

OFFICIAL TRANSCRIPT

Bohl.

COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

Wednesday, September 24, 1980

Washington, D. C.

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## EXECUTIVE SESSION

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WEDNESDAY, SEPTEMBER 24, 1980

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United States Senate,

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Committee on Finance,

7

Washington, D. C.

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The committee met, pursuant to call, at 10:25 a.m., in  
9 room 2221 Dirksen Senate Office Building, the Hon. Russell  
10 B. Long (chairman of the committee) presiding.

11

Present: Senators Long, Palmadge, Ribicoff, Byrd,  
12 Bentsen, Matsunaga, Moynihan, Baucus, Bradley, Dole,  
13 Packwood, Roth, Danforth, Chafee, Heinz, Wallop, and  
14 Durenberger.

15

The Chairman. Let's call this committee meeting to  
16 order.

17

Mr. Stern. Mr. Chairman, I have one matter I wanted to  
18 raise. When the committee acted on H. R. 4007, a State  
19 unemployment loan bill, it approved a series of amendments  
20 offered by Senator Boren relating to savings under the  
21 Unemployment Compensation Program.

22

Since that time two of those provisions have been sent  
23 to the President in another bill. So the staff would simply  
24 suggest deleting them from this bill.

25

The Chairman. Does everybody understand that?

1           Those are two provisions that we voted on. They have  
2 been enacted, so we ought to strip from the bill we have,  
3 since they have already become law.

4           Without objection, agreed.

5           Tell us about the expiring provisions, Mr. Shapiro.

6           Senator Roth. Mr. Chairman, if I could interrupt  
7 because I have to go down to the Department of Commerce in a  
8 few minutes.

9           I would like to raise the issue of our tax cut because  
10 we are in the closing days of this session, at least until  
11 our post-election meeting, and I am very concerned that  
12 neither the Senator nor the House is going to have the  
13 opportunity to work its will on the tax cut legislation  
14 which was almost unanimously adopted by the Finance  
15 Committee.

16           Let me start out by saying that I know of your real  
17 interest and sincere desire of trying to get this before the  
18 Senate, and Congress as a whole. It is my understanding  
19 that we may be cut off from any opportunity of bringing it  
20 up as there will be no tax legislation brought to the Senate  
21 floor.

22           It is my own feeling that the best to bring up this  
23 issue -- Could I have the attention?

24           The Chairman. Let's have order.

25           Senator Roth. It is my own feeling that the best way

1 of bringing up this issue is to offer it as an amendment to  
2 some appropriate piece of legislation that has come over  
3 from the House. But I think that it has to be a piece of  
4 legislation that there will be action on prior to the time  
5 that we go home.

6 I am not interested in just seeing the Senate act. I  
7 think the House as well should have that opportunity. I  
8 don't know if there is any way we can ensure that or not,  
9 but I would like to express the conviction that we ought to  
10 deal with this problem.

11 I have toyed with the idea of offering today, as an  
12 alternative, as a much inferior alternative, some kind of a  
13 sense of the Senate, or sense of the Congress Resolution,  
14 providing that the Congress or the Senate, as the case may  
15 be, will deal with the tax cut before the recess.

16 In any event, I think we made a bona fide effort in  
17 this committee to move ahead on a tax cut. It was a  
18 bipartisan approach. I think everybody will have to say,  
19 never has this committee dealt more expeditiously or in  
20 better faith with an issue than this Finance Committee.

21 I am also well aware that there are many doubters on  
22 the outside, among the public who said that this was all  
23 window-dressing, and that we were never really going to have  
24 the opportunity to vote on it. That it was good politics,  
25 but nothing in substance.

1 I want to make certain that this latter group are shown  
2 to be wrong. I do feel very strongly, for the reasons that  
3 we said when we considered this legislation, it is important  
4 that it be adopted now to give the private sector an  
5 understanding of where we are going, so that they can begin  
6 making the decisions that will do something about inflation  
7 and the economy as a whole.

8 Mr. Chairman, I would hope that we could deal for a few  
9 minutes with this problem, and try to adopt a course of  
10 action that will ensure both the Senate and the House, to  
11 the extent that we can, have an opportunity to vote the tax  
12 legislation up or down.

13 Senator Dole. Mr. Chairman.

14 The Chairman. Senator Dole.

15 Senator Dole. I appreciate the statement of Senator  
16 Roth. I think that he has been out front, as many have on  
17 this committee. I think that we will have an opportunity  
18 before we recess to offer the Senate Finance Committee bill  
19 through all kinds of proposals, such as the Superfund, or  
20 the unemployment compensation which the leadership wants so  
21 badly, which has passed the House.

22 There are a number of good vehicles that are fairly  
23 strong, which I think might be able to accommodate a rider  
24 of this size. I think that might be the best course, to  
25 have a vote directly on the amendment. Certainly, the Sense

1 of the Congress, as Bill said, has some merit, but it is not  
2 as strong as a vote on the amendment itself.

3       The Chairman. Let me just say this. If you look at  
4 the Resolution that we agreed to, that we Democrats put our  
5 names on, everyone of us here put his name on it except  
6 Harry Byrd, his name was not on the Resolution, 48 Democrats  
7 signed that Resolution.

8       We offered that at the time the Dole amendment was  
9 pending to the debt limit bill. If we had not done that, I  
10 think the majority of the Senate would have voted to add the  
11 Dole amendment, or something similar to it, to the debt  
12 limit bill, with some modification, perhaps, in the House,  
13 but it would have had to face this issue.

14       Apparently the house does not want to face it. I wants  
15 to go home without voting on it.

16       I, for one, just don't enjoy being a part of any ploy,  
17 and I just don't plan to play that role. Here is a  
18 Resolution, and I will ask that it be printed in the record  
19 so that the record shows it together with the name of the  
20 co-sponsors so that anyone researching this can see what it  
21 was that the Democrats said at that point.

22       (S. Res. 481 follows:)

23

24

25

1 The record will speak for itself on that day, when we voted  
2 to table the Dole Amendment.

3 I really don't think that it was the intention of  
4 anybody on this committee, and I am speaking of the  
5 Democrats in particular at this moment, to deny the Congress  
6 the opportunity to vote for a major tax cut, or an  
7 adjustment in depreciation.

8 When we voted to table the Dole amendment, we were in  
9 good faith, feeling that an appropriate tax cut bill should  
10 be recommended to the Senate, and the Senate ought to vote  
11 on it, and that we ought to do it before we went home,  
12 otherwise we would not have had the date that the committee  
13 was instructed to report by September 3rd.

14 I, for one, will support an amendment to an appropriate  
15 bill. Either one of the two bills that were mentioned would  
16 be fine as far as I am concerned, or both of them, to bring  
17 this issue before the Senate, and to give the Senate an  
18 opportunity to vote for what this committee is  
19 recommending.

20 Each senator can be the judge of his own conscience. I  
21 have seen these types of things happen in years gone by, and  
22 it is one of those things where, I believe the Bible adage  
23 is, "Judge not lest he be judged."

24 I have never been engaged in a ploy, or some deceitful  
25 act to pretend that we were going to do business in an

1 orderly fashion, and then deny the Senate the opportunity to  
2 vote on it.

3 I, for one, would find it my duty and conscience to  
4 support such an amendment if it is offered on any revenue  
5 bill.

6 Senator Bentsen. Mr. Chairman.

7 The Chairman. Yes, Senator Bentsen.

8 Senator Bentsen. My name is on that Resolution along  
9 with yours.

10 Senator Moynihan. Yours is leading all the rest.

11 Senator Bentsen. I have not changed my opinion about  
12 it at all, either.

13 I hear a lot of dispute as to whether or not it is good  
14 politics to pass a tax cut, and a lot of argument on both  
15 sides. I don't know what is right on that. But from an  
16 economic standpoint, for what is right for the country, we  
17 need one.

18 Practically every economist who testified before this  
19 committee or before the Joint Economic Committee said that  
20 we needed a tax cut. There were a few that had some concern  
21 that it would become a Christmas tree if it was done before  
22 the election. This committee has shown that it does not  
23 have to be. I don't thin that the Senate should show any  
24 less courage in trying to do it.

25 If we all agree that we ought to have a tax cut, then



1 we have to look at how traditionally Congress does a tax  
2 cut. Our research shows that they usually do the tax cut  
3 long after a recession is over, and that rather than  
4 contributing to the solution, they contribute to the  
5 problem.

6 We are trying to avoid that this time, and we are  
7 trying to do a very carefully targeted tax cut that does not  
8 add to inflation. When you are going to have \$86 billion in  
9 additional next year, and when we talk about a tax cut that  
10 on a fiscal year basis is \$19 billion, on a calendar year it  
11 is \$89 billion, I don't see how we can say that that is  
12 adding to inflation if all we are doing is moderating the  
13 tax increase. That is all we are doing.

14 If we have agreed to do that, then when do you think we  
15 will get it done if we don't get it done this year? My  
16 guess is that you are probably talking about eight or nine  
17 months from now, and there is that much time lost. That is  
18 why I continue to support the tax cut being passed through  
19 the Congress this year.

20 The Chairman. Let me just say also that Senator  
21 Bentsen, having been the principal sponsor of this S. Res.  
22 481, has been consistent. I have been in many meetings with  
23 him in many different places, and he has consistently  
24 supported the position he is stating right now. He has not  
25 backed off. He has been forthright and sincere about the

1 matter.

2 I applaud the Senator for his consistency. He had been  
3 advocating all along that we ought to do just what he is  
4 advocating now.

5 Senator Roth. Mr. Chairman.

6 The Chairman. Yes.

7 Senator Roth. Mr. Chairman, we are in the horns of a  
8 dilemma, there is no question about it.

9 I think that we are all basically in agreement that the  
10 best approach to accomplish what Lloyd has just very  
11 eloquently articulated is to offer it as an amendment to  
12 some appropriate piece of legislation such as the  
13 unemployment compensation.

14 I wonder if there would be any merit in at least  
15 offering a sense of the Congress Resolution to this  
16 commission so that we go on record that we want action on  
17 this prior to our recess.

18 I would hope that we would have some sort of bipartisan  
19 ad hoc committee out of this Finance Committee that would  
20 keep meeting because time is fleeting. Today is Wednesday,  
21 and if we are going to act, and get action on the House side  
22 -- I cannot underscore the importance of that. I have no  
23 interest personally in just having the Senate go through an  
24 exercise in futility that we show where we stand, and have  
25 it collapse on the other side.

1 I know that the only possibility we have is by  
2 attaching it to something that the House wants. So there is  
3 no question but that this is the preferable route, and I  
4 would hope that our leadership on this committee would be  
5 looking for that possibility.

6 In the meantime, would it make any sense to offer a  
7 Sense of the Congress Resolution that the Congress proceed  
8 to the consideration of the tax cut prior to the recess,  
9 then we would have that, if necessary, as another vehicle  
10 for a vote, if that is what it comes down to.

