

1 shown in his table on the first page. \$.1 million in health,
2 \$.2 million in income security, \$.3 million in revenue sharing.

3 In the case of health programs, you have already approved
4 more than \$700 million worth of savings. However, they are
5 offset by about \$100 million in proposed additional benefits.

6 The staff suggestion there is not to come up with new cost
7 savings initiatives, but simply to postpone for a few months
8 the effective date of the additional benefits and this will
9 bring you up to the \$700 million figure.

10 If you look at the table on page 2, the provisions that we
11 are talking about is the increased Medicaid matching for the
12 territories, the coverage of dental services under Medicare, if
13 they would have been performed by a physician; eliminating the
14 requirement of an x-ray in order to pay for a covered care of
15 subsection of the spine; new provisions relating to home
16 health benefits.

17 If you make all of those July 1st instead of October 1st,
18 1979 and December 1st, 1979 or April 1st, 1980 as in your
19 previous decisions, that would cut the new spending cost in
20 fiscal year 1980 by \$50 million and bring you to \$0.7 billion
21 rounded.

22 Our suggestion would be to postpone the effective dates on
23 those particular proposals.

24 The Chairman: Is there any discussion?

25 All in favor, say aye?

1 (A chorus of ayes)

2 The Chairman: Opposed, no.

3 (No response)

4 Mr. Stern: The second major area concerns income
5 security.

6 Senator Boren: Mr. Chairman, I wonder on the health
7 matter, on 934, if staff is aware that on Section 227 there is
8 a technical drafting change that needs to be made in regard to
9 the assurances that states would give on the nursing home
10 matter.

11 GAO recommended we put in "satisfactory to the Secretary"
12 and a couple of other technical changes.

13 I wonder if it would be appropriate to ask consent for the
14 staff to make those technical changes that were recommended by
15 GAO?

16 The Chairman: Is there any objection?

17 Without objection, agreed.

18 Mr. Stern: The next area, Mr. Chairman, is in the income
19 security area you have already saved money in proposals related
20 to the Aid to Families with Dependent Children program. These
21 suggestions are related to the unemployment compensation
22 program.

23 These are matters that Senator Boren had Subcommittee
24 hearings on, and you have discussed some of these to some
25 extent already.

1 number of people in jobs covered. It is a different concept
2 from unemployment in general.

3 This insured unemployment rate is not defined in the
4 statute. The way it actually has been applied by the
5 Department of Labor is to take into account not only the people
6 who are receiving regular unemployment benefits ---that is,
7 during the first six months of unemployment. They also add in
8 the number of people who are receiving extended unemployment
9 benefits, the seventh through ninth month.

10 This has the effect that once the extended benefit program
11 is triggered on in a state, that the insured rate of
12 unemployment jumps in that state because a new group of people
13 are added into that total. While it does not affect triggering
14 on, it does make the program trigger off just that much later
15 in the state.

16 If you were to say that the insured unemployment rate
17 would be defined as only including the people during the first
18 six months of receiving unemployment benefits, this would save
19 a substantial amount of money in fiscal year 1980 by causing
20 the extended benefit program to terminate that much earlier.

21 In the various states that are involved, the savings
22 related to that depend on what your economic assumptions are.
23 The administration's more optimistic economic assumptions would
24 have assumed a savings of \$0.7 billion.

25 If you use the more recent CBO estimates, it may be

1 something like \$400 million or \$500 million savings would
2 result in the current fiscal year.

3 Senator Ribicoff: The only suggestion I have, Mr.
4 Chairman, again, a person who is unemployed for the extended
5 period is certainly as unemployed as a person for the shorter
6 period.

7 I think that we are not looking at the realities when you
8 realize what is happening economically. Maybe Senator Bentsen
9 could enlighten us to a greater extent.

10 With steel and automobiles and everything that I can read,
11 you are going to go into a substantial recession into 1980 and
12 to chop these people off who are going to be very, very
13 seriously hurt I do not think is very wise and I believe that
14 we ought to take that into account.

15 Is there somebody here from the administration who handles
16 this phase of the problem that could talk to it?

17 Mr. Stern: Mr. Weatherford from the Labor Department is
18 here.

19 Senator Ribicoff: What is going to happen to these
20 people? I do not know what the Congress is going to do with
21 Chrysler. Chrysler aside, everyting I read, there has been a
22 fantastic drop in automobile sales and production that will
23 have repercussions in every state in the union.

24 You have the closing of these steel plants and the
25 difficulty with steel. You are going to have certain

1 communities in the United States actually devastated. What
2 will the impact of this be on them?

3 Mr. Weatherford: Senator Ribicoff, as Mr. Stern said, we
4 have proposed to make this change. Earlier in the year, in
5 trying to address what we considered to be some inequities
6 between the states and trying to recognize the fact that the
7 program was self-perpetuating, at the time that we published
8 those regulations for comment, a substantial amount, the
9 majority, I would say, of the comments recommended that we not
10 do that -- certainly not do that at this particular time.

11 It was for this reason that we in the Department have
12 deferred going ahead and publishing the regulations to
13 implement the change. We still believe that there is some
14 merit in making this change, but at this point in time, with
15 our economic assumptions and, as you well outlined, some of the
16 events in the automobile industry and steel industry, we have
17 chosen not to go ahead and implement that.

18 The Chairman: I want Mr. Stern to answer this question.
19 I want to get this thing straight in mind.

20 What is the trigger, the nationwide trigger that we have
21 for extended benefits?

22 Mr. Stern: A 4.5 percent insured unemployment rate.

23 The Chairman: A 4.5 percent insured unemployment.

24 Now, explain how this works in a state where the
25 unintended benefit would take effect?

1 How much uninsured employment would they have to have in
2 order to get the benefit from the extended programs?

3 Mr. Stern: In an individual state, the insured
4 unemployment rate has to be 4 percent. It has to be at least
5 20 percent higher than in the past two years.

6 Suppose that a state has now risen above that 4 percent
7 rate. What immediately happens is that this new group of
8 unemployed persons -- that is, the persons now getting benefits
9 under the extended program now get counted in for purposes of
10 determining that percentage.

11 That 4 percent jumps up a little bit higher than it would
12 be if you only count the people who are receiving the regular
13 benefits.

14 The Chairman: After you add those people into your
15 numbers, you trigger the program and you take a whole bunch of
16 people on the rolls, so after you trigger that program into
17 effect, you count all of these people that we did not have in
18 mind.

19 That makes you eligible for that program. At that point,
20 you can have what would have been the equivalent of 3 percent,
21 or even 2.5 percent uninsured, 2.5 percent insured, and you
22 would still get it where otherwise you would not be eligible
23 for the program unless you have 4 percent insured employment.

24 Would that be right?

25 Mr. Stern: Yes, sir. I do not know if there would be

1 that big of a difference, but there would be some difference
2 between. The program would otherwise have triggered out as of
3 such and such a date, but it continues on.

4 The Chairman: Under this provision in existing law -- and
5 it was an oversight. It was never intended to be this way --
6 under this provision, you could have a situation where, within
7 that state, you have actually got a labor shortage, but still
8 have the extended benefit program applying, could you not? At
9 least theoretically you could.

10 Mr. Stern: All right, yes.

11 Senator Ribicoff: Mr. Chairman, if you would yield, being
12 unemployed for a year is not theoretical at all. It is a very,
13 very drastic situation that is seriously affecting the people
14 concerned.

15 If there is one time you do not play games with formulas,
16 it is when people are out of work for extended periods on a
17 matter that is beyond their control. Especially when you take
18 the basic industries of this country, like steel and
19 automobiles, and I think that we should go very slowly
20 punishing that group of people and I do not think that this is
21 a question of one state or another.

22 If a person is unemployed for a year, he is unemployed
23 whether it is in Missouri, Mississippi, Louisiana, Connecticut
24 or Texas.'

25 Senator Moynihan is concerned with this. I have just

1 gotten word from the staff that he will be here in five minutes
2 or so and wants to be heard on this one.

3 If we are going to save money, if you are looking to do
4 something, let's not do it on the backs of people who are going
5 to be in a desperate plight with the economy.

6 It is not their fault that the automobile industry is down
7 or U.S. Steel is closing its plants. This is something that is
8 certainly beyond their control.

9 The Chairman: Senator Boren?

10 Senator Boren: Mr. Chairman, listening to what Senator
11 Ribicoff has been saying, I understand his concern and I think
12 Senator Moynihan has the same concern. I have talked to him.
13 They are particularly concerned about states where you have one
14 or two basic industries that may have massive lay-offs and they
15 do not want to delay triggering the benefits, those extended
16 benefits in those states.

17 I would suggest that weighing these two first proposals
18 that changing the definition versus eliminating the national
19 trigger, that eliminating the national trigger which is the
20 second one is a much less painful thing than the first one.

21 Let me explain the difference. If we change the first
22 one, we are talking -- let's say we have a state. Let's take
23 the case of two states. One of them has only a 2 percent
24 unemployment rate. They have virtually full employment.
25 There is not a severe problem.

1 The other one is approaching this 4 percent trigger
 2 figure or higher because the state's basic industry has been
 3 hard hit. If we change the formula as proposed under this
 4 first proposal, we will make the triggering of benefits in the
 5 state with the higher rate come in two or three months later
 6 perhaps.

7 I can see where that is a problem, as Senator Ribicoff has
 8 been saying in a time of economic uncertainty. On the other
 9 hand, if we just eliminate the national trigger, let's suppose
 10 one state gets up to 6 percent unemployment but the other is
 11 only at 2 percent. Let's suppose the national average gets up
 12 beyond this 4.5 percent.

13 Still, there is no reason to trigger the extended benefits
 14 in a state that has 1 percent unemployment.

15 I think that if we adopt the second proposal and defer
 16 action on the first where I recognize Senator Ribicoff's
 17 suggestion that it would protect those areas that have high
 18 unemployment, it would not change the formula at all. We do
 19 not trigger extended benefits in states that have virtually
 20 full employment. It may be sort of an oasis, probably taking
 21 Federal funds in my own state, in some cases.

22 It does not make any sense to trigger the extended
 23 benefits in states where the situation is prosperous, good,
 24 with relatively full employment.

25 I suggest we defer one and adopt two. That would answer

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1 Senator Ribicoff's concern.

2 Senator Ribicoff: Senator Moynihan is coming. I have a
3 note here and I will read it to you. I do not know if this
4 will satisfy.

5 Senator Moynihan will oppose the Committee's suggestion
6 and he will offer a compromise to get the Committee out of its
7 budgetary difficulties. He will suggest that you temporarily
8 for one year only, increase the national trigger level from 4.5
9 percent to 5 percent, or the IUR from 7.5 percent to 8 percent,
10 national unemployment in terms of people.

11 This would mean an additional 250,000 will have to become
12 unemployed before the national trigger will kick in.

13 Also, Moynihan's suggestion will still achieve the \$.3
14 billion in savings.

15 If Senator Moynihan's staff is here, have I properly
16 stated Senator Moynihan's position?

17 Voice: Yes, you have, sir.

18 Senator Ribicoff: By taking the Moynihan formula, you
19 will still achieve the .3 without doing undue harm to people
20 who are in an area of heavy unemployment, so unless you want to
21 wait for Senator Moynihan, that is his suggestion as I
22 understand it.

23 The Chairman: Senator Chafee?

24 Senator Chafee: I support Senator Boren's proposal. I
25 think we are getting into heavy weather here when we deal with

1 the first proposal and I think that the second one is very
2 fair. There is no point in having 2 percent unemployment state
3 move into the extended benefits just because the national
4 trigger is kicked in.

5 I support Senator Boren's suggestion.

6 Senator Ribicoff: I do not know if Senator Boren's is the
7 same as Senator Moynihan's. That is why I am holding up.

8 Your idea may be just as good. I would like to wait until
9 Senator Moynihan comes here.

10 Senator Bradley: Mr. Chairman?

11 I think the Moynihan proposal is tied into one's
12 expectation of what the insured unemployment rate will be in
13 the coming year. I wonder if there were any staff projections
14 on what that might be nationally.

15 If we are going to raise the figure from 4.5 percent to 5
16 percent what is the projection of what that unemployment rate
17 will be?

18 Mr. Stern: The difference between Senator Moynihan's
19 suggestion and Senator Boren's suggestion is under Senator
20 Boren's suggestion in no case would there be a national trigger
21 that would trigger benefits in every state, including ones with
22 relatively low unemployment rates.

23 Senator Moynihan's either saves us the \$300 million or
24 saves zero, depending on what happens nationally. If the
25 national insured unemployment rate gets to 5 percent then the

1 benefits get paid in every state.

2 Senator Bentsen: Would you repeat that last part on
3 Moynihan?

4 Mr. Stern: Under the present law, a 4.5 percent national
5 insured unemployment rate triggers extended benefits in every
6 state regardless of unemployment in that state. Senator
7 Moynihan's suggestion is to make that 5 percent instead of 4.5
8 percent.

9 If the insured unemployment rate gets to 5 percent then
10 you save nothing under Senator Moynihan's proposal because you
11 would still pay the benefits in every state. If the national
12 insured unemployment rate is somewhere between 4.5 percent to 5
13 percent, then you save just as much money under Senator
14 Moynihan as under Senator Boren because benefits would be paid
15 in no state compared with present law.

16 I do not think we have that projection. The
17 administration is relatively optimistic. Economic assumptions.
18 Would have no extended benefits paid anyway.

19 Senator Bentsen: The estimates we have had before the
20 Joint Economic Committee -- I am just not talking about insured
21 unemployment. I am not sure how that correlates. Perhaps you
22 can tell me.

23 The consensus of estimates gets us to an unemployment rate
24 in this country by the middle of next year between 7 and 8
25 percent.

1 Senator Bradley: That is not the insured.

2 Senator Bentsen: I said that.

3 Mr. Stern: The difference is 3 percent.

4 Senator Bentsen: I do not know how that correlates to the
5 insured Maybe you know.

6 Senator Bradley: That is what I asked.

7 Mr. Stern: 3 percent.

8 The Chairman: Senator Boren's situation makes so much
9 more sense than some of the others. We have some areas --
10 obviously this is not the case over the whole state, but we
11 have some areas in Louisiana where people are driving for 75
12 miles to go down there and take jobs because the jobs are
13 there. I am talking about places that are impacted because we
14 are trying to drill on the Outer Continental Shelf and develop
15 energy, so they are impacted.

16 Everybody who wants a job can have a job. They have signs
17 hanging out all over town and they are importing labor, 50, 75
18 miles a day. People are driving every day to go to work and
19 drive home.

20 So with a labor shortage here are people out of work, not
21 available to work, for one reason or another because they are
22 just laying there and enjoying that unemployment money. And
23 when you take the two sources of income, perhaps the wife
24 bringing in a paycheck or the wife drawing unemployment and the
25 husband bringing in a paycheck every day, take that all into

1 account and they have about as much income as they would if
2 they were working. You are paying the unemployment money to
3 keep them from taking a job.

4 And then to have a situation like that where we are
5 pouring the money out to keep them from taking jobs, to say
6 well, here, when as a practical matter you may be down to 2
7 percent uninsured, you have a labor shortage, still you are
8 putting out the money to keep folks from going to work.

9 That is totally self-defeating. It makes better sense to
10 say, sure, if you have a national trigger, to trigger the
11 program. That does not trigger in a state where you have a
12 labor shortage and that makes a lot more sense than the
13 alternatives.

14 Senator Bentsen: Senator Boren's suggestion is certainly
15 appealing. I agree there is no sense in extending the benefits
16 to a state that is not having a problem. In my state in
17 general it is not having a problem.

18 Let me ask you how it affects within a state. What
19 happens there?

20 Houston and Dallas, I would guess probably have 2 percent
21 unemployed. You go 500 miles south on the Mexican border, and
22 we run into -- I am not talking about insured again ---you run
23 into 10 and 11 percent unemployed. Is there anything to take
24 care of that or not?

25 Mr. Stern: Once the benefits trigger on a state, they

1 trigger on all of the states. Until then, they do not trigger
2 on anywhere in the state.

3 Senator Ribicoff: If you have abuses, according to
4 Senator Long, you have a problem. Let's change whatever the
5 rules and regulations to take care of it, but if you have a
6 state like California or a state like Texas with those vast
7 breeches, why should somebody along the Mexican border be
8 penalized if you have 10 percent unemployment because Houston

9 and Dallas 500 miles away does not have the problem?
10 I can understand even a state like Connecticut. It seems
11 to go from one section of a state to the other. I can see the
12 situation in Texas or California, the state of New York between
13 Buffalo and New York City.

14 Mr. Stern: Under present law, there is no distinction
15 within the state. You take the total state insured
16 unemployment rate under present law for purposes of Federal
17 matching.

18 Senator Bentsen: Would you speak up?

19 Mr. Stern: Even under present law, you look at each state
20 as a whole and the state either triggers on as a whole or not,
21 so that present law presently does not make a distinction
22 between one part of the state and another part.

23 Senator Baucus: Mr. Chairman, I was wondering, what was
24 the reason for the trigger in the first place? It has some
25 appeal as Senator Moynihan's proposal. There must have been

1 where you have a labor shortage. Then you will have this
2 program and they cannot get anybody to go to work.

3 The principal reason you cannot is you are paying out
4 unemployment benefits to people who should be working but
5 prefer to make it easy, stay at home, enjoy themselves.

6 Then on the other hand, you would make it even worse in
7 areas where they ought to have the benefit of the program to
8 take that alternative.

9 I think the Boren amendment makes better sense.

10 Senator Ribicoff: The only thing I disagree with the
11 Chairman on the assumption that everybody who is unemployed,
12 everybody on welfare, is a bum and no one wants to work. I
13 think there are things in unemployment and welfare that require
14 people to work if there is a job available, and I do not think
15 that we should go on an assumption that everybody unemployed is
16 basically unworthy.

17 Maybe a lot of people who do not work are unworthy. Let's
18 tighten up where you have to tighten up.

19 We are trying to do that in welfare and unemployment.

20 Certainly we are entering into a period of high
21 unemployment. I think that Senator Bentsen has indicated what
22 his studies indicate and show as Chairman of the Joint Economic
23 Committee. If we are reaching that situation, I think that we
24 should not be really legislating in a vacuum. We should
25 realize what this country is faced with six months down the

1 line and prepare for it.

2 The Chairman: In either case, the same problem is going
3 to exist. You have these two alternatives. One alternative is
4 to raise the national trigger which would mean, in areas where
5 you have high unemployment you would still have to have more
6 people out of work in order to get some benefit.

7 The other alternative is to say that you would save the
8 same amount of money by taking the view that if you have high
9 unemployment in one area and low unemployment in another area
10 you get the benefits where you have the high unemployment and
11 you do not get the extended benefits where you have the labor
12 shortage.

13 To me, that makes all the sense.

14 Senator Boren: I really think my proposal protects the
15 areas of the country where they are having economic problems.

16 The Chairman: The areas that need to get the help.
17 Obviously you are going to have individual cases where somebody
18 is out of a job and cannot find one. That is going to exist in
19 any event.

20 Senator Bradley: What is the insured unemployment rate
21 now? Does the Labor Department have that answer?

22 Mr. Weatherford: 3 percent.

23 Senator Bradley: 3 percent.

24 What, approximately, would have to be national
25 unemployment for the insured unemployment rate to get to 4.5

1 percent?

2 Mr. Stern: About 3 percent spread right now, so probably
3 7.5 percent to get 4.5 percent.

4 Senator Bradley: To 5 percent, it would be 8 percent?

5 Mr. Stern: About 8 percent.

6 Senator Bradley: What is the most pessimistic projection
7 for unemployment next year?

8 Senator Bentsen: The most pessimistic we had is we would
9 have 8 percent. The pessimism is almost a consensus.

10 Senator Bradley: I see.

11 The Chairman: Let's vote, as between the two. As far as
12 I am concerned, whichever way the Committee wants to go is all
13 right.

14 Let's just have a show of hands.

15 Call the roll. Those who favor the Boren approach, raise
16 your hand if you favor the suggestion made by the Senator from
17 Oklahoma.

18 (A show of hands.)

19 The Chairman: Those who favor the alternative approach?

20 (A show of hands.)

21 Senator Ribicoff: I have the proxies of Senators Gravel,
22 Matsunga and Moynihan.

23 The Chairman: Call the roll, then. Let's call the roll
24 on the Boren amendment, the Boren suggestion. If that does not
25 carry, we will try the other one.

1 Mr. Stern: Mr. Talmadge?
2 Senator Talmadge: Aye.
3 Mr. Stern: Mr. Ribicoff?
4 Senator Ribicoff: No.
5 Mr. Stern: Mr. Byrd?
6 Senator Byrd: Aye.
7 Mr. Stern: Mr. Nelson?
8 (No response)
9 Mr. Stern: Mr. Gravel?
10 Senator Ribicoff: No.
11 Mr. Stern: Mr. Bentsen?
12 Senator Bentsen: Aye.
13 Mr. Stern: Mr. Matsunaga?
14 Senator Ribicoff: No.
15 Mr. Stern: Mr. Moynihan?
16 Senator Ribicoff: No.
17 Mr. Stern: Mr. Baucus?
18 Senator Baucus: No.
19 Mr. Stern: Mr. Boren?
20 Senator Boren: Aye.
21 Mr. Stern: Mr. Bradley?
22 Senator Bradley: No.
23 Mr. Stern: Mr. Dole?
24 (No response)
25 Mr. Stern: Mr. Packwood?

1 Senator Packwood: Aye.
2 Mr. Stern: Mr. Roth?
3 Senator Roth: Aye.
4 Mr. Stern: Mr. Danforth?
5 Senator Danforth: Aye.
6 Mr. Stern: Mr. Chafee?
7 Senator Chafee: Aye.
8 Mr. Stern: Mr. Heinz?
9 (No response)
10 Mr. Stern: Mr. Wallop?
11 Senator Wallop: Aye.
12 Mr. Stern: Mr. Durenberger?
13 Senator Durenberger: Aye.
14 Mr. Stern: Mr. Chairman?
15 The Chairman: Aye.
16 Eleven ayes and six nays, so the suggestion is agreed to.
17 Do we have something we want to vote on here?
18 Mr. Stern: Yes, sir. There are some smaller provisions.
19 The next one is on the middle of page 3 and it deals with
20 benefit limitations for ex-servicemen.
21 A person who has been in the military service for 90
22 days is eligible for unemployment benefits if he leaves the
23 service. While the general theory of this is ending your
24 service in the military is not exactly a voluntary situation if
25 your enlistment is completed, however, there are many cases I

1 am told that something like 40 percent of the cases where the
2 person ends his enlistment substantially before the period he
3 enlisted for, and this is more in the nature of a voluntary
4 leaving.

5 One suggestion would be to say if a person has completed
6 less than five-sixths of his original enlistment that he would
7 not be eligible for unemployment benefits. This would save
8 about \$130 million.

9 The administration has said, since very often a person
10 applies for benefits in a state far from where he was on active
11 duty, it might save a lot of trouble if you simply changed the
12 qualifying period. Instead of saying, if you have been in the
13 service at least 90 days you would be eligible for these
14 benefits, to change that to a year so that a person who is in
15 the service for six months and then leaves with the mutual
16 agreement of the military service would not be eligible for
17 these unemployment benefits.

18 This approach would save \$90 million in fiscal year 1980.

19 The benefits for ex-servicemen are 100 percent Federal.
20 They are administered by the states but they are wholly Federal
21 benefits.

22 The Chairman: All in favor, say aye.

23 (A chorus of ayes)

24 The Chairman: Opposed, no?

25 (No response)

1 The Chairman: The ayes have it..

2 Mr. Stern: That would be the alternative approach.

3 On the top of page 4, most states --

4 Senator Boren: Mr. Chairman, would we want to stop and
5 vote on the servicemen?

6 Mr. Stern: We already did, Senator.

7 Senator Boren: I am sorry. I missed it.

8 Mr. Stern: On the top of page 4, most states do not pay
9 benefits for the first week of unemployment. There are twelve
10 states that do pay benefits for the first week of unemployment.
11 Nine other states will require people to wait a week before
12 they get benefits. After some period, that varies, they will
13 pay benefits retroactively for that week.

14 If all states were required to have that waiting week, the
15 cost of the program would be reduced by \$.1 billion, if you did
16 not allow any retroactive payments for the first week, that
17 would be another \$.1 billion.

18 If you did it that way, you would be doing it by
19 establishing a Federal requirement. If you would like to try
20 to achieve soemthing of the same result, you might simply say
21 for purposes of Federal matching benefits, matching for
22 extended benefits, that you would not pay benefits for the
23 first week after the individual exhausts regular benefits
24 unless there was a waiting week.

25 That would not save much money in the first year. It

1 would only save about \$20 million, but it would be a fairly
2 clear statement to the states that you would expect them to
3 modify their laws to establish that waiting week. That avoids
4 the problem of actually having a Federal standard in the law.

