

MINI

1 EXECUTIVE SESSION ON THE MARK-UP OF THE BUDGET DEFICIT

2 REDUCTION PROPOSALS

3 THURSDAY, MARCH 8, 1984

4 U.S. Senate

5 The Committee on Finance

6 Washington, D.C.

7 The committee met, pursuant to recess, at 11:20 a.m. in
8 room SD-215, Dirksen Senate Office Building, Senator Robert
9 J. Dole (chairman) presiding.

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

13 Also present: Mr. John Chapoton, Assistant Secretary for
14 Tax Policy, Department of the Treasury; Mr. Ronald Pearlman,
15 Deputy Assistant Secretary for Tax Policy, Department of the
16 Treasury.

17 Also present: Roderick DeArment, Esquire; Michael Stern,
18 Esquire; David Hardee, Esquire; Mr. Richard Belas; Mr. Randy
19 Weiss; Mr. Richard Gordon; Mr. David Brockway; Mr. James
20 Wetzler; and Mr. Harry Graham.

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1 The Chairman. First of all, we have a little agenda
2 here. I am not certain we will follow it in that order.

3 Senator Heinz. If we did, it would be the first time
4 we did anything in order.

5 The Chairman. Well, that's not a requirement, is it?

6 (Laughter)

7 The Chairman. As long as we take your amendment, you
8 don't care, do you?

9 (Laughter)

10 Senator Heinz. I care that we have a good bill,
11 Mr. Chairman, and I think you do, too.

12 The Chairman. Well, your amendments make it better.

13 Senator Heinz. I've got 16 more.

14 The Chairman. Well, we had better have an agenda.

15 There was a question on agriculture cooperatives, and
16 I understand that has now been resolved to the satisfaction
17 of the Administration and those -- I guess, Cargill and
18 the National Council of Cooperatives. Is that correct?

19 Mr. Chapoton. Yes, sir, that is correct. We are
20 happy with it, and I understand they are.

21 The Chairman. Could we just state briefly, for the
22 record, what that would do? It's in FSC.

23 Mr. Chapoton. Yes. Let Mr. Pearlman review that.

24 Also in the FSC, Mr. Chairman, while he is getting the
25 materials, I want to clarify that the effective date would

1 be January 1, 1985. The draft we sent up last year would
2 have been effective this year, but the budget calls for
3 January 1, 1985. And we will need some drafting authority
4 on a couple of technical changes.

5 The Chairman. I think there is no objection to the
6 drafting authority, as long as you don't change what we
7 agreed on too much.

8 Mr. Chapoton. All right.

9 Mr. Pearlman. Mr. Chairman, a rule has been devised,
10 with the cooperation of the cooperatives, that is intended
11 to afford FSC benefits on a parity with other businesses
12 that export abroad. The basic approach is to try to
13 identify the portion of the cooperatives' taxable income,
14 which is eligible for FSC treatment. So, it creates a piece
15 of their income that is eligible.

16 I am not sure whether Mr. Chapoton had mentioned it or
17 not, but there are some technical amendments that apparently
18 the staff is agreeable to.

19 The Chairman. All right. Well, if that has been worked
20 out to everyone's satisfaction, I know of no objection to
21 the amendment.

22 Senator Durenberger. Mr. Chairman, may I just take the
23 time, since a lot of this lands in my State, one way or the
24 other, to compliment you and to compliment the staff and
25 Treasury for working out this problem? And also for the

1 help that everybody was on the small business concerns that
2 are in this FSC bill as well. I think that was very
3 appropriate.

4 The Chairman. Now, if we will move to No. 6 rather than
5 No. 1.

6 Senator Mitchell?

7 Senator Mitchell. I have a brief question regarding
8 the legislative history. I wonder if I could address a
9 question to Treasury on this?

10 According to some of the companies involved, under the
11 DSC rules, the way of computing foreign content and
12 determining eligibility for DSC benefits causes problems for
13 some electronic companies. They urge that the legislative
14 history of the FSC provisions make clear that in computing
15 foreign content for FSC purposes only the true net foreign
16 content of any product be taken into account, rather than some
17 larger amount.

18 Do you see any problems with making this clear in the
19 legislative history?

20 Mr. Pearlman. Senator, we are aware of that request,
21 and I think that we have two questions: Number one, what
22 the revenue impact of that is, and we are looking at that
23 now, so I can't really respond on that point; the other
24 thing is, we want to make sure that that change is not going
25 to have an adverse effect on the creation of U.S. jobs, by

1 encouraging manufacturers to send property abroad for part
2 of its manufacturing and then bring the property back in.
3 And until we can react to those two questions, that's about
4 all I can tell you at this point.

5 Senator Mitchell. Well, I share your concern about the
6 American jobs, obviously. Could I ask, then, that before
7 we get to the point of completing action on this, that you
8 let me know?

9 Mr. Pearlman. Certainly.

10 Senator Mitchell. You can work with my staff and then
11 let me know what the progress is?

12 Mr. Pearlman. Yes.

13 Senator Mitchell. Thank you very much.

14 Thank you, Mr. Chairman.

15 The Chairman. It is suggested that we accept the
16 Heinz amendment. Is that estimate on revenue still solid?

17 Mr. Gordon. Yes, Mr. Chairman.

18 The Chairman. Fine. Then there is no need to disturb
19 that.

20 I have Mike handing out a package. I don't know how
21 many amendments are in that package.

22 Mr. DeArment. Thirty-three.

23 The Chairman. I might say to the members that what we
24 have is a package of 33 miscellaneous, non-controversial,
25 very little revenue involved amendments that many of the

1 Members have brought to our attention.

2 These amendments have been cleared by Treasury, by the
3 Joint Committee, by the Republican and Democratic staff, and
4 I would hope we wouldn't have to go through each one of
5 these and spend a great deal of time.

6 Different Members have an interest in some, they are
7 on both sides of the aisle, and I would hope that we might
8 give Members a chance to run through the package quickly.
9 If they have questions on any of them, they could be raised;
10 if not, we can just adopt those amendments.

11 Senator Long. Why don't you just read them by title?

12 The Chairman. All right.

13 Buck or Dave, do you want to just go down them by title?

14 Mr. Brockway. Item No. 1 would be a two-year
15 moratorium on fringe benefit regulations. Item No. 2 would
16 be extension --

17 The Chairman. If there is no objection, the two-year
18 moratorium on non-statutory --

19 Senator Heinz. Just one question, Mr. Chairman. Are
20 we extending that freeze to faculty housing as well?

21 The Chairman. Yes.

22 Senator Heinz. A slight expansion.

23 The Chairman. Right, a slight expansion.

24 Senator Heinz. I have no objection.

25 The Chairman. All right.

1 Mr. Brockway. Item No. 2 is the suspension of the
2 1976 Act rule dealing with net operating losses, giving
3 further time to come up with a proposal in that area, that
4 the committee is working on.

5 Senator Durenberger. Mr. Chairman, on No. 1, I am
6 informed that Senator Symms has an interest and probably an
7 amendment.

8 The Chairman. Yes, he has a whole amendment.

9 Senator Moynihan. Mr. Chairman, I am sorry to be
10 academic; but, on the nonstatutory fringe benefits, it says
11 "The freeze would apply to faculty housing where the
12 professor pays the cost of the housing." There are usually
13 very few professors and there are a great many faculty who
14 do not have the rank of "professor." Does that mean someone
15 who teaches?

16 Mr. DeArment. That is correct, Senator. Any faculty
17 member will.

18 The Chairman. All right. Any objection to No. 2?

19 (No response)

20 The Chairman. If not, it will be approved.

21 And No. 3?

22 Mr. Belas. This is an extension of the employee
23 educational assistance exclusion, without a dollar cap.

24 Senator Danforth. Mr. Chairman, this is a VEBA issue,
25 isn't it?

1 Mr. Brockway. It's a type of benefit that can be
2 provided through VEBA, but it does not have to be.

3 Senator Danforth. But isn't the issue that we were
4 discussing yesterday with respect to VEBAs the issue raised
5 in this Greensboro Pathology Associates case?

6 Mr. Belas. That is correct. The extension of the
7 provision also would include a restriction that would not
8 allow -- for instance, the type of a situation where
9 children of the employees would be able to have a reserve
10 set up for them, even though they are not going to go to
11 college for seven or ten years.

12 The Chairman. Do you want to pass this one?

13 Senator Danforth. Let's pass it.

14 The Chairman. No. 4?

15 Mr. Brockway. The next item deals with the disallowance
16 of income tax deductions for demolishing historic
17 structures, and it would also provide that deductions for
18 demolishing any structure would be capitalized.

19 The Chairman. You pick up 5 million, right?

20 Mr. Brockway. That is correct.

21 The Chairman. If there is no objection.

22 No. 5?

23 Mr. Brockway. No. 5 is the deduction for architectural
24 and transportation barrier removal. It would increase the
25 exclusion from 25 to 35, and extend it through 1985.

1 The Chairman. Right. I might say that's a matter that
2 I have an interest in. That was in the law. It expired;
3 and this would expand it to 35,000. I know of no objection.
4 It's a matter I worked on years ago with Senator Mondale.
5 The way he's running, he may need this.

6 (Laughter)

7 The Chairman. Without objection.

8 No. 6?

9 Mr. Brockway. No. 6 is the reporting of State tax
10 refunds. This would allow the reporting of State tax refunds
11 to be done at the time the refund is made.