11 The Chairman. Senator, if you want to offer something,  
12 I suggest that you offer it.

13 Senator Roth. Mr. Chairman, initially this was drafted  
14 as a sense of the Senate. I think that it would be  
15 preferable to do it as a sense of the Congress. Let me read  
16 it:

17 Expressing the sense of the Congress with respect to  
18 consideration of H.R. 5829, "It is the sense of the Congress  
19 that the Congress proceed to the consideration of the Tax  
20 Reduction Act of 1980 prior to the recess, which is  
21 scheduled to begin no sooner than September 30, and no later  
22 than October 2nd."

23 The Chairman. I would suggest adding the word "should"  
24 after the word Senate, that the Senate should proceed.

25 Senator Roth. All right.

1 I think it is important that if we are going to move  
2 this way that we do it with the bipartisan approach, that  
3 both sides agree.

4 Senator Moynihan. Mr. Chairman.

5 The Chairman. Senator Moynihan.

6 Senator Moynihan. May I say, Mr. Chairman, simply that  
7 I will vote to support this Resolution, but with respect to  
8 the events on the floor when they take place there are those  
9 of use who have been asked to support the Majority Leader in  
10 procedural matters and have agreed to do, although most of  
11 us, I think, at least I have said that where the substance  
12 of the tax bill is involved, I will vote on the floor as I  
13 voted in committee.

14 The Chairman. I feel somewhat the same. I have  
15 supported Bob Byrd for Majority Leader. In fact in some  
16 sources I was described as his campaign manager when he was  
17 selected as Majority Leader. So I don't want to lead a  
18 revolt against the Democratic leadership in the Senate, but  
19 I don't think that this does that.

20 I think that this simply says that we think we ought to  
21 do this, and I think that if this is agreed to either in  
22 this capacity or an amendment to some bill, I would think  
23 that the leadership ought to take note of it. If the  
24 majority of the senators vote for it, I think that they  
25 ought to take note of the fact that that is what the

1 majority wants.

2 Our Majority Leaders, fine man that he is, he should be  
3 seeking to lead the majority, and it would seem the majority  
4 of all senators and not just the Democrats.

5 Senator Packwood. Mr. Chairman.

6 The Chairman. Yes.

7 Senator Packwood. I voted against the tax bill before,  
8 and I will vote against this Resolution. I assume that it  
9 will pass. It is an exercise in futility. There is not  
10 going to be a tax bill out of this Congress, I don't even  
11 think that there is going to be one considered on the Senate  
12 floor. If it makes this committee feel better to vote for  
13 this Resolution, that is fine, but it is a waste of time.

14 Senator Ribicoff. I think that it is a waste of time.  
15 How are you going to get this Resolution up if Senator Byrd  
16 does not want to bring it up?

17 Senator Roth. We can move to have it brought up.

18 The Chairman. At least you can get it as far as a vote  
19 in this committee. You can get that far.

20 Senator Danforth. Mr. Chairman.

21 The Chairman. You want to say something?

22 Senator Danforth. Mr. Chairman, if it is a waste of  
23 time, it is not a waste of very much time.

24 (General laughter.)

25 The Chairman. Why don't we vote on it.

1 All in favor say, aye.

2 (Chorus of ayes.)

3 The Chairman. Opposed, no.

4 (Chorus of nays.)

5 The Chairman. The ayes appear to have it.

6 Do you want a roll call?

7 Senator Roth. No.

8 The Chairman. The ayes have it.

9 Mr. Stern. Mr. Chairman, could I read the text as  
10 changed?

11 "It is the sense of the Congress that the Congress  
12 should proceed to the consideration of the Tax Reduction Act  
13 of 1980," and so forth, "prior to the recess." Is that the  
14 way that you have modified it?

15 The Chairman. Yes.

16 Mr. Stern. This would be reported as a Concurrent  
17 Resolution, since it affects the House, too?

18 The Chairman. Yes.

19 Mr. Stern. Fine.

20 The Chairman. Let's let Mr. Shapiro tell us about the  
21 expiring tax provisions.

22 Senator Dole. The one on the independent contractors?

23 Mr. Stern. Senator Moynihan, did you disagree with  
24 that, "It is the sense of the Congress that the Congress  
25 should proceed"?

1 Senator Moynihan. No.

2 Mr. Shapiro. The first item you have on your agenda is  
3 a list of some expiring tax provisions. The first one is  
4 the independent contractor.

5 As you know, under present law taxpayers who had a  
6 reasonable basis for not treating workers as employees in  
7 the past may continue the same treatment with respect to  
8 their employees up until the end of this year. The proposal  
9 has been made to extend that for a period of time, and I  
10 have heard anything up to one year, two years, three years,  
11 six months.

12 So to the extent that the committee would like to  
13 extend the present law, and that is to allow to employers to  
14 continue to treat their employees as they have in the past,  
15 it can extend it for whatever period the committee would  
16 like to do so.

17 Senator Dole. There is a permanent solution, S.736. I  
18 am not so sure that there is total agreement on that. There  
19 is some slight opposition from Treasury on anything we do.  
20 So I just suggest that we extend it for three years. One  
21 year I don't think is adequate. A lot of these people are  
22 going broke just running back and forth to Washington on  
23 this extension, a lot of the independent contractors.

24 The Chairman. Let's hear from Mr. Lubick.

25 Mr. Lubick. Senator Dole, I certainly agree with you

1 that we ought to arrive at a permanent solution to the  
2 problem. I don't believe you have yet proposed the right  
3 permanent solution, but I am confident that next year we  
4 will be able to work something out.

5 I think the factor to keep in mind is that it is  
6 important to have a permanent solution. There are a lot of  
7 problems involved in deferring it. For example, I have  
8 picked at random a letter from an employer who did treat his  
9 workers as employees; and now finds himself in the situation  
10 under the existing freeze that his competitors are being  
11 treated differently from him. There are a number of these  
12 situations. So extending the freeze on a continuing basis  
13 creates a number of problems.

14 We have a letter from the California Division of  
15 Unemployment Insurance pointing out some very difficult  
16 problems that many persons are losing unemployment benefits  
17 because they are being classified as an independent  
18 contractor category.

19 The National Association of Tax Administrators is  
20 indicating that the states are having a number of problems.

21 Senator Dole. Anybody who works? Anyone in the  
22 private sector?

23 Mr. Lubick. Yes. The first letter I referred to is,  
24 indeed, that situation.

25 I think, basically the freeze goes on until the end of



1 this year. It automatically means that no return is  
2 required for three months thereafter because these  
3 employment taxes are on a quarterly basis. It would seem to  
4 me that if you extended the freeze for, let us say, a  
5 six-month period and then you automatically would have  
6 another quarter, that would lead you until a year from now,  
7 which ought to be ample to deal with the permanent  
8 solution.

9 I think that it is very important to keep the time  
10 limits sufficiently short so that you don't leave the  
11 problem to fester for several years. I would suggest  
12 anywhere from six to nine months would be perfectly  
13 adequate, and I know you would want to get to work on it  
14 next year bright and early.

15 Senator Dole. There is going to be such a big turnover  
16 next year that it may take a while to get underway.

17 I would want to be reasonable, as I always am, and say  
18 maybe two years..

19 Mr. Lubick. I think that two years is going to get you  
20 into the same position of immobility. How about 13 months?

21 (General laughter.)

22 The Chairman. The House might not give us much in the  
23 way of legislation at the beginning. They usually don't.  
24 So it seems to me, if we had until July of 1982 that would  
25 give us time to work out some legislation and act on it

1 between the two Houses. I would suggest that as a  
2 compromise, and let you two people discuss it.

3 It seems to me as though both sides would have the  
4 opportunity to make their case during that period.  
5 Ordinarily I would say that a year would be enough, but you  
6 and I know that the House will not give us a revenue bill at  
7 all until about six months.

8 Mr. Lubick. Is that June of 1982, Mr. Chairman.

9 The Chairman. Yes.

10 Mr. Lubick. Any extension automatically has an  
11 additional three months anyway because there is no filing  
12 required except on a quarterly basis.

13 The Chairman. That is all right. I would settle for  
14 that.

15 Senator Dole. If we accept that --

16 The Chairman. I hope they just take it.

17 Mr. Shapiro. The House is expected to agree with an  
18 extension. I would want to somewhere within what you are  
19 talking about right now, the House would probably accept  
20 that.

21 The Chairman. I would be glad to say, give us one year  
22 after the House sends us a bill, but that would be more than  
23 June 1982. I think the chances are pretty good that they  
24 would go along with it.

25 Senator Dole. I am just advised that Congressman

1 Ullman has put in a bill for a three-year extension. So we  
2 don't want to undercut his efforts on the House side.

3 Mr. Lubick. Actually, Senator Dole, Congressman  
4 Rostenkowski has reported out of his subcommittee a  
5 substantive bill. So I think you can be assured that you  
6 will have a good probability of getting expeditious action  
7 out of the House.

8 I would think under those circumstances, the 18 months  
9 would be more than adequate.

10 Senator Dole. I think that everyone here is  
11 interested. Is that date all right?

12 The Chairman. Yes, it gives time for action.

13 Mr. Shapiro. You pick June 30th, 1982.

14 The Chairman. Right.

15 Mr. Shapiro. The next item on your list deals with the  
16 historic structure provision. It is an extension of that.  
17 It is a bill that has been put in by a series of senators on  
18 this committee and others.

19 In 1976 you enacted rules to create tax incentives for  
20 the preservation of historic structures, and reduced many of  
21 the tax advantages that may be available for the demolition  
22 of historic structures. These provisions expire at the end  
23 of 1981, at the end of this year.

24 Essentially what they do is provide a 60-month period  
25 for capital expenditures in order to write-off expenditures

1 and a series of other provisions relating to the  
2 depreciation with respect to the historic structures.

3 The fact that they expire at the end of this year, the  
4 committee has to make the decision as to how long you want  
5 to extend. Bills have been introduced to extend it as long  
6 as five years. Anywhere between one to five years is  
7 something for the committee to decide.

8 Senator Bentsen. Mr. Chairman.

9 The Chairman. Senator Bentsen.

10 Senator Bentsen. I have got S.2881 on this, and it is  
11 co-sponsored by you and Senators Talmadge, Ribicoff, Gravel,  
12 Moynihan, Mastunaga, Baucus, Chafee, Roth and Durenberger.  
13 It talks about five years. But in talking this over with  
14 the Treasury, I think we have arrived at an agreement of  
15 three years.

16 This is something that has not been on the books for a  
17 long time, but already we have seen some very positive  
18 response with the rehabilitation of certificated historical  
19 buildings across the country.

20 We have a tendency in this country to tear down old  
21 buildings, often when we should not. We have a limitation in  
22 resources in our country, and we are beginning to understand  
23 that. We ought to be trying to preserve where we have a  
24 valid, historic building.

25 This also helps in some of the older cities, and in

1 some of the older parts of the older cities. It has  
2 generated substantial amounts of activity in employment in  
3 those areas. I would strongly urge that the committee  
4 extend that particular piece of legislation.