5 The Chairman: Mr. Boren?

6 Senator Boren: I might mention, Mr. Chairman, we have
7 done some research. States which have a one-week waiting
8 period where there is never compensation back or on the
9 committee, Alaska, Kansas, Oklahoma, Wyoming, there are several
10 other states that have variations -- Georgia, Hawaii, Louisiana,
11 Minnesota, Missouri, New Jersey, New York, Rhode Island, Texas,
12 Virginia -- the common variation is you cannot draw it for the
13 first week, but then later on if you qualify and then you draw
14 it for 20 weeks, some say 12, then you can get retroactively
15 your first week back.

16 There are only four states represented on the committee
17 that do not have the one-week waiting requirement: Wisconsin,
18 Pennsylvania, Delaware and Connecticut. The vast majority of
19 states, all but 12, have it. In some cases, if you do not get
20 your first week, but later on, if you are genuinely unemployed
21 you go in after looking for work for a week, start drawing your
22 benefits, and later on you retroactively get the week back.

23 I thought that may be of interest to some of the Committee
24 members to know which states have it and which states do not
25 have it.

1 The Chairman: How would you suggest we vote on it? Do
2 you have some alternative suggestions?

3 Senator Boren: What would the savings be if we just said
4 states? I know some people have a concern about mandating a
5 Federal mandate. I think the suggestion of Mr. Stern might be
6 a very good one, that we simply say, to qualify for the Federal
7 match, the states would have to have this. This avoids a
8 direct, Federal mandate.

9 The Chairman: It seems to me the simple way to do it is
10 just to say, if they want to pay for it out of their own money,
11 they can, but we are not going to match it.

12 Senator Boren: That is right.

13 Mr. Stern: Right.

14 Since the payment for the benefits under the regular
15 program comes from state funds, this assumes that you would do
16 it by not paying for the first week of extended benefits. It
17 really more or less sets a Federal policy. You do not save
18 very much in matching if the states do not make any changes.
19 Our estimate is just \$20 million.

20 It could very well lead states over the next few years to
21 change their state laws in response to this so they would not
22 lose that matching.

23 Senator Boren: That would avoid the philosophical
24 question of making a direct mandate. If you want to qualify
25 for the Federal share later on, you would have to adopt it.

1 The Chairman: If you are not going to save \$20 million,
2 why fool around with it? If you are going to save something,
3 save \$100 million or something.

4 Mr. Stern; This is a provision Mr. Chairman, that we
5 would say two or three years from now would be likely to save
6 you \$100 to \$200 million. This is one that does not save much
7 money in th immediate year, but would save more money as states
8 change their laws.

9 Senator Boren: Eventually it would come to \$100 million
10 to \$200 million. States are going to have to have time to
11 change their laws.

12 You start out with \$20 million this year.

13 Senator Ribicoff: Is not the National Commission supposed
14 to report on this in July, 1980?

15 Mr. Weatherford: Yes.

16 Senator Ribcioff: The National Commission that is
17 studying this is supposed to report back in July, 1980. My
18 understanding is that this will not save anything for 1980.

19 Mr. Stern: It is characteristic of the unemployment
20 program that you can only make major savings in the current
21 fiscal year on those programs that are directly federally
22 funded such as the national trigger or the ex-servicemen
23 program, so other types of changes you may achieve significant
24 savings but never in the first year.

25 The Chairman: Do I understand this would apply only to

1 the extended program and not apply --
2

3 Mr. Stern: The sanction that you would be using to try to
4 get states to change would be the extended benefit program. In
5 fact, what you would be trying to do is to change the regular
6 benefit program. To the extent they respond to their sanction,
7 the change would be in the regular program, not the extended
8 benefit program. That is simply a way of encouraging them
9 financially to make this change.

10 Senator Boren: I think it is worth doing, Mr. Chairman,
11 and I would move its adoption. I think we will have
12 significant savings on it. We are going to be looking at this
13 pension offset. \$20 million a year may help do what we want to
14 do there.

15 Senator Chafee: Mr. Chairman, may I ask a question? I am
16 not quite clear how this works.

17 Let's say a state has a week wait and then pays the 26
18 weeks. Then that is one of the states that pays back the week
19 that they waited. You mentioned that there is a group that does
20 that.

21 Now you go to the extended 13 weeks. What happens?

22 Mr. Stern: The Federal government would not match for the
23 first week of those 13 weeks. The Federal government would
24 only match for 12 out of the 13 weeks in that state until the
25 state changes the law to remove that retroactivity.

Senator Chafee: I see.

1 This is in the case of a state that paid back?

2 Mr. Stern: That is correct.

3 Senator Chafee: The same thing would apply to the state
4 who paid the first week?

5 Mr. Stern: Again, the Federal government would only pay
6 for 12 of the 13 extended benefit weeks until the state changed
7 its law to establish a one-week waiting period.

8 Senator Chafee: I see.

9 Senator Boren: I might say in Rhode Island, yours is a
10 different variation still. Yours is not retroactive. You do
11 have the one week waiting period. The only case is, it is a
12 retroactive later if it is due to a state of disaster or
13 emergency declared by the Governor, which is kind of a natural
14 disaster type variation which is unique in all the states.

15 Senator Chafee: We do not pay back under most
16 circumstances?

17 Senator Boren: You do not, under most circumstances.

18 The Chairman: Those in favor of the proposal, say aye?

19 (A chorus of ayes)

20 The Chairman: Opposed, no?

21 (No response)

22 The Chairman: The ayes appear to have it. The ayes have
23 it.

24 What is the next thing?

25 Mr. Stern: The next item is in the middle of page 4.

1 Under the extended benefit program, under the state trigger as
2 I mentioned before, the state has to have a program if the
3 insured unemployment rate is at least 4 percent and 20 percent
4 higher than under the previous two years. However if a state
5 does not have unemployment that is higher by 20 percent in the
6 preceding two years, it may, at its own option, have a program
7 if its insured unemployment rate is at least 5 percent.

8 That is a flat figure. The state either establishes a
9 program at 5 percent or none at all.

10 The suggestion here is that you allow the states the
11 additional flexibility if they wish to establish a program at
12 any percentage rate at 5 percent or higher. If a state does
13 not have a program and they want to have one at 6 percent or
14 have one at 5 percent, or rather have it at 5 percent, or so
15 on, you would allow the states that much flexibility.

16 Here, again, the savings in the current fiscal year are
17 probably going to be quite small. If every state went to 5, to
18 6 percent, it would be \$30 million but we would not expect that
19 to happen.

20 However, in fiscal 1981, your savings could be somewhat
21 higher than that.

22 The Chairman: I do not see any point in getting involved
23 in it if it is only going to be a small savings. It seems to
24 me we could let that one wait.

25 Mr. Stern: This would allow a state a greater measure of

1 flexibility if they wished in establishing --

2 The Chairman: Is that optional with the states?

3 Mr. Stern: It is optional with them now to have a program
4 triggering at 5 percent, but no other figure.

5 This would allow them to trigger.

6 The Chairman: Are you saying we may save additional money
7 by an additional option?

8 Mr. Stern: That is correct.

9 Senator Chafee: Give them the option. Why not?

10 The Chairman: All in favor, say aye.

11 (A chorus of ayes)

12 The Chairman: Opposed, no?

13 (No response)

14 The Chairman: The ayes have it.

15 What is next.

16 Mr. Stern: The item two-thirds of the way down the page
17 relates to the Federal unemployment benefit program.

18 When Federal employees become unemployed, those benefits
19 are paid out of a fund that does not relate to the actual
20 employer or the agency employing them. The suggestion here is
21 to give the Federal agency the same kind of incentive as
22 employers have in private industry by requiring the agency that
23 the individual worked for to reimburse a special account for
24 the benefits paid to the individual employee so that, like
25 private employers, the agency will have to pay out of its own

1 appropriation for the person who becomes unemployed.

2 This would hopefully give the agency somewhat of an
3 incentive to reduce employee turnover or just monitor claims
4 for unemployment that are made against them, to be sure that it
5 is a bona fide claim, just as an employer in private industry
6 does. The savings are estimated at \$11 million. That is
7 entirely a Federal program.

8 The Chairman: Is there any discussion?

9 Senator Chafee: Is this not kind of fraught with
10 problems?

11 Here, you want to cut back an agency, and
12 to have them pay into that fund, something that they do not do
13 now.

14 The approach in private industry and the government are
15 two different things. In private industry, you are trying to
16 encourage them to have employment to stabilize it, not to lay
17 people up. In government employment, I am not sure we want
18 every incentive for them to keep every employee they have.

19 Mr. Stern: It is all Federal money in any case and this
20 money would presumably come out of the appropriation that they
21 might otherwise spend on salaries for other people so the
22 agency would have an incentive for insuring that when one
23 claims they are unemployed, they are unemployed involuntarily,
24 that the agency would have some interest in contesting that
25 claim if the situation were not true.

1 Otherwise, they would have to take it out of money they
2 could spend on their own salaries.

3 Senator Chafee: That point makes sense, that last one.

4 The Chairman: Those in favor of the proposal say aye.

5 (A chorus of ayes)

6 The Chairman: Opposed, no?

7 (No response)

8 The Chairman: The ayes appear to have it.

9 Mr. Stern: The last item is one that actually costs
10 money which would probably offset the savings that you have
11 achieved.

12 This relates to a case where a person is receiving a
13 pension based on recent employment.

14 The present law, which goes in effect next April, says
15 flat out, any pension that you receive offsets unemployment
16 benefits dollar for dollar. That was done because the Congress
17 decided a few years ago it did not want a situation where a
18 person retires in the ordinary course of things and receives
19 unemployment benefits since their unemployment is really not a
20 situation of involuntary unemployment as much as retiring.

21 The actual provision, which the required dollar for dollar
22 offset, is probably too harsh because you could have situations
23 where people have small pensions based on much earlier
24 employment, where it is not affected one way or the other by
25 their later employment.

1 The suggestion here is that you replace the provision of
2 present law with this dollar for dollar reduction by making it
3 only a dollar for dollar reduction when a person receives a
4 pension paid for by the employer that he worked during the
5 period of employment which is used for unemployment purposes.

6 If a person retires from an employee and receives a
7 pension benefit, then you have the dollar for dollar offset.
8 If he has a pension based on previous employment from five or
9 ten years back, that would not count for this dollar for dollar
10 purpose.

11 That would increase the cost by \$100 million in fiscal
12 year 1980.

13 This is a provision that the administration recommends, and
14 it has been reported by the Ways and Means Committee. Your
15 savings here could offset the cost of that.

16 Senator Talmadge: Is there any discussion? Is there any
17 objection?

18 Without objection, it is agreed to.

19 Mr. Stern: That would give you a net savings now of,
20 roughly speaking, \$325 million. Our suggestion that you might
21 want to consider, using these unemployment savings as a
22 committee modification of the Trade Adjustment Assistance bill
23 that is on the calendar, the only other bill that actually
24 deals with the subject of unemployment.

25 Senator Talmadge: Is there any objection?

1 Without objection, agreed to.

2 Senator Chafee: Mr. Chairman?

3 Senator Talmadge: Senator Chafee?

4 Senator Chafee: Could I go back to that previous one that
5 went through?

6 Senator Talmadge: Certainly, sir.

7 Senator Chafee: You take the situation. We are talking
8 about a pensioner who works for Company A. He works for the
9 government, gets a pension from the Navy, say, retires and goes
10 to work for Company A.

11 He builds up a pension there. Let's say that he
12 contributes half to that pension. Then he retires and he goes
13 to collect. It is clear that the Navy pension does not count.

14 Mr. Stern: That is correct.

15 Senator Chafee: Let's say he goes to collect and you are
16 saying his pension from this company is \$100 a month.

17 The Chairman: Could I interrupt for a second, because the
18 Senate is meeting and they have a Finance Committee bill being
19 considered there, I have to go. I will leave Senator Talmadge
20 presiding until I get back.

21 Senator Ribicoff will try to come over and relieve me
22 as soon as he can, but he is interested in a number of items
23 here on this calendar and I hope, Senator Talmadge, you will
24 try to see that he gets his matters considered so he can come
25 on over and relieve me. He can leave his proxy if need be, and

1 I will come back and join you as soon as I can. One of us has
2 to be over there on the Floor.

3 Go right ahead, Senator.

4 Senator Chafee: So he collects his pension of \$100 a
5 month, of which he has contributed half. Now, under what we
6 just did, that \$100 would be offset against what he collects.

7 Mr. Stern: In unemployment benefits, that is correct.

8 Senator Chafee: Is there not a difference between the
9 fellow who retires and does everything exactly the same except
10 has not contributed at all to his pension and is getting \$100?
11 It seems to me that the fellow who has contributed one-half to
12 his pension is being unfairly penalized. He is just getting
13 back what he put in. It is not a company pension.

14 Mr. Stern: When Congress enacted this provision in 1976
15 that called for a dollar for dollar offset, it did so on the
16 basis that unemployment benefits are supposed to reimburse you
17 for loss of income that you incur from being unemployed
18 involuntarily. Retirement is not in that category.

19 There is no reason to pay unemployment benefits to a
20 person who reaches 65 and retires and gets a pension.

21 Senator Chafee: That is a different philosophy. If you
22 argue that philosophy, that is a different point, but we do not
23 seem to be arguing that philosophy here.

24 Whether somebody -- whether a pensioner should collect
25 unemployment compensation I think is open to discussion but you

1 have jumped over that and you have decided he can collect.

2 It seems to me that the fellow who has contributed half to
3 his pension as opposed to the fellow who has contributed
4 nothing, you are treating them the same and I am not sure that
5 is quite fair.

6 Mr. Stern: Senator, I stand corrected. The way this
7 reads, "receives a pension paid for by the employer." Maybe we
8 should spell it out a little bit more. I gather that the House
9 provision does, indeed, only count the employer contribution
10 portion of the pension.

11 Am I correct about it?

12 Mr. Weatherford: That is correct. The contribution that
13 he makes, only taking that into account what the employee has.

14 Senator Chafee: All right.

15 Senator Talmadge: If that is agreeable to you, Mr.
16 Chafee.

17 Senator Ribicoff?

18 Senator Ribicoff: I have not asked for this preference,
19 but the Chairman wants me to be on the Floor.

20 Senator Talmadge: We are ready to take up these bills on
21 the agenda now.

22 Mr. Stern: The last item, if you want to take it up --

23 Senator Talmadge: How long will that take?

24 Mr. Stern: It relates to the state portion of general
25 revenue sharing.

1 Senator Talmadge: Let's take up Senator Ribicoff's
2 matters first, then, and go back to that.

3 Senator Ribicoff: Mr. Chairman, the first item on the
4 agenda is for United States-People's Republic of China trade
5 agreement. I do not think the Committee is ready to consider
6 this at the present time.

7 Senator Roth and I have asked for additional information
8 from the administration, but it has not been forthcoming. When
9 it is forthcoming, it will then be submitted to the Committee.

10 I would suggest we pass that over.

11 Senator Talmadge: No objection in passing that over.

12 Senator Ribicoff: On S. 873 relating to tax treatment of
13 Americans working overseas, who are forced to return to the
14 United States, I understand that this has Treasury and staff
15 approval.

16 The only request that I would have here, it is my
17 understanding that the House Ways and Means Committee has
18 approved similar legislation instead of putting it on an
19 omnibus bill, that we wait until the House bill comes over here
20 and take it up as a part of the House bill.

21 Senator Talmadge: Without objection, that will be done.

22 Senator Ribicoff: The next item is an amendment to
23 Section 401(k) of the Internal Revenue Code to cover
24 money-purchased pension plans. It is my understanding that
25 Treasury approves of it but has worked out other language and

1 the Treasury language is satisfactory to me.

2 If there is no objection to it --

3 Senator Talmadge: Without objection, agreed to.

4 Senator Ribicoff: Senator Percy asked me to bring up a
5 matter on H.R. 4746. Is it the intention to bring up H.R.
6 4746? Does the staff know about this?

7 . . Does the staff know whether it is the intention to bring
8 up H.R. 4746?

9 Mr. Shapiro: We are aware of the provision you have. If
10 that does come up, the Committee deals with that provision, we
11 will bring it up, the matter you have.

12 Senator Ribicoff: I told Senator Percy I would submit it
13 for him. Let me see.

14 My understanding from my own staff, have we covered
15 everything?

16 Senator Durenberger, you are bringing up the problem of an
17 amendment to extend the time not qualifying wills may be
18 conformed. Are you bringing that up?

19 Senator Durenberger: Yes.

20 Senator Ribicoff: I go along with Senator Durenberger on
21 that.

22 I thank you, Mr. Chairman.

23 Senator Talmadge: Thank you, Senator Ribicoff.

24 I would like to return to the revenue sharing matter.

25 Mr. Stern: As we add up what you have done already in the

1 health and unemployment area, that would leave approximately
2 \$225 million to achieve what is set out in the budget
3 allocation report. The write-up here talks in terms of cutting
4 the payment to the state for revenue sharing in April and July
5 by 25 percent. You could get \$225 million by cutting it by 20
6 percent.

7 What this assumes, then, of the four payments that are
8 made for fiscal year 1980, you take the payments that are made
9 in April and July for the previous quarters and you cut each of
10 them for the states by 20 percent. That would save the
11 remainder of the money, a total of \$225 million.

12 If the Committee agrees on doing that, you might want to
13 put that on as a floor amendment to the countercyclical revenue
14 sharing goal when that comes over from the House.

15 Senator Talmadge: That will solve the item of the Budget
16 Committee's mandate.

17 Mr. Stern: That is correct.

18 Senator Talmadge: Is there objection? Without objection,
19 agreed to.

20 Senator Danforth: Mr. Chairman?

21 Senator Talmadge: Senator Danforth.

22 Senator Danforth: Mr. Chairman, I would just like, at
23 this time, to flag a problem with this that is of concern to
24 me, but I do not know what we can do about it. That is the
25 particularly harsh effect that this is going to have on the

1 non-oil producing states.

2 What we are doing here is to reduce the total amount of
3 the fund available to all of the states for general revenue
4 sharing. The revenue sharing formula is comprised in part of
5 total state tax effort and therefore, in determining how the
6 allocation of the total fund is made between the states, among
7 the states, one of the aspects of the formula is the total tax
8 effort of each state.

9 To the extent that the state has a high tax effort, high
10 tax receipts, that state is going to receive a relatively large
11 portion of the total revenue sharing funds.

12 On the other hand, a state that does not keep up with
13 these state tax receipts will not do so well.

14 One of the effects of the decontrol of the price of oil is
15 that state severance taxes for oil producing states will go up
16 quite markedly, \$95 billion between now and 1990. Already
17 state severance tax receipts have gone up.

18 My concern is that this is going to be a really double
19 whammy on the non-oil producing states who at one and the same
20 time are going to have the total amount to be distributed to
21 all states and secondly they are going to be relatively worse
22 off due to the fact that the total state tax effort is going to
23 be increased by those states which have a higher severance tax
24 receipt.

25 I do not have any proposal for how to deal with it, but I

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1 did want to express my concern.

2 Senator Moynihan: If the Senator would yield, the Senator
3 has made an important point. I wonder if it would not be
4 possible to have the Committee staff estimate what will be the
5 effects of the anticipated increase in oil revenues on the
6 state shares of the revenue sharing given the current fixed
7 amount in as much as there is not going to be any increase in
8 the amount.

9 If there is no increase in the amount, the states without
10 oil revenue will lose on revenue sharing and the states who
11 have the paradoxical situation that the windfall tax profit,
12 you might say, of these states will increase their revenue
13 sharing.

14 Senator Danforth: That is right.

15 Senator Moynihan: It would be nice to see how much that
16 comes to, and raise the question of whether there ought to be
17 some compensatory adjustment.

18 Senator Talmadge: Senator Chafee?

19 Senator Moynihan: Mr. Chairman, I would like to ask,
20 could that be done?

21 Senator Talmadge: Without objection, that will be done.

22 Senator Bentsen: Well, if we are going to do that, let's
23 go and get some others. Let's talk about doing it on coal,
24 because I know of a number of the states who are raising a
25 severance tax. My own particular state has one, as I recall,

1 of about 4 percent on oil. On coal, it is getting up to as
2 high as 30 percent.

3 So if we are going to talk about some of these minerals
4 and what is happening to the price of minerals, let's run the
5 study.

6 Senator Talmadge: If the Senator would yield at that
7 point, you want all minerals that might be subject to a
8 decontrol, the same study made in that that will be made on
9 oil.

10 Without objection, that will be done.

11 Senator Chafee?

12 Senator Chafee: Mr. Chairman, I would just like to
13 complement Senator Danforth for bringing this to our attention.

14 This has incredible wrenching effects on the revenue
15 sharing. We are working with a uniform piece of pie.

16 That piece of pie is not growing. If the tax effort
17 includes this -- is that correct, Mr. Stern? That it would
18 include the income from the royalties or the severance taxes?

19 That would have incredible distortions in the distribution
20 of the constant size piece of pie which is the revenue sharing
21 amount. Is that correct?

22 Mr. Stern: We should point out that the revenue sharing
23 act itself terminates at the end of the current fiscal year, so
24 you will have another chance to look at that question.

25 In other words, this would not happen for years into the

1 future. The program itself does expire October, 1980. If you
2 did not do anything, if you just extended the program.

3 Senator Chafee: Revenue sharing comes up for us to
4 reconsider, the whole thing.

5 Mr. Stern: Yes, sir.

6 Senator Chafee: What about the distributions in 1980? Is
7 the tax ever based to terminate in 1979 for the distribution of
8 the revenue sharing in '80?

9 Mr. Stern: It is based on data that already would have
10 been collected. I do not think that there would be much effect
11 on the payments going on now.

12 Senator Chafee: I see.

13 Senator Bentsen: I think there is a simple solution to
14 this thing. Let's cut out revenue sharing for the states.

15 Senator Talmadge: Senator Baucus is seeking recognition,
16 then Senator Heinz.

17 Mr. Stern: Should we take up the tariff matters? I say
18 that --

19 Senator Heinz: Wait a minute.

20 Senator Talmadge: We have three Senators seeking
21 recognition. I wanted to recognize them before we proceed with
22 the agenda.

23 Senator Wallop, Senator Heinz, Senator Packwood, in that
24 order.

25 Senator Wallop is recognized.

1 Senator Wallop: Mr. Chairman, if I could have Senator
 2 Boren's attention for just a minute, I supported your amendment
 3 on eliminating the national trigger. I wanted to point out
 4 something and see if there is something that the staff
 5 recommended. I think that there needs to be some relief for
 6 employers in states who do not trigger into the extended
 7 benefits program, assuming that the national trigger is
 8 eliminated, that they should enjoy some increased offset from
 9 the fruit of their Federal unemployment tax, so that they do
 10 not end up paying for the unemployed people from the other
 11 states.

12 I think that is a consequence that is unattended by your
 13 amendment. Unless we do something, probably it will happen.

14 Under present law, every employer pays at a rate of 2.7
 15 percent plus .7 percent for extended benefits for a total of
 16 3.4. Employees all get a 2.7 percent offset for Federal tax
 17 paid for regular benefits.

18 Thus, requiring all employers to pay .7 percent of the
 19 first \$6,000, employers in states who do not trigger under
 20 extended benefits should get some equitable relief from their
 21 tax either in the form of increased tax credits or reduced tax
 22 liability.

23 Mr. Stern; I would mention that it is a feature of
 24 present law that the extended benefit program, 50 percent
 25 Federal, is paid for at a uniformed percentage rate by

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1 employers in all states. The only effect of Senator Boren's
2 amendment would be to decrease the cost of the program.

3 Therefore, I hasten the day when that tax rate is reduced.

4 Senator Wallop: You do not think --

5 Mr. Stern: This would be a fundamental change in the
6 financing of the extended benefit program. It would vary from
7 state to state.

8 Senator Boren: Senator Wallop, what you are saying has
9 some merit. We would be glad to study it.

10 I hesitate to try to write a provision now, not knowing
11 all of the financial impacts that it might have, but what you
12 have said is accurate. We are reducing the cost of the
13 extended benefit program nationwide. All employers would get
14 some benefit from that.

15 Mr. Stern: They would get a more direct benefit for the
16 50 percent state share. To the extent that there is not a
17 national trigger, therefore, benefits do not trigger on in a
18 state with lower unemployment, they would not pay the state
19 share of those benefits, too.

20 Senator Boren: You are suggesting a change of another
21 nature in the existing law. I think perhaps it might be better
22 for us to look at that as a separate item, kind of like the
23 things Senator Bentsen talked about, about pockets of
24 unemployment within states, that sort of thing.

25 Senator Wallop: Let me say this. To the extent that we

1 put a little more study into it if it gets to the Floor, we
2 might propose something that is equitable.

3 Senator Boren: We will certainly work on it. I think the
4 principle you raised has a lot of merit to it.

5 Senator Wallop: Thank you.

6 Senator Talmadge: Senator Heinz.

7 Senator Heinz: Mr. Chairman, I just wanted to express my
8 concern about the reduction in the state share of revenue
9 sharing. In the event we proceed with that, I want to be
10 recorded as being against it.

