maybe jeopardy is not the right
4 word, but is there some other way we can accommodate the
5 Senator from Minnesota without placing every other member in
6 jeopardy? Is there another vehicle around that we can use?

7 Senator Danforth. Well, Mr. Chairman, I just
8 would like to say I have not made a study of this that
9 Senator Durenberger has made, and do not purport to be an
10 expert on the subject by any means. But I will say that in
11 the State of Missouri there is very considerable interest
12 in this. And, in fact, it is with a number of people just
13 absolutely on the top of their agenda. I would just wonder
14 if there wouldn't be a possibility of Treasury reconsidering
15 its position on this.

16 Mr. Chapoton. Senator Danforth, the point here
17 is how much of the benefit from tax exempt financing we are
18 passing along to the home buyer. The law now requires that
19 all of it, save 1 percent, be passed along. What we would
20 now be saying is the state can charge the home buyer more to
21 cover, in some cases, to leave a cash profit in the local
22 issue or the state, whoever, an arbitrage profit.

23 It is impossible to tailor a rule that precisely
24 passes along all the benefits, because the mortgage is always
25 going to be cheaper than a commercial mortgage would be. So

1 in 1980, the Congress took a meat axe approach and said
2 1 percent should cover the cost. In some cases, it does not
3 cover the cost of the housing agency. That does not permit
4 the bonds from going forward. Indeed, many bond issues now
5 are going forward. As Senator Durenberger pointed out, there
6 is a rule now that was clarified in regulations that did
7 help considerably, evidently.

8 We just think that all the benefit ought to be
9 passed along to the home buyer; that there should not be
10 encouragement through the possibility of a profit at the
11 local level -- I mean, through arbitrage profit at the local
12 level -- for these bonds. And, indeed, there is nothing
13 wrong with the fact if the local government or the state has
14 to provide something to help the project along instead of
15 the Federal Government being looked to to pay the entire cost.

16 Senator Danforth. Well, I would just say that I
17 think the program in the State of Missouri is a good program
18 of the housing development. The program in the State of
19 Missouri, the people do operate that program, and they told
20 me that this is the first as far as their operation is
21 concerned. I don't know. I have no way of determining
22 whether it is crucial or not, but their view is that it is
23 a matter of extreme urgency.

24 Mr. Chapoton. The Missouri Housing Development
25 Commission had a \$76 million offering the week of

1 December 11th.

2 Senator Danforth. But the problem here is is
3 the profit problem. But I am not trying to create profit for
4 anybody else. And that is why we spend so doggone much time
5 on this, trying to get this down to something that eliminates
6 as much of the so-called profit, as you call it, for as many
7 people as possible. And we have come so close to your
8 nonprofit theory of 1 percent. But I just don't know how we
9 can get any closer without calling all those people out there
10 a bunch of liars. And I just don't think the Housing Finance
11 people and a lot of the other who are involved in this
12 process are lying to us about the practical effects in some
13 states. Do you recall they were in here, and in some states
14 the 95 percent rule is a little bit more important than this
15 one. But there are an awful lot of states out there. There
16 are three of them right now -- New York, Louisiana, and I
17 forget what the third one is -- that are being held up by
18 this.

19 There are a lot of states where this is not a
20 profit item.

21 Mr. Chapoton. Right.

22 The Chairman. I think we have to make a judgment
23 of whether we are going to -- is there any other vehicle to
24 put it on? I don't have to call up anything. We can just
25 adjourn the meeting. I am not going to sink 25 amendments to

1 adopt one that is not going anywhere.

2 Senator Long. Mr. Chairman, I am in favor of what
3 the Senator wants to do, but I have had some experience of
4 trying to pass a revenue bill this late in the session. In
5 fact, I think I was the floor manager of the original
6 Christmas Tree bill.

7 (Laughter)

8 Senator Long. And I am proud of that bill. It
9 had some good things in it that really did a great deal to
10 improve the law of the land. But since that time it has
11 gotten more and more difficult to pass Christmas Tree bills.
12 And all we had to do is to have a Treasury objection, and
13 that is going to stop the bill at least as far as that part
14 of it is concerned. And the trouble is, once you lose your
15 momentum, it is awfully hard to get it going again, and to
16 get it back up and to get the bill considered.

17 Now, I would like to see the Senator's bill
18 passed, but I believe we had better leave out of the bill
19 anything that the Treasury objects to just because I think
20 that the Treasury's objection will not permit this bill to get
21 through.

22 The Chairman. Isn't there some way to work this
23 out with Treasury between now and -- we are looking at
24 tomorrow. You know, we are going out of here on Wednesday
25 I understand. So is there any negotiating room left with

1 Treasury? I think I had better ask Treasury.

2 Mr. Chapoton. Well, we have raised this question
3 at a very high level. Indeed, the policy study group in
4 the White House, I have discussed it with them. And this is
5 our position, Mr. Chairman.

6 Senator Mitchell. Mr. Chairman, could I just ask
7 Mr. Chapoton something? You have given a very fine
8 explanation of the details of this, but I think Senator
9 Durenberger's point earlier, he said he would not "regale us"
10 I think was his phrase with all the details of the housing
11 industry, but it is a critical industry. It is in a deep,
12 deep depression, not a recession; it is in a depression. It
13 doesn't seem to be much doubt -- perhaps I am wrong on
14 this -- that this will be of some assistance, it will provide
15 some stimulus. Doesn't that broader interest -- it is such
16 a crucial part of our economy, particularly in mine and other
17 states -- doesn't that, to some extent, outweigh the specific
18 objections that you have? However well founded they may be
19 on the particular merits, isn't that a fact that ought to be
20 considered?

21 Mr. Chapoton. Senator Mitchell, that fact should
22 be considered, and that indeed is why I wanted to be sure this
23 was raised with the Domestic Council staff at the White House.
24 And this will not have, in their view, a dramatic impact on the
25 housing problem, which indeed certainly exists, we all

1 recognize. And they do not think it is a proper way to
2 address the problem that does exist.

3 Senator Mitchell. Well, of course, what is or what
4 is not a dramatic impact? I think that the housing industry
5 is in such a bad state now that anything will be seen as
6 dramatic if it is favorable at all. Obviously, I do not want
7 to prolong it, Mr. Chairman, but I just think it is a very
8 short-sighted view to focus on the narrow thing. When this
9 committee met with realtors--we met with the home builders,
10 we met with others--the tales of woe that we received from
11 them are really shocking, really shocking. And I think that
12 there ought to be some recognition of this problem and try to
13 do something for the housing industry.

14 Mr. Chapoton. Well, Senator, I point out again
15 that the right to tax exempt financing is available. The
16 question is if all expenses are not met, and particularly
17 the expenses of operating the agency, whether the Federal
18 Government should pay for that with more tax exempt bonds on
19 the market or should it be paid for if there is an excess
20 expense in smaller issues, whether it should be borne
21 elsewhere.

22 Senator Mitchell. But the state housing authority--
23 the state housing authorities--which are the impetus that
24 Senator Danforth spoke about, and I think others have spoken
25 about, they are not after any undue profit. They want

1 housing. That is their function.