5 I would like to hear from the Treasury if we are  
6 publicly in agreement on this three years.

7 Mr. Lubick. The Administration had originally proposed  
8 an extension to the end of 1982, the notion being that in  
9 the interim period the Interior Department would come up  
10 with its study which would enable you to make a permanent  
11 solution to the problem.

12 In discussing it with Senator Bentsen, it did appear to  
13 us that it would be appropriate, perhaps, to go to the  
14 three-year period with the understanding that if the study  
15 were completed and we could bring the matter up before the  
16 committee earlier than that, you could consider it.

17 Senator Bentsen. Of course.

18 Senator Heinz. Mr. Chairman.

19 The Chairman. Senator Heinz.

20 Senator Heinz. I would ask unanimous consent that I,  
21 too, be listed as a co-sponsor of this legislation.

22 Senator Chafee. Mr. Chairman.

23 The Chairman. Yes, sir.

24 Senator Chafee. I just want to say that this is an  
25 extremely good measure. It has been used effectively in our

1 part of the country. I urge its adoption.

2 The Chairman. I would like to be added as a  
3 co-sponsor.

4 Senator Bentsen. You are already on it.

5 The Chairman. If I am on it, that is fine. I don't  
6 see my name on here. I am pleased to be a co-sponsor  
7 because I think that this is a good proposal.

8 All in favor say, aye.

9 (Chorus of ayes.)

10 The Chairman. Opposed, no.

11 (No response.)

12 The Chairman. The proposal is agreed to.

13 Mr. Shapiro. Another provision that is not on your  
14 list here, but some senators have indicated an interest, and  
15 we have been asked to bring it up. That is Section 167(k)  
16 which provides a five-year write-off with regard to  
17 low-income housing.

18 That expires at the end of next year, but each time  
19 that that comes close to expiring those in the industry that  
20 deal with low-income housing indicate that they have to wait  
21 right up until the end, and they are not sure whether to  
22 start projects.

23 They have asked whether or not that could come up now  
24 to maybe extend it, so that we do not have to wait until the  
25 end of next year which keeps them in the dark as to whether

1 Congress is seriously considering extending it.

2 It is Section 167(k) which allows a five-year  
3 write-off, and expires at the end of next year. Does the  
4 committee want to, at this time, extend that provision, and  
5 I understood that there is an expression for three years.

6 Senator Bentsen. That is what I have discussed with  
7 Treasury, and I think some of the others have. That is an  
8 extremely cost-effective way of restoring low-income  
9 housing, and that is very much needed in this country  
10 today.

11 The Chairman. All in favor say, aye.

12 (Chorus of ayes.)

13 Senator Heinz. I don't disagree with the vote, but is  
14 that a bill that we are reporting or what is it?

15 Mr. Shapiro. That is a provision. What we are going  
16 to have is a series of provisions that expire, and they will  
17 all be put together on one bill. So it would just be a  
18 series of expiring provisions.

19 Senator Heinz. If you want to be a co-sponsor of that,  
20 you ask that you be a co-sponsor of the original bill. I  
21 suppose that this would be the simplest way to do it.

22 The Chairman. I guess all you could co-sponsor is the  
23 same proposal as introduced by Senator Bentsen.

24 Senator Bentsen. Yes.

25 Senator Heinz. Let me ask that I be listed as a

1 co-sponsor.

2 The Chairman. Without objection, it is agreed to.

3 Mr. Shapiro. I will say there is one modification that  
4 we can make to 157(k) which may alleviate a problem in the  
5 future. It is the fact that it is a sudden death cut-off  
6 any time that it expires, which means that the industry is  
7 not sure what to do in the last several months.

8 A change that we can make is to say that any  
9 expenditures for any of the reconstructions dealing with  
10 low-income housing that end before the termination date will  
11 be covered. This will take the pressure off the Congress  
12 and those in this particular field from holding up the last  
13 number of months, not knowing what you will do.

14 The Chairman. Without objection, this amendment will  
15 be agreed to.

16 Mr. Shapiro. The next item that you have on your  
17 agenda is in the expiring provisions is on the back of Item  
18 H, and that is the extension of taxicab fuels tax  
19 exemption. In the Revenue Act of 1978, the Congress  
20 provided that certain taxicab use of motor fuels would be  
21 exempt from the four-cent a gallon excise tax on gasoline  
22 and other fuels.

23 There are some conditions that Congress provided, and  
24 those are that they are exempt if the taxicabs are not  
25 prohibited from ride sharing, and that if the taxicab are



1 later than a 1978 year that the fuel economy must exceed the  
2 fleet average of fuel economy standards that are applicable  
3 to the Motor Vehicle Information Cost Savings Act.

4 The Congress also provided an exemption for those small  
5 manufacturers, that is those who produce less than 10,000  
6 vehicles a year.

7 This provision, as I said, expires. It was put in for  
8 1979 and 1980. It expires at the end of this year. Once  
9 again you can extend that anywhere from one year to two  
10 years, to three years. I understand that there is some  
11 interest on the committee to extend that for several years.

12 The Chairman. Senator Moynihan had his hand up.

13 Senator Moynihan. Mr. Chairman, just to say that you  
14 should know the Secretary of Transportation supports this  
15 extension. It has had the effect of improving mileage  
16 efficiency and ride-sharing, and seems in the way of a mass  
17 transportation system a good one.

18 I understand Senator Dole might want to suggest, which  
19 I would hope he will, that we extend it more than one year.  
20 I believe that it is a three-year proposal that he is  
21 willing to make.

22 Senator Dole. Does Treasury support this?

23 Mr. Lubick. We had hoped, Senator Moynihan, for one  
24 year because we expected to be able to have information by  
25 that time as to whether or not this exemption is having any

1 effect on ride-sharing and those conservation measures that  
2 we were hopeful it would.

3 At present gasoline prices, I suppose it is unlikely a  
4 four-cent exemption is going to have a significant effect,  
5 but the DOT is going to address this as part of its highway  
6 cost allocation study required by Section by Section 506 of  
7 the Surface Transportation Act. I guess it is not the most  
8 critical thing on the agenda.

9 I think the important thing, as with all of these, is  
10 that if we do come up with a recommendation and a program  
11 that we can get consideration. To some extent the onus, of  
12 course, is on us to make a recommendation. With that in  
13 mind, I don't think that it makes much difference.

14 The Chairman. Do you want to make the December 31,  
15 1981, to December 31, 1982.

16 Senator Bentsen. Let me say, Mr. Chairman, if I  
17 might. The Highway Trust Fund is not just leveling off. It  
18 is beginning to increase in size. We have got problems of  
19 inflated costs in repairing those roads. I would like to be  
20 sure that this thing is really making a contribution before  
21 we make too long an extension of it.

22 Senator Moynihan. What about two years. We will take  
23 two years, Mr. Chairman, and then we will really have a  
24 study. We really will have absorbed it, and we can decide  
25 what to do.

1           The Chairman. Change the 1981 to 1982, and that will  
2 take care of it. It will give you two years.

3           All in favor say, aye.

4           (Chorus of ayes.)

5           The Chairman. Opposed, no.

6           (No response.)

7           The Chairman. The ayes have it.

8           What is the next thing?

9           Mr. Shapiro. The next item is the expense of State  
10 legislators. This is a provision which you have been  
11 continuing for several years after its original enactment in  
12 the Tax Reform Act, providing a special rule for State  
13 legislators.

14           Let me point out in this regard that this provision  
15 expires at the end of this year, which means that it covers  
16 this year for State legislators when they file their returns  
17 next year.

18           There has been a letter distributed to the members of  
19 this committee from the National Conference of State  
20 Legislators requesting that this matter not be dealt with at  
21 this point. They have some permanent rules they would like  
22 to have discussed, and I think they would that any rules  
23 regarding State legislators not to be considered in this  
24 Congress. It is not needed right now. They have requested  
25 that they be considered next year.

1 Unless there is a problem with the committee, it may be  
2 that you would want to pass this over right now, and wait  
3 until next year on that.

4 The Chairman. If that is the case, we could just  
5 delete it, couldn't we?

6 Mr. Shapiro. We delete it.

7 The Chairman. Without objection, we will delete it.

8 Mr. Shapiro. The next item is not on the sheet, but it  
9 has an effective date. The House passed a special bill that  
10 Mark will explain that deals with scholarships.

11 Mr. McConachy. Presently scholarships are not  
12 taxable.

13 The Chairman. What is it?

14 Mr. McConaghy. This deals with scholar'ships, primarily  
15 Federal scholarship programs.

16 The Chairman. All right.

17 Mr. McConaghy. There is temporary legislation which  
18 provides an exclusion from income for certain Federal  
19 scholarships such as the Armed Forces Scholarship Program,  
20 even though the recipients have to perform some services.  
21 That exclusion expires at the end of 1980.

22 This bill would provide a permanent exemption for those  
23 Federal scholarship programs with respect to tuition, books,  
24 fees, and things which are directly related to it.

25 There is also in S.2938 a provision which would extend

1 for one year another Federal scholarship program. It is  
2 really the National Research Service Awards. That would  
3 provide that any award which was made through 1981 also  
4 would be non-taxable.

5 The bill would make a permanent exemption for Federal  
6 scholarships, and extend the NSRA for one year.

7 The Chairman. Any objection?

8 (No response.)

9 The Chairman. Without objection, it is agreed.

10 Without objection, then, we will recommend the bill.

11 Mr. Shapiro. That was the last expiring provision.  
12 There is one other bill that has more of a time pressure  
13 that Senator Byrd had indicated an interest that it be  
14 brought up, and that deals with the Tax Court Judges. That  
15 is H.R. 7779 that the House passed.

16 They presently have 16 judges on the Tax Court. They  
17 have requested that the Congress increase the number of Tax  
18 Court Judges by three, up to 19, because of the significant  
19 increase in their burden.

20 The House has passed a bill which says that the bill  
21 would not become effective until February 1, 1981, in order  
22 not to deal with the appointment before the presidential  
23 election, so at the new President would make the  
24 appointments.

25 The reason that they would like it now is so that right

1 after the President is elected the process can proceed to  
2 determine who the appointees will be, and so that they can  
3 get the judges sooner.

4 Since the House has already passed it, and Senator Byrd  
5 indicated an interest to have it brought up because of the  
6 timeliness involved.

7 Senator Byrd. Mr. Chairman, this issue was approved by  
8 this committee and by the Senate on the Windfall Profits  
9 Tax, not the date but whether or not there should be three  
10 additional judges. I have been informed that there has been  
11 no change in the number of judges since 1926. It occurs to  
12 me that the committee having already approved it, and the  
13 Senate having already approved it, that it would be well at  
14 this time for the committee and the Senate to act.

15 As to the date, I don't have any feeling on that. The  
16 proposal would be to make it effective immediately after the  
17 election?

18 Mr. Shapiro. It would be effective February 1, 1981,  
19 which means that the appointments could not be before  
20 February 1, 1981. In other words, it would allow the new  
21 Administration to make the appointments, but they could not  
22 send up to the Congress until that time. They could,  
23 however, go through their process.