12 The revenue estimate on this, I should note, is high.
13 We will revise it down. This is on the earlier data they
14 have.

15 The Chairman. If this is the amendment of Senator
16 Baucus and Senator McClure, I think the revenue estimates
17 were actually lower.

18 Mr. Brockway. Yes, they will come in lower than this.

19 The Chairman. Without objection.

20 No. 7?

21 Mr. Brockway. This corrects a technical error in the
22 1975 Act dealing with percentage depletion. It would provide
23 that secondary and tertiary depletion -- there is a typo on
24 the write-up -- that the percentage depletion of secondary
25 and tertiary after 1983 would get 15 percent rather than

1 having it repealed. It would also apply that the anti-
2 transfer rules would apply to property transferred after
3 September of 1975.

4 The Chairman. There is no question about it, it was
5 an error in the Tax Reduction Act of 1975. There is no
6 revenue effect.

7 Mr. Brockway. That is correct. It simply puts it
8 where it was intended.

9 The Chairman. It is a matter that I and Senator Boren
10 presented to the committee.

11 Without objection.

12 No. 8?

13 Mr. Brockway. This would allow the State tax installment
14 payment provision to apply to certain situations where there
15 is a holding company for active business stock, and it would
16 also allow -- well, that is the provision. I'm sorry. It's
17 a \$22 million loss.

18 Senator Danforth. Mr. Chairman, on this issue, this
19 is my amendment. I understand that there have been some
20 drafting problems at least on the House side, the House
21 version of this amendment. I hope that we would approve it,
22 but with the possibility that I could take a look at the
23 drafting before we put it in concrete.

24 Senator Durenberger. Mr. Chairman, I am informed
25 Senator Symms has a similar problem and would like to be able

1 to look at it.

2 The Chairman. On No. 8?

3 Senator Durenberger. Yes.

4 The Chairman. All right. If there is no objection,
5 we will approve it; but let's make certain that those who
6 have an interest -- Senator Symms, Senator Danforth, and
7 there may be others -- have a chance to review the language.
8 And if the revenue estimates change, then we will bring it
9 back to the committee.

10 Mr. Brockway. No. 9 is a modification discussed in the
11 committee before, dealing with the percent of the walls
12 that have to be retained when there is a rehabilitation of
13 a historic building.

14 The Chairman. Making it more liberal? Is it a
15 liberalization?

16 Mr. Brockway. Very slightly, but it deals with
17 situations where --

18 The Chairman. Is that going to exacerbate the problem
19 Senator Bentsen mentioned?

20 Mr. Chapoton. I think the problem Senator Bentsen
21 mentioned is -- this is the standard. The problem he has
22 mentioned is whether you can greatly enlarge or have a
23 substantially new structure qualify for the credit.

24 As we read the rules yesterday, I think that is not
25 allowed under the rules. And we are still trying to work

1 with Senator Bentsen's staff, trying to get the facts on the
2 case that he saw.

3 But we don't have a tightening recommendation now.

4 The Chairman. All right. Then, without objection, we
5 will agree to No. 9.

6 No. 10? This was passed before.

7 Mr. Brockway. That is correct.

8 The Chairman. And it was dropped in conference --
9 exemption from aviation excise tax for certain helicopters
10 who just fly out to Riggs, as I understand it.

11 Mr. Brockway. Yes.

12 The Chairman. With no objection.

13 No. 11?

14 Mr. Brockway. This would change the effective date on
15 the multi-employer pension plan, an amendment to the Act so
16 that it would not be retroactive, the liability.

17 The Chairman. This is an amendment of Senator Danforth,
18 as I recall.

19 Senator Chafee. I am interested, also.

20 The Chairman. Without objection.

21 No. 12?

22 Mr. Brockway. The next amendment deals with a relief in
23 one instance where there is a rollover for pension plan
24 distributions transferred into an IRA.

25 The Chairman. I don't know whose amendment it is.

1 Mr. Brockway. I believe it is --

2 Mr. DeArment. The rollover of IRAs?

3 The Chairman. Yes.

4 Mr. DeArment. That is Senator Helm's.

5 Senator Grassley. I hope that is my amendment. If it
6 isn't, then I had something in this area. If it doesn't
7 cover what I was concerned about, I would like to make sure
8 that is included. From the description of it, it sounds
9 just exactly what I wanted to accomplish.

10 The Chairman. Well, unless there is an objection, we
11 will approve this; then we will take care of yours.

12 Senator Grassley. Well, I hope this includes it.

13 The Chairman. Is there any revenue effect?

14 Mr. Brockway. It is negligible.

15 The Chairman. All right.

16 Senator Bentsen. Let me interrupt just a minute. I
17 want to get clear again, because I was trying to talk to
18 someone else at the same time. I did not hear Secretary
19 Chapoton's comments as to what we were going to be doing to
20 stop the abuse on the rehabilitation of historic structures,
21 where they build something outside the structure. I want
22 to be sure that is really blocked, and that that kind of a
23 ripoff is stopped.

24 Mr. Chapoton. Senator, in response to your inquiry
25 yesterday, we looked at the statute and the regulations

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1 which are now in draft form, and it would be clearly stopped.

2 You cannot enlarge the existing structure and get the
3 credit for it.

4 Senator Bentsen. I would like to see the draft of the
5 regulations. Would you have those provided to my staff?

6 Mr. Chapoton. Yes, sir. It might be more helpful if
7 we just stated in a letter to you, specifically, on this
8 point what it would provide. And if you think it needs to
9 be further tightened, we certainly would look at it.

10 Senator Bentsen. This obviously doesn't take care of
11 it.

12 Mr. Chapoton. This liberalizes it just a bit. This
13 will make a change -- it is a slight liberalization. We
14 didn't have problems with this change.

15 Senator Bentsen. I will look forward to your letter.

16 Mr. Chapoton. All right.

17 The Chairman. I hope that if we need to do anything,
18 we can do it by statute, to tighten it up.

19 Mr. Chapoton. Well, if there is any doubt about it,
20 we certainly will support a tightening.

21 The Chairman. All right.

22 No. 13 -- is that Senator Mitchell's amendment?

23 Mr. Belas. No. I believe this is an amendment that
24 Senator Packwood is interested in. It just clears up a
25 technical error in the Social Security area.

1 The Chairman. No revenue effect?

2 Mr. Belas. No, there is not. It is a technical
3 correction.

4 The Chairman. I think I am correct, just so we don't
5 have to ask each time, Treasury, the Joint Committee, and
6 our own staff have reviewed all of these amendments, and
7 they are not objectionable. Is that correct?

8 Mr. Chapoton. Yes.

9 Mr. DeArment. That's correct. We sat down on
10 Saturday and went through all of these, and they also have
11 minor revenue effects.

12 The Chairman. All right.

13 No. 14?

14 Mr. Brockway. No. 14 makes my technical corrections
15 in the treatment of regulated investment companies. The
16 principal one here is that it clarifies how the computation
17 of Treasury bills is held by the regulated investment
18 companies.

19 The Chairman. All right, without objection it will be
20 agreed to.

21 No. 15? This is Senator Moynihan's, I think.

22 Mr. Brockway. This is Senator Moynihan's amendment
23 dealing with cooperative housing associations, allowing,
24 essentially, corporations to be tenant shareholders, and
25 certain other changes.

1 The Chairman. Without objection, that will be
2 approved.

3 No. 16?

4 Mr. Brockway. No. 16 allows U.S. civilian government
5 personnel killed overseas to not be subject to tax during
6 the year they are killed or the prior year. It treats
7 it the same way as --

8 The Chairman. I don't think there is any objection,
9 but as I understand it we have a time problem. Would there
10 be any objection to agreeing to it as part of the package
11 but also reporting it out separately? We are getting near
12 the April 15 deadline.

13 Mr. Brockway. Yes. This has also passed the House in
14 a separate vehicle.

15 The Chairman. Right.

16 Mr. DeArment. That's H.R. 4206 that we would report
17 out separately.

18 The Chairman. Right. Hopefully we could keep it clean
19 and just pass that without anybody trying to load it up.

20 Is there any objection to just reporting it out
21 separately?

22 (No response)

23 The Chairman. All right.

24 No. 17?

25 Mr. Brockway. This deals with a situation where

1 a handicapped taxpayer won a contest for a home, and this
2 would abate the penalties for six months on --

3 The Chairman. Oh. This is the child that Senator
4 Metzenbaum and Chairman Rostenkowski called to our attention.

5 No. 18?

6 Mr. Brockway. This would allow, in two estates, allow
7 the payment of estate taxes with a contribution of property
8 to the Government rather than payment of the tax.

9 The Chairman. All right.

10 No. 19?

11 Senator Chafee. Does it require special legislation
12 to do that?

13 Mr. Brockway. Yes, it would require special
14 legislation.

15 The Chairman. I think No. 19 is Senator Mitchell's.
16 I know of no objection; we have done that in the past, and
17 I assume we will continue to do it on a two-year basis.

18 No. 20?

19 Mr. Brockway. It would make a technical correction to
20 the Superfund legislation, to make sure that light harbor
21 carbons used in the production of motor fuels and fertilizer
22 are not doubly taxed.

23 Senator Bradley. Mr. Chairman, I object to this.

24 The Chairman. All right.

25 We will set it aside. If somebody wants to press it, we

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1 will have to vote on it.