2 Now I can understand your saying to us we cannot
3 rely upon the advice of those who have a direct interest in
4 specific benefits from this, but the state housing officials
5 across this country, it would seem to me, have an interest in
6 housing, in promoting adequate housing in their states. And
7 if it is so widespread and comes from so many states, how can
8 it be so wrong?

9 Mr. Chapoton. Indeed, it is not wrong.

10 Senator Mitchell. Well, how can it be so
11 ineffective? How can it not be effective? We have been told
12 for several months that problems are best left to the states.
13 I think that we have heard the President say many times that
14 state officials are in a much better position to tell us how
15 to solve the problems than people at the federal level.

16 The Chairman. Well, they can pay a little of this
17 if they want.

18 Senator Mitchell. Yes. Now we have a case here
19 where state officials from all over the country telling us
20 just that, but you are saying, well, a group in the White
21 House says that it won't have the impact. It seems to be a
22 reversal.

23 Mr. Chapoton. Senator, the state officials in
24 this case are solving a problem, that they want the entire
25 cost of the problem paid by the tax exempt privilege. They

1 do not want to contribute anything, even the cost of
2 operating the agency, the overhead type of expenses of
3 operating the agency. That's what we are talking about.
4 And there is nothing blocking these issues from coming
5 forward, provided those funds are available.

6 Senator Mitchell. Well, that is a matter of
7 dispute. I don't want to go into that. I don't want to
8 prolong it any more.

9 Senator Durenberger. Mr. Chairman, I appreciate
10 your concern, as accurately expressed, and I would hope that
11 we would buy a little time for Buck to go back and discuss
12 this one more time. I am not sure what got discussed at
13 the Domestic Policy Council. As I look at the figures that
14 are involved here in terms of revenue loss, they are very,
15 very small. So that leads me to the conclusion that this is
16 one of those philisophical problems again that we went through
17 for example, with refundability, as you very, very well know,
18 and we ended up with a substitute called "leasing", which is
19 probably very good. But it is going to take an awful long
20 time to prove it. And we have a system that is probably a
21 temporary system in our provision for shelter in this country
22 called mortgage revenue bond financing. And we have created
23 housing finance agencies all over this country to help us with
24 it. And within a couple/three years, hopefully, when we do
25 all these things right, it will all disappear. The only point

1 that is being made here is this is not the time to make them
2 disappear; that when we said 1 percent in 1980, we might have
3 meant 1 - 1/8th, or we might have meant 1 - 1/16th when we
4 lumped all the costs together. We lumped them together under
5 1 because 1 is easier than 1 with a fraction. And everybody
6 is now telling you, given the condition of the market and
7 given the realities, it is 1 - 1/16th or 1 - 1/8th. And that
8 is where I come down on this. I am not trying to make
9 barriers for anybody on this thing, I am just trying to keep
10 this system alive until you and us turn this whole thing
11 around. And I am really fearful that somewhere some
12 unnamed folks have got a philisophical objection to this
13 that I might share with them, but not today.

14 Senator Roth. Mr. Chairman, could I echo what
15 Dave is saying? I think this is important to many of our
16 states. And I would urge him to go back to the Treasury and
17 have them review it and see if some relief, even temporary
18 relief, couldn't be given so that this program that most
19 states think is extremely valuable can continue. They do
20 have that opportunity. It could be done for a year and we
21 would take a further look at it, at least try to get some
22 relief right now.

23 Senator Baucus. Mr. Chairman, I want to follow
24 up, too, on the same point. Actually as I listen to the
25 comments of the Senators around the table here, it might not

1 make much difference whether the Treasury rethinks. I think
2 there is strong support in this committee for the provision,
3 but at the very least to facilitate this or something very
4 similar to it going through. I don't want to take the time
5 to reiterate the arguments, but the housing industry is in
6 tough shape. We can't wait. And this will help.

7 The Chairman. Well, I think we may as well
8 resolve the matter. I don't have any quarrel with taking
9 action on the amendment, but I do think it would put in
10 jeopardy everything else we have done today. That is no
11 problem. I don't have any amendments on any.

12 Senator Durenberger. Mr. Chairman, if that is
13 the case, then as far as I am concerned, then pull it down
14 and let them kill it. I mean, not today. I would like to see
15 it go into the bill. And if you find yourself within 24 or
16 48 hours finding the whole effort dying because of this, I
17 would hate to stand in the way. But then the money is going
18 to be on the back of these people.

19 The Chairman. Well, they have already indicated.
20 Is that reversible?

21 Mr. Chapoton. Well, we have given it. We can
22 always look at problems further. I have given the reasons.
23 We have spent an awful lot of time on this and we have
24 reached a conclusion. I would reiterate that bond issues are
25 going forward, and we expect many, many more bond issues to go

1 forward, particularly as the rates keep coming down. And
2 that is a major element here. We are not talking about
3 blocking major bond issues. We are talking about whether all
4 the costs are paid from arbitrage yield or not.

5 Senator Danforth. Mr. Chairman, I understand the
6 joint committee looked at it and came to a different
7 conclusion. Is that correct?

8 Mr. McConaghy. Senator Danforth, we did run lots of
9 different programs and we took Minnesota's costs and
10 developed what we call "step down" mortgage programs and
11 so forth. And in so doing, it was clear under the cost that
12 we worked with Minnesota on that issue, that to cover what
13 our operating cost as well, but operating cost that they
14 have shown us are attributable to that particular issue; that
15 it would take somewhere around 1 - 1/16ths. We have not
16 looked at other issues. We have asked for issues that have
17 gone up to be submitted to us so we could run the same kind
18 of analysis, and have not received those. But with that
19 issue, it would take a hundred million dollar issue a point
20 and a sixteenth.

21 Senator Danforth. Mr. Chairman, clearly the
22 Administration has the power to kill this if it wants to.
23 And I think it would be unfortunate. I think that we have
24 had a very strong indication of a very strong support on the
25 part of a number of members of the Finance Committee. But I

1 think that Senator Durenberger has made a good suggestion.
2 Would it be in order to simply include this matter in the
3 bill, and then authorize you to drop it if the Treasury
4 finds that between now and when it comes up to the floor that
5 it cannot agree with it?

6 The Chairman. I would rather we do it the other
7 way. Let's see if we can't work it out between now and the
8 time it gets to the floor and then offer it. I don't want to
9 get all those phone calls.

10 (Laughter)

11 Senator Durenberger. But I may not be around.
12 So if there was a way for you to accommodate me on it.

13 The Chairman. I would be happy to do that. If
14 we can get some agreement not to press it now -- and I will
15 work directly with Treasury to see if we can't work out
16 something, because I am certain that if you put it up for a
17 vote in this committee, it would be almost unanimous. That
18 does not mean there may be the correct way to proceed, but it
19 is an indication for support for the amendment.

20 Senator Bradley. Mr. Chairman, is the Treasury
21 opposed to the last three parts of the amendment or only the
22 first?

23 Mr. Chapoton. No, only the first.

24 Senator Bradley. Well, why don't we adopt the
25 last three, and then if they are going to kill it, they will

1 kill it. Later, if they approve, we will put it in. At
2 least we will have three-quarters of it in.

3 Senator Durenberger. It is too easy to kill with
4 this out. I just do not have it all in there.

5 The Chairman. The big provision is arbitrage. And
6 then you have some problem with the last provision.

7 Mr. Chapoton. Some problem, but I just raised the
8 problem for the committee's consideration, that is, if the
9 reason for tax exempt financing of multi-family housing is
10 because significant benefit is provided for low and moderate
11 income when you reduce the period of years, for that reason,
12 it diminishes commensurately.