24 Senator Byrd. It seems reasonable to me. I move its  
25 adoption, Mr. Chairman.

1 The Chairman. Without objection.

2 Mr. Stern. Mr. Chairman, just on a procedural  
3 question. I would assume that you would order that bill  
4 reported without amendment, and the extensions that you were  
5 talking about until now, relating to independent  
6 contractors, preservation of historic structures, the fuels  
7 tax exemption for taxicabs, and the scholarships would all  
8 be an amendment to another, and I would recommend H.R. 6975,  
9 a tariff bill on hardwood veneers whose substance you have  
10 put on another bill already. That would put all the  
11 extensions in one bill. But the Tax Court Judges would just  
12 be passed without amendment, as it came over from the  
13 House.

14 The Chairman. Without objection.

15 Senator Baucus. Mr. Chairman, if you recall sometime  
16 ago, we reported a measure out of this committee but we  
17 needed a vehicle to put it onto. I am wondering whether the  
18 Tax Court bill would be an appropriate vehicle for  
19 attorneys' fees.

20 Senator Danforth. What attorneys' fees?

21 Senator Baucus. It is a bill that we discussed  
22 sometime ago basically because the government must award  
23 attorneys' fees to taxpayers where the government takes an  
24 unreasonable position and the taxpayers substantially  
25 prevail. It would be limited to \$20,000.

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

2 Mr. Lubick. We think that it is a reasonable solution  
3 to a problem that has been very vexatious for a long time.  
4 There has been a lot of opposition in government agencies to  
5 any attorneys' fees bills, and I think that we have been  
6 able to work with Senator Baucus and Senator Bentsen, and  
7 work out an arrangement where we have a trial period, I  
8 believe, for a good number of years where taxpayers who are  
9 the victim of harrassment would be compensated if they had  
10 to go to court.

11 It seemed to us that that was appropriate, and it was  
12 relevant to the business of the tax court because it  
13 controls how litigation is going to be handled. So it seems  
14 to us that it is germane to the particular bill as well. We  
15 would like to see this problem behind us, and see it  
16 underway.

17 The Chairman. You would support that amendment to this  
18 bill, the Tax Court bill. You would recommend an amendment  
19 to the Tax Court bill?

20 Mr. Lubick. Yes. It seems to us, Mr. Chairman, that  
21 it is relevant.

22 Mr. Shapiro. Mr. Chairman, let me just make one  
23 observation for the committee's determination. The  
24 attorneys' fee bill that the Administration supports has not  
25 been considered in the House. They have a hearing scheduled



1 on it, I think that it is one of the field hearings that  
2 they are going to have during the recess.

3 If there is any effort to get the Tax Court bill  
4 adopted and sent down to the President for signature before  
5 the end of year, a guarantee of it, a provision that is put  
6 on that the House has not held hearings on or has any  
7 controversy, the House would not agree with right now.

8 So, I am not making any comment with regard to the  
9 substantiveness of this particular amendment, or any other  
10 amendment.

11 The Chairman. Senator, I think that you ought to put  
12 your amendment on a bill on which we hope to hold a  
13 conference. In that way you stand a chance of having it  
14 agreed to. I think that that would be the better course of  
15 wisdom in the situation.

16 I believe that we are going to have at least one or two  
17 bills around here where we hope to hold a conference. If  
18 you put it on one where we hope to have a conference, that  
19 way you can go to conference and if you can get them to  
20 agree to it, then you have got it. Otherwise, you might  
21 kill this bill without getting yours.

22 Senator Baucus. I understand the problem.

23 What are the chances that we are going to have a bill  
24 that will be going to conference?

25 The Chairman. I believe that we are going to have a

1 bill.

2 Mr. Shapiro. I will tell you that the House has sent  
3 over here a significant number of House passed provisions  
4 which they really want. The type of provision, such as this  
5 Tax Court provision, is not something that the House cares  
6 about. It is something that the Tax Court has requested.

7 You have a series of provisions which Senator Byrd has  
8 held hearings on. These are House passed bills that they  
9 have an interest in. If you put your amendments on one of  
10 those bills, then you are going with provisions that the  
11 Finance Committee members care about in a conference with  
12 the provisions that the House members care about.

13 The Chairman. It seems to me, Senator, that we have a  
14 bill here -- I don't know the number of it, but we will be  
15 voting on a bill that has some provisions that the House  
16 members very much. You know, that individual members are  
17 interested in, who are individual members of that  
18 committee.

19 I believe we are going to delete some of their  
20 amendments. So when you go to conference, you will be in a  
21 good position to talk for yours, and let them speak for  
22 theirs.

23 Senator Baucus. Would it make any sense to place the  
24 attorneys' fees on one of the expiring authorization bills?

25 The Chairman. If we knew that we were going to have a

1 conference on that one, it would be something else. But we  
2 are hoping that they will take that one without a  
3 conference.

4 Mr. Shapiro. All the expiring provisions are ones that  
5 the House would probably agree with without a conference  
6 because they need to be extended.

7 The Chairman. If you hold your bill, and offer it on  
8 one of those on which we are going to have a conference, and  
9 there is at least one bill that we are going to be voting on  
10 here where we will have a conference. They will agree to it  
11 because they want what is in their bill, and we are going to  
12 make some changes in it. That being the case, you will be  
13 in a good position to talk to them in conference about what  
14 you want.

15 Senator Baucus. It makes sense. If there is no  
16 conference on these expiring provisions, it makes sense not  
17 to do it.

18 Mr. Stern. Mr. Chairman, there was one thing that I  
19 omitted to mention.

20 The other day the Committee did approve a House passed  
21 provision relating to charitable deductions for certain  
22 contributions of real property for conservation purposes,  
23 but without assigning it to a bill. That is also an  
24 extension, and we would recommend that it be on the  
25 extension bill. I forget to mention it a moment ago when I

1 mentioned the extension provisions.

2 The Chairman. Without objection, it is agreed.

3 I believe that we are going to vote out of here a bill  
4 with several provisions that the various House members want  
5 very much.

6 Can you tell me what that bill is?

7 Mr. Shapiro. There are several bills and the committee  
8 has a choice.

9 The Chairman. By the time we get to one of them, that  
10 is where you ought to put your amendment because that way  
11 they will have some things they want, and we will have some  
12 things we want.

13 Senator Ribicoff. Mr. Chairman.

14 The Chairman. Senator Ribicoff.

15 Senator Ribicoff. There is a technical correction that  
16 must be made to a Trade Reorganization Plan No. 3. It has  
17 to be done before January 1st, 1981. The Reorganization  
18 Plan No. 3, the Trade Reorganization inadvertently  
19 transferred to the Department of Commerce from the Treasury  
20 the country of origin determination function. This  
21 determination is necessary to implement the MTN code on  
22 government procurement.

23 I am proposing a technical correction which has the  
24 support of the Administration. This measure could be  
25 attached to a miscellaneous tariff bill already approved. I

1 understand H.R. 5047 could be the appropriate vehicle.

2 Determining the country of origin of imports is a  
3 traditional function of the Custom Service.

4 It is a highly complex and technical function performed  
5 by Customs Inspectors on a case-by-case basis. The transfer  
6 to Commerce from Treasury was an error. The purpose of this  
7 technical correction is to transfer back to Treasury the  
8 country of origin determination of the Trade Agreements Act,  
9 otherwise there is confusion and our whole trade posture  
10 will be hurt.

11 The Chairman. Does anyone have any objection to that?

12 Mr. Stern. This would be a further modification of  
13 H.R. 5047, the miscellaneous tariff bill that has already  
14 been ordered.

15 Senator Ribicoff. That is right.

16 The Chairman. Without objection, agreed.

17 Senator Bradley. Mr. Chairman.

18 The Chairman. Yes, sir.

19 Senator Bradley. Could I inquire, the fuels tax  
20 exemption has been passed by the committee?

21 The Chairman. Yes, sir.

22 Senator Bradley. Was there a vote on that, or was it  
23 adopted.

24 The Chairman. We did that by voice vote.

25 Senator Bradley. That was for?

1 Senator Dole. For two years.

2 Senator Bradley. I would like to add my support for  
3 that action.

4 The Chairman. It is so noted.

5 What is the next point? Have we voted on the Tax Court  
6 bill?

7 All in favor say, aye.

8 (Chorus of ayes.)

9 The Chairman. Opposed, no.

10 (No response.)

11 The Chairman. The Tax Court bill is ordered reported.

12 Mr. Shapiro. The next item on your agenda is the tax  
13 treatment of installment sales. That is one of the  
14 procedures that the committee had asked the staff to work  
15 with regard to installment sales. Don Ricketts of the Joint  
16 Committee staff has been primarily involved in all of the  
17 simplification measures on behalf of the Joint Committee  
18 staff along with other miscellaneous items. He has worked  
19 on the passage of the measure on the House side through  
20 their subcommittee and their full committee.

21 Ed Hawkins has been working on the installment sales  
22 bill in the case of the Finance Committee along with the  
23 minority staff members as well.

24 Don will explain the House passed bill, and Ed Hawkins  
25 will explain to the committee the amendments that have been

1 proposed on modification.

2 Mr. Ricketts. I should note, except for several House  
3 amendments, that this House passed bill is identical to a  
4 bill introduced by the Chairman and Senator Dole. As Bobby  
5 mentioned, this bill was directed by the sponsors to be  
6 developed in consultation with the Treasury Department,  
7 professional groups, accounting associations, small  
8 business, farm and banking groups.

9 In general, this bill revises the rules for reporting  
10 non-dealer sales of real and personal property. First of  
11 all, it makes a number of structural improvement by  
12 separating the dealer provisions under one section,  
13 non-dealer provisions under another section, and special  
14 disposition rules in yet a third section.

15 In addition, it makes a number of language changes to  
16 clarify existing law. The House committee report includes a  
17 statement that it is its intention that farmers who are not  
18 required to inventory their crops, and so forth, are  
19 entitled to report under installment method for those  
20 sales. This, of course, is a private letter ruling recently  
21 issued by the IRS.

22 Secondly, the bill would eliminate the requirement  
23 under present law that the seller receive no more than 30  
24 percent of the selling price. Basically, this is intended  
25 to avoid or eliminate traps for a taxpayer who apparently

1 satisfied the requirements but because of the interaction of  
2 other provisions, such as the imputed interest provision  
3 under present law, failed to satisfy the 30 percent limit.

4 In addition, an argument for the elimination of the  
5 requirement is to permit the taxpayers who are negotiating  
6 the sale can purchase more flexibility without regard to the  
7 overriding tax consequences in terms of how much of a  
8 downpayment could be made to have deferred gain reporting.

9 In addition, the bill would eliminate the requirement  
10 that there must be two or more payments to qualify for  
11 installment sale reporting. The rationale for this change  
12 is to recognize that there is basically no difference  
13 between a deferred payment sale where a token downpayment is  
14 received, and a situation where none is received. You still  
15 have the same basic inability to pay with the cash proceeds  
16 being collected in future years.