2 Mr. Brockway. No. 21 deals with coordination of the
3 Sub-part F rules of the foreign personal holding company
4 rules. This is a provision that was raised by Senator
5 Bradley.

6 The Chairman. Without objection.

7 No. 22?

8 Mr. Brockway. No. 22, changes in the effective date
9 for the distribution of qualified plans. It allows a delay
10 until January 1, 1986. It is a provision that I think
11 Senator Bentsen is interested in.

12 The Chairman. Without objection.

13 No. 23?

14 Mr. Brockway. No. 23 deals with unemployment
15 compensation received by taxpayers after unemployment was
16 subject to tax. But it was with respect to a year before
17 we taxed unemployment; so we will just make sure that these
18 taxpayers weren't taxed on that unemployment.

19 The Chairman. Without objection.

20 On No. 24, I might say to the non-farm State Senators,
21 it is something that we need to do to make certain farmers
22 don't get socked all in one year, because they get a PIC
23 payment. We did it last year, and they extended the PIC
24 program.

25 Was it pick-up money in 1986?

1 Mr. Brockway. What you have is a wash. That's right.
2 You lose in 1984 and 1985, and you pick up in 1986. It's
3 just a rollover.

4 The Chairman. Without objection.

5 No. 25?

6 Mr. Brockway. This allows the duck stamps to -- a fee
7 to be charged for the duck stamps, and the funds will go
8 into the Migratory Wildlife Fund.

9 I don't believe there will be any significant increase,
10 but I think it is \$4 million a year's worth that we are
11 estimating.

12 The Chairman. All right, without objection.

13 No. 26?

14 Mr. Brockway. No. 26 is a technical amendment to the
15 marital deduction and the gift and estate tax, and it will
16 allow a usufruct interest to be treated as qualified income
17 interest for the marital deduction.

18 And we understand that the revenue on this item is
19 negligible.

20 The Chairman. I don't know what that word means,
21 but -- whatever.

22 (Laughter)

23 Senator Moynihan. Usufruct means a lifetime ability
24 to use a certain property, doesn't it?

25 Mr. Chapoton. You raised the question of usufruct?

1 The Chairman. Whatever it is, yes.

2 Mr. Chapoton. That is the equivalent of a trust under
3 common law.

4 The Chairman. It is a what?

5 Mr. Chapoton. Equivalent of a trust under common law.

6 Senator Moynihan. I thought it was abolished by the
7 Magna Carta, but I guess not.

8 (Laughter)

9 Mr. Chapoton. Well, it is a Louisiana law. Senator
10 Long can tell you about it.

11 Senator Long. I think Louisiana law is about the only
12 one that uses the word "usufruct," but we have the usufruct
13 and we also have the naked ownership. The "usufruct" refers
14 to the income from the property, and the "naked ownership"
15 refers to the fact that if you have the naked ownership but
16 not the usufruct, you own it but you just don't get anything
17 out of it. The person with the usufruct is the one that
18 gets the income.

19 The Chairman. Without objection, whatever-it-is will
20 be agreed to.

21 (Laughter)

22 The Chairman. No. 27? We promised on the Senate
23 floor, if you recall, and I think Senator Bradley is familiar
24 with it, that we would take care of No. 27, on portability
25 for AT&T employees. Is that correct?

1 Mr. Belas. That's right.

2 All it does is allow certain employees who were
3 employees of AT&T's operating companies, which are just
4 divisions, subsidiaries, to continue to keep their pension
5 even though they may become employees of now-separate
6 companies, the same operating companies.

7 The Chairman. Without objection.

8 No. 28?

9 Mr. Weiss. No. 28 involves an amendment on the coverage
10 of congressional employees under the Social Security System
11 and provides that if a congressional employee elects out of
12 the Civil Service System, then that person will be covered
13 under the Social Security System.

14 Mr. DeArment. This is an item that this committee has
15 previously approved, but we just didn't put it on any
16 particular vehicle.

17 The Chairman. What is the effective date?

18 Mr. DeArment. I think it is January 1, 1984.

19 The Chairman. All right. Let's hear a little more
20 about this, because our staff may ask you about it.

21 Senator Heinz. Mr. Chairman, I have one question about
22 it.

23 The Chairman. Randy?

24 Mr. Weiss. Mr. Chairman, under the Social Security
25 amendments, the provision for mandatory coverage for new

1 Federal employees included a provision that said that, in the
2 case of a Legislative Branch employee who was covered under
3 the Civil Service System in December of 1983, that they
4 would be in effect permanently exempted from Social Security
5 coverage. What that allowed was such an individual to be
6 covered under Civil Service in December 1983, then in
7 January 1984 go off the payroll, or whatever had to be done
8 to get out of the Civil Service System; so that as of
9 January or February of 1984 that individual could be out of
10 both the Civil Service and the Social Security Systems,
11 because of the way that was drafted.

12 So what this would do, it would say that if such an
13 individual did opt out of Civil Service, then the individual
14 would mandatorily be covered under Social Security. So,
15 either one system or the other would cover them.

16 The Chairman. I think we also addressed letters to our
17 colleagues in December to point that out; because it seemed
18 to us that if that happened on a large scale, it would give
19 the reform efforts a rather black eye.

20 Senator Heinz. Mr. Chairman, I have no quarrel with the
21 policy thrust of what we are trying to do; I just want to
22 be sure that if a congressional employee goes off the
23 payroll for one or two months, as many congressional
24 employees do in campaign years -- to go and work in a
25 campaign they cease being congressional employees -- that

1 that is not going to cause them to give up their benefits,
2 any benefits that they had prior to December 31, 1983.

3 Mr. Weis. Civil Service benefits?

4 Senator Heinz. Yes.

5 Mr. Weiss. Yes, I believe that that would not be
6 the case.

7 Mr. DeArment. That is precisely the intention here.
8 They can go off for a full year to work on a campaign and
9 come back.

10 Senator Heinz. And they will not be precluded from
11 rejoining on the same status they had?

12 Mr. DeArment. That is correct, as long as they don't
13 use that as a device to go off and pull their money out
14 of the Civil Service Retirement System.

15 Senator Heinz. But if Senator Bradley is running this
16 year, and if he has to take a member of his staff off for
17 four months, that will not render them ineligible under the
18 old rules for a continuation system?

19 Mr. Weiss. That is correct.

20 Senator Heinz. All right. Thank you.

21 The Chairman. Senator Bentsen?

22 Senator Bentsen. If I could ask a question of
23 Mr. Hardee on No. 22: It has been brought to my attention
24 that the Kentucky Legislature will not be back in session
25 until 1986. I wonder if that date could not be, instead of

1 January 1st, 1986, be December 31st of 1986. That would
2 provide time for the Kentucky Legislature.

3 Mr. Hardee. Yes. We would need to move the date to
4 December 31, 1986, if we are going to take care of
5 Kentucky. Their State Legislature is getting ready to go
6 out of session; it will not be back in until after -- until
7 1986. So we would need to extend that.

8 The Chairman. I have no objection to that. It that
9 all right with Treasury? Does the Joint Committee see any
10 problem with that? That is one State, is that right?

11 Mr. Brockway. No problem.

12 Senator Bentsen. Yes. That is my understanding.

13 The Chairman. Then, without objection, 28 will be
14 approved. We will go to No. 29.

15 Mr. Brockway. No. 29 is the provision that Senator
16 Grassley is interested in, and that would treat taxable
17 alimony received during the year as compensation for IRA
18 purposes rather than being subject to the conditions and
19 limitations of present law.

20 Mr. Chapoton. Mr. Chairman, if I could interrupt, we
21 didn't put this in this spread sheet, because I didn't
22 mention it. This is one of the proposals in the
23 Administration's budget. Another proposal is the Spousal
24 IRA that we may or may not get to later.

25 But a related problem has been that, in the current-law

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1 Spousal IRA Rule, which is \$250 for the non-employed
2 spouse, that if the spouse does earn \$100 during the year,
3 then the Spousal Ira is limited to the \$100 rather than
4 going to the full \$250, which is just sort of a technical --
5 it seems to me to be a very technical mistake.

6 I would hope that maybe we could correct that in
7 connection with this, in the event we don't get to this
8 larger Spousal IRA.

9 The Chairman. Is there any objection to that?

10 Senator Chafee. Well, Mr. Chairman, I have reservations
11 on this item. It seems to me that it leads us straight into
12 the Spousal IRA situation.

13 The Chairman. All right. Let's set it aside for now.

14 No. 30?

15 Mr. Brockway. No. 30 deals with tax-exempt property
16 for daycare centers; if the daycare centers provide day care
17 to help parents work, and if it is provided to the general
18 public, it would be a tax-exempt organization.

19 The Chairman. Without objection, No. 30 will be
20 agreed to.

21 No. 31?

22 Mr. Brockway. No. 31 would make permanent the Tribal
23 Indian Tax Status Act, which would essentially permit
24 tribal organizations to be treated as State Governments for
25 purposes of the Code, but without authority to issue

1 industrial development bonds.

2 The Chairman. Without objection, it will be agreed to.

3 No. 32?

4 Mr. Brockway. No. 32 is a modification of the
5 limitations on small-issue IDBs. It would provide that a
6 seller waste disposal facility to produce energy is not
7 included in capital expenditures for purposes of the
8 \$10 million limit.