13 The Chairman. And I think there are going to be
14 other amendments in the same category. So I don't think this
15 will be the long ranger. I think everybody still here must
16 have one of those.

17 So maybe we ought to take a look at some of the
18 others and maybe just adopt a group policy.

19 Senator Durenberger. I would prefer moving mine
20 with the understanding that I indicated to you earlier,
21 Mr. Chairman, and drop out the objectional provision if the
22 Treasury doesn't change its mind to move mine on to the
23 bill, and I so do it at this time. And I would like a roll
24 call vote.

25 Senator Symms. Mr. Chairman, exactly what are we

1 voting on? If we vote for this, we vote for it today.

2 The Chairman. If you vote for this you will
3 probably vote to kill the other 22.

4 Senator Symms. Well, are we giving the Chairman
5 a Carte Blanche just to drop it from the bill? That is kind
6 of unusual.

7 The Chairman. Why not give me the authority to put
8 it in? I mean, what is the difference?

9 Senator Durenberger. Only my preference, I guess,
10 Mr. Chairman.

11 Senator Roth. How are we voting to kill the bill
12 if you have the authority to drop that?

13 The Chairman. Well, if it were not for the honor
14 of the thing, I would rather have the authority just --

15 (Laughter)

16 The Chairman. -- just to propose it at the
17 appropriate time. I wouldn't want to be responsible for
18 dropping it out.

19 Senator Long. I would be willing to make the
20 motion that we agree to include the Durenberger amendment
21 with the understanding that the Chairman has the power to
22 modify it if he can come to terms with the Treasury on the
23 matter. And if he cannot come to terms with the Treasury on
24 the matter that the amendment would not be added; he would
25 withhold it. But that is basically the thing we are talking

1 about. If he can get them agree to do it he will add it, it
2 will be a part of the bill. If he cannot get it agreed to, it
3 will not be a part of the bill.

4 The Chairman. As long as that is clearly defined.
5 I do not have any discretion, and I don't really want any in
6 this case. But I will try to work it out with Treasury. If
7 not, I just can't help it.

8 Senator Bradley. Does the Chairman have the
9 discretion to add any part of the amendment or is it the
10 whole amendment?

11 The Chairman. Well, I would want to consult with
12 Senator Durenberger because I think he feels very honestly
13 that without part (a) the others are not really all that
14 important. But, as I suggested earlier, we take the
15 noncontroversial parts, whatever happens. Are you going to
16 be in town?

17 Senator Durenberger. I will not be on Wednesday.

18 Senator Long. Well, we have telephones. They
19 haven't put them out of business yet.

20 (Laughter)

21 The Chairman. All right. Does anyone else have
22 any noncontroversial proposal?

23 Senator Symms. Mr. Chairman, if we could do that,
24 why don't we do the same thing on a retroactivity?

25 The Chairman. Well, as I indicated, we are going

1 to probably have a group policy here before we are finished.
2 We may not have any policy at all. But do you still want to
3 vote?

4 Senator Durenberger. If it would help to
5 strengthen your hand, yes, I would like a vote.

6 The Chairman. All right. The Clerk will call the
7 roll.

8 The Clerk. Mr. Packwood?

9 Senator Packwood. Aye.

10 The Clerk. Mr. Roth?

11 Senator Roth. Aye.

12 The Clerk. Mr. Danforth?

13 Senator Danforth. Aye.

14 The Clerk. Mr. Chafee?

15 Senator Durenberger. Aye, by proxy.

16 The Clerk. Mr. Heinz?

17 Senator Durenberger. Aye, by proxy.

18 The Clerk. Mr. Wallop?

19 (No response)

20 The Clerk. Mr. Durenberger?

21 Senator Durenberger. Aye.

22 The Clerk. Mr. Armstrong?

23 Senator Armstrong. Aye.

24 The Clerk. Mr. Symms?

25 Senator Symms. Aye.

1 The Clerk. Mr. Grassley?

2 Senator Grassley. Aye.

3 The Clerk. Mr. Long?

4 Senator Long. Aye.

5 The Clerk. Mr. Byrd?

6 (No response)

7 The Clerk. Mr. Bentsen?

8 Senator Bentsen. Aye.

9 The Clerk. Mr. Matsunaga?

10 Senator Matsunaga. Aye.

11 The Clerk. Mr. Moynihan?

12 Senator Moynihan. Aye.

13 The Clerk. Mr. Baucus?

14 Senator Baucus. Aye.

15 The Clerk. Mr. Boren?

16 Senator Boren. Aye.

17 The Clerk. Mr. Bradley?

18 Senator Bradley. Aye.

19 The Clerk. Mr. Mitchell?

20 Senator Mitchell. Aye.

21 The Clerk. Mr. Chairman?

22 The Chairman. Aye.

23 The Clerk. Seventeen ayes.

24 The Chairman. Senator Roth has been waiting for
25 a noncontroversial issue.

1 Senator Armstrong. Mr. Chairman, before we take
2 the next Senator, what was the vote tally?

3 The Chairman. Eighteen ayes and zero nays.

4 Senator Armstrong. Has the kind of motion that
5 has just been adopted been a regular practice in this
6 committee?

7 The Chairman. I think it is used from time to
8 time.

9 Senator Armstrong. Well, I would just like to say
10 that as one member, I had some real reservations about the
11 proprietary. I voted to do it, and I think that the
12 Durenberger amendment is an important one. I also have an
13 amendment which I think is important. But if we extend that
14 principle very far, soon the effect will be that every
15 amendment will be approved subject to being dropped after
16 the Chairman consults with the Treasury. And I don't think
17 that is really a good practice. And I understand there is
18 a time limit to do it, and we have just done it, but that is
19 one of my concerns.

20 Senator Long. Well, if the Senator would yield
21 to me on that point, under the rules of the Senate the
22 spokesman for the committee -- in this case, the Chairman --
23 if he has a majority of the committee, he can stand right
24 there and modify the committee amendment right out there on
25 the floor. It doesn't take but a majority of the committee

1 to give him that authority.

2 Senator Armstrong. I understand that. I am not
3 questioning that we have acted in contradiction to the rules,
4 but I am simply saying that the frequency of resorts to this
5 kind of procedure really would make the operation of the
6 committee impossible. And it seems to me that it puts the
7 Chairman in an untenable position.

8 The Chairman. I did raise that.

9 (Laughter)

10 The Chairman. I think it has been sparingly
11 used in the past and I hope it is sparingly used in the
12 future. And I am very willing to accommodate the Senator from
13 Minnesota, particularly if he is not going to be here.

14 I have Senator Roth next, and then I will go to
15 Senator Symms, Senator Moynihan, and Senator Matsunaga.

16 Senator Roth. Mr. Chairman.

17 The Chairman. Is this a separate presentation?

18 Senator Roth. I can either offer it as an
19 amendment or separate. Let me say what the problem is. I am
20 very much concerned that apparently the Treasury is
21 considering reducing the IRS taxpayer assistance. This is a
22 program that I think is of critical importance to the
23 taxpayers at home. And I think, as an editorial in a local
24 newspaper point out, that this is a penny-ante idea to save
25 thousands while billions are wasted, they propose to eliminate

1 IRS free advice to taxpayers. Even our Sunshine friends at
 2 the IRS are aghast at the idea. It has been difficult enough
 3 for responsible taxpayers to figure out the constantly
 4 changing tax regulations, particularly since the booklet
 5 explaining them requires and interpreter fluent in
 6 bureaucratize.