11 Senator Danforth has expressed some of my grave concerns,
12 and I commend him.

13 Senator Talmadge: Senator Heinz will be recorded in the
14 negative.

15 Senator Heinz: Not unsurprisingly for him. He made a
16 particularly articulate statement.

17 Senator Talmadge: Senator Packwood?

18 Senator Packwood: I would like to take care of a clerical
19 error.

20 Last August, we passed out S. 100, a reforestation bill
21 that most of us are cosponsors of. I made sure on the Budget
22 Committee there was room in the budget. There is. They have
23 accommodated it.

24 We have left off this chart, however, an accommodation for
25 it on a reconciliation and it should simply read "Natural

1 resources reforestation" and an asterisk under new legislation
2 because it is less than \$50 million, a \$30 million cap, but it
3 was just an error.

4 It requires no budget approval and will not require a
5 budget waiver.

6 Senator Talmadge: I do not know what you are talking
7 about, Senator.

8 Do you know, Mike?

9 Mr. Stern: The Committee had earlier approved a provision
10 by Senator Packwood that does not fit into any of the usual
11 categories of Finance legislation and we simply omitted to
12 include a separate line for this reforestation fund. The
13 amount of money involved is \$30 million and the allocation
14 report is in terms of tens of billions so it does not even
15 round to one-tenth of \$1 billion.

16 It was just left out of the report.

17 However, we always include a flexibility paragraph in the
18 allocation report that says within the total, the Committee
19 might change in terms of legislation it reports out, so I am
20 sure it can be accommodated.

21 Senator Talmadge: Is that agreeable to you, Senator
22 Packwood?'

23 Senator Packwood: That is fine, as long as when I bring
24 it up that we previously had made room for it and it was an
25 error in leaving it out.

1 Senator Talmadge: Without objection, it will be done.

2 Senator Wallop: May I just point out, even having been
3 now a year on the Finance Committee that I find it rather
4 startlingly to say that only amounts to one-tenth of \$1 billion
5 which in layman's terms is only \$100 million, forget it.

6 Senator Talmadge: Let's proceed to the next item, Mr.
7 Stern.

8 Mr. Stern: The next item, item number three on your
9 agenda, in Document No. B, it relates to a meat import quota
10 modification bill which has now passed the House. There have
11 been hearings held on the Subcommittee and so it has been put
12 on the agenda.

13 Senator Bentsen: Mr. Chairman, let me say that it is very
14 similar to a bill that you and I and a number of other members
15 of this Committee had sponsored, very similar to the bill that
16 we passed through this committee and through the Congress last
17 year.

18 The President vetoed it and we made a minor change in the
19 President's discretion.

20 We arrived at a reasonable solution that will give some
21 stability to prices on beef for the consumer and for the
22 producer.

23 The Secretary of Agriculture has urged that we get it
24 passed in time so that they can set the quotas for the new
25 year.

1 I would strongly urge, there is so little difference
2 between our bill and the House bill and the have adopted the
3 compromise language on the Presidential discretion. They have
4 taken a billion and a quarter pounds as a target.

5 I would urge we go ahead and pass it out.

6 Senator Talmadge: Is there any objection?

7 Senator Chafee: Mr. Chairman?

8 Senator Talmadge: Senator Chafee?

9 Senator Chafee: Is this the bill we had considerable
10 debate with on the Floor last year, Senator Bensen?

11 Senator Bentsen: We did have some debate -- no. We did
12 not have debate on the Floor. We had extended hearings here,
13 but we did not have extended debate on the Floor.

14 Mr. Foster: This bill passed last year the Senate, H.R.
15 5052, a prototype of this bill without debate.

16 In the last days of the session, it came back to us as
17 H.R. 11545.

18 Senator Bentsen: We passed it at 5:00 in the morning.

19 Mr. Foster: Right. There was not extended debate at that
20 time. It was vetoed by the President, but his objections have
21 been taken care of in H.R. 2727, as it passed the House and the
22 administration is now supporting the bill and asks that it be
23 passed as soon as possible.

24 Senator Talmadge: Is there objection? Without objection,
25 it is agreed to.

1 Mr. Stern: The next item, I take it that the agreement is
2 to order the bill favorably reported without amendment.

3 The next item, number four on the agenda --

4 Senator Talmadge: Is that not the one that went over?

5 Mr. Stern: Senator Ribicoff has asked to go over on item
6 number 5. Staff Document D, a series of minor tariff matters.

7 Mr. Foster: All of these bills have passed the House and
8 cleared the committee. With one exception they are
9 noncontroversial bills and no objections to them have been
10 received by the Finance Committee. The bills were all subject
11 to hearings in the House and were passed on the suspension
12 calendar of the House.

13 If the Chair wishes, I can run through briefly the
14 provisions of each of these bills.

15 Senator Talmadge: Is there any objection to agreeing to
16 them in block?

17 Senator Danforth: Mr. Chairman?

18 Senator Baucus: Mr. Chairman?

19 Senator Talmadge: Senator Baucus?

20 Senator Baucus: There is one here regarding the Customs
21 Court that I will not object to or vote against at this point.
22 However, I respectfully reserve the right to offer an
23 amendment, perhaps -- I am not sure whether I will do so
24 ---concerning the jurisdiction of District Courts regarding
25 trade adjustment decisions by the Department of Labor and the

1 Department of Commerce.

2 It is a question I am going to look into.

3 At this point, I have no objection.

4 Senator Chafee: Could he just briefly tell us what they
5 do?

6 Senator Talmadge: Tell us what they do, then.

7 Mr. Foster: H.R. 1212 would provide duty-free treatment
8 for carillon bells for the University of Florida, a nonprofit
9 institution.

10 Senator Talmadge: Is there objection?

11 No objection, agreed to.

12 Mr. Foster: 1319, provide dutyfree entry of telescope and
13 other articles for use of the international telescope project
14 in Hawaii.

15 Senator Talmadge: Any objection?

16 Without objection, agreed to.

17 Senator Danforth?

18 Senator Danforth: I would like to raise one question.

19 One thing we have done on these tariff bills in the past that
20 we might consolidate them so we can have some House bills?

21 Mr. Stern: Our recommendation would be whatever you
22 approve substantively, you put on H.R. 31122 and keep all the
23 bills in Committee.

24 Senator Talmadge: Is there objection?

25 Without objection, it will be done.

1 Proceed.

2 Mr. Foster: H.R. 2297 would reinstate a previous
3 suspension on synthetic retille. It is a titanium ore made to
4 use titanium dioxide pigments for paint coatings, that sort of
5 thing.

6 Senator Talmadge: Is there objection?

7 Without objection, agreed to.

8 Mr. Foster: H.R. 3122 is a composite bill containing six
9 parts all of which passed the House and Senate last year but,
10 in the last rush for adjournment, failed enactment because of
11 miscellaneous amendments put on them that were not germane to
12 the bill.

13 These have all passed both House and Senate last year.

14 The first part is certain dyeing and tanning materials.
15 There is almost no U.S. production and the bill would provide
16 for permanent duty-free treatment for these imports.

17 Senator Talmadge: Is there any objection?

18 Without objection, approved.

19 Mr. Foster: The second section relates to wood excelsior
20 made for filters, padding, that sort of thing. It would
21 suspend the duty on MPN imports until June 30, 1981.

22 Senator Talmadge: Any objection? Without objection, it
23 is agreed to.

24 Mr. Foster: The third, soluble nitrocellulose used in
25 laquers and finishings for furniture, provide temporary

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1 duty-free treatment for MFN imports until June 30, 1980.

2 Senator Talmadge: Without objection, it is agreed to.

3 Mr. Foster: The fourth provision, here,

4 ~~2-Methyl-4-Chlorophenol~~, used to provide certain herbicides
5 for cereal grain production. No domestic reduction.

6 This would reduce the duty to zero through June 30, 1981.

7 Senator Talmadge: Without objection, it is approved.

8 Mr. Foster: The fifth item, certain ceramic insulators.

9 You have insulators used for spark plugs. This would
10 temporarily reduce the duty on MFN imports at 4 percent ad
11 valorem.

12 Senator Talmadge: Without objection, approved.

13 Mr. Foster: The sixth section is certain forms of zinc.
14 U.S. production of this is inadequate.

15 This would reinstate a previous suspension of the duty and
16 a suspension would expire on June 30, 1981.

17 Senator Talmadge: Without objection, it is agreed to.

18 Mr. Foster: The next bill, H.R. 5441, a composite bill.

19 The first part of that relates to a duty suspension on
20 synthetic Tantalum - Colombian concentrates. No U.S.
21 production of this item.

22 It would provide, I am sorry, permanent duty-free
23 treatment for these products.

24 Senator Talmadge: Without objection, it is agreed to.

25 Mr. Foster: The second section is another carillon bells,

1 this time for Wake Forest University, duty-free.

2 Senator Talmadge: Without objection, approved.

3 Mr. Foster: It also provides duty-free treatment for all
4 future imports of these bells after the date of enactment.

5 Senator Talmadge: Without objection, it is approved.

6 Mr. Foster: The third items, certain alloys of cobalt.
7 The House bill would provide for temporary duty-free treatment
8 of these until June 30, 1982. There is no U.S. production.

9 I am sorry, there is some U.S. production, but 95 percent
10 of consumption is supplied by imports.

11 This would reduce the costs to users of this product.

12 Senator Talmadge: Without objection, it is approved.

13 Mr. Foster: The fourth part, bicycle parts. These are
14 now suspended under a previous law. This would continue the
15 suspension on these parts to make bicycle producers here in the
16 U.S. more competitive than foreign bicycle producers.

17 Senator Talmadge: Without objection, approved.

18 Mr. Foster: The fifth one, manganese ore. No U.S.
19 production of this. The bill would reinstate the duty-free
20 treatment of MFN duty-free ore and continue until June 30,
21 1982.

22 Senator Talmadge: Without objection, it is approved.

23 Mr. Foster: The sixth one relates to model household
24 furnishings and accessories. These are models for the purpose
25 of collection and decoration, now classified as toys. This

1 item would remove them for that classification, put them in a
2 model classification, provide for MFN rate of duty of 8
3 percent, which is the lowest rate now applicable to models.

4 The Department of Commerce objects to this because this
5 has been subject to an MTN duty reduction which is staged over
6 eight years in order to protect what little domestic production
7 there is of this item.

8 This bill would provide for an immediate decrease of 8
9 percent.

10 During hearings in the House, no objections from the
11 private sector were received and U.S. production is very
12 minimal. It supplies a small part of the market.

13 Senator Talmadge: Without objection, it is approved.

14 Mr. Foster: The seventh one, definition of rubber. This
15 is a technical change necessitated by a Customs Court decision
16 which overturns present Customs practice with respect to how
17 rubber is defined.

18 The result of this overturning of present practice means
19 that some rubber-soled footwear that had been dutiable at ASP
20 rates, American selling price rates, generally higher than
21 under other methods of evaluation came subject to the lower
22 duty rate.

23 This bill would reinstate the Customs practice.

24 Senator Talmadge: Reinstate what?

25 Mr. Foster: Reinstate the previous Customs practice with

1 respect to the definition of rubber in the tariff schedule.

2 Senator Talmadge: Is that the American selling price?

3 Mr. Foster: Yes.

4 Senator Talmadge: Any objection?

5 Without objection, it is approved.

6 Mr. Foster: The last section to this composite bill
7 relates to technical amendmetns to the Trade Agreements Act.
8 Four technical errors have been discovered and identified and
9 they have the administration's support amending these Trade
10 Agreements Act to take care of these purely technical errors.

11 There is no objection.

12 Senator Talmadge: Without objection, it is approved.

13 Mr. Foster: As I understand the decision of the
14 Committee, all of these miscellaneous tariff bills would be put
15 on H.R. 3122 which would leave four miscellaneous tariff bills
16 still in committee.

17 Senator Heinz: Mr. Chairman?

18 Senator Talmadge: Senator Heinz?

19 Senator Heinz: I have another bill I would like to call
20 up for consideration in addition to this package. I am sorry
21 that my microphone does not seem to be working too well.

22 The bill is S. 1536, a bill for the relief of the Chinese
23 Chinese Cultural and Community Center in Philadelphia,
24 Pennsylvania.

25 It is a bill which I introduced earlier this year on

1 July 18th. It will suspend the duty on some very specific
2 ceramic tile for the roof of the Chinese Cultural Center in
3 Philadelphia. The tile can only be obtained from the People's
4 Republic of China.

5 The amount of duty involved is very modest indeed,
6 something like \$6,500, but \$6,500 that the Community Center
7 does not have.

8 Here is what the roof looks like right now. It does not
9 look very good. You can pass that around if you want.

10 We have contacted the Special Trade Representative. They
11 have sent us a letter saying they have no objection and neither
12 does OMB.

13 And since winter is nearly upon us in Philadelphia, we
14 would like to get these tiles in. The only way we can do it is
15 if this committee has mercy in their hearts.

16 The Chinese Cultural Center is, in fact, what it sounds
17 like. It is a nonprofit institution. It provides a lot of
18 service to individuals, to the community.

19 Senator Wallop wants to know if it is a Communist center.
20 It is a communal center.

21 If this passes, I am sure you would all be welcome in
22 Chinatown in Philadelphia.

23 I understand there is no objection to it, Mr. Chairman. I
24 would hope that we could dispose of it.

25 The Chairman: Is there any objection?

1 Without objection, agreed.

2 Senator Heinz: Thank you.

3 Mr. Foster: The last item, Senator, among these small
4 matters of trade is the Customs Court Act of 1979. This is now
5 in report in the Judiciary Committee. It has not been referred
6 to the Finance Committee.

7 There are some matters under the Finance jurisdiction. We
8 have reviewed this bill and discussed it with the Judiciary
9 Committee staff.

10 The amendments either conform to changes made in the Trade
11 Agreements Act of 1979 or very technical amendments or
12 otherwise follow the views of the Finance Committee in
13 this area.

14 The one exception is the matter that Senator Baucus
15 referred to. There is a slight controversy in that the AFL-CIO
16 is objecting to transferring jurisdiction over some of the
17 Trade Adjustment Assistance cases to the Customs Court,
18 preferring it to stay in the District Court.

19 The Finance Committee view on this in the past is first of
20 all that there should be judicial review of some of these
21 cases. Secondly that it should be done in a court with full
22 powers.

23 What the Judiciary Committee has done, it preserves those
24 interests of the Finance Committee and basically is a
25 perceptual issue, whether you feel you get better treatment in

1 the Customs Court and a specialized Court, although it is a
2 full Article 3 Court, or you feel you get better treatment in a
3 district court.

4 The Judiciary Committee has marked up the bill. The full
5 Committee has. They have decided to transfer these things to
6 Customs Court.

7 We do not see it as a major issue right now. What we are
8 recommending is that the Committee, to indicate an interest in
9 its jurisdiction, write a letter to the Judiciary Committee
10 saying we have reviewed the bill, find the changes consistent
11 with our views.

12 We will keep the bill under review, but at this time, we
13 do not plan to take any additional action.

14 The Chairman: Any objection?

15 Without objection, agreed.

16 Mr. Stern: Along similar lines, Mr. Chairman, the
17 Parliamentarian has referred to the Commerce Committee a bill,
18 H.R. 4310, the recreational boating fund act of 1979. That
19 bill does include some tax provisions toward the back of the
20 bill. It does not actually raise any taxes.

21 It authorizes the transfer of up to \$30 million a year to
22 this new national recreational boating safety fund, up to \$30
23 million of receipts attributable to the existing 4 cent per
24 gallon excise tax on gasoline and special motor fuels used in
25 motor boats.

1 We would suggest there, too, the Committee write a letter
2 to the Commerce Committee saying that you do not object to the
3 provision and that you ask to include the letter in the report
4 on the bill.

5 The Chairman: Without objection, agreed.

6 Mr. Stern: That completes the tariff items, Mr. Chairman.
7 The next items are the various tax provisions that members have
8 asked to be brought up.

9 Senator Byrd: Mr. Chairman?

10 The Chairman: Senator Byrd.

11 Senator Byrd: Mr. Chairman, I would hope that the
12 Committee would proceed very carefully before approving tax
13 legislation on which there has been no hearings. Up until a
14 few years ago it was common practice to handle tax bills of
15 some private nature at the last minute without hearings and the
16 committee found itself in considerable difficulties as a
17 result.

18 I think, in order to protect the public interest, as well
19 as to protect the integrity of the committee, that it is very
20 important that hearings be held on all tax matters before they
21 are finally approved.

22 The Subcommittee on Taxation has held a number of
23 hearings this year. The Committee has attempted to accommodate
24 as many Senators as possible. Those that the Committee have
25 not been able to accommodate up to this point will be

1 accommodated in January or February or at the earliest possible
2 time.

3 I just think that from the Committee's point of view, as
4 well as from the public's point of view, that we should not
5 attempt to act on complex, complicated tax legislation which on
6 the surface, may sound innocent enough and perhaps in most
7 cases is innocent, but in the past we have found that many of
8 these pieces of legislation are more far-reaching than they
9 appear on the surface.

10 For that reason, I think it important that there be
11 hearings. The majority of this Committee can do as it wishes.
12 As one Senator, I express the hope that we can handle this very
13 carefully and be very careful before we report from the
14 Committee legislation on which there have been no hearings.

15 The Chairman: First, let us consider the matter Senator
16 Byrd brought up.

17 Basically, Senator Byrd is arguing that we should not be
18 reporting out tax bills on which there have been no hearings
19 held, and he indicated his intentions at the beginning of the
20 year to take that attitude.

21 I really think to report out something that might have
22 some controversy about it without any hearing could simply lead
23 to the kind of thing we have seen at the close of the session
24 where there is some criticism in the press and any one Senator
25 decides well, he is going to take it upon himself to stand in

1 the door and object and not let the bill pass, so that those
2 bills which have such an amendment on it simply are stymied. I
3 saw one man delaying tactics and stopped them all late in the
4 session.

5 I think it would be better to go along with Senator Byrd
6 on his suggestion that we do business that way.

7 As I understand it, Senator, would you be willing to hold
8 some hearings in the remainder of this session to help make it
9 possible for some of those suggestions to be considered?

10 Senator Byrd: Well, I had not thought about that. I
11 could do it if that is the desire of the Committee.

12 Of course, we do not have much time left in this session,
13 but we could try to arrange to do that.

14 Senator Talmadge: If the Senator would yield at this
15 point, I have a provision here that does not change the tax
16 law, but it merely defers the operation of it, effective
17 January 1st. It might be a technical correction. I would
18 certainly hope that I could get at it.

19 Senator Byrd: Well, would it be appropriate, Senator
20 Talmadge, if we could arrange for a hearing on it?

21 Senator Talmadge: Let me tell you what it is and I
22 think you would agree to it.

23 The Congress approved a bill which requires the most
24 recently employed janitor to have the same health benefits on a
25 self-insured proposition as the President of the company who

1 has worked there for 30 years.

2 The Committee agreed to it, the Congress agreed to it
3 without any hearings at all, and it becomes effective January
4 1st.

5 Here is what the effectiveness of it is. The law is not
6 applicable if they go out and buy private insurance, so that
7 they are moving to suspend these self-insured programs. As a
8 result, they are having the opposite effect of what it had.

9 It is placing an additional burden on employers.
10 Sometimes this additional cost is as much as 22.5 percent.

11 If they get the insurance, if they buy it from a private
12 insurer, that is what it does.

13 What I am asking, if we defer the active date on it until
14 the same date as these provisions, we have already agreed to on
15 what might be called -- what is it, the benefit program? What
16 was it we agreed to the other day?

17 Senator Packwood: The fringe benefits.

18 Senator Talmadge: The fringe benefits.

19 Senator Packwood: Mr. Chairman, if we are going to take
20 this subject up, this is my amendment that Senator Talmadge is
21 referring to and I would have objections to deferring it. I
22 am willing to argue it on the substance here today, but it does
23 not require that the janitor or the President have the same
24 pension program, health insurance program.

25 There are categories of employees that can be eliminated.

1 those under 25, those who have worked less than three years,
2 anybody covered by a collective bargaining agreement.

3 The abuse that we found and the reason that this was put
4 in is that many small corporations, quite often professional
5 corporations, were paying very high medical expenses and it was not
6 being counted as income. We put this in to prohibit that.

7 The reason it only applies to self-insured plans, not
8 those purchased through insurance companies, we did not find
9 any abuses with those purchased through insurance companies.

10 If we have evidence of that, I would be happy to extend
11 the nondiscrimination provision to that also.

12 But after you have excluded those large categories of
13 employees, the law then says, if you are going to provide
14 health insurance for your employees, you must provide it on a
15 nondiscriminatory basis. There have been hearings. It is a
16 controversial subject and it would not just be a
17 noncontroversial extension of the effective date to pass this
18 out.

19 The Chairman: Do you oppose the bill?

20 Senator Packwood: I am opposed to any extension of the
21 effective date and it will go into effect January 1, 1980
22 this nondiscriminatory provision, unless it is extended.

23 The Chairman: Do I understand it that you oppose the
24 position taken by the Senator from Georgia?

25 Senator Packwood: Yes.

1 Mr. Shapiro: Let me point out to the Committee in the
2 Technical Corrections Bill, because of some of the questions
3 that were raised, the bill does have a provision to defer the
4 effective date through 1979.

5 The provision was passed last year and was to take effect
6 this year. It has been deferred in that bill and the Committee
7 has already acted to defer it until 1979. It will take effect
8 in January, 1980.

9 Senator Talmadge: Time is of the essence now. It will
10 have a detrimental effect.

11 Surveys show that a majority of the plans would be
12 terminated as a result of the new rules. Since they make the
13 same plans prohibitively expensive for many small businesses,
14 both in terms of the standardized benefits which must be paid
15 and the additional administrative costs.

16 Creative insurance companies are already designing
17 supplemental insurance packages much like those that section
18 356 would do away with and the Internal Revenue Code would not
19 require standardized benefits.

20 In addition, insurance companies would get a commission
21 that would make the coverage more expensive.

22 This was adopted without public hearing in the final days
23 of the last Congress. It was offered as a part of the original
24 administration tax package but was killed on the House side
25 very quickly.

1 Senator Talmadge: That is true only if it is a
2 self-insured plan, Senator, and if they get an insurance
3 company that makes the coverage. That is not true, because it
4 would be totally exempt.

5 Senator Packwood: that is true, but we did not find any
6 abuses of insured plans, and if we do, you could extend this
7 nondiscriminatory clause to the insured plans.

8 But look again at what you can do. Within the law, as it
9 will go into effect, you can provide discriminatory health
10 coverage. You can eliminate everybody under 25. That the law
11 still allows.

12 You can eliminate those with less than three years
13 seniority. You can eliminate those who are part-time or
14 seasonal. You can eliminate nonresident aliens and you can
15 eliminate everyone covered by a collective bargaining agreement
16 and then eliminate 44 percent more of your employees and still
17 provide this discriminatory plan, if you want.

18 I thought that we made a tremendous concession when we
19 said that the companies can eliminate all those categories and
20 then provide this discretionary plan.

21 But the abuses that we found, and again, it was mainly in
22 small professional corporations, of the high level of medical
23 expenses being paid for a relatively highly-compensated small
24 group of employees, if you want to call them that, in some
25 cases shareholders, was just an abuse.

1 It was not being taxed as income.

2 Senator Talmadge: You would not eliminate anyone on
3 collective bargaining because you would have a strike on your
4 hands immediately.

5 What I would seek is a deferral of the effective date on
6 this. Hearings can be held and the Congress can work its will.

7 Senator Packwood; What is the administrastion's view?

8 The Chairman: Yes, sir?

9 Mr. Lubick: Mr. Chairman, we would endorse what Senator
10 Packwood has said. I can speak from my own experience of a few
11 years ago in private practice, that this was a device
12 exclusively, really, Senator Packwood, not even so much for the
13 highly-paid employees, as the shareholders themselves, because
14 we would draft these --

15 Senator Talmadge: Mr. Lubick, would you yield at that
16 point?

17 Mr. Lubick: Surely.

18 Senator Talmadge: Could they not do identically the same
19 thing by getting a private insurance company to issue the
20 policy

21 Mr. Lubick: Not normally, Senator Talmadge.
22 Underwriting requirements generally required a broader coverage
23 for this sort of thing.

24 Senator Talmadge: I am informed just the opposite. They
25 tell me that all they have to do is just get a private

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1 insurance carrier to issue the policy and it is legal under
2 regulations of the Treasury after January 1.

3 Mr. Lubick: That is theoretically true, but as a
4 practical matter, Senator Talmadge, what we found was the
5 companies would normally have their Blue Cross-Blue Shield for
6 all their employees and there are certain types of expenses as
7 Senator Packwood mentioned, orthodonture is one.

8 These exotic expenses are not deductible by the individual
9 when he pays for them out of his own pocket because he does not
10 get over the 3 percent of adjusted gross income limit. It is a
11 way to get around that and allow them to be handled tax free.