17 It would also eliminate a selling price requirement for  
18 cash sales of personal property. This is intended to avoid  
19 or eliminate controversy as to whether you have a single  
20 sale of several items, or a series of separate sales which  
21 would fail to satisfy the selling price requirement.

22 It may also aid compliance. We understand that many  
23 taxpayers simply don't tell their return preparers that they  
24 made these sales until they actually collect the monies for  
25 these smaller sales.



1           The bill would reverse the election so that the  
2 provisions would automatically apply unless the taxpayer  
3 elects not to have deferred recognition applied. The  
4 flexibility is intended to permit taxpayers to elect out in  
5 situations where they might want to report the gain, such as  
6 the case where you might have an otherwise expiring net  
7 operating loss, this bill would permit a taxpayer to report  
8 the gain and not lose the benefit of his net operating  
9 loss. Of course, then, he could collect the payments on the  
10 installment obligations tax free, having reported it once.

11           The bill also contains some special rules dealing with  
12 the related party sales. There is a technique under present  
13 law which is used to avoid the current payment of income  
14 tax. Basically it is a two-step transaction.

15           Initially there is an installment sale to a relative,  
16 typically a family trust taking back a very small  
17 downpayment. Obviously, if you elect installment sale  
18 treatment there is very little tax to be paid because you  
19 report only the gain attributable to that downpayment.

20           The second step, of course, is if a day later the  
21 related party, or family trust would resell. It, too, has  
22 no gain to report because it has a cost basis which would  
23 reflect the future payments which would be made to the  
24 initial seller.

25           So what you have, in essence, is a liquidation of the

1 appreciation without the current payment of income. This  
2 bill would deal with these abuses in two ways, basically. A  
3 resale rule saying, basically, that where you have the  
4 second disposition the amount realized from the second  
5 disposition will be treated as if paid over to the initial  
6 seller to the extent that it exceeds the actual payments  
7 being made.

8 Senator Bentsen. Is there a time interval in there?

9 Mr. Ricketts. There is a time limit of two years for  
10 most property. The time limit does not apply in the case of  
11 sales of marketable securities. For example, if you were to  
12 sell IBM or Xerox listed stock to a related party, there  
13 would no time limit on those resales. But for all other  
14 property, including real estate, closely held stock,  
15 unlisted stock, there would be this two-year time limit. If  
16 the related party buyer held the property for that length of  
17 time, there would be no adverse consequences from a second  
18 disposition.

19 The theory here is that if the buyer holds the property  
20 for the two-year period at the risk of the market, then that  
21 has economic substance, and it is not a technique to simply  
22 avoid the payment of tax.

23 There are a number of other exceptions. It does not  
24 apply to the sale of Treasury stock even though the  
25 corporation may reacquire its stock in a deferred payment

1 redemption from a shareholder. There there is no reason to  
2 do that because under present law the sale of Treasury stock  
3 by a corporation is not subject to tax to begin with. So  
4 the basis is irrelevant.

5 Also, for certain involuntary second dispositions,  
6 there are exceptions in voluntary conversions, and the  
7 resale rules would not apply after the death of either the  
8 buyer or the seller.

9 There is a final general exception in case where you  
10 have non-avoidance. Basically, this final escape valve of a  
11 general nature based on motive, it would not apply in any  
12 case where it is established to the satisfaction of the  
13 Internal Revenue Service that none of the dispositions has  
14 as its principal purposes the avoidance of Federal income  
15 tax.

16 Senator Bentsen. That is traditional.

17 Mr. Ricketts. It is used under present law in several  
18 places. One place that comes to mind is in connection with  
19 the so-called preferred stock bail-outs in Section 306 of  
20 the Code.

21 One final related party rule deals with sales of  
22 depreciable property between husbands and wives, and their  
23 80 percent controlled entities. Here because of the extra  
24 deferral benefits to be obtained from resale, the bill would  
25 require those to be reported through the accrual method of

1 accounting. There would be an exception so that it would  
2 not apply in connection with any transaction incident to a  
3 divorce or separation.

4 Further the bill does provide that in the case of an  
5 installment sale which also involves the receipt of like  
6 kind property that the receipt of that property would not  
7 accelerate the recognition of gain. It just reverses the  
8 position under present law of the Internal Revenue Service,  
9 in effect making you pay your tax on the gain when you  
10 actually collect the money.

11 Another provision is to permit non-recognition  
12 treatment to shareholders who receive installment  
13 obligations in connection with a corporate 12-month  
14 liquidation.

15 The reason is that the shareholder should be treated  
16 essentially the same in the corporate liquidation case as he  
17 is where he makes a direct of his stock. The substance of  
18 those transactions is essentially the same, and the bill  
19 would accommodate that.

20 The bill also would permit the so-called contingent  
21 selling price sales to be reported under a form of  
22 installment method of reporting, or ratable basis for  
23 recovery. Under present law, because you cannot ascertain  
24 the selling price, therefore the gross profit ratio, the  
25 position of the Service is that those sales should not

1 qualify.

2           Finally there are two provisions clarifying this  
3 disposition treatment of installment obligations by gift of  
4 by bequest.

5           Finally it would permit an executor to succeed to the  
6 position of a decedent who had made an installment sale of  
7 real estate where that real estate is reacquired in the  
8 foreclosure.

9           Basically under present law, the seller can take back  
10 the property, and but for payment on the cash collected, get  
11 back in the position he would have been had the sale not  
12 been made. This permits the executor or beneficiary to step  
13 into the decedent's shoes for this non-recognition purpose.

14           In general, this bill is effective on the date of  
15 enactment except for some of the special rules. The related  
16 party rules generally are effective for sales after May 15,  
17 1980, that was the date the Ways and Means Committee marked  
18 up this bill. For the non-recognition treatment for  
19 corporate liquidations, that is effective for distribution  
20 after March 31, 1980.

21           The revenue estimate because of interaction of these  
22 provisions, on balance there would be no revenue pick-up or  
23 loss. Basically, most of the revenue pick-up would be by  
24 choice because a taxpayer, for example, would choose to take  
25 larger downpayments.

1 For the related party sales, we cannot estimate that  
2 because of the controversial nature of the litigation that  
3 has gone on.

4 As Bobby has mentioned to you, Ed Hawkins, who has  
5 worked with the staff on this bill, will now describe to you  
6 a series of possible amendments for your consideration.

7 Senator Dole. Are these amendments to satisfy some of  
8 the objections to the House bill provisions?

9 Mr. Hawkins. They vary in nature. The first one was  
10 something which had been raised on the House side, and never  
11 actually got into the bill.

12 Incidentally, there is a guide to these things on page  
13 3 of staff document I. There is a list of all these  
14 amendments.

15 The first one is not really a correction of the House  
16 bill. It is just something that was not in the House bill.  
17 Senator Bentsen mentioned it last week. The problem is one  
18 of dual taxation.

19 If you have a businessman who has sold something for  
20 \$100 and he puts it into his income because he is under the  
21 accrual basis -- It is \$100 to be received in the future as  
22 a normal 30-day or 60-day account. He then switches to the  
23 installment. The customer pays up the \$100. Under the  
24 installment method you pay when you get the installment, so  
25 he puts the \$100 in a second time.

1 Congress recognized that this was unfair some years  
2 ago, and they put in a formula to deal with it.

3 Unfortunately the formula is that you only get taxes one  
4 point something. You still get some degree of double  
5 taxation.

6 What we are proposing now is to drop the formula, and  
7 simply say that if you report it once, that is enough.

8 Senator Bentsen. Mr. Chairman, I think this technical  
9 amendment is one that the Treasury, I believe, supports.  
10 All we are doing is trying to do away with the chance of a  
11 double tax being paid.

12 The Chairman. Without objection, it is agreed to.

13 What is the other point.

14 Mr. Hawkins. Paragraph 2 deals with what Don  
15 mentioned, the transfer of depreciable property to your  
16 wife, or to some controlled entity.

17 The changes there are more or less designed to refine  
18 that. This is a case where we are taking a House provision  
19 and doctoring it to deal with various objections that were  
20 raised.

21 It was pointed out that there is already a section in  
22 the Code dealing with this type of transaction. So we made  
23 the boundary lines of the new provision exactly the same as  
24 the boundary lines of the old one. So the tax lawyers only  
25 have to learn one boundary. They don't have to learn two

1 separate rules.

2       Also, when we did that, we found that there was  
3 something that everybody agreed with, a technical deficiency  
4 in the original section, and this is Section 1231 dealing  
5 with sales of depreciable properties between related  
6 parties.

7       Senator Dole. Does Treasury support this?

8       Mr. Hawkins. Yes.

9       Senator Dole. Let's take it.

10      The Chairman. Without objection, agreed.

11      Senator Byrd. Just a minute before we leave that issue  
12 entirely.

13      I raise this point not in opposition to the way the  
14 bill is written, but just so the committee will know what it  
15 does. I have no feeling either way about it.

16      But under the proposal, it will be impossible for  
17 spouses to sell property one spouse to the other under the  
18 installment plan, or on an installment basis. Is that not  
19 correct?

20      Mr. Rickets. Only depreciable property.

21      Senator Byrd. Depreciable property.

22      Mr. Rickets. They can sell their residences, and  
23 non-depreciable properties.

24      Senator Byrd. But depreciable property, they could not  
25 sell.



1           Mr. Hawkins. Also as part of this package, in the  
2 middle of that paragraph 2, there is the reference of  
3 putting in there also the tax avoidance clause. Treasury  
4 agrees that the committee should make it clear that it deals  
5 with two things. One is the motive case, where their  
6 motives are pure. The second case, if there is no real  
7 deferral. If you sell to your wife, normally you do not  
8 want to have payments coming in longer than the life of the  
9 asset. Normally, there will not be much deferral.

10           Senator Byrd. I think that what the committee needs to  
11 realize is that this will deny installment sales between  
12 spouses. I don't say that they should not be denied, but I  
13 think the committee should be aware that it does deny that.

14           Take a "mom and pop" operation. Suppose that mom is 60  
15 years old, and says, "I am tired of this. I have a 50  
16 percent interest in it, and I want to get out of it. I want  
17 to use my money some other place." This would deny her the  
18 right to do that, is that not correct, under the installment  
19 basis.

20           Mr. Hawkins. Unless she convinced the Secretary that  
21 it was not tax avoidance. With the guidance that if there  
22 were no tax deferral involved, she could do it. That would  
23 be specifically described.

24           Senator Byrd. The initiative would be on her to prove  
25 to the courts that there was no tax avoidance.

1 Mr. Hawkins. To the Internal Revenue Service.

2 Senator Byrd. We will get to that later.

3 The Chairman. Let's hear from Mr. Lubick on this.

4 Mr. Lubick. On that point, Senator Byrd, there is  
5 language in here on establishing it to the satisfaction of  
6 the Secretary, which has already been referred to as in  
7 existence under the preferred tax bail-out.

8 Just by way of interest, we did have a computer run on  
9 all of the applications for relief under that particular  
10 section, and there were a hundred and some odd. The  
11 computer showed that only one was denied. I am not meaning  
12 to say that the Secretary is always reasonable, but in this  
13 sort of situation, I think we have a rather enviable  
14 record.