7 Mr. Chairman, I would like to first address the
 8 Treasury. It is my understanding the Treasury Postal Service
 9 and General Appropriations does contain a proposal to reduce
 10 appropriations for the IRS taxpayers' assistance program.

11 As you probably know, Mr. Secretary, several years
 12 ago there was a very serious attempt to add a program to help
 13 the taxpayers. It seems to me that this is a serious
 14 mistake.

15 Mr. Chapoton. Senator Roth, this is a serious
 16 matter. I agree with that. It is my best understanding that
 17 there will not be a reduction in taxpayers' service the coming
 18 year, 1982. And I don't even want to state that unqualified.
 19 I know that question has been addressed in the cutbacks of
 20 the Service, whether this ought to be cut back or not. So I
 21 would think the sense of the Senate-type resolution would
 22 certainly send a message. And beyond that I could not comment
 23 on it.

24

25

1 Senator Symms. Mr. Chairman, if it is satisfactory
2 with you, I would like to propose that there be a Sense of
3 the Senate Resolution, a separate resolution, that the IRS
4 Taxpayer Assistant Program shall be continued in its present
5 form without reductions in staff or funding.

6 The Chairman. Is there an objection?

7 ~~Senator Symms.~~ Senator Symms.: Reserving the right to object,
8 Mr. Chairman. And I would just like to ask the author of the
9 resolution, now, are we talking about budget cuts for the
10 IRS? I would certainly hate to go on record to be voting
11 for more money for the IRS, when it is probably the least
12 popular Government agency in the United States.

13 Senator Roth. We are suggesting that the funds not
14 be cut for the service given to the taxpayer.

15 Senator Symms. So what we would be doing would
16 be voting to encourage the Treasury to continue the services
17 but not necessarily transfer Service people to go in and
18 be punitive police officers types.

19 Senator Roth. Well, I want to keep them in the
20 present --

21 Senator Symms. You would give them as preventive
22 medicine instead of treating the care.

23 Senator Roth. Absolutely.

24 Senator Symms. I wouldn't object to that, then.

25 The Chairman. Without objection.

1 Are there other amendments?

2 Senator Symms. Mr. Chairman, if we could use
3 this Dole rule, I'm convinced after discussions we have had
4 outside the committee room here that there may be room on
5 this wraparound annuity retroactivity to find a common
6 meeting ground with Treasury.

7 Now, it is my understanding from talking to some
8 of the Treasury staff people, and the Secretary hasn't had
9 a chance to talk to those particular ones during this
10 markup, the Treasury has not yet come up with a system by
11 which these firms can comply on this retroactive issue that
12 Senator Glenn brought up in here, and that it is going to
13 create a tremendous problem for Treasury.

14 I would like to just make one last appeal that
15 maybe in the next 24 hours they could take another look at
16 this, and if that would be the case, that that amendment
17 might be accepted. As we mentioned earlier, there are 11
18 sponsors of the amendment on the committee here, so it isn't
19 that we're short of support. I'm trying to do this to help
20 Treasury from getting into a problem. I personally think
21 they are not going to be able to make these people comply.
22 It is going to create some very difficult problems on
23 enforcement as well as just voluntary compliance. People
24 are not going to be able to understand what they are
25 supposed to do.

1 So, if we could have that amendment in the
2 Chairman's pocket, so to speak, I would certainly like to
3 see that, if there's 24 more hours here, because I think
4 that some of the information that has come to light here
5 may be made available to the Secretary that he hasn't had
6 a chance to review. And there may have been a
7 misunderstanding when he testified here last week as to what
8 the intent of this was and what the impact will be.

9 Mr. Chapoton. We certainly don't want to have a
10 situation where taxpayers cannot comply. Senator Symms,
11 I have got before me now a couple of examples of the
12 prospectus. I guess I have a little difficulty
13 understanding why the issuer would not have the information
14 available to supply when they would put this type of
15 language in their prospectus: "However, should the IRS take
16 a position similar to Revenue Ruling 8274 with respect to
17 the contracts, the tax-deferral feature of the contracts
18 would be in doubt until the matter was definitely decided
19 by the courts."

20 Another one says, "Since there are certain
21 similarities, it is possible that the Internal Revenue
22 Service may attempt to extend through the issuance of further
23 rulings the logic of Revenue Ruling 8274 to annuity contracts
24 of the type offered by this prospectus. Applicants for
25 contracts offered by this prospectus are cautioned that the

1 disclosure concerning the tax status of these contracts
2 is subject to change at any time."

3 I do not want to cause a situation where
4 taxpayers cannot comply, where the industries cannot provide
5 the information. If we need more time to furnish the
6 1099s, maybe that would be the way to go, or some estimated
7 amount. I do think we have to be careful of rewarding
8 aggressive taxpayers, particularly when they seem to have
9 put themselves in a position of now arguably not being able
10 to comply.

11 Senator Symms. Mr. Chairman, might I ask, do
12 you know if your people have had a chance to review the
13 testimony that followed immediately after you testified last
14 week on this subject, Mr. Secretary?

15 And I would ask the Joint Tax Committee, have you
16 reviewed that testimony?

17 We had a former commissioner of the IRS in here
18 testifying, and other people who are very reasonable people,
19 I thought, that made a very good case. I am just wondering
20 if this hasn't all happened so fast that you haven't had a
21 chance to review it.

22 I'm not trying to embarrass anybody here, but I
23 think I've made my case. I don't want to sink this bill,
24 but how about the Joint Tax Committee?

25 Mr. McConaghy. We have not had a chance to really

1 review it the way we should, Senator Symms.

2 Senator Symms. The Joint Tax Committee has not
3 had a chance to review it?

4 Mr. McConaghy. No, not the way we should.

5 Senator Symms. It's my understanding that
6 Treasury hasn't either. And if you haven't, I understand
7 that.

8 Mr. Chapoton. We've read the testimony, and the
9 assertion is made that it will be expensive for them to
10 comply.

11 We could, perhaps, work out a -- I'm not sure how
12 we would do this, but a method for complying, some type
13 of estimation. Maybe we could spend a little more time on
14 that and see if we could work out such a rule.

15 Senator Symms. Well, All I was thinking about is
16 that we are getting close to December 31st, and this is the
17 last train going through the track. If you wanted 24 hours,
18 I would be agreeable to that. If they disagree with it after
19 24 more hours, well then, I've made the best case I can make.
20 I'm sorry; I would like to see it in the bill, but we don't
21 seem to quite be able to make our case here.

22 The Chairman. Could I interrupt just long
23 enough to -- oh, we have a quorum; Senator Grassley is in the
24 other room. Could I be authorized to request that we hold
25 the House Bill past the bills desk -- in fact, they're past --

1 to offer a committee amendment on the matters that we have
2 agreed to and subject to the Durenberger Amendment and any
3 other amendments which may be adopted in that same fashion?
4 Any objection to that?