12 You generally, in all of these cases, adopt a medical
13 reimbursement plan for the officers of the company. It may be
14 the lawyer in a professional corporation or a doctor in a
15 professional corporation and his wife and you pay those
16 expenses that are not covered under the company's insured plan,
17 which includes dentistry and those things which are not
18 normally covered under a Blue Cross-Blue Shield plan.

19 Theoretically, I suppose, you could get an insurance
20 policy for those although, as a practical matter, I never heard
21 of one being written feasibly, but this is simply a way to get
22 those medical expenses that are not ones which one would insure
23 against paid for and avoid the medical expense limitation.

24 We did have consideration of this last year on the revenue
25 act. We are about to issue regulations. I have the draft

1 regulations in our office and we think that this was a very
2 important step that was taken last year and we see no
3 particular reason for changing the decision.

4 We think that the Committee made a very wise choice. You
5 debated it in this very room last year and came to the
6 conclusion, based on the evidence that was presented, that this
7 was a very serious abuse and undercutting of the 3 percent
8 floor for medical expenses.

9 I can assure you from my personal experience that this is
10 done only for the principal shareholders, or possibly a few top
11 employees.

12 Senator Talmadge: Here is one here that I am holding in
13 my hand. Total health insurance coverage for corporate
14 officers, executives, key personnel, health care, a
15 fully-insured excess group medical plan.

16 All they have to do is just get a private insurance
17 company to do the same thing that they have been doing.

18 Mr. Lubick: I have not heard in talking with
19 practitioners, any great movement towards this. It is possible
20 that that may develop. In that case, you may want to make some
21 differentiation. I would not urge you to do so. We did not
22 see it as a problem. We do not see it as a problem. But if
23 you are talking about ways of avoiding the medical expense
24 deduction limits, it seems to me that that is something that
25 does not make any sense.

1 If you are going to allow medical expenses to be
2 deductible in full, they ought to be deductible in full for
3 everyone and you ought to eliminate the 3 percent floor and not
4 simply allow a few shareholders of corporations, be they
5 professional corporations or otherwise, simply to get all their
6 medical expenses tax free.

7 In the case of the general plans that cover a broad
8 group, the Congress has made the judgment that that should be
9 an exclusion from income where it is provided on a broad basis,
10 and there is a good policy reason to deliver health care to
11 those who otherwise could not get it and could not afford it.

12 But when it comes to those who either take the standard
13 deduction or cannot meet the 3 percent floor, if you want to
14 say that all medical expenses should be subsidized through the
15 tax system, then that floor should be abolished and it would be
16 very expensive and it would mean that you would be underwriting
17 the cost of an expense that almost everyone has to pay.

18 I think that you went into all of this last year and came
19 to a very sound decision.

20 Senator Talmadge: Were there any hearings held?

21 Mr. Lubick: Yes, sir.

22 Senator Talmadge: Where?

23 Mr. Lubick: In the hearings on the tax reform bill of
24 1978.

25 Senator Talmadge: I do not recall any.

1 Mr. Lubick: It was our recommendation, the
2 administration's recommendation.

3 Senator Packwood: Not only that. Secretary Blumenthal
4 testified at that time on the subject.

5 Senator Talmadge: I would move, Mr. Chairman, that the
6 effective date be deferred until July 1, 1981.

7 Senator Byrd: Senator Talmadge I wonder if we could
8 perhaps give consideration to this.

9 Would it be detrimental to your position if the Committee
10 were to hold a hearing, this subcommittee were to hold a
11 hearing let's say a week from today?

12 Senator Talmadge: If we can act before January 1, 1980,
13 but I am not sure that we will have another meeting of the
14 Finance Committee.

15 We are engaged on the Senate floor in the windfall profits
16 tax. We will be engaged in conference.

17 If I could be assured that the Committee could finally act
18 prior to that time, that would be agreeable to me.

19 Senator Byrd: I am not unsympathetic to your position at
20 all.

21 Senator Talmadge: I did not think you would be.

22 Senator Byrd: I do think that it is of a controversial
23 nature and that we should have some hearings.

24 Senator Talmadge: I did not think it was controversial.
25 What you can do with the private insurer and at 22 percent,

1 these people can do exactly that, now.

2 Senator Packwood: Senator Talmadge, if they did that, I
3 would be happy to extend the nondiscriminatory provision to
4 insured plans.

5 If we wanted to make that amendment now and make it
6 prospective so we are sure that does not happen. I hate to
7 legislate against things for which we have found no evils yet,
8 but I would be willing to do that.

9 My general view is that most fringe benefits should not be
10 taxable. Mr. Lubick and I have gone around and around on this.
11 I like the idea of nontaxable fringe benefits, especially in
12 the medical field, but I think that they ought to be
13 nondiscriminatory and this simply has been an abuse that was
14 discovered.

15 If you want to take care of your highly compensated
16 employees with medical care, go ahead and pay their bills and
17 let them pay income tax on it. But do not give them a
18 tremendous preference that you do not give to the bulk of your
19 other employees.

20 Senator Byrd: Let me throw out this suggestion.

21 Since it is not legislation as such, it merely defers the
22 effective date.

23 Senator Talmadge: That is correct. That is what it does.

24 Senator Byrd: Could you and Senator Packwood perhaps get
25 together on this to defer the effective date until July 1 of

1 1980?

2 In the meantime, in January, we would hold a hearing on
3 that and proceed.

4 Senator Talmadge: It is agreeable to me if it is
5 agreeable to Senator Packwood.

6 Senator Packwood: I kind of feel honor-bound to say no on
7 this. When I worked this out, I was working with the
8 administration. It was part of a package on a variety of other
9 things that were adopted.

10 What has happened is that the practitioners of this art --
11 and they are relatively few in the country -- selling these
12 programs, and they have lobbied very hard, those who are
13 packaging the programs especially are resentful of this being
14 taken away from them and I would have to leave that to the
15 administration, but it was a part of an arrangement.

16 I do not know what Don thinks.

17 Mr. Lubick: Senator Packwood, I would like to point out
18 that while it is scheduled to take effect on January 1, no
19 one's tax return is going to be filed until the end of the
20 year. I would like to wish that you not act now, hold your
21 hearing in December and January and certainly there is plenty
22 of time during the year to deal with the problem.

23 Senator Talmadge: Time is of the essence. This law has
24 become effective January 1, 1980.

25 Mr. Lubick: No one's tax liability is affected.

1 Senator Talmadge: If the law is effective they make plans
2 to obey the law, Mr. Lubick. That is what you would recommend,
3 would you not?

4 Mr. Lubick: I see no problem, Senator Talmadge, in
5 actually -- the law has been on the books for a year.

6 What you are saying is that someone may not be able to get
7 his orthodonture expenses paid in January or February, but if
8 the Committee decides to change the rules, he can allow very
9 easily plans to be adopted in March or April of 1980 which
10 would reimburse expenses incurred during all of 1980.

11 So I cannot see how anybody is going to be hurt if, in the
12 unlikely event after you have weighed all of the facts, you
13 come to the conclusion that there ought to be a change.

14 Senator Talmadge: If a law becomes effective January 1st,
15 any honorable citizen would assume that that is the law and
16 make his plans accordingly. What I am trying to do is to defer
17 the operation of the law until the Committee can hold hearings
18 and determine that is what we want, or not.

19 Mr. Lubick: Senator Talmadge, this law was really
20 effective January 1, 1979. Nobody seems to have suffered for
21 that.

22 The technical corrections act has changed the effective
23 date, but has not even passed yet to take care of it for the
24 first part of this year.

25 I do not see why, if you are able at the end of 1979, to

1 go back to January 1, 1979, why you are not able to do in the
2 spring of 1980 back making something effective for all of 1980.

3 The Committee does that all the time. It enacts
4 legislation in the course of a year to be effective for the
5 entire year.

6 Senator Byrd: May I ask this question?

7 You say that it is a part of the technical corrections
8 bill to defer from January 1, 1979 to January 1, 1980?

9 Mr. Shapiro: That was the provision.

10 Senator Byrd: Why do we not just change that technical
11 corrections bill to defer it until July 1, 1980 instead of
12 January 1, 1980?

13 Because if you do not do that, it would be a tendency, I
14 would think, for companies to drop the plans because the law
15 would be effective in January.

16 As Senator Talmadge points out, we are not dealing with a
17 piece of legislation now. We are dealing with a deferral of
18 legislation that already has been enacted.

19 Mr. Lubick: Senator, I may have mistaken what the
20 technical corrections act does. The staff statement says that
21 the technical corrections act, as passed by the House, provides
22 that the medical reimbursement plan rules apply only to
23 reimbursements paid after December 31, 1979.

24 However, the legislative history indicates that in
25 determining the taxability of reimbursements made under a

1 that we have been trying to avoid on the technical corrections
2 act.

3 The Chairman: I tell you, I am inclined to think that the
4 Mr. Lubick is right about that.

5 Senator Talmadge: Put it on some other bill.

6 The Chairman: All right.

7 We ought to keep it off the technical corrections act.
8 Right now, there is no controversy on that bill.

9 It already has been considered for amendment.

10 Let me ask you, why do we not agree, why do we not vote
11 on, since we have this one snag here, why do we not vote on
12 this with the agreement that the Senator from Virginia will
13 hold a hearing on this matter?

14 We will not vote on it on the Senate Floor until hearings
15 have been held. We can vote here. I have heard the debate
16 here. The Senator can hold his hearing and that way we will
17 have had a hearing before we vote.

18 Senator Talmadge: That is agreeable to me.

19 The Chairman: Call the roll.

20 Mr. Stern: Mr. Talmadge?

21 Senator Talmadge: Aye.

22 Mr. Stern: Ribicoff?

23 (NO response)

24 Mr. Stern: Mr. Byrd?

25 Senator Byrd: Aye.

1 Mr. Stern: Mr. Nelson?

2 (No response)

3 Mr. Stern: Mr. Gravel?

4 (No response)

5 Mr. Stern: Mr. Bentsen?

6 (No response)

7 Mr. Stern: Mr. Matsunaga?

8 Senator Matsunaga: Aye.

9 Mr. Stern: Mr. Moynihan?

10 (No response)

11 Mr. Stern: Mr. Baucus?

12 Senator Baucus: No.

13 Mr. Stern: Boren?

14 Senator Boren: No.

15 Mr. Stern: Mr. Bradley?

16 (No response)

17 Mr. Stern: Mr. Dole?

18 Senator Talmadge: Mr. Dole is a cosponsor. I think he
19 would vote aye.

20 Mr. Stern: Mr. Packwood?

21 Senator Packwood: No.

22 Mr. Stern: Mr. Roth?

23 (No response)

24 Mr. Stern: Mr. Danforth?

25 Senator Danforth: No.

1 Mr. Stern: Mr. Chafee?

2 Senator Chafee: No.

3 Mr. Stern: Mr. Heinz?

4 (No response)

5 Mr. Stern: Mr. Wallop?

6 Senator Wallop: Aye.

7 Mr. Stern: Mr. Durenberger?

8 Senator Durenberger: Aye.

9 Mr. Stern: Mr. Chairman?

10 The Chairman: Aye.

11 I hope we can continue to meet here today. We will go
12 vote and try to look after these other matters, because the
13 Senators were promised they would have an opportunity to have
14 their amendments considered.

15 The yeas are seven, the nays are five, and we will let the
16 absentees record themselves.

17 But the amendment carries, with the understanding if the
18 absentees change it, they can do so.

19 Senator Matsunaga: Could we just report out a minor
20 tariff bill that was passed by the Committee and the Senate
21 twice and would have been passed by the House if we had time
22 last year.

23 Mr. Stern: Are you talking about the telescopes?

24 Senator Matsunaga: Binoculars.

25 The Chairman: Let's go and vote and come back, gentlemen.

1 Senator Matsunaga: We are coming back?

2 Senator Wallop: Mr. Chairman, I have an appointment in
3 Dr. Carey's office at 12:30 and I have the shelter bill as
4 well.

5 The Chairman: What?

6 Senator Wallop: I have a doctor's appointment at 12:30
7 which is one of those ones that the guy can only come once a
8 month or something. Could we meet at 1:00 or 1:15 instead of
9 coming right back?

10 The Chairman: We will have to get consent to meet at
11 1:00. . That would take the consent of the Senate. Maybe we
12 could get it.

13 Do we have to have the consent of the Senate to meet
14 during the session today?

15 Mr. Stern: I do not think so, but we would have to ask.

16 The Chairman: If I can get it I would be glad to come
17 back.

18 Senator Wallop: The reason I suggest that, I am willing
19 to cancel that thing if it is necessary, but I would just as
20 soon keep it.

21 The Chairman: I will ask consent of the Senate right
22 after the vote. If we get consent, we can come back at 1:00.
23 Otherwise, we will continue to meet until 1:00.

24 (Thereupon, at 12:05 p.m. the Committee recessed, to
25 reconvene at 2:00 p.m. this same day.)

AFTER RECESS

2 The committee reconvened at 2:00 p.m., Senator Harry F.
3 Byrd, Jr., presiding.)

4 Senator Byrd. The committee will come to order.

5 The next item is legislation by Senator Wallop concerning
6 capital gains taxes on real estate held by nonresident aliens.
7 Senator Wallop, do you want to comment? Hearings have been held
8 on this issue by the Taxation Subcommittee.

9 Senator Wallop. Thank you, Mr. Chairman.

10 The bill we have is a modified draft, S.208 which basically
11 would require nonresident aliens to pay capital gains tax on the
12 sale of farmland or rural land. To accommodate Treasury's recom-
13 mentation the proposal has been expanded to cover all real pro-
14 perty held by nonresident alien investors. The reason for it
15 is that under present law foreign investors do not have to pay a
16 capital gains tax on the sale of farmland and other forms of
17 real estate unless these gains are effectively connected with U.S.
18 trade or business. Last year 52 Senators co-sponsored an amendment
19 similar to S.208 and the measure passed the Senate as an amendment
20 to the Revenue Act of '78 but it was deleted in conference.

21 This year we have 42, now 43 Senators co-sponsor it and I would
22 like to add Senator Roth is a co-sponsor today. Senator Byrd
23 pointed out the Subcommittee on Taxation and Debt Management and
24 the House Ways and Means Committee have held hearings this year
25 on legislation. It is my understanding that the Treasury supports

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1 the proposal as does the Joint Committee on Taxation.

2 Lastly, Mr. Chairman, I point out the Chairman of the Senate
3 Agriculture Committee, Senator Talmadge requested the General
4 Accounting Office to conduct a study on foreign investment in U.S.
5 agricultural lands. One of the conclusions of that study was
6 "The elimination of tax advantages available to foreign but not
7 U.S. investors would eliminate one of the factors that may be
8 inhibiting potential U.S. purchasers from effectively competing
9 with foreign purchasers of U.S. land."

10 It is a problem and it is a matter of equity. It is not pun-
11 itive. It is not a discouragement to foreign investors. It
12 is not intended as that. It is simply a matter of treating domes-
13 tic investors in agricultural land, now real property in the same
14 manner as foreign investors.

15 Senator Byrd. In other words the foreign investor would
16 have to pay the same tax as U.S. investors pay?

17 Senator Wallop. That is right and now assuming a rate of
18 inflation of seven percent, which I think all of us would like
19 to assume and hope some day we can assume again, but just assuming
20 that the foreign investor in farm land can afford to pay about
21 twentytwo percent higher than the domestic investor for the same
22 piece of ground before the equities are balanced. Simply what it
23 means is from time to time the American farmer or an American
24 investor in real property is phased out by an economic circum-
25 stance against which he can't bid.

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Senator Nelson. I agree with the distinguished Senator from Wyoming. There are a number of factors involved here. We have not been able over the years, maybe we will shortly, to get an accurate tabulation of how much land is held by foreign owners nor even how much land has been purchased by large corporations though a good deal of it, particularly in the West has. I think it is fundamental to our agricultural system that the farmland be operated by the people who own it. It is very important that you have farmland being managed and run by people who actually own it.

Anything that discriminates against that principle I think is damning to our agricultural system which is the most productive one in the world. So this is a very modest step but I think the discrimination in favor of the foreign buyer should be eliminated. I cosponsored the amendment along with Senator Wallop.

Senator Wallop. You have and I appreciate it. I just point out that it is entirely a real proposition. Here is an October 1979 international tax newsletter from Price-Waterhouse in which they are counting the investment opportunities to foreign investors in real estate. I think it is a matter of equity and it is not punitive. We have taken care of the Treaty with renegotiation problems and I guess last but not least of interest to the Senators on the committee now, there is a revenue raising aspect to it which I think certain other cars in this train that is about to pull out of the station certainly find attractive.

1 Senator Byrd. I assume Treasury would favor this proposal.
2 Mr. Lubick. We testified you will recall, Senator Byrd,
3 in favor of it. There are some details I think we would like
4 to work out in the drafting. I understand your staff is pre-
5 pared to work with committee staff on the implementation and
6 enforcement of it. We are certainly in accord with the general
7 proposition as you have stated it.

8 Senator Wallop. We are very much prepared to do it. It is
9 a matter of sensible interest to all of us and the revenue esti-
10 mate is \$150 million. I think that is probably very accurate for
11 the coming year but I suspect it is extremely modest when we
12 actually find out what the total amount of investment is.

13 Mr. Lubick. Staff indicated to me, Senator Wallop, for the
14 Fiscal Year that we are in it is about 75 million. We have to
15 have reduction for the Treaty and reduction for the fact the
16 Fiscal Year ends September 30. I think that was a calendar year
17 estimate you were using.

18 Senator Byrd. I think it is an excellent piece of legislation
19 As I recall I was a co-sponsor of your proposal last year. I
20 would be glad if you would add me along with you and Senator Nelson
21 as a co-sponsor of this.

22 Senator Wallop. Senator Danforth, Heinz, Nelson, Boren,
23 Talmadge and Roth and Senator Baucus just indicated he would like
24 to be listed as a co-sponsor.

25 Senator Byrd. That estimate by Treasury as time goes on

1 could be lowered it seems to me. There is a tremendous amount
2 of property being brought up by foreign investors. Just
3 within the last three months the homes and the farms on which
4 the homes were located, the homes of two Presidents of the United
5 States in Virginia were bought by foreign investors, the home of
6 President Zachary Taylor, I forget the number of acres but some-
7 thing around 300 or 600 acres of land and the home of John Tyler
8 with 300 or 400 or 500 acres of land. Both of those homes
9 of former Presidents have been bought now by foreigners.

10 Is the committee ready for a vote? Additional discussion?
11 Those in favor vote aye.

12 (Chorus of ayes.)

13 Senator Byrd. Opposed, no.

14 The ayes appear to have it. The ayes have it.

15 Senator Wallop. Could I make a point. This is the engine
16 which is going to pull a lot of cars out of the station and
17 before we are done with tax cars, I have one non-revenue effect
18 amendment which I would like the privilege of bringing up which
19 has had hearings.

20 Senator Byrd. Would the Senator delay temporarily. Senator
21 Matsunaga had the floor before the committee recessed and he has
22 another commitment.

23 Senator Matsunaga. Thank you, Mr. Chairman.

24 On the item 5, minor tariff bills, I was not here at the
25 time you took the item up. I was in the Energy Committee

1 offering a bill in mark up session so I offer now and ask for
2 its approval S.1738 binocular tariff bill. This measure was passed
3 by this committee unanimously and by the Senate on two occasions
4 but each time the House did not have time to act upon the bill
5 and early this year I withheld the introduction of the bill at the
6 request of Ambassador Strauss and I have a letter from him sup-
7 porting this bill now.

8 As a matter of fact he says, "Thank you for your letter
9 requesting my views on reduced duties on field glasses, opera
10 glasses and binoculars not including rifle scopes. WE are in
11 favor of such a proposal. Thank you for postponing the intro-
12 duction of your bill until the final tariff negotiations have
13 been concluded. Your action was most helpful in obtaining a satis-
14 factory agreement with Japan."

15 So that by withholding the introduction of this bill, Ambass-
16 ador Strauss indicates we helped with the negotiations with
17 Japan. U.S. industry has no opposition to the bill and the
18 Administration has no opposition. Congressman Ullman has indi-
19 cated that if they would have had time the bill would have
20 passed in the last Congress. However, since we are offering this
21 as an amendment upon suggestion of staff instead of making it
22 permanent I would ask unanimous consent or I would modify the
23 amendment by limiting the suspension to two years and Senator
24 Ribicoff asked me to represent his views, to say he has no objec-
25 tion to the bill even if it were permanent. However, staff

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1 suggests we might have some problems in the House unless we make
2 it on a temporary basis.

3 Mr. DeArment. The House has not held hearings. It is an
4 amendment to a House-passed bill. If we sent it over as a per-
5 manent duty reduction that requires more thought on their part
6 before they will recede to the Senate amendment. If we make it
7 temporary it is the sort of thing if there is a problem it will
8 be self-correcting once the duty suspension is over. If there is
9 no problem the committee several years from now can come back and
10 consider making it permanent. It just makes the bill we send to
11 them more acceptable to them and reduces the risk of them not
12 accepting our amendment and having the bill bounce back and forth
13 several times.

14 Senator Matsunaga. Actually there is none of the items
15 here which will be imported being manufactured in the United
16 states. There is no competition at all.

17 Senator Byrd. Is there any further comment on the pro-
18 posal? Without objection the proposal is agreed to.

19 Senator Chafee. Mr. Chairman, how do you intend to proceed
20 with these amendments? Is it in order?

21 Senator Byrd. We plan to proceed in order but when we
22 made that decision Senator Boren was the next one who was present.

23 Senator Chafee. Do you mean the order we appeared in the room?

24 Senator Byrd. On this agenda sheet.

25 Mr. Stern. I put them in the order of the letters. There

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1 was no particular meaning to the order in which the Senators'
2 names were arranged.

3 Senator Byrd. The reason the Chair recognized Senator
4 Matsunaga was he had recognition when the committee recessed. It
5 seemed appropriate that he should have an opportunity to complete.

6 Senator Chafee. I am not disputing it. The next one was
7 Senator Bentsen but you are going to Senator Boren.

8 Senator Byrd. That was because Senator Bentsen was delayed
9 because of important business on the floor.

10 Senator Boren. I am due to preside at three but if Senator
11 Bentsen doesn't object I will do this quickly. Two items, one
12 under H.R. 5505, that is the proposal by Senator Chafee, Senator
13 Nelson, Senator Durenberger, Senator Danforth and myself to change
14 the way in which excise tax on fishing tackle is collected. That
15 has been the subject of hearings and it is included in Section
16 7F, H.R. 5505 in the packet which you have.

17 The only change we are making here -- and it has no long-
18 range budgetary impact -- is to help these very small manu-
19 facturers, 97 percent of them are very, very small. They mail
20 out the fishing tackle due to the nature of their business and
21 usually it is five or six months before they receive payment and
22 having them pay the excise tax at the time ---

23 Senator Packwood. I can't find this.

24 Senator Boren. The back part, not the fine print but the
25 bigger print part in the back of E. Section 7F, the 5505. The

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1 title on the front says 4746 summary. The back half of it is
2 5505.

3 Senator Nelson. What page are you on?

4 Senator Boren. It is not numbered. It is seven pages before
5 the end. You will see Section 7. Section 7, and as I say this is
6 a joint proposal that five of yourselves have offered to provide
7 some relief for them because they do have to mail out, given the
8 nature of their business this tackle and if they have to pay
9 the excise tax at that time, it is a hardship.

10 What this would do is have them in the first three quarters
11 of the year pay their excise tax, defer it one quarter in terms
12 of the length of time. This helps them three months in terms of
13 when they have to pay the excise tax. Some of these people are
14 one, two and three person operations. All of this money goes
15 into an ear-marked fund, Eagle Johnson Fish Restoration Fund and
16 since you are just deferring the time of the payment it does
17 not change the total dollars you ultimately going into the fund.
18 They are not at all quarreling with that. It just helps them in
19 terms of the time of payment within the clalendar year.

20 Senator Byrd. As I recall Treasury opposed this when the
21 hearing was held before the subcommittee. Treasury might want to
22 indicates its views.

23 Mr. Lubick. Our problem with this, Senator Byrd, is that
24 the normal rule in excise taxes is the tax is due when the sale
25 is made and other creditors of the manufacturer, the employees,

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1 the suppliers, all get paid when they supply the material and
 2 for the same reason why we feel the tax should be made at that
 3 time too. The fact that the manufacturer extends credit terms
 4 to his distributors does not seem to us to be relevant in deter-
 5 mining when the tax should be paid. It would lead to some very
 6 undesirable consequences if this were ever extended to other kinds
 7 of excise taxes or even to income taxes.

8 The fact that a person on the approval method has extended
 9 credit and has not been paid does not normally effect tax lia-
 10 bility and there is no particular reason why a taxpayer should
 11 because he choses to extend credit, be entitled to delay the
 12 effective date of the payment of the tax. The tax is on the sale.
 13 When the sale is made the tax liability should arise.