9 The Chairman. Without objection.

10 The final one, No. 33?

11 Mr. Brockway. No. 33 is to make certain technical
12 corrections to the tip-reporting requirements adopted in
13 last year's legislation, essentially allowing majorities
14 of employees of restaurants to demonstrate that their
15 average tip is below 8 percent, to allow them to prove down
16 to 2 percent rather than the present 5 percent, and to
17 require IRS to issue guidelines in reporting of recordkeeping
18 requirements for tipped employees.

19 The Chairman. Without objection.

20 Senator Moynihan. Mr. Chairman, I'm sorry to go right
21 back to the beginning, but --

22 The Chairman. Right. No, I think we want to go back
23 and see. What are you on, No. 1?

24 Senator Moynihan. Yes.

25 The Chairman. All right.

1 Senator Moynihan. I just have a simple question. I
2 understand that this has not actually been drafted; and,
3 just as the word "professor" applies to someone who teaches,
4 what does the word "cost" mean? What do you intend the
5 word "cost" to mean? That's where people pay rent, but is
6 it -- ?

7 Mr. Graham. Senator Moynihan, you have introduced a
8 bill providing that if an educational or other institution
9 provides housing to a faculty member at its cost, that in
10 that event it would not be considered taxable income to the
11 faculty member. And we were basically using your bill in
12 this definition of "cost", sir.

13 Senator Moynihan. Thank you very much, sir.

14 Senator Danforth. Mr. Chairman, No. 3 is all right.

15 Senator Symms. Mr. Chairman?

16 The Chairman. Let's go ahead and approve No. 3, and
17 then we will come back to No. 1. I think Senator Symms had
18 a question on No. 1.

19 Senator Symms?

20 Senator Symms. Well, we will go back to No. 1. I still
21 have a proposition I want to bring on that, but we can do
22 it later.

23 The Chairman. Yes. I don't think you have any
24 objection to this, but I think you have a broader proposal.

25 Senator Symms. I have a broader proposal that I would

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1 at least like to have the committee look at.

2 The Chairman. Right.

3 As I understand, there are a couple of these that have
4 been asked to be set aside. I think Senator Bradley had
5 one, and Senator Chafee.

6 Senator Chafee. Mr. Chairman, could I ask about one
7 more?

8 The Chairman. Sure.

9 Senator Chafee. Mr. Chairman, on 16 -- income tax
10 exemption for military and civilian personnel -- is that for
11 their government salaries, no tax? Or for any income they
12 might have from any source that there would be no tax? And,
13 in effect, it would be for two years, wouldn't it? Because
14 it says, "For the year preceding the year in which the
15 injury was received. Is it two years?"

16 Mr. Chapoton. That is correct. The thought is that
17 these are cases where a return will not have been filed or
18 may not have been filed. It is just a forgiveness, similar
19 to the military killed in action rule that is in current
20 law. This broadens it. But it doesn't apply where war had
21 not been declared. So this covers a broader range of people.

22 Senator Chafee. I suppose we ought to make them the
23 same, but you are saying a military personnel -- you say
24 "U.S. Armed Services personnel" here.

25 Mr. Chapoton. But the problem under existing law is,

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1 if it's in a war, where you have a nondeclared combat, they
2 were not covered.

3 Senator Chafee. Is the current law -- this would make
4 the law similar as "under war"?

5 Mr. Chapoton. Let me verify that. As I understand,
6 that is the intent of it.

7 Senator Chafee. My only problem, Mr. Chairman -- I can
8 see doing it with the military or the government income,
9 but any income seems to me to be going a little far.

10 The Chairman. Well, it is a \$5 million annual loss.

11 Senator Chafee. Yes. I am surprised it is not more
12 than that.

13 The Chairman. I don't imagine many of these servicemen
14 have much income.

15 Senator Chafee. Well, I don't want to hold things up.
16 Maybe we can go on, and he can take a look and give us the
17 information.

18 The Chairman. Well, this is one they would like to get
19 reported out separately, because we've got a time problem on
20 April 15th.

21 Senator Chafee. Well, all right. I won't object.

22 Mr. Chapoton. Senator, current law gives this same
23 benefit if the death occurs to a military person in a combat
24 zone. And this broadens it beyond that.

25 Senator Chafee. All right.

1 Now, Mr. Chairman, I had a reservation on No. 29 that
2 I indicated, and that's all right.

3 The Chairman. All right. No. 29, then, will be
4 agreed to.

5 What does that leave that we have objections to? I
6 think just the one, the Superfund?

7 Senator Boren. Mr. Chairman, I certainly want to bring
8 that up and bring it to a vote, if we need to have a vote
9 on it. I feel very strongly about it.

10 The Chairman. Can't you just ask your neighbor?

11 Senator Boren. Well, I don't know that we can.

12 The point is, really, I think it is necessary to keep
13 faith with what was said at the time that the Superfund
14 Bill was passed. It was never intended that those portions
15 that were part of the stream in the production of gasoline
16 would be included in it. In fact, the revenue adjustments,
17 the estimates at the time clearly omitted that, and there
18 was a colloquy on the floor by yourself and Senator Long,
19 and also remarks by Congressman Uhlman immediately following
20 passage of the Superfund that it was not intended to include
21 the contents of gasoline. We tax gasoline under other
22 provisions.

23 Really, it has been very unclear. Treasury just has not
24 finally resolved this by regulation, and that is the reason I
25 thought we should go ahead and do it by statute. I think they

1 have had some doubt as to whether they have authority. I
2 don't think they disagree with the intent of the law, but
3 I think they have trouble as to whether or not they have
4 authority to handle this by regulation.

5 The very large, most modern refineries now take these
6 chemicals out of the barrel itself; but in some of these
7 smaller independent refineries you still have them as
8 additives. But they all finally end up producing gasoline.
9 It just seems to me it should be clarified.

10 Mr. Chapoton. Yes. Senator Boren, we have concluded
11 that the law was intended as you stated, and not only that,
12 but the revenue estimates were made on the basis as you
13 state. We carried those revenue numbers, and if the law
14 were otherwise, it effects dramatically the burden of the
15 tax between industries.

16 We have looked at it. We asked for comments at the
17 regulation hearing. The regulations were published imposing
18 the tax, as you know, on the chemicals in gasoline. And
19 frankly, that was done without our specific knowledge,
20 because it was a "category 1" regulation, which didn't
21 require me to sign off on it.

22 When we saw it and reexamined it, the point was made by
23 the Internal Revenue Service and by my staff that we did not
24 have authority to correct it. And that is what we
25

1 asked for in the regulation hearing, if we did.

2 The Chairman. Senator Bradley?

3 Senator Bradley. Mr. Chairman, about 10 minutes ago was
4 the first time I saw this list and saw this provision on the
5 list. Based upon what I see, it seems to me that the
6 Superfund Tax is on certain feedstock chemicals, and the fact
7 that they are in a strain of production of gasoline seems to
8 me, unless there was something specific in the statute, to
9 be not the point, and that it should be taxed just as any
10 other feedstock chemical that was determined to be toxic.

11 I understand that it is a burden on small refiners, but
12 so are toxic wastes. And it seems to me that there are not
13 enough revenue in the Superfund now to take care of the
14 clean-up of toxic wastes, and that if we are going to let
15 that revenue erode further, we are just not going to have
16 the money to do the job.

17 This is, again, a reaction based upon having been
18 provided this with 10 minutes -- 10 minutes ago.

19 The Chairman. Well, I think what we might do, let's
20 not vote on it now, Dave. Let's give Senator Bradley until
21 Tuesday.

22 Would that be enough time to look at it and study it?

23 Senator Bradley. Sure. I mean, we are having a
24 Superfund reauthorization coming up in the next what --
25 month?

1 The Chairman. As I indicated earlier, these are what we
2 felt were noncontroversial, where everybody was onboard; but
3 That doesn't mean they can't be objected to.

4 Mr. Chapoton. Senator, I would just add, it doesn't
5 affect the total amount going to the Superfund. There is a
6 ceiling on the amount going to the Superfund. The question
7 is, who pays it?

8 Senator Boren. Mr. Chairman, I am a strong supporter
9 of the Superfund; but at the time the bill was passed,
10 there were long negotiations about how those burdens would
11 be shared within the industry, compared to who was
12 contributing to the toxic waste problem. And it was
13 clearly the intent, because you had a \$4-500 million
14 difference in revenue estimates, it clearly was not
15 intended. You and Senator Long spelled that out in a
16 colloquy on the floor.

17 All I am saying is, I think it is rather unfair to come
18 back in at this point. If we want to reopen the whole
19 Superfund, put a lot more money in it, and fairly decide how
20 that burden should be shared, that's one thing. But I don't
21 think it was ever intended this way, and I am just trying
22 to clarify the intent of the law.

23 Mr. Hardee. Senator Dole, Senator Baucus also has a
24 concern about copper, lead, and zinc compounds used, and he
25 will be bringing that up when he gets back.

1 Senator Bradley. Here we go. You know, we are going
2 to have copper, lead, and zinc, small refiners. We've
3 eroded the law.

4 The Chairman. Well, I'll have to see what I said.

5 Senator Bradley. By the way, this colloquoy that you
6 had occurred after the law passed. So, I mean, it's not
7 exactly a colloquoy that everyone knew what the situation
8 was prior to the law passing; it was a colloquoy after the
9 law passed.