5 Mr. DeArment. The House bills that you would hold
6 at the desk are H.R. 4717 and H.R. 5159? That's the
7 Miscellaneous Tax Bill and the Black Lung Bill.

8 The Chairman. There are three bills, actually:
9 FIFO and Fannie Mae --

10 Mr. DeArment. The only one you have to hold at
11 the desk is H.R. 4717. The Black Lung Bill, H.R. 5159, will
12 automatically be put on the calendar.

13 The Chairman. That's right. That's our bill.
14 Right.

15 Mr. DeArment. And 4961 is coming out of committee.

16 The Chairman. All right, no objections.

17 Excuse me.

18 Senator Symms. Mr. Chairman, if that could be
19 the agreement, maybe there's no need to discuss this any
20 longer, and I would just move to accept the retroactive part
21 of S. 1888. That was the one part that's critical. The
22 other sections of the bill, we would let them go til next
23 year.

24 The Chairman. Would the Treasury object to that?

25 Mr. Chapoton. Well, yes. We are objecting to

1 that. If we did have some time, maybe we could work out
2 a method of reporting, to ease the reporting requirement.
3 Would that be of interest, Senator?

4 Senator Symms. What I am suggesting is,
5 Mr. Chairman, that you take the retroactive part in your
6 package with Senator Durenberger's package, and if you can't
7 work it out in the next 24 hours, well, I guess it's
8 dropped. Then if you have to come up with some new rules,
9 you will have to do it. That's not my job. But I think we
10 could save you an awful lot of trouble if we could just pass
11 retroactive and make those prospective, and it would solve
12 the problem. But if the Treasury doesn't agree to it,
13 well, let the Chairman have the prerogative of dropping it.

14 I don't think we need the other part of it, is
15 what I'm saying. But you would automatically have that,
16 anyway, I would assume.

17 The Chairman. I would prefer if I could work it
18 out with Treasury, Mr. Chapoton. We seem to have that
19 responsibility, because I know it's important to the
20 companies or company involved. I know it's important to
21 a number of Senators, and I wouldn't want to make an
22 arbitrary judgment. If there's any way the Treasury thinks
23 we might be able to work it out, then I would be happy to
24 accept that responsibility.

25 Mr. Chapoton. I think Senator Symms is saying

1 preliminary inquiry?

2 Is it at all possible, conceivable, at this
3 Christmas season the Treasury Department is at long last
4 willing to restore justice to the stamp collectors of
5 America on the hundredth anniversary of Franklin D.
6 Roosevelt's death in the form of the Collectibles Bill?

7 No, huh?

8 Mr. Chapoton. I think it's too early in the year,
9 Senator.

10 (Laughter)

11 Senator Moynihan. Well, that's all right. There
12 are a lot of stamp collectors. We will have to let that
13 work where it will, boldly. We expected that.

14 I have one thing, Mr. Chairman. But first --
15 sorry to be so parochial -- as Mr. Chapoton knows and
16 wearily concedes, any city in America can issue tax-exempt
17 industrial development bonds for the local furnishing of
18 electric energy or gas, save the whole City of New York
19 because of a technicality. The city is comprised technically
20 of five counties and is not just one city. And there is a
21 project underway to build a garbage-fueled, in effect, power
22 plant. We would like the permission to do this by simply
23 putting gas in where there now has already been provided
24 a provision for electric.

25 I know that this is a problem for the Treasury.

1 I know you recognize the irrationality of the arrangement,
2 but what is your position, sir?

3 Mr. Chapoton. Well, Senator, we recognize the
4 irrationality of the exemptions for private use of
5 industrial development financing. In 1969, when the
6 industrial development bond rules went in place, there was
7 an exception for local furnishing of gas, electric energy or
8 water. Water was pulled out, I believe, in 1976, out of
9 the local furnishing altogether. Well, let me back up.

10 There was an interpretation in the early 1970s
11 that "local furnishing" meant no more than two counties.
12 And that has been applied to deny that exemption to New
13 York City for the reasons you state. That was overruled
14 as to electricity in 1978.

15 Senator Moynihan. Well, the law was changed.

16 Mr. Chapoton. That's correct. I mean the law
17 was changed in 1978 as to the furnishing of electric energy.
18 And the furnishing of gas is still under that restriction.

19 I can see the illogic of that and a number of the
20 other exceptions. We would have to oppose, however,
21 extension of tax-exempt financing in this manner, in this
22 piecemeal manner, or any extension of private use of
23 tax exemptions.

24 Senator Moynihan. Could I ask you, Mr. Secretary,
25 is it your plan to come to the Congress with a comprehensive

1 proposal on industrial development bonds of some kind?

2 Mr. Chapoton. Yes, it is, Senator.

3 Senator Moynihan. When you do, could I ask that
4 you would deal with this anomaly? Because it is an anomaly;
5 it makes no sense to me.

6 Mr. Chapoton. I think it would be very
7 appropriate for us to deal with it at that time.

8 Senator Moynihan. Well, I appreciate that.

9 Mr. Chapoton. Whatever the rules are, we ought
10 to straighten this out as well. Yes, sir.

11 Senator Moynihan. Thank you.

12 The Chairman. Is that satisfactory?

13 Senator Moynihan. That is fine.

14 The Chairman. The Senator from Colorado.

15 Do you have an amendment?

16 Senator Armstrong. Mr. Chairman, I do have an
17 amendment, but I would be glad to let Senator Durenberger
18 precede me.

19 The Chairman. All right.

20 Senator Durenberger. Thank you, Mr. Chairman. I
21 have a Secretary that deals with the National Research
22 Service Awards and the exemption from the Revenue Ruling
23 77319, which stated that National Research Service Awards do
24 not qualify for scholarship treatment under Section 117 of
25 the Code. Since that ruling came out the Congress has acted

1 to, in effect, keep the former scholarship treatment alive,
2 and I think that expires at the end of this year.

3 The Reconciliation Bill had in it a commitment that
4 "NSRAs are not made for the purpose of receiving services
5 designated by the grantor, rather that payment requirements
6 offer benefits to the nation," et cetera, et cetera, et
7 cetera, et cetera.

8 We haven't had time to really go into this, and I
9 wondered if you had any objection to including in this bill,
10 say, another one-year extension of the exemption from
11 Revenue Ruling 77319? And I apologize to you for not
12 alerting you to my interest, that of Senators Baucus,
13 Bradley, Heinz, Danforth and Hatch.

14 Mr. Chapoton. Senator, if my information is
15 correct, I think we would not have a concern about that. I
16 would like to verify this. I'm not sure how we would do
17 that, but I would not have an objection as I understand
18 the situation now.

19 Senator Durenberger. All right. It would be all
20 right with me if the Chairman was willing to include a
21 one-year extension in the bill. And if you come up with
22 some objection and it disappears, I guess --

23 Mr. Chapoton. Mr. Chairman, I was stating that
24 with the information I am now supplied we would not have an
25 objection to a one-year extension. I would like to verify

1 that information.

2 Mrs. Lighthizer. Mr. Chairman, that item was not:
3 not included on the agenda because it did not meet your
4 requirement that every amendment had had hearings in the
5 committee, and there were no hearings in the committee on
6 that amendment.