14 Senator Byrd. The committee has heard the discussion.
 15 Those in favor vote aye.

(Chorus of ayes.)

16 Senator Byrd. Those opposed, no.
 17 The ayes appear to have it. The ayes have it. The amend-
 18 ment is agreed to.

Senator Boren has one.

19 Senator Boren. Listed among the additional matters is a pro-
 20 posal which we discussed in the hearings in an interchange between
 21 myself and Treasury. It has also been the subject of hearings
 22 in Ways and Means. Congressman Lederer in the House, from
 23 Pennsylvania, has introduced it. It is simply a technical
 24
 25

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1 correction. Under the depletion allowance which is allowed to
2 independents you have one thousand barrels under the existing
3 law. Now you can claim that either way. You could be a cor-
4 poration solely controlled corporation. If I were an independent
5 producer and I was the sole control of a corporation I could claim
6 it that way or if I chose I could just as an individual, unincor-
7 porated individual, I could be the independent producer. It was
8 never anticipated if I wanted to change my status -- say I am an
9 independent producer, change my exemption.

10 I decide for estate planning reasons or other reasons I want
11 to incorporate my operation instead of just doing it as an indi-
12 vidual, so I then transfer all of my individual properties into
13 the new corporation which I have created and I am the sole stock-
14 holder. Inadvertently when this transfer takes place by really
15 a technical defect never intended by Congress under current law,
16 I lose my depletion allowance even though I am still the same
17 person, the same thousand barrels we are talking about.

18 This would simply correct that by making it clear -- it
19 would not increase the amount of depletion you could get. You
20 could not get more depletion than the same thousand barrels you
21 now get but for estate planning reasons if you wanted to incorp-
22 orate you could and you would transfer your individual right over
23 to the corporation. It amends Sectoon 613A of the Internal
24 Revenue Code.

25 I have discussed this with Mr. Lubick and with Treasury and

1 staff. I believe there is no objection to it.

2 Senator Byrd. This was discussed by the Taxation Subcommittee
3 and Mr. Lubick at that time expressed his view but perhaps he would
4 express it again.

5 Mr. Lubick. We have discussed this at length and explored
6 it with Senator Boren. We agree with his statement. You are not
7 creating any new percentage depletion and you are allowing a
8 transfer for usually independent estate planning purposes. There-
9 fore we think that that is appropriate. We did have some tech-
10 nical problems that I would like to mention to make sure that you
11 and I are understanding on that. One was if the shares of stock
12 of the corporation are subsequently sold the depletion does
13 not go to outsiders, which is the same situation as would occur
14 if the property were sold directly.

15 Senator Boren. That is understood.

16 Mr. Lubick. It is my understanding that this would apply on
17 a prospective basis?

18 Senator Boren. As long as you are prospective in the sense
19 that if someone already made the transfer they would get the break
20 from now on. There were some people who mistakenly went ahead and
21 made the transfer thinking it was allowed since it is allowed in
22 all other cases. I am not talking about going back and having
23 a revenue impact.

24 Mr. Lubick. That particular change I think would be satis-
25 factory.

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1 Senator Boren. If you did it a couple of years ago, you
2 would not go back in time but from this time forward you would
3 get it.

4 Mr. Lubick. There are a couple of other things here that
5 have been called to my attention since we talked. Apparently
6 the statute now operates with the pool of percentage depletion
7 that is available to individuals, members of the family, allo-
8 cated among the total production that has been drilled in ratio
9 to the production where it goes over the limit. I assume that
10 that automatically would apply.

11 Senator Boren. We would certainly work with you on technical
12 drafting of it so you don't increase the number of barrels
13 that anyone would be entitled to.

14 Mr. Lubick. But the way in which it is allocated it is pro-
15 rated among the various properties.

16 Senator Boren. Yes, sir.

17 Mr. Shapiro. There are someother things that are of a tech-
18 nical nature that we would like to review.

19 Senator Boren. We are not increasing the number of barrels.
20 We are just letting them change to corporations for estate tax
21 purposes.

22 Senator Byrd. Is there further discussion? If not, those
23 in favor vote aye.

24 (Chorus of ayes.)

25 Senator Byrd. Opposed, no. The ayes have it. The members

1 agree to it.

2 Senator Bentsen.

3 Senator Bentsen. This is one I introduced at the request
4 of Treasury and one the Secretary of Treasury is very strongly
5 for. What this deals with is exempting from the 30 percent with-
6 holding tax of interest received by foreigners a new debt obli-
7 gation sold outside of the United States. The reason Treasury
8 wants this is because of the President's program in trying to bol-
9 ster the dollar, the question of the balance of payments today.
10 You can circumvent this by setting up a Netherlands Antilles
11 corporation because you have a tax treaty with them. Corporations
12 can do that and they go through the trouble of that kind of
13 incorporations hiring lawyers and accountants and they can
14 accomplish their objective. But trying to be straightforward
15 about this and to encourage our financing ease and trying to
16 help on the balance of payments, I think Treasury is right and I
17 would strongly urge that we go ahead and support the Treasury
18 position on this.

19 Senator Packwood. I support what you are driving at but isn't
20 there a difference between Treasury's position and some of the
21 brokerage houses and I think we should discuss those two dif-
22 ferences.

23 Senator Bentsen. I did not get to their's because this
24 talks about the entire issue being sold overseas. I think
25 treasury goes along, wiht that. I would like to have your feelings

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1 on it. They say that they would like to see it e xpanded to
2 cover issues whether they were all owned overseas or only in
3 part owned overseas.

4 Senator Packwood. I thought the brokerage houses make a good
5 argument.

6 Senator Bentsen. I think they do. I was concerned about your
7 opposition, Senator Packwood. If you go along with it I will go
8 ahead with it.

9 Senator Packwood. I think they made a good case.

10 Senator Byrd. Senator Bentsen, hearings have not been held
11 on this.

12 Senator Bentsen. Let me get that thought. We had extensive
13 hearings on this in '76. This committee passed it in markup and
14 it was touched on again in hearings on Senator Wallop's in
15 June of '79. It is not a new issue, Senator Packwood well knows.
16 We bought this one before.

17 Senator Packwood. We started out with that back in Texas as
18 I recall.

19 Senator Chafee. Mr. Chairman, I would like to support this
20 and go the one step beyond what Senator Bentsen originally pro-
21 posed. I agree with him as he expanded it to apply to all bond
22 issues sold within the United States, not necessarily overseas to
23 foreign investors. The idea, as I understand, Mr. Lubick,
24 Treasury has no objection to this.

25 Mr. Lubick. We are talking about portfolio as opposed to

1 parent subsidiary loans and we are also in your description,
2 Senator Bentsen, we would apply this not only to a new obligation
3 but to one assumed that has been previously issued. We think this
4 is sound policy and I would like to say a word, Mr. Chairman,
5 about the hearing problem because we agree with you absolutely
6 that that is the proper way to conduct business.

7 We think that this situation is a little different because of
8 the reason Senator Bentsen has mentioned, one, that there were
9 the prior hearings and indeed the adoption of the provision by
10 the committee but there is something special that is involved
11 in this problem and that involves the protection of the dollar
12 and our access to capital markets in the present crisis situation
13 in which we find ourselves with questionable signals perhaps
14 going to the foreign investors as to what they should be doing
15 with respect to investment in the United States.

16 We ourselves as part of Senator Bentsen's amendment had
17 urged this be available to the United States in its special
18 issues of bonds in going to the market in Switzerland and other
19 places. We think it is a matter of very considerable importance
20 to the United States for the protection of the dollar and I think
21 it is more than an ordinary tax provision.

22 We are not really proposing this as a structural tax matter
23 as those other measures are but rather this is something on
24 which so far as we have seen Senator Packwood is not the only
25 one who has changed his mind. I indeed have consulted with other

1 members of the House who opposed similar proposals in earlier
 2 years who have now also changed their position on this recog-
 3 nizing the urgency of the situation.

4 I would urge in light of all of these special circumstances
 5 that it might be appropriate to proceed with this one today.

6 Senator Chafee. It must be good if Treasury is that
 7 enthusiastic.

8 Senator Packwood. Could Treasury comment on page 2, the part
 9 about certain non-residential aliens? I think the case is well
 10 made. I support it. Are you familiar with that?

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1 Senator Byrd. We have not finished with this one yet.
2 Let me get this straight. I don't think your second reason is
3 adequate to waive hearings, but your first reason is, it seems
4 to me. This precise proposal, roughly the same proposal, has
5 already been approved by the Finance Committee. If that is
6 the case, I don't see the need for hearing unless other
7 members do.

8 Senator Bentsen. I would urge its acceptance by the
9 committee.

10 Senator Packwood. Are we accepting the broad proposal?

11 Senator Bentsen. The broad proposal.

12 Mr. Lubick. We believe, as a matter of policy, either
13 the broad proposal or the narrow proposal is acceptable.

14 Senator Bentsen. I am recommending the broad proposal.

15 Senator Byrd. Those in favor vote "aye." (Chorus of
16 ayes.) Those opposed, "no." (Chorus of nos.)

17 The ayes have it.

18 Senator Bentsen. I don't want to have given up my turn
19 to Treasury without coming in with a couple of
20 noncontroversial ones. They are on the agenda.

21 The first one deals with foundations.

22 This is where a foundation rents and gets into the
23 problem of self-dealing and how do you take care of it. I
24 will speak specifically of a foundation, the Moody Foundation,
25 for example, will have to move out of a building it is in. It

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1 spent some \$250,000 that honestly will not be expended for
2 charity if they have to do that.

3 Treasury has looked at this and this is a situation where
4 they have dealt at arm's length on the rent in the building
5 and they are paying a competitive rate. I have helped draft
6 the provision in ARISA to help take care of that situation and
7 what I am asking is that we, in effect, use the ARISA
8 provision, if they have dealt at arm's length and they are
9 paying a competitive rate, that that limitation not apply.

10 I understand Treasury has no objections to that.

11 Mr. Lubick. We agree with their amendment, Senator
12 Bentsen.

13 Senator Byrd. Your subcommittee,, Senator Bentsen, I
14 think, discussed this?

15 Senator Bentsen. We did.

16 Senator Byrd. So it has been discussed?

17 Senator Bentsen. It has.

18 Senator Byrd. Is there furthr discussion?

19 Senator Danforth. Have you finished this item?

20 Senator Bentsen. No.

21 Senator Byrd. If there is no further discussion, first
22 let me say I know the Moody ppeople and they are very fine
23 people. No further discussion. Those in favor vote "aye."

24 (Chorus of ayes.) Opposed, "no." (Chorus of nos.)

25 The ayes appear to have it.

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1 Senator Bentsen. The second one could finish, if I
 2 might, that was the one on rollover treatment for certain
 3 distribution for money purchase pension plans. Again,
 4 Treasury thinks it is right.

5 Senator Byrd. What is that?

6 Senator Bentsen. Number 2 on the back page there, if I
 7 might, S. 989. That is one if you get out of the pension plan
 8 and, let's say, you have two types, one that is money purchase
 9 and one you have a short benefit, you have to cancel them both
 10 out to get capital gains, as I understand it.

11 What you should do is leave the person the option. They
 12 should be able to roll over their money to an IRA or whatever.

13 Mr. Lubick. Treasury has testified at hearings in favor
 14 of this. If you need some explanation, Mr. Halperin testified
 15 and he will respond.

16 Mr. Halperin. The Ways and Means Committee reported out
 17 this bill just this week. We had some technical changes to
 18 that. It would be better if you could use the same language
 19 in your proposal now.

20 Senator Bentsen. Accomplishing the same objective, so
 21 the pensioner has the option.

22 Senator Byrd. Is there further discussion? The question
 23 is on the amendment. Those in favor vote "aye." (Chorus of
 24 ayes.) Opposed, "no." (Chorus of noes.)

25 The ayes have it; the amendment is agreed to.

1 Senator Packwood. I have a proposal.

2 Senator Byrd. Next on the list of those senators who are
3 here, Senator Chafee.

4 Senator Danforth. Can I inquire? I absolutely must
5 leave the room right now and be gone for about a half hour.
6 Will we still be going on this bill half an hour from now?
7 Because I have an amendment.

8 Senator Byrd. Frankly, I don't know. I don't know when
9 we are going to vote and I would guess once we leave here to
10 vote there may be difficulty getting back.

11 Senator Chafee. Mr. Chairman, I am prepared, if
12 agreeable with the others, I would let Senator Danforth go in
13 front of me, if he is ready now.

14 Senator Byrd. Without objection.

15 Senator Danforth. Mr. Chairman, I mentioned this with
16 Chairman Long just before we left before lunch, but on the
17 back page, under Senator Long's name, is an item relating to
18 voting rights for employee stockownership plans and employee
19 profit sharing plans.

20 This is a proposal to repeal section 401 (a)(22) of the
21 Internal Revenue Code relating to employee direct voting of
22 shares of stock held in profit sharing plans of closely held
23 corporations.

24 This provision was placed in the Internal Revenue Code in
25 the Revenue Act of 1978 as a floor amendment without hearings,

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1 and I don't think with any debate or controversy whatever.
2 The effect of it is to put a substantial damper on employer
3 contributions to these plans in closely held corporations.

4 For example, one major company in Kansas City, Missouri,
5 which happens to be a closely held corporation, the founder of
6 the company who is well advanced in years wants to contribute
7 substantial amounts to such a plan. In the prior law their
8 shares of stock would be voted by the trustee. However, under
9 the 1978 Act on what are called important matters for the
10 corporation, the voting rights for those shares are passed
11 through to the employees themselves.

12 This particular individual feels that what would
13 otherwise be a very cohesive things to do for the health of
14 his company, namely, to bring employees into the ownership of
15 the shares, would end up being a very divisive thing if major
16 issues were voted on by the employees. Therefore, the hope
17 was that this provision which was adopted without any hearing
18 at all, could be repealed.

19 If Treasury or anybody else wants it reenacted at some
20 future date, we could have hearings then. The effective date
21 is January 1 of 1980. The ESOP Association of America, which
22 is the organization aimed at promoting the creation of ESOPs,
23 believes that this is the most important single issue as far
24 as the future of ESOPs is concerned.

25 The Chairman offered the amendment on the floor last year

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1 and then introduced a bill this year which, among other
2 things, would repeat the same provision.

3 I talked to Chairman Long immediately before lunch and
4 suggested the possibility of raising this, and I am confident
5 that it meets with his approval.

6 Now, your comment, Senator Byrd, this morning about not
7 proceeding on anything without hearings --

8 Seator Byrd. I think hearings were held by Senator
9 Bentsen's subcommittee, wasn't it? This was heard by Senator
10 Bentsen's subcommittee.

11 Senator Danforth. Part of the hearings yesterday, I am
12 told.

13 Senator Byrd. I think you are all right on that.
14 Senator Long mentioned to me earlier he favored your proposal.

15 Senator Danforth. I hate to bring it up without his
16 being present.

17 Senator Byrd. He indicated to me he thought we should go
18 ahead if he were held up on the floor.

19 Mr. Lubick. Mr. Chairman, we did have some hearings last
20 year on the whole question of employee stock ownership and the
21 rights that employees ought to have. At that time we
22 expressed the position which essentially we think is sound,
23 that if the purpose of employees' stock ownership in these
24 plans is to give encouragement and incentive to the employees
25 to feel and act like shareholders in a corporation, consistent

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1 with that, it is important that they have the rights that the
 2 stockholders have. In other words, if the notion is to get
 3 them to be more productive employees because they have a
 4 stake, have an ownership stake in the corporation, that which
 5 normally goes with ownership may include the right to vote and
 6 the vote to receive financial information as to the affairs of
 7 the corporation.

8 Now, in many corporations the question of voting rights
 9 is less significant than the question of financial
 10 information. If you are dealing with listed companies, the
 11 question of voting rights is presumably less significant.
 12 When you are dealing with closely held corporations, we have
 13 found that frequently what appears to be an ESOP for the
 14 purpose of encouraging stock ownership is really not that; it
 15 is a device for bailing out capital gains rights of a portion
 16 of the stock of a principal shareholder who retains complete
 17 voting control and all the information to himself, so that the
 18 purpose is somewhat defeated. The employees are not treated
 19 as stockholders and don't have those attributes of stock
 20 ownership which are essential to carry out this purpose.

21 So we think, generally, that it is not appropriate to go
 22 backward on requirements of voting rights, in particular in
 23 the case of closely held corporations.

24 We think even more important than voting rights, however,
 25 is the right of the employees to receive normal financial

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1 information which under the securities laws corporations are
 2 required to provide to stockholders. That, we think, is the
 3 most important aspect of stock ownership, but we think voting
 4 rights is important and therefore we think you ought not to
 5 repeal this provision.

6 Senator Byrd. This matter has been the subject of
 7 hearings, as I understand it.

8 Senator Bentsen. Mr. Chairman, I presided over part of
 9 these hearings yesterday, and Senator Matsunaga presided over
 10 the rest of them. I understand it was brought up while he was
 11 presiding.

12 Mr. Halperin. Senator Bentsen, the bill in which this
 13 provision is contained, S. 1240, was one of the five or six
 14 bills that were listed as a subject of the hearings. Whether
 15 or not anybody specifically mentioned it during the oral
 16 testimony, I don't know.

17 Mr. Stern. Senator Matsunaga was chairing the hearing at
 18 the time this came up.

19 Senator Byrd. You heard the discussion. Any further
 20 discussion?

21 Senator Danforth. I will add, under the previous law
 22 that is in existence right now, it is not as though the shares
 23 are voted by some irresponsible person; they are voted by a
 24 trustee who has a fiduciary obligation.

25 Senator Byrd. Those in favor of the proposal, vote

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1 "aye." (Chorus of ayes.) Opposed, "no." (Chorus of nos.)

2 The ayes appear to have it. The ayes have it.

3 Senator Moynihan. The Chairman of the committee said
4 there would be a vote and he would hope the committee might
5 reconvene immediately after the vote, to finish up what
6 business we might have.

7 Senator Chafee. I would like to add, as one next in
8 line, that I share his enthusiasm for reconvening promptly.

9 Senator Wallop. I would like to add, as one who has the
10 train engine, I would like to have my thing taken care of
11 before we abandon.

12 Senator Byrd. We will stand in temporary recess.

13 (Brief recess.)

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1 The Chairman. Here is the final tabulations on the Talmadge
2 amendment. Eight ayes, and ten noes. So the amendment fails
3 to carry.

4 Now, pardon my absence, I have been with the windfall tax
5 bill on the floor.

6 Where do we stand now?

7 Mr. Stern. At the time the committee broke up, Senator
8 Chafee was about to bring up his amendment.

9 Senator Chafee. Thank you, Mr. Chairman. This is the
10 measure that we did have hearings on. It is my understanding
11 that we have the support of the Treasury on it. What it does
12 is in 1979 a group of indians in our state filed a claim to a
13 substantial amount of acreage and substantial amount of acreage
14 tax, a lot out of our state. So a settlement was worked out in
15 which the state donated over 1,000 acres of public land, and
16 the federal government agree to purchase another 900 acres.

17 All this was going to be held in a state corporation perma-
18 nently for the indian tribe. So, as of this time, the state
19 has transferred its thousand acres and the Department of Interior
20 has completed the purchase of 500 of the 900 acres the federal
21 government is going to buy.

22 The problem is that when the deal was originally worked out,
23 the owners, private owners of the other land that was going to
24 be sold to the federal government had an understanding, a belief,
25 that their capital gains would be deferred, that they could take

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1 the basis of their original land and carry it over if they
2 reinvested their money in land.

3 Now, it appears this is broken down and this legislation
4 would provide that they could have this carryover basis on the
5 new purchase. I believe I stated that accurately.

6 Mr. Stern. Up to this time, the amendments have been
7 approved without being assigned.

8 Mr. Shapiro. This deal with Rhode Island indian claim
9 settlement. It was an agreement worked out in settlement of the
10 land. The bill has two provisions. The first one would say that
11 the public corporation that would hold the land would not be
12 subject to federal, state or local taxation. It provides for
13 exception where there are income producing activities.

14 In those cases, any income producing activities on the land
15 would be subject to federal taxation.

16 The second part of the amendment deals with the sellers of
17 the land, essentially the 900 acres. That is land being sold to
18 the public corporation. Those individuals who are selling the
19 land would be allowed to have that land treated as involuntary
20 conversion which means there would be no tax on that land, it
21 would be deferred, and they would be allowed to reinvest the
22 proceeds in other activities within two years in order to be
23 taxed.

24 It would be effective on September 30, 1978, and as we
25 understand the budgetary affect would be approximately \$1 million

sjk 3 1 in the aggregate for a three-year period, fiscal year 1980
2 through 1983.

3 The Chairman. What is Treasury's position?

4 Mr. Lubick. Mr. Chairman, we are not opposed to this. This
5 was part of the settlement. In essence, we came to the conclu-
6 sion that there was an element of involuntariness involved here
7 that was the threat of litigation that, in many ways, is similar
8 to a condemnation in that as part of the overall settlement
9 it was appropriate in this case to move in this direction.

10 Senator Chafee. It has to be reinvested in real estate.

11 Mr. Shapiro. That's correct. Within the two-year period.

12 The Chairman. Any objection? Without objection, it is
13 approved.

14 Senator Chafee. Next deals with a problem that has come up
15 over a series of tax bills here and it deals essentially with
16 the pay that is received by Americans working over seas for
17 charitable activities or non-profit activities.

18 Now, prior to '76, workers for profit-making activities got
19 \$20,000 exemption and for charitable, \$25,000. Then in '78,
20 that was changed to the corporate workers got \$15,000 exemption
21 and then the charitable were reduced to \$20,000.

22 However, that has since been changed. Now, it works out so
23 that the charitable people only get the deduction if they are
24 in labor camps, worker camps, just like the corporate workers who
25 get this exemption if they are in labor camps. I misstated.

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1 The corporate people get a deduction of \$15,000 if they can prove
2 this is the cost of sending their children to school, increased
3 cost of living and so forth.

4 The problem is that the charitable workers over seas are not
5 in camps. That is not the nature of their work. If you go over
6 seas to do work in Cambodia, you are not in some workers' camp.
7 You are out by yourself and the effort here is to exempt from
8 the charitable workers over seas the first \$20,000 of income.

9 Now, Treasury is not wholeheartedly enthusiastic about this
10 as I get it, but what happens is, Mr. Chairman, if we don't do
11 this then the charities are just going to have to pay their
12 people more -- and the average salary is something like \$12,000
13 to \$14,000 -- they are not getting rich on it -- in order to make
14 up for the taxes, they have to pay to the United States Government.

15 Mr. Lubick. Mr. Chairman, I think Senator Chafee is correct
16 in his last statement that this is a device in order to cut down
17 the cost to subsidize the foreign charities. It allows them
18 to pay a lower compensation to their employees and therefore they
19 have either more funds available to pay more employees or else
20 they have to raise a smaller amount and maintain the same
21 employees.

22 This provision was part of the package that was worked out
23 last year by Senator Ribicoff. We eliminated the former \$20,000
24 exclusion and substituted two different provisions that are now
25 available for these employees.

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1 One is the series of special deductions for the employees
 2 for extraordinary expenses, cost of living, cost of rental, cost
 3 of education, home trips and in addition, leaving aside the camps
 4 which I think you are quite right in saying it does not generally
 5 apply to this type of employee. But, there is a special hardship
 6 deduction of \$5,000 over and above the other special deductions
 7 for persons in designated hardship areas.

8 Now, some of the charitable employees are in hardship areas
 9 and some of them are not. For example, if you are working in
 10 Korea, I take it if you are located in the city of Seoul, you are
 11 probably not in a hardship area. If you are in a country where
 12 you are, they use the State Department hardship allowances for
 13 this purpose.

14 Our basic problem and objection to this method of handling
 15 it is in addition to the fact we had set up this whole system
 16 last year of dealing with hardship through special deductions
 17 and the hardship area of \$5,000 deduction, is that essentially
 18 the argument is that we should subsidize foreign charities in
 19 order to enable them to carry on their charitable work. We do
 20 not do that for domestic charities and I don't see how one can
 21 differentiate between the two. We do not exempt the income of
 22 employees of the United Way or of any other United States chari-
 23 table organization. And, I don't know that one can say that the
 24 activities performed by the foreign charities are any more or any
 25 less desirable or deserving of subsidy than the United States

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1 domestic charities.

2 Therefore, I don't see any particular justification to
3 subsidies. When you deal with the individual employee who has
4 extraordinary expenses above and beyond the employee in the United
5 States, then he should get the extra deduction. That is what was
6 accomplished by the Ribicoff bill last year. We went one step
7 further. For those employees in a hardship area, we have given
8 them an extra \$5,000. That seemed to us to be adequate as far
9 as the employees are concerned.

10 When you talk about subsidizing foreign charities, there is
11 no justification for giving them a preference over United States
12 charities.