10 The Chairman. Yes, but I don't remember having it at
11 all.

12 (Laughter)

13 The Chairman. But I must have.

14 Well, in fairness to anybody who wants to hold something
15 over, we will do that. But if there are other things that
16 people want to raise, we will do that in the next group.

17 Yes?

18 Senator Grassley. Mr. Chairman, I want to raise
19 something new.

20 The Chairman. Don't raise it too high.

21 Senator Grassley. Well, no cost.

22 The Chairman. Oh, good. That's good.

23 Senator Grassley. This deals with the penalty for
24 estimated tax. I want to give the Commissioner of the
25 Internal Revenue the authority to abate the penalty for

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1 reasonable cause. And the purpose of this is that, you
2 know, people who aren't in the business don't know about the
3 legal necessities of filing estimated tax and doing it on
4 time, and then they wake up after they get a notification
5 from the IRS that they are subject to a heavy penalty.

6 I have discussed this with the Commissioner over a
7 period of a year and a half, and he sees nothing wrong
8 with it, although I understand Treasury doesn't like it,
9 that it gives them the right to waive that penalty.

10 Now, it is particularly a serious problem for older
11 people. But in my legislation I am not just covering older
12 people; I'm covering everybody.

13 The Chairman. He doesn't have that authority now?

14 Senator Grassley. No.

15 The Chairman. Is Treasury opposed to it?

16 Mr. Chapoton. We were concerned that if it just had
17 a reasonable standard test, that you would have arguments
18 for evading this penalty all the time.

19 What we were suggesting, and I think what the House
20 adopted, was to say that the penalty could be evaded if it
21 would be inequitable to impose the penalty on estimated tax.

22 The Chairman. Well, you don't have any quarrel with
23 that, do you?

24 Senator Grassley. Just a minute.

25 The Chairman. We have a case in our State that I think

1 Senator Kassenbaum has introduced a bill.

2 Senator Heinz. As a matter of fact, Mr. Chairman, that
3 is legislation that Senator Kassenbaum and I introduced, and
4 it was legislation that we had meant to incorporate in
5 TEFRA in 1982. It was an oversight. I thought that we had
6 the bill in. Nancy Kassenbaum realized that we hadn't,
7 and she quite correctly rehabilitated that legislation.
8 So I hope we can do what Senator Grassley wants. If we
9 can't, I hope we could do what Senator Kassenbaum wants.

10 The Chairman. Well, I think everybody is in agreement.
11 If it is not equitable, you wouldn't want to abate the
12 penalty, would you?

13 Senator Grassley. No, but except not being a lawyer,
14 I am not sure that I understand the difference.

15 Mr. Chapoton. I think the difference is a little higher
16 standard. If a reasonable cause is the standard, then it
17 is asserted any time the penalty is asserted. And there
18 ought to be a little higher standard. We are probably
19 picking pins here, but a little higher standard than just a
20 general reasonable cause.

21 The Chairman. I don't think the world is going to come
22 to an end either way, is it?

23 Senator Grassley. Well, what are you going to do in the
24 case of older people that don't have penalty notice, then?
25 How would you react to that, as an example -- senior

1 citizens? A senior citizen who has not had a pension
2 notice, as an example?

3 Mr. Chapoton. Well, I don't know. I would hope, if he
4 had no notice and no knowledge of it, I think it would be
5 inequitable to impose the penalty. I would also think he
6 would have reasonable cause for abating the penalty.

7 The Chairman. Well, let's agree to it.

8 Mr. Chapoton. The Joint Committee is pointing out, and
9 I think this is a good point, Senator, that we want to make
10 sure that the action -- the problem has been here that the
11 Commissioner has had absolutely no authority to abate the
12 penalty, and he wants that authority. We don't want to be
13 put in a position where that action is reviewable by courts,
14 because we will then have this going on for a long time.
15 So that would be the main reason.

16 The Chairman. We are going to have a break here after
17 a while. Let's let Senator Grassley and Treasury work it
18 out, and unless there is some objection we will agree to it
19 on that basis.

20 All right, now, I wonder if we might then move to --

21 Senator Durenberger. Mr. Chairman, before we leave the
22 package, can I raise a question about No. 7? It is referred
23 to as "a technical error regarding the tax treatment of
24 secondary and tertiary production."

25 The Chairman. It is a technical error.

1 Senator Durenberger. Well, it may be a technical
2 error; but when the technical error is corrected, I find it
3 hard to believe that the revenue effect is zero.

4 The Chairman. I think it is continued to get a certain
5 rate of depletion, which would have ended because of a
6 mistake in the law.

7 Mr. DeArment. The estimate of the 1975 Act assumed that
8 in 1984 depletion would go from 22 percent in one drop
9 straight 15. Because of the defective drafting, it goes
10 from 22 to zero. But we are estimating --

11 Senator Durenberger. Why don't you just give me the
12 dollars that are involved; that's all I want to know. I
13 understand that there is a technicality, but there are some
14 dollars in that.

15 Mr. DeArment. There are no dollars involved. This is
16 what was assumed was the congressional policy.

17 Senator Heinz. I think what Senator Durenberger is
18 asking is, if you didn't make the technical change --

19 Mr. Brockway. We can come back with data on what is
20 affected. The reason we carry it as a zero revenue estimate
21 is that, exactly as Rod said, in 1975 when percentage
22 depletion was phased down, that the rules provided generally
23 would step down to 15 percent after 1983. Then there was an
24 amendment put on to keep secondary and tertiary at 22 percent
25 up to 1983 and drop down.

1 What happened when that was drafted was that there was
2 a mistake, that both that percentage depletion for secondary
3 and tertiary would have been repealed after 1983, plus,
4 the people could have avoided the anti-transfer rules. This
5 corrects both of those errors back to where it was, and so
6 that's the reason why we did it. But we can come back
7 with the numbers.

8 Senator Durenberger. I understand that, but you are
9 not being responsive to the question.

10 Mr. Brockway. We will come back with the numbers.

11 Senator Durenberger. We are here supposed to be
12 reducing the deficit.

13 Mr. Brockway. We will come back with the dollars that
14 we estimate to be affected by it.

15 Senator Durenberger. Do you have an approximation?

16 The Chairman. Dollars of what?

17 Mr. Brockway. Well, if I understand what Senator
18 Durenberger is asking, he is saying that it's fine that we
19 may be estimating that this is what was intended, but I
20 believe what he wants to know is, suppose we don't correct
21 this mistake? What happens to the taxpayers?

22 Mr. DeArment. The question is, what would the revenue
23 estimate be on secondary and tertiary recovery if you take
24 the depletion rate down to zero and leave it? It is 15
25 percent on primary recovery right now.

1 The Chairman. All right. Well, let's just withhold
2 that until we get the figures.

3 What do we have in the package, then, that we need to
4 come back to?

5 Mr. DeArment. Pass over that item?

6 The Chairman. Right.

7 Would it just be those two?

8 Mr. DeArment. Yes, those are the only two.

9 The Chairman. All right.

10 Are there any other questions on anything in the
11 package?

12 (No response)

13 The Chairman. If not, I would like to ask Buck if
14 you could go over what you think would be a reasonable
15 approach in the real estate area. I know you have been
16 working on it, and I will say the industry has been most
17 cooperative.

18 I think Treasury has some ideas that we would like to
19 at least have explained while we have a good attendance here.

20 Mr. Chapoton. All right.

21 The Chairman. I might say, also, did you work out the
22 VEBA problem with Senator Packwood?

23 Mr. Chapoton. No, we have not finished working out
24 that. We were going to discuss that this morning, but I
25 see that Senator Packwood is not here. I think it would be

1 good if we could have a little more time on that.

2 The Chairman. All right. Let's go to the other.

3 Mr. Chapoton. All right.

4 The suggestion has been made, as I mentioned yesterday,
5 by Senator Bentsen and others to go to a 20-year life from
6 the 15-year life on real estate.

7 We would suggest, instead, that you go to an 18-year
8 life on real estate.

9 The Chairman. On both?

10 Mr. Chapoton. On both residential and commercial, but
11 keep low-income housing at 15 years.

12 Senator Bentsen. The only correction I would like to
13 make is, I suggested it 20 on commercial.

14 Mr. Chapoton. I'm sorry, that's correct. You said
15 20 on commercial, and you had all residential at 15. And
16 we would say all at 18, except low-income housing would be
17 at 15.

18 And then, we would propose strengthening the recapture
19 rules in several respects, because we think the recapture
20 is the problem.

21 The first item would be on an installment sale of
22 real property -- we would say that the ordinary income
23 portion that will eventually be recaptured could not be
24 deferred by election of installment treatment, because part
25 of the problem is that the buyer, of course, will immediately

1 take depreciation on the property purchased, and we think
2 the recapture of prior depreciation should not be deferred
3 while the buyer is again taking depreciation. So that is
4 the first rule.

5 In addition, we would say that in the case of
6 commercial real property, which now, if straight line is
7 used there is no recapture. If accelerated is used, there
8 is full 1245 recapture. That is 100 percent recapture of
9 the prior depreciation.

10 We would make no change with respect to the case where
11 accelerated is used, but if straight line is used we would
12 suggest 1250 recapture; that is recapture of the
13 depreciation in excess of straight line. But for making
14 that test, we would assume a 35-year life for the real
15 estate; so that, to the extent in the year of sale recapture
16 had exceeded straight line over a 35-year life, there would
17 be a recapture as ordinary income on the sale, but we would
18 phase out that recapture beginning in year 10. That is what
19 we suggested. You could pick any year, but we suggested
20 starting in year 10 the 1250 recapture would phase out, and
21 we have suggested over a 20-year period, so that after
22 year 30 there would be no recapture at all.