7 Senator Durenberger. Thank you very much.

8 The Chairman. Senator Matsunaga.

9 Senator Matsunaga. Mr. Chairman, I have an
10 amendment which I'm constrained to offer, more in the
11 nature of the technical amendment, to provide that certain
12 provisions relating to annual accrual method of accounting
13 now available to corporations engaged in farming be
14 extended to corporate joint farming ventures.

15 Mr. Chairman, when I proposed the current law in
16 1976, the provision of the annual accrual method of
17 accounting was limited to corporations engaged in farming.
18 This limitation was the intent to preclude any tax abuse of
19 the annual accrual method of accounting by individuals in a
20 tax-shelter arrangement as provided in the Tax Reform Act of
21 1976, which was a proposal I had made; therefore, the
22 annual accrual method of accounting may be used by
23 corporations only.

24 Section 447(g) of the Code as enacted in 1976
25 recognized the accounting practice of Hawaiian sugar

1 companies. The annual accrual method used by the companies
2 predated the current Code and had long been approved in
3 Internal Revenue Service rulings.

4 Thus, the 1976 Act simply codified existing
5 practice. As later events have shown, the need to include
6 corporate joint farming ventures have been overlooked. And
7 under current law, while corporations are permitted to use
8 the annual accrual method of accounting, corporations acting
9 in joint venture are not.

10 So my amendment would amend the law merely to
11 permit corporations acting in joint venture in agriculture
12 to utilize the accrual method of accounting. In line with the
13 Anti-Tax Abuse Provisions in the original provision which
14 I proposed, Mr. Chairman, the annual accrual method of
15 accounting would remain unavailable for individuals, personal
16 holding companies or closely-held corporations.

17 Now, I might say, Mr. Chairman, that the Joint
18 Taxation Committee has opined that the proposal will
19 engender no revenue loss whatsoever.

20 The Chairman. Have there been hearings held on
21 this proposal?

22 Senator Matsunaga. Well, it's a technical
23 amendment, in a sense. There were hearings held in 1976 in
24 which the amendment I am proposing now should have been made
25 a part and was intended to be part. And, except that by the

1 IRS, we need an amendment.

2 The Chairman. Let me ask, is there any urgency
3 to this amendment? We are coming back in January. And I
4 think once we start violating the rule of accepting
5 amendments with no hearings, either in the House or the
6 Senate, we open ourselves up to criticism. People will
7 think we are putting special interest amendments on the
8 bill without hearings, without an opportunity for those who
9 might be opposed or the public generally to be alerted to
10 the amendment. But, is there some urgency?

11 Senator Matsunaga. Yes, Mr. Chairman, there is.

12 The Chairman. Would you want to jeopardize your
13 other amendment that is in the bill?

14 Senator Matsunaga. I don't believe this will
15 jeopardize.

16 The Chairman. Well, it will if Treasury opposes
17 it.

18 Senator Matsunaga. I would like to hear from the
19 Treasury.

20 Mr. Chapoton. Well, Senator, I have just been
21 handed this amendment. I think I see what it does, but I
22 really would have to study it further.

23 Senator Matsunaga. Well, could we put in a base
24 that we get together and talk it over and see?

25 Mr. Chapoton. We would be happy to do that.

1 Senator Matsunaga. I really cannot understand
2 why the Treasury would oppose this amendment, really. And
3 if we can have time to talk it over --

4 The Chairman. If it is technical in nature, I
5 would have no objection. But I must say, there are a lot
6 of colleagues of mine who asked if they could bring up
7 their amendments. I said, "Have there been hearings held,"
8 and they said "No." And I said "No."

9 So I think once we open the floodgates, unless
10 it is a technical amendment, we are asking -- I think we
11 have just about got a full load now.

12 Senator Matsunaga. Yes. I would say,
13 Mr. Chairman, if it is determined that this is not really
14 technical in nature -- and I say it is technical in nature,
15 one on which lengthy hearings were held in 1976 -- then I
16 would withdraw it to offer as an amendment to a House-passed
17 bill later, at the appropriate time.

18 The Chairman. Thank you.

19 The Senator from Colorado.

20 Senator Armstrong. Mr. Chairman, I have a
21 proposed amendment which I hope and believe qualifies under
22 the groundrules, one, that there has been a hearing on the
23 matter I want to raise, and, second, that it has, so far as
24 I am aware, absolutely no revenue loss, and that is an
25 amendment in the same form as the bill which Senator Hart and

1 I have introduced to relieve the El Pomar Foundation of the
2 need to dispose of the Broadmoor Hotel.

3 The circumstance, as I'm sure the committee is
4 aware, is that in 1969 we put a duty on the number of
5 foundations to dispose of certain assets under certain
6 conditions. At that very time, the Senate exempted the
7 Broadmoor Hotel because of the unique circumstances
8 surrounding its ownership, its position in the community,
9 and the fact that there were none of the hallmarks of abuse
10 which had led to the passage of the Act. None of those
11 hallmarks were present in the specific case of the
12 Broadmoor.

13 So, literally, the amendment which I would
14 suggest is in the form of the bill on which we have had the
15 hearing, but it would simply remove this requirement of the
16 1969 Act with respect to the El Pomar Foundation and the
17 Broadmoor. I would think it would not be a burden on the
18 bill, at least I would hope that it would not, that it
19 could be added.

20 Mr. Chapoton. Senator, we did testify, and we did
21 object. I would just point out that there are a number of
22 private foundations that would like relief from the
23 divestiture requirements. They were considered onerous when
24 they enacted it, and many, many foundations have already
25 complied.

1 As I remember, this foundation has at least 10
2 more years to proceed with the disposition. I just do not
3 think we could exempt a foundation from the business
4 holding requirements without reexamining those requirements
5 as to all foundations.

6 Senator Armstrong. Mr. Chairman, in light of
7 what the Secretary has said, I would seek your counsel. I
8 haven't sought to introduce a broad-gage bill that would
9 exempt every foundation. I have introduced a bill that
10 would exempt one foundation, and only one. And we have had
11 a hearing on that.

12 Now, I can go back and introduce a bill that goes
13 beyond that so that we can have a hearing on that, if that
14 is the Secretary's indication or your pleasure. I've got a
15 very specific, admittedly parochial but nonetheless worthy
16 problem. Now, 10 years sounds like a long time, but it was
17 12 years ago that the Senate exempted, in the Senate-passed
18 version of that 1969 Tax Act, this specific situation, and as
19 a matter of fact, did so upon the motion of my predecessor
20 on this committee, Gordon Allen.

21 You know, I can certainly hold this at this time,
22 if that is your pleasure, but the circumstance isn't going
23 to change any next year; it really comes down to a question
24 of whether or not we want to do this or not. I would be
25 glad to make the case in full another day, or whatever you

1 think, but the argument that the Treasury makes, and I
2 understand their concerns, really just comes down to a
3 judgment factor. There is, so far as we are aware, no
4 revenue impact, because the hotel corporation is fully
5 subject to the income tax.

6 At the hearing the Chairman of the Subcommittee,
7 Senator Packwood, listened with interest to the
8 presentations on both sides, including the objection of the
9 Treasury, and then declared that at least he was persuaded
10 based on the testimony that the legislation was well advised
11 and he expected to support it.