13 The Chairman. Did you conduct hearings on this, Mr. Bird?

14 Senator Bird. Yes.

15 The Chairman. What is your thought on it?

16 Senator Bird. I have mixed thoughts on it. I am inclined
17 to support it. I cannot argue strenuously for it, but I am
18 inclined to support it.

19 The Chairman. All in favor of the proposal, say "aye".

20 (Chorus of "ayes".)

21 The Chairman. All opposed, say "no".

22 The "ayes" have it.

23 Mr. Stern. I mentioned to the committee the additional
24 revenue under the Wallop amendment is about \$57 million. And,
25 the amendments of the committee agreed to so far, add up to rather

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1 close to that figure, perhaps slightly lower than that, \$73 or
 2 \$74 million. It has been contemplated the additional revenue
 3 under Senator Wallop's amendment should accompany the amendments
 4 in the tax area that the committee wants to agree to. There
 5 are two relatively important significant amendments. Senator
 6 Bentsen's relating to the withholding tax is about \$25 million
 7 in fiscal year 1980. The one that Senator Chafee just raised on
 8 charitable organizations is about \$39 million and the other
 9 amendments that the committee has agreed to are all less than
 10 \$5 million.

11 Senator Packwood. How much is Senator Wallop's bill?

12 Mr. Stern. \$75 million. It raises about \$75 million.

13 The Chairman. You say this costs \$70 million.

14 Mr. Shapiro. \$03 million. The first fiscal year is \$25
 15 million on a calendar basis, but it covers last year as well.
 16 It covers two years, so it gets \$39 million for that one amendment.

17 The Chairman. Could we amend it to ease the impact by
 18 making it start, let's say, at some later point? When would this
 19 start?

20 Mr. Shapiro. In 1979.

21 The Chairman. Start in 1979?

22 Mr. Shapiro. For this year, January of this year.

23 The Chairman. It could ease the budget impact one would
 24 think if we would start it maybe the middle of the year, some-
 25 thing of that sort. Start in the middle of the year so they could

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1 have half the year after July. That would cut down the burden
2 of it.

3 Mr. Lubick. How about extending the \$5,000 hardship deduc-
4 tion to the non-hardship areas?

5 Senator Chafee. I don't think so. What I would suggest,
6 we have people who are over there who are, whether they are from
7 some Kansas State University, wherever it is, advising in the
8 Sudan, and to hit them, it would not work for them to defer it.
9 I would suggest a proposition of having it apply only to the
10 lesser hardship nations. Maybe that would be a way out. Do
11 you have any figures on that, Mr. Lubick?

12 Mr. Lubick. That is certainly an improvement. I think the
13 charitable employees in Paris and Rome don't present to my ethos
14 as crying a situation as those that are enduring some genuine
15 hardship in third world countries.

16 The Chairman. How much do you think that would reduce the
17 cost?

18 Mr. Shapiro. We don't have a revenue estimate for that now.
19 We used to have a provision that dealt with less developed
20 countries under previous law and we could adopt that type of
21 legislation. I am sure it would cut down the revenue affect
22 probably significantly.

23 The Chairman. If that is all right, Senator, let's do it
24 that way.

25 Senator Chafee. I think the compromise that might fit well

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1 with Mr. Lubick's ethos is have the lesser developed countries
2 this year and all the nations next year.

3 Mr. Lubick. We can get the revenue estimate for you. I
4 am trying to telephone back to Treasury where I believe we did
5 make the revenue estimate.

6 It seems to me, in any event, if you are going to go in
7 that direction, I would urge you to do it on a permanent basis.
8 I think the justification for subsidizing the charities in Geneva
9 as opposed to the charities in Providence or some other place is
10 very hard to define.

11 Senator Chafee. I urge you not to use the work foreign
12 charities constantly. These are United States charities func-
13 tioning abroad whether it is Cairo or the Baptist convention of
14 the south, whatever it is. They are United States. Maybe
15 providing services abroad.

16 Mr. Lubick. The amendment covers foreign charities as well
17 as United States.

18 Senator Chafee. They have to be qualified under that 301
19 whatever it is.

20 Mr. Lubick. Those need not be United States.

21 Senator Chafee. But, these are all American taxpayers we
22 are talking about. I suggest that might be the way, Mr. Chairman.
23 Do the lesser developed nations.

24 The Chairman. Then without objection, we will limit the
25 application of this to less developed nations.

sjk 10 1 Senator Packwood. I want to know what order we are going in.
2 I have been waiting.

3 The Chairman. Go ahead.

4 Senator Roth. Action was taken this morning, Mr. Chairman,
5 that I think with your permission should be clarified. The
6 amendments involving unemployment compensation were attached to
7 the Trade Adjustment Act which was reported out several weeks ago.
8 I was not here and I object very strenuously to attaching these
9 unrelated amendments to that even though I am supportive of
10 those amendments.

11 As a practical matter, that is what, in the closing days of
12 the last session, killed trade adjustment. We had reported it
13 out. No advance notice was given to me. I think Senator Moynihan
14 from New York agrees with me. We feel strongly that should be
15 a clean bill. I do.

16 The Chairman. Do we have legislative matters around here
17 enough so we could send that through as a clean bill and put
18 amendments on other bills?

19 Mr. Stern. You have other bills. None of them deal with
20 unemployment compensation. The thought was to pay for the
21 additional \$100 million.

22 Senator Roth. Those funds are available anyway. I just
23 object to this procedure being used.

24 The Chairman. Let me get this straight. Did you suggest
25 that the amendments that reduce the cost of the unemployment

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1 program go on the bill that provides the additional benefit for
2 unemployment as a result of the Trade Act, is that it?

3 Mr. Stern. Yes,,sir.

4 Senator Moynihan. It is a question of keeping an agreement
5 that our committee made. When we passed the Trade Bill, we said
6 there would be the trade adjustment legislation. It just ran
7 a foul of this kind of process at the end of the last Congress.
8 We did pass the Trade Bill. We got a budget waiver for the
9 increased costs in the unemployment compensation that might come
10 about. And, I think the committee -- I don't want to make a
11 large claim of moral obligation -- but, it was expected we would
12 do this.

13 There is to my knowledge, no opposition in either house of
14 Congress to the trade expansion provisions. The unemployment
15 compensation measures we adopted this morning will have opposition
16 and there will be additions.

17 The Chairman. Let me ask you would the trade adjustment
18 bill be subject to a budget objection if it did not have these
19 savings that we voted on the unemployment compensation program?

20 Mr. Stern. I don't believe any spending bill is likely to
21 be subject to a point of order until next spring or so. Perhaps
22 the final supplemental appropriation bill. The question is it
23 is not going to be that easy to pass a bill cutting unemployment
24 benefits all by itself and this would give some balance to the
25 bill.

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2 Senator Roth. I feel in all candor if this proposal is
3 going to be made, it should have been brought to our attention
4 ahead of time. This bill was reported out as on the calendar.
5 I object very strenuously. I talked to Senator Boren. He has
6 no objections to these other amendments being attached, and I
7 think, as Senator Moynihan has said, we have an obligation here.
8 We did vote it out clean. There was an opportunity to bring it
9 up and to me it is just appropriate procedure to pursue in this
10 case.

11 The Chairman. This trade adjustment assistance bill is
12 something we reported out last year. We passed it. It did not
13 become law because it got involved with a lot of other items,
14 wasn't that right?

15 Senator Roth. That's correct.

16 The Chairman. Your view is that we might be involved in
17 the same scenario again because of the proposals to make the
18 reductions in the unemployment program?

19 Senator Roth. That's correct.

20 The Chairman. How do the senators feel? It is all right
21 with me to do it however the committee want to do it.

22 Senator Roth. As I said, I spoke to Senator Boren about
23 it, and he said it is all right with him.

24 The Chairman. Can we find some other measure to put it on?

25 Mr. Stern. There is a bill which passed the House dealing
with services for disabled children on SSI. The committee has

sjk 131 already put that provision on the disability insurance bill, so
2 you could use that number.

3 The Chairman. It does not have much of a rider to go with
4 it. It is not all that popular a bill, so you are probably
5 putting a lot more burden on the horse than the horse can carry.

6 Mr. Stern. In effect, the horse has left because it is on
7 the other bill.

8 The Chairman. It might be a noble gesture.

9 Mr. Stern. You would not necessarily have to strike the
10 provision. You could make it an amendment at the end of the bill.

11 The Chairman. If there is no objection, then we will.

12 Senator Moynihan. Mr. Chairman, Senator Heinze wished to
13 be associated with the remarks that Senator Roth and I have made.

14 The Chairman. If there is no objection, we will reconsider
15 the vote by which we agreed to add it to the adjustment assistance
16 bill and if there is no objection, we will proceed to put the
17 amendment on this number you have over here.

18 Mr. Stern. I would suggest not striking the provision and
19 leaving the House provisions as well as making this an amendment
20 so that the unemployment amendments would be on the same bill as
21 the disabled children.

22 The Chairman. Without objection, that will be agreed.

23 Senator Packwood. Mr. Chairman, last August we passed out
24 S100 Reforestation Bill by unanimous vote in this committee. You
25 have a package in front of you that says Packwood's Reforestation

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sjk 14

1 Proposal. I would like to add it to the bill that Senator Wallop's
2 revenue proposals will go to. This bill has been waiting for
3 four months now for a verdict and I talked with you about it. It
4 has no objection short of some moderate objections of the
5 Treasury but I don't think this is an appropriate time to raise
6 them because we already sent this bill out. We voted it out
7 unanimously last August waiting for a verdict so I would like to
8 attach it to this bill.

9 Mr. Shapiro. Senator Packwood's provision is one the
10 committee previously agreed to. He is suggesting it gets put
11 on the bill Senator Wallop's bill gets attached to. His amendment
12 has been agreed to, but it has not been attached to the bill.
13 He wants to put it on this list.

14 The Chairman. Without objection.

15 Senator Packwood. I have a second proposal. It relates --
16 page two of G -- to Senator Bentsen's proposals. I don't know
17 if there have been hearings on this. This relates to elimination
18 of withholding on pensions paid to certain non-resident aliens.

19 Mr. Shapiro. There have not been hearings on that to date.

20 Senator Packwood. There have not been hearings on that to
21 date. Take a look at G. It is the page two of G entitled
22 Elimination of Withholding of Pensions paid to Certain Non-
23 Resident Aliens. There have been no hearings. I will wait until
24 we have hearings on it.

25 Mr. Lubick. Senator Packwood, in a sense it is a similar

sjk 15 1 problem to the interest we talked about. Basically, what you are
2 talking about are foreign employees such as banana pickers in
3 Honduras who are under pension plans that are largely United
4 States employees and they are exempt under that portion of their
5 pension as represents the employer contribution. And, the
6 question involved is that some of the pension plans have invested
7 and received interest from United States sources. So, in the
8 sense that it deals with the question of interest from United
9 States sources, it is not unrelated to what you have already
10 done.

11 Senator Packwood. It is not unrelated. If I understand
12 correctly the only difference is if the pension happens to be
13 funded, it is counted as a payment from capital. If it was a
14 payment, they would not be paying taxes on it to the United States,
15 is that correct?

16 Mr. Lubick. That's correct. So, in a sense, it ties into
17 the tax on interest invested in the United States by these very
18 low paid --

19 Senator Packwood. As I understand, Treasury has no objection,
20 do they?

21 Mr. Lubick. That's correct.

22 Senator Packwood. Then could we attach it?

23 The Chairman. What is the estimated cost of this?

24 Mr. Shapiro. We don't have a revenue affect yet.

25 Mr. Lubick. We had a revenue affect. It is very minimal.

sjk 16

1 I think it was \$1 to \$2 million at the outside.

2 The Chairman. All in favor say "aye".

3 (Chorus of "ayes".)

4 The Chairman. All opposed, say "no".

5 The "ayes" have it.

6 Senator Packwood. Let me ask was there a hearing on
7 Senator's Percy's industries proposal which is item number T?
8 I told Senator Percy I would raise it for him.

9 Mr. Shapiro. There haven't been hearings on that as of now.

10 Senator Packwood. Let's withhold on that.

11 The Chairman. Senator Durenberger's proposals.

12 Senator Durenberger. Mr. Chairman, I believe I have two
13 situations here without or with minimal revenue impact. Two
14 situations in which I am not trying to change current law with
15 or without hearings, but rather to extend the applications of
16 January first deadline in two different situations.

17 For the sake of time and clarity, I would appreciate it if
18 Mr. Shapiro would explain for the committee each of these propo-
19 sitions.

20 Mr. Shapiro. The first one is similar to the one the
21 committee agreed to earlier with respect to the problem. That
22 was the Moody Foundation one Senator Bentsen brought up that
23 Treasury had no objection to. This particular one deals with
24 services that are provided by foundation as trustee. Under the
25 Tax Reform Act of 1969, the Congress, in those provisions, had

sjk 17

1 certainl rules which dealt with disqualified persons, and they
2 said when a foundations deals with a disqualified person, it is
3 treated as an act of self-dealing and, in effect, is prohibited
4 by a list of excise taxes and the affect of that is to have
5 absolute prohibition.

6 As a result, some of the special situation that came to the
7 attention of Congress, resulted in deals that have been going on.
8 Congress provided a period of time, essentially a transition rule,
9 to allow these situations to be corrected so that they would not
10 have to make adjustments over night to deal with economic circum-
11 stances.

12 In the particular case Senator Durenberger is bringing up
13 the Hormel Foundation, there was a transition rule that allowed
14 them to continue to 1980 to be a trustee of a trust which would
15 otherwise be a disqualified person. The proposal that Senator
16 Durenberger is suggesting here, in this amendment, would extend
17 the transition rule for certain services for one more year so
18 the rule would not apply until after 1980.

19 The Chairman. What is Treasury's position on that?

20 Mr. Lubick. Mr. Chairman, we think that this is indeed a
21 very different situation from the Moody one that Senator
22 Bentsen raised because in the one Senator Bentsen raised, you
23 had arms-length standards in determining whether there was self-
24 dealing or not because most of the building was rented to
25 outsiders who knew what the rental was.

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sjk 18

1 Here, the question is that the trustee is in a conflict of
2 interest situation. The purpose of the private foundation rules
3 was to make sure that the trustee would act independently. The
4 trustee could resign, but the trustee does not want to because
5 the trustee wants to deal with the property in a certain way in
6 trying to solve the problem, with which I have a great deal of
7 sympathy, the maintenance of the present status of the corpora-
8 tion's location. And, they are concerned if it is sold to
9 outsiders there would be a whole different development.

10 I tried to exercise some ingenuity and you have given me
11 some ideas as to how this could be solved. I think if we could
12 use the ESOP device here to permit this corporation's stock to
13 be transferred to employees, you would solve two problems, the
14 trustee would be able to get out of the difficult situation in
15 which it finds itself because the ownership could be in the hands
16 of the employees and the employees doubtless would be interested
17 as owners of the company in perpetuating the location of the
18 company where it is and I think all sorts of good things could
19 develop.

20 The Chairman. That sounds like a great idea. I am all for
21 employees. It gets you a lot of votes.

22 Senator Durenberger. That sounds like an exciting idea.
23 I am not here trying to make any excuses for the foundations
24 inaction over a period of years or the lack of ingenuity on any-
25 one's part. This bill did pass the House in the last session.

SJK 19

1 And, I would hope that we could take a year to get hearings from
2 Senator Bird's committee so we could exercise ingenuity and
3 find a way out of the problem.

4 Mr. Lubick. Is your bill one year for all the rules on
5 private foundations or just this particular trusteeship?

6 Mr. Shapiro. I understand it was just on this particular
7 situation.

8 The Chairman. You would have minimal revenue impact, would
9 you not?

10 Mr. Lubick. No revenue impact at all on it. It is simply
11 we are very concerned about undermining transition rules.

12 The Chairman. I wish the Senator would consider Mr.
13 Lubick's proposal. I think it would get howls of joy from
14 the employees.

15 Senator Durenberger. Give me time, Senator, I will be
16 glad to get excited about it.

17 The Chairman. It would not give you too much trouble to
18 give you one year to work it out.

19 Mr. Lubick. I think we would go down the ESOP road and I
20 would feel happier about it.

21 The Chairman. I would, too.

22 We better dispose of this one way or the other. Would
23 those in favor of the Durenberger proposal say "aye"?

24 (Chorus of "ayes".)

25 Those opposed, say "no".

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sjk 20

1 I think I will have to vote for employees on that. The bill
2 will be recommended as an amendment.

3 Now, what is the other proposal?

4 Mr. Shapiro. The other one, Senator Durenberger, is M on
5 your list. It deals with a period of time to conform to remain-
6 der trust for estate tax purposes. This was also a proposition
7 in the Tax Act of 1969. They were somewhat detailed. Regulations
8 came out a couple of years later. As a result, in the regula-
9 tions themselves they allowed a period of time for individuals
10 wills or estates to adjust and conform to the new rules.

11 Because of the complexity and the fact that not all of the
12 wills that were executed prior to a certain date were aware of
13 these changes, Congress, on some occasions, has extended the
14 date to conform to these new provisions. There is another
15 situation that has recently come to the attention of the Congress
16 and, therefore, this amendment is to propose an additional two-
17 year period of time to conform to these views to meet the new
18 rules and acted in 1969. This would take it through 1980.

19 It would cover 1979 and 1980.

20 Mr. Lubick. We have been working with staff to try to come
21 up with a permanent solution on this problem that would take care
22 of the particular cases that are before you now, and I think Mr.
23 Shapiro's staff and ours are really fairly close to a permanent
24 solution so we don't have to extend this year after year.

25 Basically, we would try to provide a rule that if anyone who

sjk 21

1 executed a will which was not proper, revised before a certain
2 date and then died, or anyone who executed an irrevocable trust
3 before a certain date, would have a given period of time, either
4 a number of years following the death of the testator in the case
5 of the will or following the date of adoption in the case of
6 the irrevocable trust, to get reformation and you would give them
7 all a chance to come in on an equal basis.

8 So, if you wanted to agree to it in principle and let the
9 staffs go back and work on it, I think we could, within a reason-
10 ably short time, a few days probably ---

11 The Chairman. Do you think in a couple of days you could
12 give us a broader rule?

13 Mr. Lubick. Within a week.

14 The Chairman. Something that you would recommend.

15 Mr. Lubick. Right.

16 Mr. Shapiro. What you may want to do is say if you don't
17 have time to deal with it before this particular bill is going
18 that the two-year deferral would be agreed to as Senator
19 Durenberger proposed, but if in the meantime, staff can work
20 something out, you will substitute that for the two-year deferral.

21 The Chairman. I think it would be better if you could get
22 a general rule that would cover this type of situation that
23 Treasury could recommend. I think that would be a lot better
24 than recommending something limited where only one taxpayer could
25 get the benefit.

sjk 22

1 Mr. Shapiro. Each time we have had extensions because we
2 heard of another case that wants to conform to the new rules,
3 but did not do it in time, and I agree with Mr. Lubick, we have
4 been trying to get a final rule all along. And, I think we can.

5 The question is does the committee want to have this
6 extension, if something is worked out agreeable to the committee.
7 in the meantime?

8 Senator Durenberger. I would like to recommend Mr. Shapiro's
9 recommendation. I think it is a matter of time to put the
10 language together. Also, this is the same situation Senator
11 Ribicoff and I believe also Senator Nelson had a concern with.

12 The Chairman. Then, you are suggesting that we agree to
13 the proposal with the understanding that the Treasury will try
14 to work out a rule of broader application. If that is the case,
15 we will substitute that for this.

16 Mr. Shapiro. It is a final solution. It is not this is
17 only for one taxpayer and the other is broader applications. What
18 we are saying is you don't need to extend it any more. What we
19 would work out would be a final solution so Congress would not
20 have to look at it again for another one year extension.

21 The Chairman. All in favor, say "aye", those opposed, say
22 "no".

23 (Chorus of "ayes".)

24 The Chairman. The "ayes" have it.
25

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1 a sale of know-how to that country and if the tax rate is less than
2 ten percent the '76 Act rule would treat it as U.S. source
3 income and you could not get a foreign tax credit to use other
4 taxes against that.

5 This entire set of rules involves a certain degree of problem
6 and I think that staff has had considerable discussions both with
7 the taxpayer involved here and also with Treasury and felt that
8 it might be better to change the '76 Act rule to to have a sep-
9 arate limitation for capital gains but perhaps not to include cap-
10 ital gains on royalty payments of the type of the taxpayer invol-
11 ved here so they could continue to get the foreign tax credit and
12 treat that as active business income.

13 Mr. Lubick. Our view would be that there ought to be a sep-
14 arate limitation on capital gains for the foreign tax credit.
15 In the absence of that we would have to regard this as something
16 we would seriously oppose. There have not been hearings on
17 this.

18 The Chairman. Have there been hearings on this?

19 Mr. Brockway. There have not been hearings.

20 The Chairman. We had agreed we were not going to try
21 to report these matters without holding hearings.

22 Senator Roth. I would ask that we would try to have early
23 hearings if that were agreeable.

24 Senator Byrd. We will be glad to. I will get together
25 with you and we will try to work it out.

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1 The Chairman. What is the next item?

2 Senator Dole.

3 Senator Dole. I have one for Senator Baker who is not in
4 town. Apparently this involves a Tennessee matter. It is marked
5 number Y. Are you familiar with that one? Treasury I guess is
6 not opposed to changing the law but opposes retroactive effective
7 date and other transitional rules. That is the report I had.

8 Mr. Shapiro. This deals with election of estate tax alter-
9 nate valuation.

10 Under present law, the executor of a decedent's estate may
11 value the property in the gross estate as of the date of the
12 decedent's death or the "alternate valuation date," generally
13 six months after the date of the decedent's death. Alternate
14 valuation provides estate tax relief when property in a dece-
15 dent's estate declines in value shortly after the decedent's
16 death. Alternate valuation must be elected by the executor on an
17 estate tax return filed within 9 months of the date of death or
18 any period of extension granted by the Internal Revenue Service.
19 The Internal Revenue Service may grant an extension of time to
20 file an estate tax return. Generally however, they will only
21 apply one extension and not more than one. The bill that Sen-
22 ator Dole is referring to that Senator Baker has, S.541, would
23 permit election of alternate valuation on any filed estate
24 tax return or first late return. It would allow it for a late
25 return that is filed. The bill would apply to estates of

1 decedents dying after December 31, 1977 but there would be a
2 special transition rule that is included in the bill that applies
3 to one situation that is really the basis of the bill, and that
4 is estate of the late Sylvia Burling of Tennessee.

5 In this particular case there are some extenuating circum-
6 stances around filing the return. It is not clear as to all the
7 facts and circumstances although we talked to some of the people
8 involved. There was illness and they got one extension but
9 somehow did not file the return within the period of time and
10 therefore were not allowed to elect alternative valuation date.

11 Therefore they are asking to allow them to file a late return
12 and elect alternate valuation date.

13 Senator Byrd. Is this not the same proposal that Senator
14 Sasser is interested in?

15 Mr. Shapiro. I think it is.

16 Senator Byrd. The committee had a hearing on this?

17 Mr. Shapiro. You did.

18 Senator Byrd. It occurred to me they made a good case in
19 support of the bill.

20 The Chairman. What is Treasury's position on this?

21 Mr. Lubick. Mr. Chairman, the basic provision as Senator
22 Dole stated is one that we think is satisfactory but we think
23 this is the retroactive relief here. We think it is not called
24 for at all. Here you are giving relief to really the wrong per-
25 sons. You are giving relief to that person who filed a late

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1 return and then made an election that was clearly prohibited under
2 the law but those people who filed late returns and knew that the
3 law prohibited the election did not even attempt the election
4 and even though therefore they could have gotten the benefit
5 they are not going to get any relief at all. So it seems to
6 us this is a situation where the change in the rules is accep-
7 table to us but to do it retroactively is relief to those per-
8 sons who are least deserving of it and we would object to that
9 very much, not only because of the administrative difficulties
10 in going retroactively, which are considerable, but because the
11 very persons you are giving the relief to are those persons who
12 did not file the late return and did that which was prohibited
13 whereas those who filed late return did not get the relief.

14 The Chairman. It seems to me there is serious Treasury
15 objection that we are hearing here. If this is reported as an
16 amendment it would presumably go on some bill that would have
17 some other amendments on it and it would seem to me it would
18 kill whatever bill it went on. The Treasury would be objecting
19 to it and once you add it on you will either have to get it
20 back off somewhere or the bill is not going to become law.

21 While I am sympathetic to the Senators and I know they
22 are two very great Senators and I wish them the best, I don't
23 think I could support this particular amendment because it
24 seems to me as though whatever you put it in is not going any-
25 where. If you can find a bill that is not going anywhere anyway,

1 it might be a different matter.

2 Senator Chafee. Couldn't you have a situation where --
3 in this present situation -- where the tax was greater than the
4 value of the estate, if there was a rapid decline in the assets
5 and they could not elect a late date and the assets depreciated
6 tremendously in that period?