15 I might add that this provision was worked out with the  
16 concurrence not only of the staff, but with practitioners in  
17 the field who actually have to live with it. They and  
18 persons on my side saying that this was satisfactory that I  
19 had never seen on my side at any time before in other  
20 areas.

21 So I would hope that this would some indication that  
22 this is an area that we can administer in accordance with  
23 your concepts of fairness and equity as well.

24 Senator Byrd. We are talking about the sale of  
25 property between spouses, and I raise it only so that the

1 committee will be aware of what it is doing. I don't oppose  
2 it. If it is felt that that should be denied, that is all  
3 right with me.

4 I raise this so that the committee will be aware that  
5 this does deny the right of spouses to sell property on the  
6 installment basis.

7 The Chairman. Go ahead, and discuss that point.

8 Mr. Hawkins. In the interest of completeness, there is  
9 one other technical change relating to liquidations to make  
10 that conform to this husband and wife provision.

11 The third amendment is quite different. It has arisen  
12 in a farm context, but it would apply to anyone. Stating it  
13 in terms of a farmer, if you sell for a note, a common  
14 practice is to have the note secured by a letter of credit  
15 or security by a third-party guarantee. That is not the  
16 equivalent of receiving cash.

17 The letter of credit or the guarantee does not work  
18 unless the debtor fails to pay out. So Treasury agrees that  
19 we should have a provision in the bill which would say that  
20 the mere fact that you have a letter of credit or a third  
21 party guarantee does not mean that you have received  
22 payment. You can use the installment method.

23 The Chairman. Without objection, agreed.

24 What is the next one.

25 Mr. Hawkins. The fourth one is in the insurance

1 company problem that Senator Ribicoff mentioned last week.  
2 At one time the tax treatment of life insurance companies  
3 was such that they might not be taxed on the installment  
4 gains at all. Accordingly, a provision was put in the code  
5 which said that if any installment obligation was  
6 transferred to an insurance company, a gain would be  
7 triggered right on the transfer, lest they never collect  
8 it.

9         Some years ago they changed the tax treatment of life  
10 insurance companies, and forgot that this provision was in  
11 there apparently. At least, if the proper elections are  
12 made, an installment gain realized by a life insurance  
13 company today will be taxed in almost exactly the same  
14 manner as if it were a shoe factory.

15         Due to this change in the law, the tax rule for  
16 transfers to a life insurance company is or may be  
17 obsolete. Both industry representatives and the Treasury  
18 agree that the rule should now be waived in any case where  
19 the proper elections are made.

20         Senator Ribicoff. As I understand, Mr. Chairman, this  
21 places insurance companies in exactly the same position as  
22 other taxpayers.

23         The Chairman. There is no objection that you know of.

24         Mr. Hawkins. Right.

25         The Chairman. Without objection, agreed.

1           What is the other point?

2           Mr. Hawkins. The fifth one relates back to the  
3 question of tax avoidance as to both related parties  
4 provisions, the sale and resale, and the depreciable  
5 property.

6           The House bill, as modified by these amendments,  
7 provides that the transaction is protected if the taxpayer  
8 can establish to the satisfaction of the Treasury that tax  
9 avoidance was not a principal purpose. In other words, the  
10 taxpayer must convince the Internal Revenue Service that he  
11 had a legitimate purpose.

12           In the case of the husband and wife business, we spell  
13 out in the committee report a couple of obvious cases where  
14 the Commission is directed what to do.

15           If the taxpayer fails to convince the Secretary, a  
16 court will reverse the Service's position, but only if it  
17 finds an abuse of discretion.

18           The argument in favor of having the tax avoidance  
19 exception at all is that it permits some flexibility in the  
20 operation of the law to take care of hard cases. The  
21 argument in favor of the House language that the avoidance  
22 test must be met to the satisfaction of the Secretary is  
23 that it may prevent the exception from opening up so wide as  
24 to generate litigation. It may also prevent certain  
25 compliance problems. It is a provision that the Treasury

1 considers very important.

2       The argument for deleting the test of satisfaction of  
3 Internal Revenue Service is that the taxpayers are thrown  
4 too heavily on the mercy of the Internal Revenue Service.  
5 It is very difficult to persuade a court of an abuse of  
6 discretion, even if the court would have decided in favor of  
7 the taxpayer as an original matter.

8       Senator Byrd, the subcommittee chairman who held the  
9 hearings on this bill, believes that if the parties cannot  
10 agree they should go into court on as close to an equal  
11 footing as possible.

12       Under existing law there is already a presumption in  
13 the Commissioner's favor, and that places the taxpayer at  
14 enough of a disadvantage without requiring him to prove  
15 abuse of discretion as well.

16       Senator Byrd feels that he is not willing to support a  
17 provision that on its face is obviously weighted against the  
18 taxpayer.

19       Senator Byrd. Mr. Chairman, first I want to commend  
20 the staff of the Finance Committee, and the Joint Committee,  
21 and the Treasury and others who have worked on this bill.  
22 It is a very important, very complex bill. Ed Hawkins,  
23 particularly, has done a lot of work on it. Ed Beck of my  
24 staff has. I think basically it is a good bill, and I  
25 support it.

1           On this particular provision, I would hope the  
2 committee would delete the reference to the Secretary or the  
3 Commissioner of Internal Revenue for the reason that Ed  
4 Hawkin stated. I see it, there is a principle involved  
5 here. A taxpayer, as I see it, ought to have the right to  
6 go into court on as nearly equal footing with the government  
7 as possible. It is weighted a little bit on the  
8 government's behalf as it is.

9           I happen to think that the Internal Revenue Service  
10 does a good job by and large. I think that every effort is  
11 made to be fair. I have no quarrel in that regard. But I  
12 think that the average taxpayer feels that he or she is at  
13 enough of a disadvantage now without deliberately and  
14 willingly, and knowingly into a piece of legislation  
15 language which will put the taxpayer at an even greater  
16 disadvantage.

17           That being the case, I would just suggest that the  
18 committee delete the words "satisfaction of the Commissioner  
19 of the IRS." Then the taxpayer, if there is a dispute, goes  
20 to court and the burden of proof would be on the taxpayer to  
21 prove that there was no tax avoidance involved.

22           Senator Bentsen. Mr. Chairman, I take no pleasure in  
23 differing with my friend, who has done such an excellent job  
24 in chairing that subcommittee, but in this instance I don't  
25 believe that you can anticipate all the conditions, nor can

1 you cover them with appropriate exceptions to try to bring  
2 about equity. Because of that, I think the number of  
3 occasions could be innumerable when none of these  
4 guidelines would fit, and you would have to turn to Treasury  
5 and ask for their judgment on it.

6 I have also talked to a number of awfully tough tax  
7 attorneys who generally are supporting the taxpayers'  
8 position, who also argue the same side. Give the discretion  
9 to Treasury in this kind of a situation, and that discretion  
10 is not an unfettered one. If there is an abuse of that  
11 discretion, they of course would have the right to go to  
12 court.

13 I think the Senator from Virginia has well stated the  
14 problem in that, but I believe that the number of cases  
15 where the guidelines will not fit the situation, and yet the  
16 Treasury could come to the judgment that this really was not  
17 a transaction done solely for tax purposes that that  
18 judgment should be allowed.

19 I would support the Treasury's position on that.

20 The Chairman. Let me hear from Mr. Lubick on that.

21 Mr. Lubick. This bears on the statistics that I have  
22 already given you, Mr. Chairman, and the generally  
23 reasonable attitude that I believe the Service has taken in  
24 the administration of an identical discretionary authority  
25 given it in the preferred stock bail-out area.



1           As I indicated, we found only one case out of over 100  
2 where they had denied the ruling. Obviously that means that  
3 taxpayers who cannot meet that test are not going to come  
4 into the service. Indeed, that is what you want to  
5 prevent. You want to prevent taxpayers from entering into  
6 the so-called audit lottery, "we will take a chance. Maybe  
7 they will catch us, maybe they won't." But if they come  
8 forward with a genuine, supportable, legitimate case, the  
9 Service is going to be reasonable and will not put the  
10 taxpayer at a disadvantage.

11           I would agree with Senator Byrd. My background is as a  
12 private practitioner, I like to start out at least  
13 reasonably even, too. But in situations where the ordinary  
14 nature of the transaction, the sale on an installment basis  
15 to a related party followed in most of these situations by  
16 an immediate resale, or in the husband-wife sale of  
17 depreciable property, there are situations which carry with  
18 them a rather strong presumption that it is the unusual case  
19 where there is not tax avoidance as opposed to the norm.  
20 That is why, I think, one can accept Senator Byrd's  
21 principle, but not apply it to this particular situation.

22           Lest we be regarded as biased, we saw it that way. We  
23 did try to talk with the practitioners who face this  
24 problem, the American Bar Association, the New York State  
25 Bar Association, the CPAs, the Cattlemen's Association, the

1 American Bankers Association, all found that their  
2 experience concurred with out judgment in this. Indeed, a  
3 number of them have written letters which indicate that  
4 under these circumstances, which differ from the ordinary  
5 ones that Senator Byrd is concerned about, the deletion of  
6 this would, in the words of one, "promote manipulative tax  
7 planning, controversy, and litigation."

8 I think what we want to do is make the thing work as  
9 smoothly as possible without litigation. I would urge you  
10 to try this. Let's see if there are cases where the  
11 Secretary is unreasonable, and return to it in a few years.  
12 I am confident that there will not be that problem, but if  
13 there is I would be willing to put it again before you, and  
14 let you again review those situation.

15 The Chairman. Let me put the problem the way I  
16 understand it. As I understand it, this bill had been a  
17 bill that our staff, and in particular Mr. Hawkins, who is a  
18 distinguished tax practitioner himself, have been working on  
19 for at least a year.

20 If we can pass this bill, and I am not talking about  
21 this particular point within the bill, but if we can pass  
22 this bill, this will be the principal achievement of this  
23 committee in the area of tax simplification for this  
24 Congress.

25 This is the sticky point, this little point right

1 here. As I understand it, there are all these different  
2 points that are all worked out, the law is all written and  
3 it provides what you do in each individual case where the  
4 taxpayer gets the break here and does not get the break  
5 there, and so forth. The whole thing was worked out until  
6 it got to this one sticky point.

7 The suggestion was that this one sticky point be  
8 resolved by saying, "In this particular case, if there is  
9 nothing else in the bill that the taxpayer can use to his  
10 advantage, he or she can still get the benefit of this  
11 installment sale capital gains so long as he can convince  
12 the Secretary that he or she was acting without trying to  
13 avoid taxes." Any other purpose is all right, but if the  
14 Secretary thinks that he or she is engaging in tax evasion,  
15 then he or she would not have the benefit that the Secretary  
16 could permit him or her to have.