12 So I would proceed however you think best. But
13 I wanted to surface the issue. I had hoped we could add it.
14 If we can't add it to the bill, I would like to add it to
15 the Durenberger basket. Or, if we can't add it to that,
16 I would like to add it to wherever it goes on.

17 The Chairman. I think, under the circumstances,
18 Biz, if we can pass what we have agreed to, we are going to
19 be short of a miracle. And I'm afraid if we take a
20 provision where Treasury has an objection -- I'm not
21 suggesting that the House will accept all of the things we
22 have agreed to. In fact, we have gone over a number of the
23 provisions with the House, and they have already indicated
24 they could not accept certain revisions we have adopted this
25 afternoon.

1 I would hope the Senator might save it. We are
2 going to have some bills next year where Treasury objection
3 will not be critical. I mean it is always reasonable, but
4 particularly critical now because of adjournment facing us
5 on Wednesday.

6 Senator Armstrong. Thank you. I will be happy
7 to do that, but I would ask this: Is it the desire of the
8 Chair under those circumstances that we have a hearing on
9 the broader issue? Or is that something you would like to
10 reflect on?

11 The Chairman. I think on the broader issue.

12 Senator Armstrong. I am willing to ask for a
13 broader issue, and yet I am reluctant to be in a position
14 of having to carry the mail for every foundation in the
15 country, because I don't know whether I'm even in favor of
16 it for every foundation.

17 I am well aware of the facts and have been for
18 many years involving El Pomar and the Broadmoor, and I'm
19 eager to help them because it's meritorious. I know the
20 people, I know the community, but I am not so sure that I
21 would even feel the same way about these others. But I
22 wouldn't want this bill to always be left on the back burner
23 for lack of a hearing on the broader question if that's
24 required.

25 The Chairman. I think Treasury would indicate

1 that they would like to hear the broader proposal.

2 Mr. Chapoton. Yes. Senator, the question was
3 much discussed in 1969 and has been much discussed since
4 then. I would point out that the business-holding
5 requirements do not prevent the charity from operating in the
6 community in such a way as it sees fit. It simply found
7 in 1969 that the conflict of interest could develop too
8 easily and, indeed, imposed a very stringent rule on all
9 foundations. And if we are to revisit that rule as to one,
10 I think we should revisit it to all.

11 Senator Armstrong. Mr. Chairman, I think we've
12 covered the ground; except I don't want to leave at rest
13 the final comment of the Secretary, because I just want to
14 note for his benefit and the committee's that the kind of
15 abuses which evidently were prevalent in many cases that
16 led to the Tax Reform Act of 1969, specifically, a foundation
17 controlled by family members or heirs or grantors, or
18 something else, none of those circumstances are present in
19 the El Pomar case. In other words, this is really a clean
20 deal, and none of the circumstances that led, properly so,
21 to the Tax Reform Act of 1969 were then or are now present
22 in the El Pomar situation.

23 Mr. Chairman, let me just take it down with that
24 much airing and ask for an opportunity to bring it up at the
25 right moment.

1 The Chairman. All right. Thank you, Senator.

2 I wonder now, before we conclude, if we have an
3 understanding of what we have here. As I understand, we
4 have approved the 14 amendments or 13 listed amendments plus
5 the amendment of Senator Packwood which was number 14,
6 on which there have been hearings and on which there is no
7 objection. Now, does the staff have a list of the other
8 amendments that have been agreed to?

9 Mr. Lighthizer. Plus we agreed to add, off of
10 item 14, a, b, d, e and f.

11 The Chairman. That's in H.R. 4961.

12 Mr. Lighthizer. That's right. Take those
13 provisions and add them as part of the committee amendment
14 with modifications on a and b.

15 Senator Matsunaga. Mr. Chairman, are you using
16 H.R. 4717 as the vehicle?

17 Mr. Lighthizer. That's correct, Senator.

18 The Chairman. Yes, that's right.

19 Mr. Lighthizer. But we're going to take these
20 other provisions off.

21 Plus, we have agreed to Senator Bradley's
22 amendment on the study by the task force on June 15th.

23 Mr. Chapoton. Bob, we agreed to just the task
24 force study -- not his amendment, but just a date on the
25 task force study that is already underway.

1 The Chairman. Right. I think he said that could
2 be done with one sentence.

3 Mr. Lighthizer. The Durenberger amendment on
4 mortgage revenue bonds, with the Chairman having the
5 authority to drop it off.

6 The Chairman. That's the same with reference
7 to a portion of Senator Symms' amendment on wraparound
8 annuities.

9 Mr. Lighthizer. Wraparound annuities. That's
10 right. The Senate Resolution.

11 The Chairman. A separate resolution on tax
12 service.

13 Mr. McConaghy. The only other one, I think, that
14 we have a question on is Senator Durenberger's on the NSRA
15 Awards.

16 The Chairman. I don't have any problem with that
17 amendment; I have a problem with the fact that they haven't
18 had hearings on the amendment. That's why I raised the
19 question.

20 Senator Matsunaga. And, Mr. Chairman, the
21 Matsunaga amendment, if it is determined that it is a mere
22 technical amendment, which should be agreed to by the
23 Secretary of the Treasury.

24 Mr. Lighthizer. And then, Mr. Chairman, the staff
25 would like to have the authority to make some technical

1 changes in the leasing reporting.

2 Mr. McConaghy. For example, leasing reporting,
3 we have a minor amendment, the Joint Committee Staff,
4 refined on Treasury's okay, and we would like that
5 technical authority.

6 The Chairman. Are there any other technical areas
7 that need to be addressed by the staff?

8 Mr. Chapoton. I would like clarification by
9 Senator Symms on the Section 6166.

10 The Chairman. Could I, just before we do that,
11 understand the status of the Durenberger amendment, the
12 second amendment? Is there some matter of urgency with that
13 amendment?

14 Mr. DeArment. Yes, Senator. If the amendment is
15 not adopted, then the existing provision will expire that
16 makes these particular National Research Service Awards
17 non-taxable.

18 Mr. McConaghy. So there is a date that we're
19 facing where there is going to be an expiration.

20 The Chairman. That makes them taxable?

21 Mr. Chapoton. They would become taxable next
22 year.

23 The Chairman. But they wouldn't pay their tax in
24 January, would they?

25 Mr. DeArment. There would be withholding

1 responsibilities on the part of the universities, I guess.

2 Senator Durenberger. Mr. Chairman, I didn't bring
3 it up to get around your rule.

4 The Chairman. No. Right.

5 Senator Durenberger. I wasn't even aware of the
6 fact we didn't have hearings on it.

7 Mr. McConaghy. It may be, Senator Durenberger,
8 that it's not needed, because the reason that made these
9 taxable was a string that was attached that they had to
10 perform research for the NSRA if, in effect, they didn't
11 have a project of their own. As we understand it, that
12 requirement has been eliminated as of 1981, and it may be
13 that as to 1982, if that is true, that there wouldn't be
14 the string that would make them taxable. But we're not
15 sure.

16 Mr. DeArment. Actually, what was eliminated was
17 an alternative requirement that they either serve in the
18 armed forces or in the National Health Service. I think
19 there still is a vague requirement of doing research. But
20 it's not in any particular university, it's just that they
21 engage in research.