7 Mr. Lubick. That could happen if you elected the alternate
8 valuation date and the stock market fell subsequent to that. If
9 you have a drastic enough reduction in the size of the estate
10 and you have not disposed of your assets within a certain
11 period of time, that result can always occur. That is not par-
12 ticularly a function of this provision.

13 Senator Chafee. No, mercy.

14 Mr. Lubick. I think mercy should be in the Judiciary
15 Committee.

16 Senator Chafee. I would hate to think not a shred of mercy
17 poured over into this committee.

18 Senator Dole. The argument that the transition rule is too
19 narrow, we could broaden it.

20 Mr. Lubick. I think if you are going to go back for three
21 years, Senator Dole, and say everybody has a second crack at the
22 alternate valuation data that that would cause very serious
23 administrative problems for the Revenue Service. They would have
24 to reopen -- everybody could reopen every estate tax filed for
25 the last three years. I don't think you want to accomplish that

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result.

Senator Byrd. Was not this the case where an executor was incapacitated at the particular time for the beneficiary to file under the transitional rule? I can't remember the detail but something along that line.

Mr. Shapiro. The executor had either a heart attack or some serious operation but was incapacitated for several weeks or a month before the period that he was to file the return and whoever was handling for him, they accounting firm or whoever, did not pick it up and therefore the date elapsed and there was no action taken.

Senator Byrd. It occurred to me they had a very good case where the person handling it was incapacitated and was not able to act.

Senator Dole. Could we vote on that and maybe find an appropriate vehicle.

The Chairman. Those in favor of the amendment say aye.

(Chorus of ayes.)

The Chairman. Opposed, no.

I think the vote is tied. Senator Moynihan and I voted no. I heard two ayes. All in favor raise your hand.

(Show of hands.)

The Chairman. Those opposed.

(Show of hands.)

The Chairman. The motion is agreed to. Good luck,

1 gentlemen. I don't think you are going anywhere.

2 Senator Dole. The next one is S.1467.

3 Mr. Shapiro. 1467 deals with method of accounting for
4 railroad track assets.

5 Senator Dole. I might say Senator Wallop has no objection
6 to adding this to his proposal.

7 Mr. Shapiro. As you know generally most business when they
8 buy assets take a method of depreciation, either straight line
9 or some form of rapid depreciation method. In the case of rail-
10 roads, however, they have a method called the retirement replace-
11 ment betterment method. RRP method. Essentially what that is
12 is that when a railroad line track is laid the cost including
13 both materials and labor are capitalized. In other words they
14 are not deducted. And there is no depreciation that is claimed
15 on that track at the time it is laid. , However, when that original
16 installation is replaced, if you have a replacement of that
17 track, then you can deduct the replacement immediately. That is
18 immediately deducted. When the replacement is a betterment,
19 then you deduct the proportion of the railroad track that is just
20 a replacement but the betterment portion of that would not be
21 deducted.

22 Therefore it is capitalized. The problem that arises is
23 the fact the railroad retirement replacement method is not
24 specifically recognized in the Internal Revenue Code. However,
25 it has been recognized as an appropriate method of depreciation

1 for the railroads by Internal Revenue Service and the customers.

2 The Interstate Commerce Commission also uses the RRP method
3 for purposes of ratemaking. Now, therefore you have consistency.

4 The same depreciation methods for railroads is used both for ICC
5 purposes for ratemaking and also for the Internal Revenue Service
6 for their tax purposes. The problem comes into the case on the
7 basis of the fact that the Interstate Commerce Commission is
8 in the process of reviewing the method of depreciation for rate-
9 making purposes and may well not allow the RRP method.

10 The railroads however like that method and would like to
11 be able to continue to use that method even if they are not per-
12 mitted to do so for purposes of the ICC. It is not clear whether
13 or not the Internal Revenue Service would allow them to do so.

14 It may be this amendment is not needed meaning if ICC says you
15 can't use it, Internal Revenue Service still may allow the rail-
16 roads to use it. They prefer to be allowed to use this. They
17 feel they have been able to and therefore the railroads would
18 like to codify the Retirement Replacement Betterment Method of
19 accounting for the railroad tax assets as an acceptable method
20 of depreciation regardless of what ICC may do in the future.

21 Senator Dole. As I understand it, I have a letter from
22 ICC reporting the amendment. It is co-sponsored by Senators
23 Bentsen, Packwood, Durenberger and others, and I understand there
24 is no revenue loss involved.

25 Mr. Shapiro. They use that method as of now. There is no

1 effect because they are codifying what they presently do.

2 Mr. Lubick. The ICC wants to change to get rid of this method
3 I don't see why they want to shove it down our throats. It does
4 not reflect income. We don't see why Internal Revenue Service
5 should be the only people in the world that have to train their
6 agents to handle this very complex method of accounting which is
7 not used anyplace else when everybody else is getting off it.

8 We are interested in making sure that the railroads are
9 not adversely affected and there is a separate question here.
10 When you change methods of accounting I think the railroads may
11 be worried that it would result in some additional tax during
12 the transition period and we have indicated and we will indicate
13 to ylu that we are willing to work out some sort of transition
14 rule, some sort of suspense account technique or something else.

15 We will sit down with the railroads and try to come up with
16 something satisfactory so they do not have to pay any tax as
17 a result of the transition but we think it would be a terrible
18 administrative burden on the IRS to leave in place for tax pur-
19 poses a method of accounting that everyone else has discarded,
20 SEC and ICC and the railroads themselves for book purposes and say
21 for tax purposes only you have this one unique method of accounting
22 which everyone agrees does not reflect income and is the
23 equivalent of indexing depreciation for the railroads because
24 they can expense off all of the replacements that they make.

25 So I would please with you to allow us to deal separately

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1 with the question of the actual tax burden of the railroads.
2 We will work with you on that. We met with the railroads on
3 November 14th and they agreed to do a revenue estimate by February
4 based on our proposed transitional rules. As a matter of fact
5 I thought they had undertaken not to push any legislation until
6 we got that revenue estimate down.

7 I would hope we could at least wait until we can see if we
8 can work out this problem.

9 Senator Dole. There have been hearings on this. I think the
10 best procedure would be to report it and if you work it out we
11 can always take care of that. We have been through that carry-
12 over basis thing where we are going to work it out. We had this
13 for 75 years. I don't know of anybody who objects to the method.

14 Mr. Lubick. ICC and SEC object to it because they are
15 getting rid of it.

16 Senator Dole. I have a nice two-page letter from ICC saying
17 how ---

18 Mr. Lubick. They don't object to it for us but they do
19 for themselves. We can have those problems but they don't want
20 them themselves.

21 Senator Dole. I appreciate your views. I will be glad to
22 put them in the record.

23 Mr. Lubick. It seems to me if we are willing to come
24 up with a situation that does not impose any tax burden on the
25 railroad industry I don't see why we want to perpetuate an

1 unsound discarded complicated administratively obnoxious method
2 of accounting for the Revenue Service.

3 It does not make any sense.

4 Senator Moynihan. He really is against it.

5 Senator Dole. I have enough sponsors on the committee I
6 think, Bentsen, Packwood, Boren, Danforth, Heinz, Wallop,
7 and Durenberger. That does not indicate it is meritorious
8 but it does have some impact.

9 Mr. Lubick. It may be all of you thought we were trying to
10 impose a burden, a fiscal burden on the railroads. That is
11 not our intention. It is not our intention to raise the taxes
12 paid by the railroads as a result of this change but we would like
13 to keep the work on a system whereby we can administer a proper
14 accounting system for what is one of the largest industries in
15 the country. There are a lot of railroads and they have complicated
16 books and if they are keeping them one way for SEC and the same
17 way for ICC and the same way for their financial statements I
18 don't see why the administrative difficulties in the IRS to
19 have a wholly separate system which ought to be perpetuated.

20 The Chairman. Senator Byrd, did you have hearings on this?

21 Senator Byrd. Yes, we had hearings on this. As I recollect
22 this system has been used by the railroads for 75 years.

23 Mr. Lubick. And by the ICC. They started it. Now ICC
24 wants to get rid of it.

25 Senator Byrd. What I am getting at, am I correct the

1 railroads have been using this system for 75 years?

2 Mr. Lubick. That is correct.

3 The Chairman. Frankly it seems to me, Mr. Lubick, if this
4 committee wants to do som they have a right to say you will
5 continue to pay your taxes the same way you have been pahing your
6 taxes for the last 75 years. As I understand Mr. Doles position,
7 he is not saying to change the law. You are.

8 Mr. Lubick. No, Senator Long.

9 Senator Dole. I only want to codify it.

10 Mr. Lubick. What has happened for the past 75 years and what
11 is different is as long as ICC has been supervising the accounting
12 of the railroads it does not put the same pressure on the Inter-
13 nal Revenue Service to. We can rely on the ICC which closely
14 scrutinizes the accounting of the railroads to make sure that
15 what is done is correct. Now if the ICC wants to shet itself
16 of this complex method of accounting, we in the IRS don't have
17 that protection any more. I think that is a very changed cir-
18 cumstance. If the IRS is left out, their having to find
19 accountants who have experience in this particular method of
20 accounting, which very few have, it is going to be a very diffi-
21 cult burden on us to administer.

22 We are not asking for any money from the railroads. I don't
23 see, if we are willing to maintain the financial situation of
24 the railroads as far as the tax burden is concerned, why we should
25 continue this system which is an anachronism.

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1 The Chairman. Once in a while it is nice to have something
2 that the taxpayer prefers. He doesn't get his choice about
3 much.

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1 The Chairman. My heart bleads for IRS. They are about
2 the only tax collecting agency in the world that has the right
3 to put a poor soul in the penitentiary because he did not pay
4 taxes. In the States and most other nations, about all you
5 can do is sue the guy, but over here you put the penalty on
6 him to report. If he doesn't pay the way you think he ought
7 to, you can march him down there and show him the jail cell
8 that is prepared for him, and put him in and go on through
9 with it, put the guy in the penitentiary for failing to pay
10 and then change the rules. Just say we have been thinking
11 about this matter and you seem to like the way you have been
12 paying, so we have news for you, you are not going to do it
13 that way anymore.

14 Mr. Lubick. We agreed we are not going to change until
15 ICC changes. So long as ICC continues to use this as a method
16 of accounting, we will have that supervision and that
17 protection.

18 The Chairman. And you and the ICC are all supposed to be
19 working for us. You are supposed to be administering the law
20 the way we intended it; and the way we think it should be.
21 Sometime you are and sometimes you are not. So that the
22 senator is just saying it is his impression this is what he is
23 proposing, is existing law. He thinks that is the way it is
24 now. That is the law.

25 Mr. Lubick. If it is the law, it seems to me there is no

1 need to pass the amendments. You have passed a statute that
2 says that income shall be accounted for on a method that
3 reflects income.

4 Now, if the ICC, SEC, the AICPA and all other accounting
5 outfits or agencies that set accounting standards come to the
6 conclusion that this does not clearly reflect income, then we
7 don't think the IRS should be completely out of step. In that
8 situation, we think, and we indicate the reason industry --
9 and they agreed with us -- we should work out a system whereby
10 that accounting which they regard as proper for accounting to
11 their shareholders and their creditors ought to be the one
12 used to reflect their income, and we would assure them they
13 are not going to suffer revenue loss as a result of the
14 transition.

15 We will pledge to you that that is legislation that we
16 would support.

17 Senator Dole. I think we are making progress. Why don't
18 we just go ahead and report it out and continue the
19 negotiations.

20 Mr. Lubick. Do you want to hold it?

21 Senator Dole. Report it and let you hold it. We will be
22 holding it.

23 Mr. Lubick. If you report it out, Senator Dole, I think
24 that they won't sit down with us and work it out. There
25 won't be any need to. You are taking away our --

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1 Senator Dole. Leverage?

2 Mr. Lubick. Really, what you are doing is putting us
3 under the railraod ties.

4 Senator Dole. We won't hold you to that.

5 The Chairman. Do you think the Dole provision ought to
6 be voted through or not?

7 Senator Byrd. Well, it seems to me if they have been
8 doing this, using this system, for 75 years, and Internal
9 Revenue Service has not complained about it before, just
10 because ICC and SEC want to change it, I don't know if that is
11 adequate reason for changing it. I am inclined to go along
12 with Senator Dole's proposal.

13 Mr. Lubick. Basically, we never liked the method,
14 Senator Byrd, but we felt as long as it was authorized by some
15 other agencies, why, it was a recognized method of accounting
16 and we would go along with it.

17 Senator Byrd. Let me ask you this: You don't mean to
18 say IRS has not been auditing the railroads' tax returns?

19 Mr. Lubick. We have, but the ICC has also been
20 supervising the books.

21 The Chairman. Let's vote on it. Those in favor of the
22 amendment say "aye." (Chorus of ayes.) Those oppsoed, "no."
23 (Chorus of nos.)

24 The ayes have it.

25 I suggest we go over there and vote and come back.

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1 (Brief recess.)

2 The Chairman. I would like to vote on these matters about
3 employees' stock ownership. Can we talk about those?

4 I understand Treasury likes some of them and doesn't like
5 some of them.

6 Mr. Shapiro. Your employees' stock ownership
7 improvement provision is X on the sheet.

8 The Chairman. Would you help explain that, Mr. Curtis?

9 Mr. Shapiro. We worked with Jack Curtis and I think he
10 may be in a position to answer this. He worked extensively on
11 the bill and worked with staff of Treasury.

12 The first one on the sheet is an exception from section
13 415 limitation for extraordinary forfeiture allocations. What
14 it does would allow ESOP certain forfeitures which are caused
15 by unusually high employee turnover. When you have
16 forfeitures they are allocated in employees' accounts. Even
17 if the allocation exceeded normal limitation, in allocation
18 essentially what that is saying is, under present law you have
19 limitations in the cases where contributions and other
20 additions would be allowed to be added to certain employees'
21 accounts.

22 The problem is where you have forfeitures whether or not
23 they can reallocate that to other accounts, the proposal would
24 allow that to be done, notwithstanding the limitations under
25 present law.

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1 The Treasury Department, as I understand it, is not in
2 favor of that particular provision, although I should point
3 out that in your bill that you have introduced, in which the
4 hearings were held, there are approximately ten items, most of
5 which Treasury is supportive of. This particular one they do
6 not support.

7 The Chairman. Do you oppose that, Mr. Lubick?

8 Mr. Lubick. Mr. Halperin has been working on that. He
9 will speak to it.

10 Mr. Halperin. First, we feel that it is important to
11 maintain limits on the amount that can be credited annually to
12 any one person's account.

13 This bill would permit a corporation to exceed that limit
14 in the case of forfeitures. Secondly, what it does, perhaps
15 to some extent it discourages rapid vesting. If they
16 allocated amounts to employees' accounts and those amounts
17 were vested immediately or shortly thereafter, these forfeits
18 would not occur.

19 I suggest we pass over that one.

20 Mr. Curtis. What we are reaching for is a situation
21 where the employees are making a big purchase. They are
22 buying a lot of stock and in order to repay the stock, to
23 repay the purchase price through the leverage ESOP, they have
24 to set themselves up with such a large ESOP contribution every
25 year that if in a year they have tremendously unexpected

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1 forfeiture, like 25 percent higher employee turnover in a
2 year, they will run the risk of disqualifying the plan even
3 though what they are trying to do is do what we want to do.
4 We want the employees to buy the company.

5 We are not creating a situation where we are promoting
6 any type of abuse. It is just that in a year they
7 unexpectedly lose a lot of people that year, they may exceed
8 those limits, and it creates a threat to the qualification of
9 the plan.

10 Mr. Halperin. Our understanding is, it would be possible
11 in most cases to arrange the loans so they would not have that
12 forfeiture problem, would not have that excess allocation
13 problem.

14 Secondly, of course, if they vested their employees at
15 the time that the contributions were made, they would not have
16 the forfeitures and would not run into the difficulty.

17 I don't know whether there is a very strong policy. It
18 seems to me the policy is in favor of rapid and immediate
19 vesting in ESOPs and not requiring long periods of service in
20 order to get vested interest in the corporate stock.

21 Mr. Curtis. It seems to me we could accomplish what we
22 are trying to do here if we simply arrived at a standard and
23 we said if in a given year they had a 50 percent higher
24 turnover than normal, where it was totally unexpected, that in
25 a case like that we would give them this type of exemption

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1 because the alternatives to do it under ESOP where they hold
2 forfeitures in expense accounts and nobody gets them. If we
3 are trying to get the stock to the employees, let'd go ahead
4 and allow the reallocation and simply give an exemption in
5 that case where there is a tremendously unexpected turnover.

6 The Chairman. Well, at this time of the day, and with
7 the small number of senators here, I think we had better pass
8 that one over. I think we had better look at the ones where
9 Treasury can go along with us and see where we can reach
10 agreement.

11 Let's look at the next one.

12 Mr. Shapiro. The committee also agreed to that one, the
13 voting rights matter.

14 The next number, three, deals with distribution options,
15 and that is on page 2. That is the one at the top of the
16 page.

17 This says, "Stock bonus plans must generally distribute
18 stock to participants entitled to a distribution. A TRASOP
19 or an ESOP which is a stock bonus plan, however, may
20 distribute cash, subject to a participant's right to demand
21 the benefits be distributed in the form of employer
22 securities." If the stock which is not really tradable is
23 distributed, the participants could require that the employer
24 repurchase the stock.

25 These rules under the law today are applicable to ESOP

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1 and TRASOPs and the proposal would be to extend it to the
2 bonus plan.

3 Treasury does not oppose this one.

4 Mr. Halprin. We have no objection.

5 The Chairman. Without objection, we will agree to that.

6 What is next? Use of nonvoting stock in TRASOPs and
7 ESOPs. What is that about?

8 Mr. Shapiro. Next is on page 3, the top of page 3.

9 Mr. Curtis. The one you just referenced, we agreed to
10 delete that from consideration.

11 The Chairman. Top of page 3.

12 Mr. Shapiro. Top of page 3 deals with availability of
13 additional percentage for TRASOPs.

14 The proposal would provide if the 10 percent investment
15 tax credit of a public utility is flowed through to consumers,
16 then the utility would be eligible for an additional 1-1/2
17 percent investment tax credit for the contribution to TRASOP,
18 provided that additional 1-1/2 percent investment tax credit
19 is not flowed through to consumers.

20 Under present law, the problem occurs in that if the
21 utility is required to flow through, they are not eligible for
22 an additional 1-1/2 percent, and this proposal would allow
23 them to get it as long as they don't flow their 1-1/2
24 percent through.

25 I understand Treasury does not oppose this.

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1 The Chairman. Treasury has no objection?

2 Mr. Halperin. When you get to the flow through rules, I
3 am not sure we ever understand them, but if we understand what
4 the intent of this amendment is, we do not oppose it.

5 The Chairman. I think I understand it. Basically, you
6 can't eat your cake and have it too. You can't put the money
7 in the stock and at the same time pay it through to the
8 consumer. You have to pay it one way or the other. That
9 being the case, if you have no objection, I think it is a
10 meritorious proposal.

11 Mr. Halperin. We have no quarrel.

12 The Chairman. What is the next one?

13 Mr. Shapiro. Midpart of page 3 deals with special
14 limitation for employee stock ownership plans. This proposal
15 would provide the contribution of cash to ESOP or TRASOP which
16 is used to purchase employer security, would be counted for
17 purposes of determining special dollar limitation with respect
18 to allocation of contributions to participants' accounts under
19 either ESOP or TRASOP.

20 In a sense, it is just allowing the certain contributions
21 of cash which are used for securities to be counted for
22 special limitation; and I understand Treasury does not oppose
23 this one.

24 Mr. Halperin. We think we could get there under the
25 statute as it presently exists. We have no objection. We

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1 don't think it is needed.

2 The Chairman. But you have no objection to it?

3 Mr. Halperin. No.

4 The Chairman. Without objection..

5 Next?

6 Mr. Shapiro. Top of page 4.. It relates to making of
7 qualified matching employee contributions to TRASOPs.

8 Essentially what this would do is provide if an employer
9 makes both matching employer and matching employee
10 contributions to TRASOP, employer would be allowed a deduction
11 for the amount of matching employee contribution in addition
12 to the additional one-half percent of the investment credit
13 for the matching of the employer contribution.

14 That is really saying essentially that if the employer
15 pays the employee's share, you will be allowed to get the
16 benefit for the amount he pays. This particular one does have
17 a revenue effect. In 1980 it has about \$19 million and it
18 goes up \$38 million in '81, \$56 million in '82. By 1985 it
19 goes up to approximately \$175 million.

20 As I understand it, Treasury does not support this
21 particular proposal.

22 The Chairman. Why does Treasury object to this?

23 Mr. Halperin. Mr. Chairman, we have indicated to you in
24 the past that we have trouble with the investment credit basis
25 for ESOP and indicated preference for the labor credit which

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1 you have been offering as an alternative in your bill.

2 Therefore, we have some problem with expanding the investment
3 credit type approach for this type of revenue loss.

4 Mr. Curtis. This is not what I would consider to be
5 expansion. In the '76 Tax Reform Act, the agreement was the
6 employer could get 1-1/2 percent investment tax credit if the
7 employees put in half a percent of their own money. It never
8 worked. Regulations took three years to be promulgated and
9 employers have been unwilling to adopt them; and, of course, a
10 lot of employees don't have the cash to put in.

11 Treasury has been concerned, since only high-paid people
12 can put the matching amount in; only the high-paid people get
13 the additional stock and they are concerned about these plans
14 being discriminatory.

15 So the purpose was, we will solve the discrimination
16 problem. We will make sure everybody gets allocation of
17 additional amounts and we are not giving the employer any more
18 credit. He still gets 1-1/5 percent credit he got before, but
19 we are letting him put in the employee part as well, and he
20 gets a tax deduction for that, as if he paid the employees the
21 salary and they made the contribution.

22 Mr. Halperin. I think Mr. Curtis' statement -- the
23 reason for the amount, it is likely to produce a plan that is
24 less discriminatory than what you might get where the
25 employees have a chance, whether they contribute or not. He

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1 The proposal would change the valuation method to say
2 that the value of employers' securities that are listed on
3 national exchange would be to average closing price of the
4 securities for the 22 days immediately preceding date of
5 contribution of the plan. So it is just changing the
6 contribution of the plan rather than the date of the closing
7 prices preceding employers' tax return.

8 The Chairman. How does Treasury feel about that?

9 Mr. Halprin. We have no objection.

10 The Chairman. Without objection, we will agree to that.

11 Mr. Shapiro. The next one is on top of page 5, dealing
12 with the participation of subsidiary contribution in a TRASOP.

13 This one is a proposal that a corporation which is at
14 least a 50 percent owned first tier subsidiary of a parent
15 corporation may, if the parent corporation becomes a 100
16 percent owned first tier subsidiary of an acquiring
17 corporation in a transaction occurring on or after November 9,
18 1978, use stock of the acquiring corporation in its TRASOP.

19 As I understand it, Treasury does not oppose this one.
20 This is a particular case. We understand it covers the Time
21 Magazine TRASOP case, and it could be broadened to cover more
22 than that, from what I understand.

23 The Chairman. Treasury has no objection to that
24 proposal?.

25 Mr. Halperin. That is correct.

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1 The Chairman. Without objection, it is agreed to.

2 What else?

3 Mr. Shapiro. At the bottom of page 5, this deals with
4 retirement savings by TRASOP participants.

5 Under present law, an employee who is an active
6 participant in a tax qualified plan during the year is not
7 eligible to make contributions to an IRA. Therefore, if an
8 employee is a participant in TRASOP, he is ineligible for IRA.

9 In effect, what the proposal would do would allow an
10 employee that is a participant in TRASOP to also pay
11 contributions to IRA. This does have a revenue effect. The
12 revenue is about \$6 million in 1980. It goes up to \$10
13 million in 1981, and approximately \$2 million each year there
14 after.

15 As I understand it, Treasury does not support this one.

16 The Chairman. Why do you oppose it, just because of
17 revenue effect, or because you have strenuous objection?

18 Mr. Halperin. I am not sure they are strenuous, but
19 generally the IRAs have been reserved for people who are not
20 participating in otherwise employer plans. We don't think an
21 exception ought to be made just for this case.

22 There are a number of proposals before you on which there
23 have been hearings before Senator Bentsen's subcommittee this
24 year, on the question of expanding the opportunity for people
25 who are participating in qualified plans to use IRA.

1 Senator Dole has a proposal along these lines and I think
2 the broader approach ought to be considered, and we ought not
3 to be doing this in a piecemeal way.

4 Mr. Curtis. What we are taling about here is a vary
5 limited situation. We are talking about the railroads.
6 Because the railroads don't have what are called qualified
7 plans; they don't have pension and profit-sharing plans; they
8 cover people under the Railroad Retirement Act and employees
9 employed by railroads can set up IRAs. But those railroads
10 are trying to adopt a TRASOPs and provide stock for their
11 employees.