17 It is my understanding that with this similar provision  
18 that is made reference to in this letter that I am going to  
19 read in just a moment, there has been 144 cases go before  
20 the Secretary, and the Secretary was to decide whether the  
21 purpose was tax avoidance. The Secretary decided for the  
22 taxpayer 143 times out of 144. That is not bad from the  
23 point-of-view of the taxpayer, winning 99.9 and five-tenths  
24 percent of the time.

25 But if we cannot resolve this little point, I am afraid

1 the whole bill will fail, and I don't think that we will  
2 have achieved much to be proud in the area of tax  
3 simplification.

4 Here is a letter, signed by some of the ablest tax  
5 practitioners in America. They say that this intallment  
6 sale bill is an excellent bill, and they recommend this  
7 provision.

8 They make reference to the fact that experience with  
9 this section, which is already in the Internal Revenue Code,  
10 and to which I made reference, has been completely  
11 satisfactory. They would strongly recommend that we resolve  
12 this matter in this fashion. This is a compromise that has  
13 been suggested, and it is essential to the bill.

14 When I look at the people who signed this letter, I  
15 must say that I am enormously impressed. I notice here  
16 Edward Benjamin of my State. But here are some of the other  
17 names that you will recognize: Sheldon Cohen; Mortimer  
18 Caplan; William M. Goldstein, who served down here in the  
19 Treasury for some years; Frederick Hickman, who served in a  
20 responsible position at Treasury; Vester Hughes who was  
21 asked to come down here to serve as General Counsel for the  
22 Treasury, but it was just not convenient to do so, it was  
23 too big a financial sacrifice to do it.

24 John Nolan who served with distinction here working  
25 with this committee, writing tax law; Charles Walker, who is

1 the outgoing chairman of the Tax Section of the American Bar  
2 Association, and he served here with us working on these  
3 things.

4 I commend all these gentlemen to you. Here you have  
5 got the most distinguished tax practitioners you can find in  
6 the America who all seem to think that this is about the  
7 best way you can resolve this problem, and the taxpayer, in  
8 experience on a similar situation, has a win record of 99.5  
9 percent of the Secretary deciding in their favor.

10 So I would hope that we could resolve it this way,  
11 because otherwise I am afraid that we are not going to be  
12 able to pass this bill. If we don't pass this bill, I  
13 believe that we will have failed to do what I think the  
14 country has a right to expect of us in the way of tax  
15 simplification.

16 As I said, this point would not be so important to me  
17 if it were not for the fact that I am afraid that if we  
18 can't resolve this, we are not going to succeed in passing  
19 this bill. So I would hope that we would accept the  
20 compromise that has been suggested here, that our staff  
21 worked out with the Treasury, and with the support so far as  
22 I know of every distinguished practitioner in the American  
23 Bar Association.

24 I understand that there was a gentleman who testified  
25 before the subcommittee against this point. But with the

1 evidence that we have got to say that this the best we can  
2 do under the circumstances, I would hope that we would  
3 accept this.

4       Senator Byrd. Mr. Chairman, there is a precedent being  
5 set here. If you go with the way it is written, then the  
6 taxpayer if he goes to court, goes in at a disadvantage. We  
7 are writing a disadvantage into the law insofar as the  
8 taxpayer is concerned.

9       It just seems to me as a matter of policy and principle  
10 that if a taxpayer is not satisfied with the ruling of the  
11 Commissioner, he or she should have the right to go to court  
12 on an equal footing with the government, and that is the  
13 only point that I am trying to make.

14       The Chairman. Here is the part that concerns me. If  
15 we don't pass this bill, he is not even going to have the  
16 chance to go to court.

17       Here you are with a provision where the taxpayer has  
18 been winning 99.5 times of 100. If I were a member of the  
19 Tax Section of the American Bar Association, looking at a  
20 provision in the law where if I am in good faith the  
21 Secretary had been willing to recognize my good faith 99  
22 times out of 100, where I don't even have to go to court.  
23 It seems to me that I am better off with that than I am with  
24 the situation where I won't even get to court because the  
25 law will not pass.

1           Senator Byrd. The Internal Revenue Service will have  
2 an opportunity anyway to negotiate with the taxpayer under  
3 the proposal that I am making. It is only when they cannot  
4 agree that they go to court.

5           It just seems to me, do we want to say and establish a  
6 precedent that we are going to write into law a distinct  
7 disadvantage to the taxpayer and prevent him from going to  
8 court on an equal footing with the government. That is the  
9 whole thing. It does not change the process that the  
10 process that the bill is trying to establish.

11           The Chairman. Senator, here are the elite of the  
12 American Bar Association, the Tax Section of the American  
13 Bar Association, saying, yes, pass this with this in it.  
14 They think that this is a good resolution of the problem.

15           Mr. Lubick wanted to say something.

16           Mr. Lubick. You correctly stated, Mr. Chairman, that  
17 we were reluctant in the first place to have any exceptions  
18 in this area because we think that when you are dealing with  
19 related parties, the possibilities of abuse are so great,  
20 and there have been so many people who will just take a  
21 chance because they have nothing to lose in entering into  
22 these transactions that we cannot keep up with them.

23           That is why we want to have some hold on the  
24 situation. We are hoping to keep people out of court, quite  
25 frankly. But when practitioners came to us and said, "Look,

1 if there is an equitable case, we are willing to live with  
2 the standard you have been applying under 306 because we  
3 know you will deal fairly with us in a case where there is  
4 not tax avoidance."

5 We said, "All right, we will back off our resistance to  
6 allowing any of these transactions. We will say, yes, if  
7 the taxpayers can show us that their motives are not tax  
8 avoidance, we will allow it." It was in that spirit that we  
9 put together this package with all of these groups.

10 The Chairman. Let me ask you this. This so-called  
11 compromise, was it your suggestion of how it could be  
12 compromised, or was this the suggestion of imminent tax  
13 practitioners.

14 Mr. Lubick. This was the suggestion of the imminent  
15 tax practitioners. We preferred not to even let them in the  
16 door -- the imminent practitioners other than ours.

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

18 The Chairman. The point I have in mind. This is not  
19 something the Treasury came here pushing for.

20 Here is my concern. Let me ask Mr. Hawkins this  
21 question.

22 This is a controversy that had to be resolved, which I  
23 understand has to be resolved if you are going to have this  
24 bill. Now where did the suggestion come from that we  
25 resolve it in this fashion?



1           Mr. Hawkins. I don't remember. The thing that I  
2 remember most vividly is trying to persuade Treasury to put  
3 in a tax avoidance clause at all. It was like pulling teeth  
4 to get them to agree.

5           Senator Danforth. Mr. Chairman, could I ask Mr. Lubick  
6 a question?

7           Given Treasury's strong opposition to any exception,  
8 and given the fact that from the standpoint of Treasury  
9 transactions between related parties are a tax avoidance  
10 scheme, would it be your judgment that the satisfaction of  
11 the Treasury would be met anywhere close to 99 percent of  
12 the time?

13          Mr. Lubick. I would expect continuation of that same  
14 batting average.

15          Senator Danforth. How could it be with this strong  
16 presumption?

17          Mr. Lubick. Because the cases that will come to us  
18 will be cases where the taxpayers genuinely are acting from  
19 motives other than tax avoidance. The people that have the  
20 tax avoidance in their scenario simply will not come in.  
21 They will be discouraged. They will be deterred. That is  
22 the very purpose of the provision.

23          It is not surprising to me that where there is no tax  
24 avoidance that we have such a fine record to point to. The  
25 provision, I think, is a self-selective and self-fulfilling

1 accomplishing device.

2 Senator Danforth. You have statistics as to the  
3 batting average of the Treasury Department in this other  
4 section of the Code. Is that a public record?

5 Would this committee be able to find out, for example,  
6 how this is working, if the Secretary were given this  
7 discretion?

8 Mr. Lubick. Absolutely, Senator.

9 Senator Danforth. He knows as a matter of course.

10 Mr. Lubick. There is no longer a cloak of secrecy over  
11 private rulings. All the private rulings are now made  
12 available to the general public, even though they may be  
13 sanitized as to names.

14 Senator Danforth. The batting average, so to speak,  
15 that would be kept?

16 Mr. Lubick. The batting average could be published at  
17 such as frequent intervals as you want. If we press the  
18 button, apparently, we can get the average.

19 Senator Danforth. Would it be a simple matter for the  
20 Ways and Means Committee and the Finance Committee to be  
21 apprised of that?

22 Mr. Lubick. It is all kept track of by a commercial  
23 service that is run by CCH. So it can be done at any time.  
24 We could report it to you on an annual basis what the score  
25 is.

1           Senator Danforth. I don't like to just create another  
2 letter for people to write. But that would seem to me to be  
3 a way of satisfying the question as to whether or not there  
4 is such a presumption against transactions between related  
5 parties that there never would be an exception that would be  
6 granted.

7           Mr. Lubick. We will be glad to report back to you a  
8 year from now, or at such time as you think is appropriate.  
9 It might be fairly close. There will not be any reports  
10 probably for a period of a year-and-a-half, but we would  
11 certainly be glad to come back at such time as you  
12 designate, and let you see how the section is operating, and  
13 what the results have been.

14           Senator Talmadge. Mr. Chairman, may I ask a question.  
15 I am trying to get the issue here.

16           Senator Danforth. Excuse me, Senator Talmadge, but if  
17 I could just follow up.

18           I wonder if that could be just as a matter of course  
19 done?

20           The Chairman. We could so provide, and Treasury has no  
21 objection to that.

22           Mr. Lubick. We have none at all.

23           Senator Talmadge. I am trying to get the issue in this  
24 case.

25           When related parties make a sale with each other, this

1 provides that the Secretary may determine whether or not it  
2 is a tax avoidance scheme. If so, you disapprove it. Is  
3 that correct?

4 Mr. Lubick. That is not quite so. There are a number  
5 of permitted transactions. First, we are dealing with the  
6 availability of the installment sale in the first sale  
7 between the related parties. Then, in the one provision,  
8 for example, if there is no resale for two years, then the  
9 question is never even raised. But if there has been a  
10 resale within two years, unless it falls within a number of  
11 the listed exceptions which take care of those cases which  
12 we have been able to foresee, such as involuntary  
13 conversions would not involve tax avoidance, then the  
14 taxpayer is still all right.

15 But then as a catch-all because we have not been able  
16 to foresee, as Senator Bentsen said, all of the  
17 circumstances where there might be unusual motives that are  
18 not tax avoidance, then we say that the taxpayer can come in  
19 and satisfy the Secretary that his motive was not tax  
20 avoidance. It is only in that last resort, in that last  
21 residuary case, where the taxpayer comes in to the Secretary  
22 and shows what his true motives were that you get the  
23 question of the Secretary evaluating them.

24 Senator Talmadge. Let me take it one step further.

25 Let's just assume that the Secretary was completely

1 arbitrary and capricious, and clearly wrong. What is the  
2 remedy to the taxpayer; can he go into court and show that?