23 The Chairman. Would you also make some adjustment
24 in the minimum tax that Senator Moynihan was talking about?

25 Mr. Chapoton. We have been looking at the minimum tax

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1 as an independent matter. I think there is concern in the
2 industry, and we have some concerns about the minimum tax
3 as well.

4 We are suggesting that instead of the affect on
5 at-risk, that we look solely to the interest element in a
6 partnership, that a loss created in a partnership, in
7 Subchapter S corporation, that is attributable to interest
8 come out of the partnership as investment interest, and
9 that that be treated as a preference. So there would be
10 no direct impact on the at-risk rule; but to the extent the
11 loss is attributable to interest, it would be treated as a
12 preference.

13 Senator Moynihan. Mr. Chairman, that went by very fast.
14 Did everybody hear all of that?

15 Mr. Chapoton. Well, I think we need to give you that in
16 more detail, more slowly, so you can understand it. But
17 basically, the rule now -- let me back up -- the rule now
18 is that investment interest is basically, to the extent
19 your taxpayer's investment interest deduction, that is,
20 interest on debt incurred with respect to assets held for
21 investment, that that interest is not deductible in excess
22 of the taxpayer's investment income plus \$10,000.

23 But that rule does not, for some reason, apply with
24 respect to interest incurred in a partnership. So, if you
25 are in a tax-shelter partnership, there the interest

1 deduction in the partnership has no special classification
2 when it comes out of the partnership. And we see large
3 interest deductions being created in tax shelter partnerships.

4 So we are suggesting that, if a partnership has a
5 loss, to the extent that loss is attributable to interest,
6 then that interest come out and be a preference item, that
7 that interest be treated individually as a preference. It
8 would still be fully deductible.

9 Senator Moynihan. May I ask what prospective revenue
10 is involved?

11 Mr. Chapoton. Well, our preliminary estimate is that
12 that would be slightly over a billion dollars for this
13 three-year, 1985 to 1987.

14 Senator Bentsen. Well, that is just the one item. You
15 are not talking about your total proposal.

16 Mr. Chapoton. I'm sorry. That is just on the
17 interest element I have just been describing.

18 Senator Bentsen. That is not your total proposal,
19 because when you talk about charging recapture when they
20 use straight line on 15 years, and then you recapture out to
21 the economic life of the project back to 35 years, with
22 some modifications, with some phase-out, you are talking
23 about quite a major change. You must be recouping a lot more
24 money than that.

25 Mr. Chapoton. I digressed to talk about the minimum

1 tax element.

2 Coming back to the real estate specifically, I described
3 the recapture rule with respect to commercial property. We
4 would have a similar rule with respect to housing.

5 First of all, on normal housing there would be, as
6 I described, it would go to 18 year life, and recapture
7 would be computed under 1250 recapture, using a 25-year
8 life for housing, also with a phase-out beginning at
9 year 10. So it would be a slightly less rigorous recapture
10 rule with respect to housing.

11 And then, low-income housing would have the same
12 phase-out, would have the same recapture rule, but would
13 have a faster phase-out, would have the same phase-out it
14 has under existing law of 1250 recapture.

15 Now, all told, we estimate -- and this is preliminary --
16 that those real estate changes would increase receipts over
17 the three years of a little over \$2 billion, over the
18 three years period.

19 Senator Bentsen. As compared to what I had proposed,
20 my proposal would have raised overall \$3.5 billion, as I
21 recall.

22 Mr. Chapoton. I think that is correct.

23 The Chairman. That was 3.4, yes.

24 Senator Bentsen. It was 3.4.

25 The Chapoton. The difference is in dropping it from

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1 20 to 18 years. You would reduce some of that.

2 The Chairman. As I understand, there are still --
3 I don't say "negotiations" in that sense, but they are
4 still working with the industry. I would say they have been
5 most forthcoming in trying to cooperate in this effort.

6 Maybe by next Tuesday morning you could resolve this.

7 Mr. Chapoton. We have talked about these. They have
8 not seen these details that I have just described.

9 The Chairman. Well, we do not want to act on it until
10 they have.

11 Senator Heinz. Mr. Chairman, on this subject --

12 The Chairman. Senator Pryor had asked for recognition.

13 Senator Heinz. Very well.

14 Senator Pryor. Mr. Chairman, I would just like to ask

15 Buck: Do we have anything in writing, a breakdown of your
16 proposal?

17 Mr. Chapoton. Yes, we are putting together a write-up
18 of it this morning. I just got this myself.

19 Senator Pryor. Now, Mr. Chairman, are we planning to
20 take a vote on this issue this morning, or not? Are we just
21 going to look at it?

22 The Chairman. The staff and the Treasury have been
23 meeting with real estate people and will over the weekend.

24 Senator Roth. Mr. Chairman, on that point, could I
25 ask, for example, are those in the private sector who occupy

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1 their own buildings, have they been consulted with as well
2 as those who are -- ?

3 Mr. Chapoton. Senator, there have been groups meeting
4 on this. I don't think we ought to represent that everybody
5 who is interested in this has been in those meetings.

6 Senator Roth. Let me just say as one Senator, and I
7 may be very sympathetic to both of these proposals, talking
8 about the minimum -- we already have one minimum tax.

9 I am very bothered by the fact that we are involved in a
10 third change since we passed it in 1981, and nine chances out
11 of ten we will have a further change next year.

12 What worries me is that we don't move ahead without
13 knowing what we are doing. And I know of no hearings that
14 have been held generally on this matter. Maybe these are
15 good changed, but I am personally reluctant to move without
16 knowing exactly what we are doing.

17 One of the things -- all we are talking about is how
18 much money are we recovering. That is very important, but
19 even more important is what kind of an impact does it have
20 on the economy.

21 Some of these changes were originally adopted with the
22 idea that we were not competitive and that we had to do
23 something to modernize our plants.

24 So, I think we need to have these -- I agree with
25 Senator Pryor, we need to have these in writing. But I, for

1 one, would like to know what kind of impact they are going
2 to have on the economy generally.

3 I have had a lot of people come to me from the private
4 side and complain, particularly a small businessman plan.
5 He doesn't know what we are going to do next. Three
6 changes in three years -- roughly. And I'll bet you five
7 bucks we will have another change next year, and maybe
8 should have; but I sort of agree with something I think
9 Senator Bradley was saying: If we are going to have reform,
10 let's have real reform, and permanent reform. But this
11 nibbling away at it just to get a buck here and a buck
12 there, I think is having a very negative impact on the
13 economy.

14 Mr. Chapoton. Senator, let me just state what I stated
15 the other day. I am not sure whether you were here or not.

16 Our concern in the real estate area has been on the
17 churning problem.

18 Senator Roth. I share that concern.

19 Mr. Chapoton. So, we started out saying we want much
20 stricter recapture rules. The owner-occupied is not so
21 concerned about tougher recapture rules, but other segments
22 of the industry are. They have suggested not doing recapture
23 and if you want to lengthen the life, that might be a better
24 approach.

25 Senator Roth. But let me point out my original

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1 question, the case of occupiers. They are not involved
2 in churning.

3 Mr. Chapoton. That is correct. That is what I
4 am saying. So, they wouldn't be concerned about the
5 recapture rules.

6 Senator Danforth. Mr. Chairman?

7 The Chairman. Senator Danforth.

8 Senator Danforth. Buck, would you restate what your
9 proposals with respect to real estate would produce in
10 revenue? Not the alternative minimum tax part of it, but
11 the rest of it?

12 Mr. Chapoton. The rest of it would be 2.1 billion.
13 That is our preliminary estimate. And I emphasize
14 "preliminary."

15 Senator Danforth. Two-point-one billion --

16 Mr. Chapoton. Over the three-year period.

17 Senator Danforth. As opposed to Senator Dole's
18 proposal which was 1.4, and Senator Bentsen's proposal which
19 was 3.5?

20 Mr. Chapoton. That is correct.

21 Senator Chafee. Amongst those proposals, Mr. Chapoton,
22 do you have one that is 20 years for residential and
23 commercial?

24 Mr. Chapoton. Eighteen years for residential.

25 Senator Chafee. No. I am saying, do you have revenue

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1 estimates for 20 years? Now, that isn't quite Senator
2 Bentsen's, because Senator Bentsen had some exemptions for
3 -- well, his did residential to 15.

4 I am saying take all commercial and all residential
5 except low-income housing to 20 years. What do you get
6 there for revenue? I am not asking for the answer now.

7 Mr. Wetzler. Well, it's 4.5 for all property. We
8 would have to back out a little bit for low-income housing.

9 Senator Chafee. I see. Would that be substantially
10 increased by the anti-churning rules and the recapture that
11 Mr. Chapoton was talking about?

12 Mr. Brockway. Not necessarily. We would have to run
13 that.

14 One effect of recapture rules is that it may cause
15 taxpayers to switch off of accelerated deductions onto
16 straight line, and vice versa; so that, during the first
17 three-year period you could have some substantial swings.
18 But if you add those on a long-term basis, that those rules
19 would pick up more revenue in the three-year period that
20 I am looking at, I'm not sure.