12 Southern Pacific Railway testified and said they were
13 having great success, but the employee says, "I get one
14 percent of my pay under TRASOP. I could put 15 percent of my
15 pay aside under IRA, and you want me to take one percent in
16 stock as opposed to 15 percent in IRA."

17 So the railroads are having a problem because the
18 employees, even though they want the stock, can put more aside
19 in an IRA.

20 This is a very, very limited situation and I don't think
21 we are being fair to the railroad or to the employees if we
22 don't let them have the TRASOP.

23 The Chairman. I heard of situations where somebody's
24 plan was disqualified because they had a small amount of money
25 in an IRA. Is that involved in this kind of thing here?

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1 Because somebody had a small retirement account, it apparently
2 invalidated TRASOP.

3 Mr. Curtis. It could simply leave -- for example,
4 Southern Pacific Railroad, if they have enough people that
5 say, "Thank you for the stock, but no thank you; I will take
6 my IRA," then TRASOP can be disqualified because they won't
7 meet the coverage requirements, and I don't think that is
8 fair.

9 Mr. Halperin. I think the hearings we previously held
10 indicate the problem of people saying, "I do't want to be in
11 your plan; I would rather have IRA." That is a real problem,
12 but it is extended beyond this situation.

13 I also think I could make two other points. One,
14 railroad employees who are covered under supplemental railroad
15 retirement benefits really are already in what is the
16 equivalent of a qualified plan because the benefits under that
17 plan are much more generous than the benefits under social
18 security, so the fact that that is considered not to be a
19 private pension plan and therefore they are eligible for IRA
20 is probably a mistake.

21 The Chairman. Couldn't you people help to compromise
22 this matter so that the TRASOP would not be disqualified just
23 because some of the people would prefer to participate in IRA?
24 Is some of the people want to put their money in IRA and
25 others want to go into TRASOP, couldn't you go along with an

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1 arrangement wherey the people who want to have a benefit in
2 TRASOP would not be denied that right just because certain
3 other people prefer to put their money into IRA?

4 You see what I am talking about, don't you? Let's assume
5 you give a person the option. Some people say, "We prefer not
6 to fool around with the ESOP plan. Thanks, no. We would
7 rather put our money into the IRA." If that is the case, but
8 those who are not involved in the investment retirement
9 account wold like to participate in TRASOP, couldn't you go
10 along with the arrangement whereby those who want to
11 participate in TRASOP would, with the understanding they can't
12 have both?

13 Mr. Halperin. I think that is an interesting approach,
14 and can we have time to think it over and see if we can work
15 something out with staff along those lines?

16 The Chairman. The trouble is, we need to get some
17 decisions made. Could we agree to this with the understanding
18 that you will try to perfect it, technically?

19 Mr. Halperin. Yes. It does lead to the question as to
20 whether we are going to extend this across the board and
21 allow, in effect, employers to count people who elect to be in
22 IRA as really participating in a qualified plan and therefore
23 properly excused from the plan.

24 The Chairman. Do you see what I am talking about, Mr.
25 Curtis?

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1 Mr. Shapiro. What you are saying, if employees prefer to
2 be in IRA, that would not cause TRASOP to be disqualified?

3 The Chairman. That is right. Assume that 30 percent of
4 the employees prefer not to be in TRASOP. Couldn't we agree
5 as far as the other employees are concerned that would not
6 disqualify them from being in a TRASOP?

7 Mr. Shapiro. I think the concern Treasury has is that it
8 would be a precedent that would apply to other areas. You are
9 saying let it only apply to TRASOP-IRA situations and if the
10 reason the employees are not in the TRASOP is because they
11 would rather be in IRA, that would not disqualify TRASOP.

12 Mr. Curtis. From Treasury's point of view, I think they
13 would rather go along with the provision as you propose it
14 than the compromise.

15 I would go with either one of them, but I think they will
16 hae a tougher time dealing with the coverage requirements than
17 they would with allowing this provision.

18 I think Treasury recognizes the problem. I am not sure
19 they know what the best response is.

20 The Chairman. What do you suggest, Mr. Lubick?

21 Mr. Lubick. I think we have less concern if we are going
22 to maintain adequate coverage in the plans, whether it be any
23 kind of qualified plan, we want to make sure we don't get
24 everybody moving our into IRAs and leaving a small segment of
25 employees in the prohibited groups that are left, and it is

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1 still a qualified plan.

2 If we were dealing with a small number of employees, and
3 we had minimum participation in the TRASOP or the qualified
4 plan, I think the compromise technique might be workable.
5 That is why I think if we could have a week or so -- I think
6 we have already agreed to have a week on one of the other
7 provisions in here -- we could work through the problem and
8 get back and talk to you about it, and see if we can't come up
9 with a solution that might solve the particular problem of the
10 plans.

11 The Chairman. Is it all right with you if we agreed to
12 it on the same basis we did on the previous situation? We
13 agree to it on the basis that the Treasury will have the
14 opportunity to see if they can perfect it to their liking. If
15 they can't, we will substitute that.

16 Mr. Lubick. Could we agree in any event there has to be
17 for the TRASOP or the profit sharing plan or any other -- just
18 dealing with TRASOP but we have to agree there has to be a
19 substantial coverage, in any event, of the employees that are
20 otherwise eligible.

21 We ought to maintain that as a necessary prerequisite for
22 qualification.

23 The Chairman. I think that is fair.

24 Mr. Lubick. There are only a few tht drop out. That
25 would not trouble us.

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1 The Chairman. Does it sound all right to you, Mr.
2 Curtis, if we agree 50 percent of employees have to be
3 interested in TRASOP?

4 Mr. Curtis. Let me see if I understand the compromise.

5 Mr. Lubick. I was thinking 80 percent myself.

6 Mr. Curtis. That is already the test. The test for
7 coverage is already 80 percent.

8 Mr. Lubick. It could be 80 percent of the 80 percent.

9 Mr. Curtis. We are not going down ten percent at a time
10 are we? Why don't we say 50 percent? This will only be
11 applied to railroads. We know that.

12 Mr. Lubick. One of the problems is, if as people go out
13 there is more money left to allocate to those that stay in --

14 The Chairman. They are not going to get that much.

15 Mr. Curtis. The average is one percent of payroll, \$100
16 for a man making \$10,000.

17 Mr. Lubick. Some sort of ceiling like that would be
18 worked in as well.

19 Mr. Curtis. We can do it two ways, provided it is for a
20 man that has a small percentage that goes in, or we can apply
21 this to railroads. There is a case where you won't run into
22 the profit sharing plan or pension plan. You are not opening
23 a can of worms just in the railroad case.

24 Mr. Lubick. Let's build in all three considerations.
25 Fifty percent, maybe two percent of payroll for TRASOP, and

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1 the railroads.

2 The Chairman. If you are going to insist on putting your
3 qualifications in, there is no point in putting ours in. Why
4 don't we just leave the ones you suggest? You want two
5 percent limitation and we will go along with the 50 percent
6 rule.

7 Mr. Curtis. We are saying this will only apply to plans
8 in which no more than two percent goes to the account of any
9 employee and they have to meet 50 percent coverage
10 requirement.

11 The Chairman. Without objection, we will agree to that
12 part. We will expect you to help perfect it.

13 Mr. Shapiro. Just a couple left. On page 6, at the top
14 of the page, his deals with a special requirement for
15 qualified plans. This has been modified from what you have in
16 front of you.

17 Under the present law, an employer is generally allowed a
18 deduction for profit-sharing of stock bonus plan contributions
19 which do not exceed 15 percent of the compensation of all
20 employees under the profit sharing or stock bonus plan. If
21 the contributions are made to two or more profit-sharing or
22 stock bonus trusts, such trusts will be looked at as one trust
23 for the purpose of applying the limitation on contributions.

24 What the proposal would do is to say that where the
25 employer generally would be allowed a deduction for

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1 contributions to one or more profit sharing plans and to one
2 or more ESOPS which do not exceed 25 percent, rather than 15
3 percent under present law of the compensation, so essentially
4 it is increasing the 15 to 25 percent in the case of profit
5 sharing plans and ESOPs.

6 The Chairman. How does Treasury feel about that?

7 Mr. Halperin. Mr. Chairman, I think the limit is already
8 25 percent if it is an ESOP involved, so all it does -- the
9 amendment is limited to situations where there is no ESOP, but
10 where there may be one or more profit sharing plans and one or
11 more stock bonus plans.

12 We are opposed to this amendment. We think that the
13 present rules would allow you to contribute 25 percent to a
14 defined contribution plan only if you have at least in part a
15 money purchase plan which has mandatory contributions.

16 We think the law, since it favors money purchase type
17 pension plans where the employee has some assurance as to what
18 is going to be contributed on his behalf, should be preferred
19 when you have profit sharing or stock bonus plans. The
20 employee does not necessarily know what is going to go in
21 there annually, and it is much more difficult to plan for
22 retirement; so we think the present rules are appropriate and
23 we are opposed to this amendment.

24 Mr. Curtis. What we are trying to do here -- Treasury
25 agrees -- if you have ESOP and a money purchase plan which is

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1 just like a profit sharing plan, only it has a committed
2 contribution formula, it is okay. What I am trying to do in a
3 case like this is, if you have a company that maintained a
4 profit sharing plan and it has diversified assets and
5 everybody is protected and they want to set up an ESOP also,
6 the problem you have, so they can give the employees stock,
7 those two plans run head on into each other because the
8 Internal Revenue Code and this provision which is rather old
9 says these two plans are the same type of thing, so the
10 contribution limits don't go up.

11 It seems to me that any type of defining contribution
12 plan, ESOP, profit sharing plan, money purchase plan, they
13 have the same purposes and I think this is the kind of
14 situation where we are trying to make it, you can make the
15 stock available to employees and not do what the Department of
16 Labor is concerned about, and that is, do away with
17 diversified assets. We are trying to give them both
18 diversification under profit sharing plans and concentration
19 of ownership under ESOP.

20 I think it is silly to apply an arbitrary rule to this
21 and deprive the employees of that ability.

22 The Chairman. When we have more time to debate it, I
23 would like to pursue that matter. I don't think I will do it
24 now, so let's pass over that.

25 What is the next one?

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1 Mr. Shapiro. The last is at the bottom of page 6,
2 dealing with flexible benefit.

3 Under present law, a cafeteria plan is an employee
4 benefit plan under which a participant may choose between
5 taxable benefit and one or more nontaxable welfare benefits.
6 Such plans are not permitted to provide deferred compensation.
7 However, the proposal suggested would permit a cafeteria plan
8 to provide deferred compensation under the rules applicable to
9 cash for deferred profit sharing and stock bonus plans.

10 As I understand it, Treasury does not oppose this one.

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1 The Chairman. Does Treasury agree to that?

2 Mr. Halperin. Yes.

3 Mr. Curtis. I would like to back up to the top of page
4 five and make sure we agreed on the same thing. This is the
5 one they referred to as the Time Magazine amendment. Bob said
6 the Treasury was willing to expand that to cover the employers
7 in the same position.

8 Now, I think we should do that, but I want to make sure what
9 we agreed to. Did we agree to the limited time amendment?

10 The Chairman. I thought we agreed to expand that.

11 Mr. Curtis. Do you want to use the same effective date
12 November 9, 1978?

13 Mr. Halperin. I don't think that should matter. If it
14 has been existing before that, why would you think the later
15 acquisition made a difference?

16 Mr. Curtis. I was concerned the specific situation Time
17 Magazine had was the subsidiary could have had a TRASOP except
18 the way the parents corporation was acquired would have knocked
19 them out. I want to make sure we are protecting them, and also
20 I want to know if we are going to apply this to other people in
21 the same situation. I think we should and I understand you
22 agree to that.

23 Mr. Halperin. That's right.

24 The Chairman. So much for that. We might discuss it at a
25 later meeting and I hope we can.

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1 Senator Moynihan.

2 Senator Moynihan. Mr. Chairman, I would like to bring up
3 the matter about which I wrote you on December 3rd. This is a
4 measure which the committee adopted last year which we are fami-
5 liar with. It has to do with the ruling of the Treasury on
6 November 4, 1977, which declares that with respect to industrial
7 development bonds that advance refunding would no longer be
8 permitted as of 5:00 that evening.

9 The issue is one of due process. The merits of the decision
10 are not. We are not protesting their decision. We are protesting
11 the suddent detonate of it. There was no advance notice, and
12 a great many cities around the country, which had been following
13 what they thought to be a legitimate accepted practice were
14 suddenly told in a day's time they were not, and there were
15 large losses incurred and unjustly in our view.

16 Last year the Senate Committee on Finance approved a change
17 which would let those bonds then in process go forward, not to
18 have any others. The proposal I have proposed given an 18-month
19 period rather than nine, to complete the bonds transation. It
20 only refers to those bonds that were, if you will, in the pipeline
21 on November 4, 1977.

22 Last year, Mr. Chairman, the Senate passed this measure. It
23 was not accepted by the House of Representatives. This year,
24 as the case has been presented and has come to be better under-
25 stood, or what seems to be a fair reading of the act, two very

sjk 3 1 distinguished members of the Committee on Ways and Means have
 2 introduced this measure, and they have written you a letter.
 3 They sent a copy on November 28, Representative Conable and
 4 Representative Corman wrote to say that the committee was not
 5 familiar with it last year.

6 This year they say, "Many of us have studied the affects
 7 of this bill with respect to its equity for taxpayers and with
 8 respect to the position held by the Department of Treasury to
 9 correct what we believe to be a wrong. We have introduced
 10 legislation identical to that which will be raised in your
 11 committee again this year."

12 Then they say, "We have reason to believe that should this
 13 matter come to Congress from the Senate, it would be favorably
 14 received by a majority of the House conferees." Since the
 15 matter is familiar to us, I would propose that we put it to the
 16 committee, and we hear Mr. Lubick, of course. And, I would ask
 17 that we have a roll call voate which will be kept open until
 18 tomorrow evening.

19 Mr. Lubick. I would be very glad to testify at a hearing
 20 on this subject. I have not yet had an opportunity to. If the
 21 committee would like to give everybody a chance so you could all
 22 hear.

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1 The Chairman. I thought we had agreed in the beginning,
 2 Senator Byrd made the point he did not want to report these mat-
 3 ters out without a hearing. I thought we had agreed that we would
 4 hold a hearing if there had not been a hearing. I know this matter
 5 was heard before. I know there was a dissent vote on it.

6 Mr. Lubick. It was voted before but it was never heard.

7 The Chairman. I haven't been here all day but could you tell
 8 me what is the latest status of that general agreement we started
 9 out with?

10 Mr. Shapiro. You started out, Senator Moynihan was not
 11 here, but there was general colloquy between Senator Byrd indi-
 12 cating on the bills on which there were no hearings he suggested
 13 the committee hold back on these and have hearings and he would
 14 get those as soon as possible later this month or early January
 15 or February. During the day however I should point out not all
 16 provisions have followed that general principle.

17 There have been proposals that have come up on which the
 18 hearings have not been held.

19 Senator Moynihan. Mr. Chairman, I think that we have had
 20 a general feeling here that if the committee wants to approve
 21 the matter and the Senate approved the matter we did not have
 22 to go through it again. The point is here if we don't act there
 23 will come a time when it will be moot or the injury will be
 24 compounded. All I would ask is the committee be polled and if
 25 we have a majority we do and if we don't, then we don't.

1 The Chairman. I think we should ask Senator Byrd if he
2 would hold a hearing on that matter. But we had voted on the
3 other matter, perhaps two matters we voted on where we voted and
4 said we will vote but we will hold a hearing also. If anyone
5 wants to change his mind after hearing, he can do that too.

6 In either event we will give you a hearing whether you win
7 or lose. Theoretically anybody might want to change his mind
8 after hearings.

9 Mr. Lubick. If you will permit me I would like to address
10 the merits and perhaps tell you ---

11 The Chairman. Let me say, Mr. Lubick, before you get
12 started. You picked up one vote, you picked up my vote, not
13 that I have been converted necessarily but I sat through that
14 long conference and went through all that struggle and I would
15 like to get off. I would like to forget about it and go on to
16 something else. This is like some cause that will be around here
17 50 years from now. I feel like standing by the Senate conferees
18 and fighting that battle around the clock -- I feel like I heard
19 enough about it. If somebody wants to argue about it if they
20 would please let me know so I can be on my way home.

21 Mr. Lubick. Do I understand ---

22 The Chairman. I just want you to know it is not that I am
23 angry about it. I just want out. I would like to forget about
24 it. I understand the freshman Senator, he comes here full of
25 enthusiasm and vim and vigor but I sat through this with some of

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1 the fellows who have gone on, passed on into free enterprise
2 or the other world or whatever. So I have heard enough about this
3 amendment even though it has a lot of merit to it, and I am not
4 going to vote for it. I think we did our best to try to persuade
5 the House to see it our way.

6 The Senate is optimistic the House will agree to it this
7 time. If they feel that way about it, they should send it over
8 here. They kept us up around the clock a year or two ago on that
9 matter absolutely adamantly refusing to go along with it and I would
10 just suggest the Senate too if they think the House is willing
11 to vote for it -- please understand Senator I just feel like as
12 much as I would like to follow the Senator from New York on this
13 particular matter I just have seen enough of it. I would like
14 say good-bye.

15 I just can't vote for it. All these first year soldiers
16 might want to sign up in that crusade.

17 Mr. Lubick. I would then spare you the gory details which
18 you are doubtless familiar with.

19 The Chairman. I don't need to hear it, Mr. Lubick. You
20 can save it for hearing.

21 Mr. Lubick. May I between now and tomorrow night quote
22 you as voting in the negative?

23 The Chairman. I feel reluctantly I have to at some point
24 say life is too short. I don't think this is going to become
25 law. I think there is a lot of opposition to it. The committee

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1 can vote for it but if we do it will be a slow death either
2 in the Senate or conference but I don't think it will be agreed
3 to.

4 Mr. Lubick. If I could say one brief paragraph to Senator
5 Moynihan which is that given the premise, with which I do not agree
6 that there has been some justifiable reliance by those persons who
7 started to undertake this type of obligation and were then hurt
8 by the Treasury regulation which came out, the law of torts
9 generally rewards misguided reliance by compensation for out-of-
10 pocket harm rather than protection of their contractual expect-
11 tancy and the revenues which the United States would lose for
12 another twenty years of these obligations amounts perhaps to some
13 \$500 million whereas the out-of-pocket expenses in terms of
14 attorneys' fees, directors time, investment brokers time, might
15 at the most, as we calculate it for these issues, amount to
16 a million dollars and I think Treasury would rather issue a check
17 to compensate for the million dollars worth of time that was
18 lost then give up the \$500 million for the next twenty years.

19 Senator Moynihan. May I say, Mr. Lubick -- and let us keep
20 it all in good humor when you say that -- it is toward night --
21 we would not be going through that. The Treasury has been quite
22 adamant about these things.

23 The Chairman. If you are serious about that that might
24 solve the whole problem. It would make a compromise, it might
25 save one Senator five years of his life. I never saw a Senator

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1 work more diligently, an able Senator an effective Senator work
 2 more diligently and try so hard with a legislative matter than
 3 did Carl Curtis with this same proposal. In fact I would not
 4 be surprised if the frustration he suffered on that bill might be
 5 what caused him to retire from the Senate.

6 He could certainly have been reelected. If such a matter
 7 could be done I think that might be a dandy way to settle it.

8 Mr. Lubick. I would be glad to undertake the assembling
 9 if they will present their evidence of the expenses that have
 10 been incurred in this matter up until November 5 and we can eval-
 11 uate it and perhaps the committee with its usual ingenuity can
 12 work out something.

13 The Chairman. I don't want to work it out. If Treasury
 14 wants to bring something in here you remember I will sign off
 15 on it but I don't want to work it out.

16 Senator Moynihan. Let us take the Secretary at his word
 17 which is a very good work with us. I will withdraw this proposal
 18 pending a meeting between the representatives, the persons who
 19 think they were aggrieved. It was not for nothing Senator
 20 Curtis put that amount of time into this matter. He happened
 21 to think a wrong was done. Not interest of his. No interest of
 22 his state. He thought the government had wronged persons and I
 23 think if the government is willing to respond that way let us
 24 hear that. Let us also agree to having a hearing. At that hearing
 25 we can find out what has been worked out.

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1 Mr. Lubick. I would like to invite those who did undertake
2 these proceedings to submit their vouchers and statements of the
3 time and effort to us so we can evaluate it. We will report.

4 Senator Moynihan. Don't just say no.

5 Mr. Lubick. I am not saying no. I am saying this is appro-
6 priate.

7 The Chairman. Let us understand, Mr. Lubick, it may be what
8 you said might have been facetious. It might have been not
9 serious at all but if you were serious about the proposal that
10 might be the answer.

11 Mr. Lubick. I am serious. I was not being facetious.
12 I did indicate that I don't think a wrong was done but again
13 if it is a cheap way of buying out some very serious damage I think
14 we would like to evaluate it. I would like people to show us
15 exactly what was done and what costs were involved.

16 The Chairman. Would you mind changing that word to say
17 compensating rather than buying out. The way the settlement is
18 received it make a great deal of difference.

19 Senator Dole. I have something, double A back here. I am
20 not certain there have been hearings on this. It involves the
21 issue of whether use of residence by the taxpayer's relative
22 if the relative pays a fair rental should be treated as personal
23 use by the taxpayer for purposes of the section.

24 Does Treasury support that?

25 Mr. Lubick. No, Senator.

1 Senator Dole. Have there been hearings?

2 Mr. Shapiro. There have not been hearings.

3 Senator Dole. That would fall under the generally followed
4 rule from this morning. Finally I mentioned last week I would
5 like to at least discuss tax treatment of losses from commodity
6 futures spread transactions. It is my understanding that there
7 have been no hearings on this proposal but there is an effort under
8 way by Treasury, Joint Tax Committee and some of the parties
9 involved to work out some compromise. Is that an accurate under-
10 standing of the status?

11 Mr. Shapiro. You are correct. We have been working on
12 that. It is a complicated difficult problem and one on which we
13 worked with Treasury and the parties involved to see if a
14 solution can be worked out.

15 Senator Dole. Is that an on-going process?

16 Mr. Shapiro. It is.

17 Senator Dole. I would assume if something could be resolved,
18 something everyone agreed on by the time this bill were being
19 brought up on the floor it could be offered without hearing. If
20 there is an agreement by the Treasury and Joint Tax Committee with
21 that as a guideline, do you still have to have hearings?

22 Mr. Shapiro. The committee has to decide that. We will
23 proceed as expeditiously as we can. It depends on how important
24 the time limit is. It may be something for which a solution
25 will be appropriate.

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1 One of the technical correction provisions was withheld
 2 because there was a controversy involved. That controversy
 3 has been removed and it may be appropriate to add that to the
 4 technical corrections. We discussed it with Senator Byrd. He
 5 agreed.

6 It deals with proposals that guarantee funds in Florida. It
 7 may be appropriate for the committee to add that.

8 The Chairman. Without objection.

9 Mr. Stern. Do you want to deal with the question of what
 10 bills these would go on and how ylu do it? I would make a
 11 suggestion, if you want?

12 The Chairman. What is your suggestion?

13 Mr. Stern. You could either put them all in one bill
 14 or if you wanted to put them in three bills you could split up
 15 the revenue raising part of Senator Wallop's bill by raising
 16 one-third of the tax in each of the three bills. In that case,
 17 since the Wallop amendment would raise \$75 million in Fiscal 80
 18 if you split it into three bills, you could put with one bill
 19 Senator Bentsen's amendment on eliminating withholding tax on
 20 foreign investments because that cost \$25 million.

21 You could put on the second bill Senator Chafee's amend-
 22 ment which cost \$24 million on employees of charitable organi-
 23 zations and lesser developed countries and you could put with
 24 that some additional very low cost amendments or no cost amend-
 25 ments such as Rhode Island Indian claim settlement, the Hormel

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1 Foundation amendment and the railroad accounting method amend-
2 ment, the four of which together would add up to \$25 million
3 and then in the third bill you could put all the rest of the
4 things, the rest of the provision which would also add up to
5 \$25 million.

6 I would suggest that the first bill be H.R. 2297 dealing
7 with the suspension of duties on synthetic rutile whose substantive
8 position you already put on. The second one, Hawaii telescope
9 bill and the third which would carry most of the amendments
10 would be the bill relating to carillon bells for the University
11 of Florida.

12 The Chairman. Without objection.

13 Senator Dolae. Is there a good chance they are all going
14 somewhere? I think the Wallop bill has a future.

15 Mr. Stern. It would be split in thirds, one-third of
16 tax liability would be imposed by each of the three bills so the
17 President would have to sign all three in order to get the full
18 effect of the Wallop.

19 Senator Dole. I want to put the Golden Jubilee amendment
20 on the Wallop bill.

21 The Chairman. That will be on all three.

22 Without objection it is agreed.

23 We are adjourned.

24 (Whereupon, at 6:15 p.m. the committee hearing was adjourned.)

25