22 Senator Durenberger. Maybe it is something we can
23 work with Treasury on.

24 Mr. DeArment. It may well be that if there were
25 an extension, or it may be that if they go back and apply

1 for a ruling with the Service, that the Internal Revenue
2 Service will agree that as a result of the reconciliation
3 changes that the result will be different than in the past.

4 The Chairman. Maybe we can do something in the
5 report language or something, so that we are not opening
6 up the floodgates for everybody else who has a nice
7 amendment but no hearings on it, sort of a protective
8 device, if that's all right.

9 Senator Durenberger. That certainly would be
10 agreeable to me. I brought it up only because it was a
11 reconciliation, and the time was running out.

12 The Chairman. Let's address it in that way.

13 Are there other areas in addition to the one
14 Mr. Chapoton wants to address in Senator Symms'? Are there
15 any other areas marked?

16 Mr. Lighthizer. No. I think maybe general
17 technical authority, because we are modifying some bills,
18 and we are going to have to do some drafting tonight.

19 The Chairman. Any objection?

20 (No response)

21 The Chairman. Without objection you'll have that.

22 Mr. Chapoton?

23 Mr. Chapoton. I just wanted to get it straight.

24 As I understand it, Senator Symms, there were three changes
25 that we were talking about in the declaratory judgment

1 provision in your bill. The first two would be very
2 technical. One relates to the "IRS can enter into a binding
3 agreement as to fair market value under 2832(a) regardless
4 of whether the executor has made the formal written request
5 for an IRS fair market value determination or not." We
6 wanted that, and I think you did, too.

7 Senator Symms. Yes.

8 Mr. Chapoton. For the second one, we would drop
9 one of the declaratory judgment questions, ergo, one of
10 the questions that could be decided by declaratory judgment,
11 that is the question concerning the amount of the adjusted
12 gross estate. And so the valuation question would be left
13 in the normal proceeding, but the question of whether this
14 was a business which qualified would be subject to
15 declaratory relief.

16 Senator Symms. I think that's correct.

17 Mr. Chapoton. The valuation question would not be
18 the question resolved by declaratory relief, but the
19 question whether it was a qualifying business, qualifying
20 interest, would be the question that would be raised by
21 declaratory relief or would be subject to declaratory
22 relief.

23 Senator Symms. Yes.

24 Mr. Chapoton. I'm sorry, I'm probably misleading
25 you somewhat. It would be the value of the adjusted gross

1 estate that would not be determined by declaratory relief;
2 it would be only the questions relating to the property
3 which it was claimed to be the closely-held business would
4 be subject to declaratory relief.

5 Senator Symms. Right.

6 Mr. Chapoton. All right.

7 Then, the third one was a very straightforward
8 question of whether the declaratory relief would be subject
9 to higher court review. We had preferred that it not be
10 subject to higher court review because, number one, we are
11 providing a forum for resolution of the question when the
12 IRS and the taxpayer disagree. If that subject were itself
13 subject to review, then we could have deferral, in fact,
14 whether or not the taxpayer prevailed.

15 We had thought that providing Tax Court judgment
16 whether or not the taxpayer was entitled to deferral should
17 be the question. And that would be it.

18 Senator Symms. So, what you are saying is that
19 the third part is the part. You see, I understood when
20 we went through this, Mr. Chairman, that the Secretary
21 had finally come around to my point of view on this. But
22 this is the only place in the Tax Code that I am aware of
23 where a person can't go to the Circuit Court and defend
24 themselves. Is this correct?

25 Mr. Chapoton. Well, it would certainly be one

1 of the few, if not the only. I can't say unqualifiedly,
2 Senator.

3 Senator Symms. Well, in a declaratory
4 judgment?

5 Mr. Chapoton. Right now, of course, solely IRS
6 makes that determination, and there is no review at all.
7 And you are adding review in the Tax Court. And we are
8 agreeing that we ought to try that. But we point out that
9 the question being reviewed is whether the taxpayer can
10 defer paying his tax. And if the review by the Tax Court
11 is also subject to review, then de facto deferral would be
12 obtained even if the taxpayer eventually lost.

13 Now, he would have to pay the higher rate of
14 interest during that period of time, but deferral is the
15 question.

16 Senator Symms. Well, is the taxpayer still going
17 to have to pay what he owes, or what he thinks he owes?

18 Mr. Chapoton. In any case, he has to pay what he
19 owes.

20 Senator Symms. Is it that big of an issue?

21 Mr. Chapoton. No. That is the issue, when he
22 pays it. He is going to have to pay the same amount. The
23 amount of liability involved is not at issue; the question
24 is when he pays it.

25 Senator Symms. Well, Mr. Chairman, I don't

1 want this to hold up the rest of the package; I just feel
2 that this judicial right question is one that we've got to
3 address, then, if we can't get it worked out this time. I
4 just think it's a bad policy for us to not allow that
5 taxpayer to be able to appeal his case.

6 But I'm sorry there was a misrepresentation. I
7 don't know what all the members of the committee think they
8 voted for when they accepted this.

9 The Chairman. It's hard to tell.

10 (Laughter)

11 Senator Durenberger. But I feel a little bit sad
12 about that.

13 Mr. Chapoton. Senator Symms, the appellate review
14 was in this legislation as it passed the House before, and
15 we think that's a better way to go. This is a new approach,
16 and we would think it a better way to go. We can always
17 come back and add appellate review if, for some reason, it
18 seems to be needed.

19 The Chairman. If we can work it out with the
20 drafting, that satisfying as nearly as you can Senator
21 Symms' desire.

22 Senator Symms. Senator Symms wants to pass the
23 part of the bill that we can get accepted, and we will try
24 to get the rest of it next year. But I feel a little bad
25 about the misunderstanding, because I do think that some of

1 the other Senators might have thought that they were
2 clarifying it.

3 The Chairman. Well, I wouldn't give up on it.
4 You may still be able to just authorize the drafters to try
5 to work the thing out. I don't know if anybody has any
6 objection to that.

7 Senator Symms. I would prefer not to give it up,
8 but I understand that the Secretary didn't understand what
9 we had in the amendment and what he thought he was agreeing
10 to. So I just don't want the misunderstanding.

11 The Chairman. Well, whatever you can work out, I
12 would be happy to include.

13 Are there any other matters that need to be
14 brought before the committee? I understand that there are
15 still the Durenberger and Symms, and other matters that we
16 will be discussing with the Secretary between now and
17 whenever this bill comes to the floor. You see, if the
18 House acts tomorrow, I assume if we are in late we could
19 act tomorrow night or Wednesday.

20 Mr. McConaghy. I think that's correct, Mr.
21 Chairman. We will draft tonight and hopefully be able to go
22 that drafting final tomorrow morning.

23 The Chairman. I guess in the meantime, just as a
24 suggestion, I assume we will be in contact with the House
25 to see whether they have strong objections to any of the

1 amendments we have adopted. But I would say again for the
2 record that every amendment, or the two that have been more
3 or less accepted -- three; Senator Matsunaga has one -- but
4 in one case we have had House hearings and no Senate
5 hearings. In every other case we have had Senate hearings,
6 no real revenue loss, no objection from Treasury, and
7 general agreement among members of the committee.

8 The hearing session will be adjourned.

9 (Whereupon, at 5:26 p.m., the meeting was
10 adjourned.)

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