21 Senator Chafee. All right.

22 But, with the 20 years for everything except for the
23 low-income housing, you get about 4.5 or thereabouts?

24 Mr. Brockway. That is correct.

25 Senator Chafee. Thank you.

1 Senator Heinz. Mr. Chairman?

2 The Chairman. Senator Heinz?

3 Senator Heinz. Let me ask Buck Chapoton: Buck, our
4 original reason for getting into this was to correct an
5 abuse called "churning." How much do you believe churning,
6 however you define it, costs the Treasury annually in tax
7 avoidance?

8 Mr. Chapoton. Senator, we can't give you a figure on
9 that. It is even difficult to estimate exactly how much --
10 number one, you have to define "churning," and how much is
11 going on.

12 We know it is a mathematical calculation, that at about
13 year 8 or 9 the property becomes more valuable to a new
14 purchaser.

15 Senator Heinz. Have you got any range that you could
16 give us -- a high and a low?

17 Mr. Chapoton. The cost of churning?

18 Senator Heinz. Yes.

19 Mr. Chapoton. Well, I don't have it with me. We might
20 be able to get that for the record.

21 Senator Heinz. Let's get that for the record on
22 Monday or Tuesday when we are all back here.

23 The Chairman. Could you also bring back -- I think if
24 we exempt the real estate industry from income tax or tax
25 at all, we save \$7 billion a year. Is that correct?

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1 Mr. Chapoton. If you exempted income from real estate
2 and precluded all deductions from real estate, from
3 offsetting other income, there is a revenue increase.

4 The Chairman. Well, it is a pretty fat thing we are
5 looking at here.

6 Senator Heinz. Buck, one last point, I guess.

7 If we settle on something other than the extension of
8 lives, I would hope, Mr. Chairman, that if we adopt some
9 new recapture rules, in particular, that we will equally
10 take care of the problems of low-income housing. The
11 recapture rules can trap them if they are not drawn
12 accordingly.

13 Thank you, Mr. Chairman.

14 Mr. Chapoton. Senator, could I respond to Senator
15 Danforth?

16 I said a preliminary estimate on this proposal on
17 real estate generally was 2.1; it's \$2.6 billion over the
18 three years -- 2.6.

19 Senator Symms. Mr. Chairman?

20 Now, you are going to give us the numbers, if I
21 understand correctly, on Tuesday on what the prepayment and
22 the minimum tax and how what Senator Moynihan was proposing
23 relates to this. You will have those numbers? Or did you
24 say you can't figure out how much money in tax they
25 attributed to churning?

1 Mr. Chapoton. We will give you some information on
2 dollars involved in churning. I do not have that now.

3 We are treating the minimum tax as an independent
4 analysis.

5 Senator Symms. What I am trying to get at is, what
6 is the impact of the prepayment and the minimum tax on the
7 real estate churning question?

8 Mr. Chapoton. Well, we had not viewed the prepayment
9 problem as a real estate matter. And the minimum tax, I
10 haven't seen it as directly relating to the churning problem.

11 Senator Symms. You see, Mr. Chairman, my concern is
12 I was talking the other day in here about the small
13 businessman who wants to build a potato warehouse to pack
14 potatoes in Idaho or any other State. If we take away the
15 15-year present ACRS rules, we really hurt that owner-
16 occupant who wants to go in here and be an entrepreneur,
17 and go into some business.

18 I don't see how we get at this. Unless you are pretty
19 careful, just stretching out these years, you will still have
20 all the same problems that we talked about.

21 Mr. Chapoton. Well, if the life on used property is
22 stretched out, it does address it. But we agree with you
23 that we definitely want to have something in here on
24 recapture, because we think that is a major part of the
25 problem.

1 Senator Symms. Well, do you think recapture is more a
2 part of the problem, then, than the time distance?

3 Mr. Chapoton. Recapture is where we started out.

4 Senator Symms. So now we are talking about 18 years,
5 if I heard you correctly.

6 Mr. Chapoton. That's correct, and that was with a
7 reduced recapture, because there had been a suggestion that
8 we go to 20 years. This was a cut-back from 20 to 18.

9 One of the problems from the committee's standpoint and
10 from the situation we found ourselves in: If you increase
11 recapture without doing anything on the lives, there is a
12 revenue loss during this period of time, because taxpayers
13 will move from straight line where there is no recapture
14 now to accelerated, where there is a recapture now and
15 there would be under the proposal.

16 Senator Symms. Well, Mr. Chairman, you know, what this
17 brings out to me is that we come in here in this committee,
18 we find a problem, and Buck says here it's recapture. So
19 we end up here starting off -- what we are really trying to
20 do is raise money, and whoever gets in the way is going to
21 get hit by it.

22 I think Senator Roth is right on target: If we want
23 to reform the Tax Code, we should start at the ground level
24 and reform it; or else, we should go in and cut spending so
25 we don't have all this pressure on the budget.

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1 But what we are doing here is just nickel and diming
2 everybody around the country.

3 The Chairman. Well, we can vote to exempt them from
4 tax, the real estate people. I don't think they want that;
5 they have so many goodies in there they don't want to lose.

6 Senator Symms. Do we include that guy with the produce
7 warehouse in there?

8 The Chairman. If we vote to exempt them from tax and
9 offset that with deductions, it seems to me that everybody
10 would like to be exempt from taxation.

11 Senator Armstrong. Could we have a clarification of
12 that? What did that statement really mean? If you take
13 all of the income derived from real estate and exempt it
14 from the income tax, and you do away with all of the
15 deductions --

16 Mr. Chapoton. All related deductions.

17 Senator Armstrong: -- that you end up with a
18 plus-7 billion?

19 Mr. Chapoton. Including interest. No, I don't want
20 to put a figure on it. It is a plus figure.

21 Senator Armstrong. I see. Well, am I correct in
22 thinking that this does not take into account the fact that
23 many owner-used buildings on which depreciation is a proper
24 business expense nonetheless would not show any income from
25 real estate because it would flow through and be business

1 income?

2 Mr. Chapoton. I think it would not take that into
3 account, right.

4 Senator Armstrong. Well, I just want to make that
5 point, Mr. Chairman. I never heard of this notion until
6 a minute ago, but it leaves the impression that the
7 ownership of real estate is a gigantic ripoff. And if that
8 is true, then I think we ought to know it. I would like
9 that to be a part of the hearing on this overall issue.

10 But obviously, a huge proportion of the depreciation
11 expense in real estate is in business enterprises that own
12 and occupy their own structures. And to leave the
13 impression somehow that this is just a big ripoff, I think
14 would not be right.

15 Mr. Chairman, while I have the microphone, I want to
16 renew my request that, if we are really serious about this,
17 that we ought to have a hearing on it.

18 I regret that I had been splitting my time between
19 meetings this morning and returned to find this matter on the
20 table. I asked to be summoned back when it came up. And
21 in checking around at this end of the table, there is not
22 any certainty as to exactly what is in the package.

23 So, could somebody just state what the items are that
24 are under consideration?

25 The Chairman. The item under consideration now is

1 recessing until 10:00 Tuesday.

2 Senator Danforth. Could I ask one question,
3 Mr. Chairman?

4 Senator Armstrong. Well, Mr. Chairman, did
5 Secretary Chapoton actually announce a package?

6 The Chairman. I asked him to explain what Treasury
7 had been considering, because we have been workign with the
8 real estate people over the past several days. He just
9 outlined what they were looking at. We haven't agreed on
10 anything. There is no package.

11 Senator Armstrong. I understand that, but could we
12 first have order, Mr. Chairman? And second, wihtout wanting
13 to discuss it or argue it, could we just ask the Secretary
14 to state again the elements of the package? Because I have
15 learned that I am not the only member of the committee that
16 is unaware of what the package is.

17 Mr. Chapoton. Senator, I will be happy to restate it
18 again. We want to hand out something for you to have in
19 writing on what we are looking at.

20 Basically the elements of the package would be to take
21 all real estate, commercial and residential, to 18 years,
22 with the exception of low-income housing, and to have --
23 I won't go throught the actual details because it takes a
24 little time -- I did earlier -- but have recapture on
25 commercial real estate disposed of prior to year 30, even

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1 though straight line depreciation is claimed over 15 years,
2 and to have --

3 Senator Armstrong. Through year 30?

4 Mr. Chapoton. Through year 30. It would be a phase-out
5 so there would be no recapture if the sale occurred after
6 year 30, and to have similar rules -- less stringent
7 recapture but also more stringent than existing law -- for
8 residential property.

9 Senator Danforth. Mr. Chairman, could I ask Buck what
10 is Treasury's position now? Is Treasury still supportive
11 of the original anti-churning \$1.4 billion idea, or is
12 Treasury now supporting this latest idea?

13 Mr. Chapoton. I don't know that we have had to come
14 down on one. I think there were a lot of objections to
15 separating used property. We thought it was a good idea.

16 I think stronger recapture rules are the best way to
17 go. So, in direct response, if we had to pick one or the
18 other, I think we would pick this one, definitely.

19 The Chairman. I understand that you have worked out
20 the mining problem with Senator Wallop -- is that correct?

21 Mr. Chapoton. That is correct.

22 The Chairman. An agreement has been reached with the
23 Treasury Department concerning the exception to the
24 premature accrual provision?