3 Mr. Lubick. Yes, he can.

4 Senator Talmadge. In other words, the Secretary's  
5 decision is not final.

6 Mr. Lubick. It is not final.

7 Senator Talmadge. It merely carries the presumption  
8 with it, and that presumption can be refuted in court.

9 Mr. Lubick. It can if the Secretary is shown to be  
10 unreasonable.

11 Senator Talmadge. You have answered my question.

12 The Chairman. I just think that in order to get this  
13 straightened, I think that somebody ought to put a little  
14 chart up here on this blackboard to show us how this  
15 particular area we are talking about is an area that could  
16 be the subject of considerable tax avoidance of concern to  
17 the Treasury.

18 Could somebody put a diagram up there on this board  
19 that would show us how if this not carefully monitored that  
20 this could be an area of serious concern as far as tax  
21 avoidance is concerned. If that is what prompts the  
22 Treasury to be sticky about this, I think that they are  
23 right about being tough about it, because this is an area  
24 where if you don't watch it, this could be an area where  
25 there is tax avoidance.

1           Senator Byrd. Mr. Chairman, may I say that I agree  
2 with you. I feel that this is an area where tax avoidance  
3 should not be permitted, and that is why I favor tightening  
4 up on the sales between related parties. That is why I  
5 favor the proposal that is in the bill. It is not the point  
6 that I am making.

7           The point that I am making is that where there is a  
8 difference of viewpoint between the Commissioner and the  
9 taxpayer, that the taxpayer should be able to go to court on  
10 an equal footing with the Commissioner, which he cannot do  
11 now.

12          The Chairman. I understand. But it seems to me that  
13 this is a very small point compared to all that is  
14 involved.

15          Do you mind putting up there just what the tax  
16 avoidance problem is.

17          Mr. Hawkins. The case that we are talking about, for  
18 example, is on resale, it is a gross case but it is almost  
19 exactly the type of tax cases that I used to have and I  
20 could never find any good reason to tell my clients not to  
21 do it.

22          The husband has IBM stock that has a value of \$100, and  
23 he paid \$10 for it. So he has a new gain. On Monday, he  
24 sells the stock to his wife. His basis is 100, but he sells  
25 to his wife for fair market value, and her basis is now

1 100. Instead of paying him in cash, she gives him a 20-year  
2 note. So he has nothing to report on his tax return. He  
3 has not gotten his money.

4 On Tuesday, the wife turns around and sells the stock  
5 at the stock exchange for cash. The stock has now  
6 fluctuated. The buyer gets the basis of 100. There is no  
7 tax here because she is selling at her basis.

8 What has happened is that the husband and wife are  
9 viewed as a team, and they have taken their appreciated  
10 stock, they have turned it in 24 hours into cold, hard cash,  
11 and they will not pay any tax for 20 years.

12 Senator Byrd. Mr. Chairman, may I make the statement  
13 that that is outlawed by the bill. It has nothing to do  
14 whatsoever with the point that we are talking about. That  
15 is outlawed by this bill.

16 The Chairman. It has much to do with it. We are  
17 talking about the flagrant tax abuses. We are talking about  
18 flagrant tax avoidance. We are talking about Treasury's  
19 concern that the Treasury not be robbed by tax avoidance.

20 Senator Byrd. This will not be such a case because the  
21 bill outlaws any such transaction.

22 The Chairman. Now can you get us to a point that  
23 involves the good faith of the taxpayer.

24 Mr. Hawkins. The one that has been presented to us is  
25 that the father is a farmer, again he has a basis of 10 in

1 his farm. He is getting old and he wants to sell the farm  
2 to his son. He sells his farm to his son at a fair market  
3 value of 100. The son has no great source of money, so what  
4 is often done is that the son will agree to pay out of the  
5 profits of the farm, and pay the 100 over a long period of  
6 time, so there will have a long-term note.

7 The father will not have to pay any tax until the son  
8 pays off. The son takes over the farm and everything is  
9 fine. We felt that that transaction was covered under the  
10 statute because we put in the two-year rule. If the son  
11 wanted to run the farm for a lifetime, we felt that he was  
12 protected by the two-year rule.

13 Then someone said, if the son dies. In that case,  
14 clearly, the estate will want to resell the farm. So we put  
15 in an exception for that.

16 Then we started thinking about the involuntary  
17 condemnation. The son does not want to resell the farm, but  
18 the State wants to build a highway through it. So we would  
19 put an exception for that. Then we tried to run through all  
20 the other things that could happen in a case like that. The  
21 son may develop multiple sclerosis.

22 At that point, in trying to think of all the possible  
23 things that could happen in a perfectly authentic  
24 transaction, a lot of us took the position that if we  
25 thought for two years, we would never think of all the



1 possible cases, why not just have an area where you just do  
2 a tax avoidance, and do it on a case by case basis.

3       The Chairman. Basically, after you thought of all the  
4 different cases where someone could legitimately use the  
5 installment sale method within the family, where the purpose  
6 was not tax avoidance, you finally wound up with a situation  
7 where there might be a myriad of other situations arise  
8 where there is no way that you could spell out that in the  
9 law, and at that point you said, "Why don't we just say that  
10 if they can convince the Secretary that the purpose of this  
11 transaction is not tax avoidance, he can waive it."

12       Mr. Hawkins. It was to have the flexibility.

13       Senator Byrd. No one is arguing against the  
14 flexibility. The only argument is whether the taxpayer can  
15 go to court on an equal footing with the Commissioner in  
16 determining the facts. That is all.

17       The Chairman. The Secretary is not willing to leave an  
18 open-ended provision as to the various things that might be  
19 dreamed up by taxpayers. That is basically your position.

20       Mr. Lubick. That is correct, Mr. Chairman. Our  
21 problem is that unless the taxpayer comes in, we don't want  
22 him to be simply claiming these things and take a chance and  
23 say, "Maybe the IRS will audit me, and maybe they won't."  
24 That would not lead to any diminution of the problem if it  
25 were left up to the audit lottery.

1 Senator Wallop. Mr. Chairman, could I just ask.

2 If that the case, Mr. Lubick, and I appreciate what you  
3 are trying to get at, how can you answer Senator Talmadge in  
4 the affirmative when he asked you if the taxpayer always has  
5 the ability to challenge the judgment of the Commissioner.

6 Mr. Lubick. What the taxpayer can say is that the  
7 Commissioner -- The taxpayer comes in and says, "We want to  
8 go through with this transaction. Tax avoidance is not a  
9 motive." The Secretary says, "I am not convinced." Then  
10 the taxpayer goes to court, and says, "Well, the Secretary  
11 is crazy as a loon. He is being unreasonable." If he can  
12 indeed establish that, then the courts have held that the  
13 Secretary's discretion is not unbridled, it cannot be  
14 exercised arbitrarily, it cannot be exercised capriciously.  
15 Indeed there is a review.

16 Senator Byrd is concerned about the standard of review.  
17 He does not want it to be whether the Secretary is  
18 reasonable or not. He wants it to be whether the Judge  
19 thinks if it is reasonable or not, and not the Secretary.  
20 Our concern is that if it is left that way, taxpayers will  
21 say, well, maybe the Secretary will catch me, or maybe he  
22 won't catch me. But ultimately, I will have a chance to  
23 argue it in court, or maybe the Secretary won't catch me,  
24 and I will never have to argue it.

25 On the face of the statute, if I have at all a

1 plausible case, and taxpayers and their practitioners are  
2 very inventive at developing plausible cases and putting a  
3 facade on it, then I am protected from a fraud charge, and  
4 that is all he is concerned about, and he has nothing to  
5 lose otherwise.

6 Senator Matsunaga. Mr. Chairman.

7 The Chairman. Here is the thing that concerns me. If  
8 we resolve this matter the way Harry Byrd would like to  
9 resolve it, and we report this bill that way, it will have  
10 to go out over the Treasury's objection. Is that correct?

11 Mr. Lubick. Yes, sir.

12 The Chairman. You will have to object to the bill.

13 Mr. Lubick. Yes, sir.

14 Senator Wallop. It would not be the first bill we  
15 passed through here that the Treasury objected to.

16 The Chairman. Yes, but basically, gentlemen, if we  
17 don't pass this bill in the area of simplification, this  
18 committee will have been a failure. We have worked on  
19 simplification on all sorts of things that we have talked  
20 about, Subchapter S, and all sorts of things. This is a  
21 very significant reform.

22 If I do say it, I am a practitioner by law. I know a  
23 little about this. If we vote down the whole American Bar  
24 Association, the American Bankers Association, and everybody  
25 else, to insist on some point where the lawyers are not

1 concerned about it, it seems to me that it is just a failure  
2 to do our job.

3 Ordinarily the Senator could be arbitrary, and I would  
4 go along with him. But it seems to me that if we insist on  
5 this point, we are going to fail to pass a very important  
6 bill which will be a major step in tax simplification.

7 Do I understand that the American Bankers Association  
8 agreed with this also? The American Bar Association favored  
9 it. The American Bankers Association favored it.

10 Senator Matsunaga. The American Institute of Certified  
11 Public Accountants, as I understand it, also favored it, and  
12 they are representatives of the taxpayers.

13 The Chairman. Those are the people who ought to be  
14 concerned about their right to adjudicate the matter, and  
15 they are all for resolving this matter in this fashion. If  
16 we have it the other way the bill is not going to become  
17 law.

18 I would just like to see us achieve something. That  
19 being the case, it seems to me that we ought to go along  
20 with the Treasury position on this -- This is not the  
21 Treasury position, this is the answer that was suggested to  
22 them by the practitioners.

23 Did you want to say something, Mr. Matsunaga.

24 Senator Matsunaga. I added that the American Institute  
25 of Certified Public Accountants, too, who represent

1 taxpayers, are also endorsing the language as proposed by  
2 the bill. So that I would ask Senator Byrd, in light of all  
3 this, since the representatives of the taxpayers themselves  
4 have approved the language, and the Treasury would otherwise  
5 oppose it, perhaps we ought to let this language go to the  
6 floor as it, and perhaps if there is any objection maybe it  
7 could be raised there.

8 Senator Byrd. The issue, as I see it, do we want to  
9 deny the taxpayer the right to go to court on an equal  
10 footing with the government. That is the whole thing. If  
11 we are going to do it in this case, then this is going to be  
12 a precedent for doing it many case.

13 The Chairman. The precedent is already set. The  
14 provision that you are talking about is already in the law.

15 Senator Byrd. It expands the precedent, then. It  
16 creates an additional precedent.

17 The Chairman. But it is already in the law. All the  
18 practitioners are extremely happy about the way it has been  
19 working out.

20 Those in favor of the proposed compromise that the  
21 Treasury is willing to go along with say, aye.

22 Senator Byrd. I don't see a quorum to vote, Mr.  
23 Chairman.

24 The Chairman. If you want to make a point of no  
25 quorum, Senator, all right. That is your privilege.

1           Senator Byrd. I make a point of no quorum.

2           The Chairman. Fine.

3           I am not going to ask that we try to bring the other  
4 senators in here. We will just discuss this at our next  
5 meeting.

6           We will stand in recess.

7           (Whereupon, at 12:15 a.m., the committee adjourned,  
8 subject to call of the Chair.)

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