25 Mr. Chapoton. That is correct. And that rule is

1 basically a current --

2 The Chairman. The solid waste disposal site
3 reclamation. Senator Bentsen, Senator Wallop, and Senator
4 Heinz I think were involved in the discussions. Has that
5 been agreed to?

6 Mr. Chapoton. That has been agreed to.

7 The Chairman. All right, then, without objection.

8 Senator Moynihan?

9 Senator Moynihan. Just a very short question,
10 Mr. Chairman.

11 I came in here two weeks ago with a proposal which
12 simply said that our objectives in the minimum tax were
13 being defeated by various kinds of tax avoidance arrangements,
14 that this minimum tax, which asks persons -- as Senator
15 Long put it so nicely, if those people go to the bank to
16 borrow money, they don't show them their income tax return;
17 I mean that is not their real economic return, it's very
18 high. These are people with million dollar incomes paying
19 no income tax.

20 We tried to do something about the minimum tax, and
21 then it turned out this object was being defeated.

22 So we had something else in another proposal you couldn't
23 deduct.

24 And the alarms that made their way out of this room,
25 that people with million-dollar annual incomes might have

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1 to pay a marginal rate of taxation that Secretary's pay --
2 well, it just seemed to be, you know, the next thing you
3 know you have a French Revolution.

4 There is more at issue here than just the money
5 involved; it is the appearance of the tax system.

6 Could I ask our distinguished -- you know how much we
7 respect you -- would you say once again what I heard you
8 say, that if all income from real estate was exempted from
9 tax, just begged free, but all deductions were disallowed,
10 the Treasury would make money?

11 The Chapoton. The direct answer is yes. And I will
12 need to be more specific on that. I mentioned this to
13 Senator Dole the other day. This is not new news -- and I
14 will have to be more specific on it -- it existed prior to
15 ACRS; because, when you throw interest into the picture,
16 there are very significant deductions for real estate.

17 Senator Moynihan. But it does speak to the nature of
18 the Tax Code, does it not? Somehow?

19 Mr. Chapoton. It does speak to the nature of the
20 Tax Code.

21 Senator Moynihan. I thank you, sir.

22 The Chairman. Well, we are working on that.

23 Could I just ask one thing, if there is no objection
24 from the committee? S. 2062 is on the floor, and of course
25 we never got to it last year. As I understand, it is

1 necessary to change some of the effective dates, and I
2 would only ask if Treasury and the Joint Committee and the
3 staff on both majority and minority sides have looked at the
4 effective dates? I think it is a technical matter. If
5 somebody wants to discuss each date, we can; but are
6 we satisfied that the Joint Committee looked at the dates,
7 and the Treasury? Rod, have you?

8 Mr. DeArment. We have reviewed these effective dates
9 on the staff level, of where some change would be
10 appropriate, of where no change would be appropriate.

11 The Chairman. Well, is the reason for the change
12 because we didn't take up the bill?

13 Mr. DeArment. In some cases, and in some cases if we
14 were looking at a 1986 window, we are now looking at a
15 1987 window, in the case of the postponement of the net
16 interest exclusion.

17 The Chairma. The Joint Committee reviewed it?

18 Mr. Brockway. Yes, and Rod has accurately described
19 it.

20 The Chairman. If there is no objection, then, we will
21 agree to those changes. And if someone raises an objection,
22 we can discuss it.

23 Mr. DeArment. At some later point we will need to go
24 through, on the spending side, some of the appropriate
25 effective date changes.

1 The Chairman. Right. And let's make the effective
2 date changes a matter of record, without reading them right
3 now.

4 Senator Mitchell?

5 Senator Mitchell. I just wanted to ask Mr. Chapoton:
6 When you provide the revenue figures for the latest
7 proposal that is being considered on real estate, if you
8 would break them down as to the various components, to
9 the extent possible.

10 Mr. Chapoton. Yes. We shall do that.

11 One of the problems you have is, there is so much
12 interaction in all of these things. But we will have that
13 line. Somebody just has to make a decision on which line
14 comes first, because the second thing interacts with the
15 first.

16 The Chairman. Senator Pryor?

17 Senator Pryor. Is it possible if we meet on Tuesday
18 at 10:00, is it possible or asking too much that we possibly
19 have a hearing on this issue at 8:30, before we go into
20 session, so that people can come up and talk to us about
21 the impact it is going to have?

22 The Chairman. Well, if we were making any major
23 changes in the law. We are talking about going from 15 to
24 18 years. Now, if that is a major change, I assume we could
25 have people come in and say that they object to that.

1 What we are talking about may be changing the rate.

2 Mr. Chapoton. Changing the recapture is all.

3 Senator Pryor. Mr. Chairman, one more question?

4 The Chairman. Maybe if we could do it on recapture
5 or something.

6 Senator Pryor. Now, if the Treasury supports this, do
7 we assume the President supports this program?

8 The Chairman. I would assume that if we agree to it,
9 he will support it.

10 Senator Pryor. If we vote for Mr. Chapoton's proposal,
11 are we going to be accused by the President of dismantling
12 his program that he originally put into effect in 1981?

13 Mr. Chapoton. I would think not, Mr. Pryor.

14 The point I want to make, though, is that this is not
15 something we have come forward with yet. As the Chairman
16 has described, this is what we are presently considering.
17 And this is an attempt to bring together proposals that
18 were being considered yesterday -- the 20-year proposal.

19 We definitely feel that the recapture is needed, and
20 we would prefer to reduce the lives rather than have longer
21 lives with no recapture.

22 So that is what we are suggesting now.

23 The Chairman. Let's see what happens between now and
24 Monday, Dave. And then if necessary, I would be happy to
25 have a hearing tonight. I think all of the people who want

1 to be heard are in the room. I see one of them standing
2 over there by the door.

3 (Laughter)

4 The Chairman. But hopefully we will all be singing
5 the same tune on Tuesday.

6 Senator Matsunaga. I have one question.

7 Now, on Tuesday we will take other miscellaneous
8 Members' items? I note that you have "noncontroversial,"
9 but I am referring to the item we discussed last November,
10 Buck, where you said certain adjustments could be made
11 relative to investment in real estate.

12 Mr. Chapoton. The financed property and the
13 educational -- that is going to come up, and I would like to
14 talk to you about that, Senator.

15 The Chairman. No, we are not going to preclude other
16 Members, obviously. I know Senator Armstrong has an
17 amendment and a technical amendment, and others may have
18 amendments.

19 What we tried to do today is to go through the ones
20 we thought were totally noncontroversial. And out of 33,
21 we were right 31 times.

22 Is there any objection to agreeing that the action taken
23 on those noncontroversial items and other actions we have
24 taken so far on the revenue side are final actions?

25 Senator Armstrong. Yes, Mr. Chairman, there is

1 objection.

2 The Chairman. Because the lobbyists are changing votes
3 faster than I can in some of these areas.

4 (Laughter)

5 Senator Bradley. Mr. Chairman, maybe you would like
6 that votes can only be changed to the end of the day,
7 instead of the end of the bill.

8 The Chairman. Well, I have to check and see how they
9 are.

10 (Laughter)

11 Senator Moynihan. Well, Mr. Chairman, let us say,
12 as a service to the lobbyists, so they can prove what they
13 are worth, could we have a daily posting of changes in the
14 bills?

15 (Laughter)

16 Senator Moynihan. Like a market? We could have a tape
17 running, "Minimum tax has dropped too low"?

18 (Laughter)

19 Senator Bradley. You could put up another blackboard.
20 Just put another blackboard up there.

21 (Laughter)

22 The Chairman. See those things that have been removed
23 up there?

24 Senator Moynihan. Oh, I think if we had a moving tape.

25 (Laughter)

1 Senator Moynihan. All three would do it. "Real
2 estate depreciation -- up three votes."

3 (Laughter)

4 Senator Moynihan. There are a lot of real possibilities
5 here.

6 The Chairman. Well, there are a lot of real
7 possibilities out in the hallway, too.

8 (Laughter)

9 Senator Matsunaga. After all, they represent the
10 people.

11 (Laughter)

12 The Chairman. Right.

13 Senator Moynihan. Some of the people.

14 The Chairman. I don't quarrel with that; I just
15 suggest that we have a very liberal rule in this committee,
16 where until a bill is reported out you are authorized to
17 change your votes. I don't quarrel with that. I guess we
18 have changed things. The luxury car went out the window,
19 is that right?

20 Senator Moynihan. Well, now, there you are. You
21 could say "Luxury car down six votes." I didn't know that.
22 So, the Rolls Royce is back today.

23 The Chairman. And I have the feeling that while some
24 of these people say they are cooperating with us, they are
25 really buying time to work on Members on the committee. I

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1 detected that here this morning.

2 We will stand in recess until 10:00 Tuesday.

3 (Whereupon, at 12:43 p.m., the Executive Session was
4 recessed, to reconvene at 10:00 a.m., Tuesday, March 13,
5 1984.)

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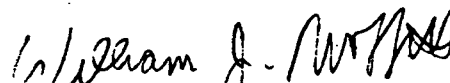
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C E R T I F I C A T E

1
2 This is to certify that the foregoing proceedings of
3 an Executive Session of the Committee on Finance, held on
4 March 8, 1984, in re: Mark-up of the Budget Deficit
5 Reduction Proposals, were held as herein appears and that
6 this is the original transcript thereof.
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9

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11 _____
12 WILLIAM J. MOFFITT

13 My Commission expires April 4, 1984.
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